Empirical Legal Research in Leading Generalist Australian and New Zealand Law Journals (2019–24): A Pilot Study

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Empirical legal research uniquely provides insights into the operation and practice of law, highlighting areas for reform in ways that doctrinal and theoretical research may not. Evaluative reflections on empirical methodology are vital to maximise the rigour and impact of the research. To that end, this article presents a pilot study of empirical legal research in leading Australian and New Zealand generalist law journals from 2019–24. Using systematic content analysis, the article identifies the following trends: a preference for established data sources and methods; an emphasis on 'informal' methods to analyse judgments and other documents; a willingness to use multiple methods in the same study; a preference for small authorship teams; the prominence of government/philanthropic funding; and the absence of ethics approval information where it might be expected. Given the pilot nature of the study, these trends are presented as hypotheses for further testing using broader, more representative datasets over lengthier durations. The article also provides the broad methodological framework for conducting those broader studies, from data sources, search methods, coding and analysis, to be adapted as needed. Further, the trends highlight potential directions for the enhancement of empirical legal research in the Australasian region.

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The dataset and reliability testing data are available at the University of Auckland's figshare data repository: https://doi.org/10.17608/k6.auckland.32796423. Disclosure: one of the author's papers is included in the dataset: Joshua Yuvaraj and Rebecca Giblin, 'Are Contracts Enough? An Empirical Study of Author Rights in Australian Publishing Agreements' (2020) 44(1) *Melbourne University Law Review* 380. This is an unavoidable limitation of being an academic in the Australasian region that specialises in empirical legal research.

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I INTRODUCTION

Empirical legal research enriches discourse about how law operates in practice, in ways that may otherwise not be apparent from doctrinal or theoretical research.[1] As Genn and others have articulated:

> Empirical legal research helps to build our theoretical understanding of law as a social and political phenomenon and contributes to the development of social theory. Put simply, empirical research helps us to understand the law better and an empirical understanding of the law in action helps us to understand society better.[2]

To achieve these goals, however, empirical legal research must be done *well*. Without high standards for empirical legal research, law reform discourse can be infected by bias, outdated or unreliable findings, over-generalisations and other 'bad data' issues. The need for high standards is particularly important in Australia and New Zealand, given the documented, but often unsatisfactory, reliance of judges in both countries on empirical insights when deciding cases before them,[3] and the fact that Australasian law schools have not typically focused on training in empirical methods.[4]

To that end, this article is the starting point of a broader project interrogating empirical legal research in and from the Australasian region. Critical reflections on empirical legal research are plentiful elsewhere,[5] but are less common in relation to Australasia-related research. The overall aim of the project is therefore to advance empirical scholarship on the law in this region. Given the voluminous nature of the literature, the starting point is a pilot study of empirical legal research published in leading Australian and New Zealand generalist law journals from 2019–24. The pilot study is designed to be exploratory, providing 'initial insights and ideas [about] … and … variables associated with' empirical legal

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1 Stefan Theil, 'Carefully Tailored: Doctrinal Methods and Empirical Contributions' (2025) 45(4) *Oxford Journal of Legal Studies* 1047, 1067–8.

2 Hazel Genn, Martin Partington and Sally Wheeler, *Law in the Real World: Improving Our Understanding of How Law Works* (The Nuffield Inquiry on Empirical Legal Research, Final Report, November 2006) [4] <https://www.nuffieldfoundation.org/wp-content/uploads/2019/12/Law-in-the-Real-World-full-report.pdf>.

3 Kylie Burns, 'The Australian High Court and Social Facts: A Content Analysis Study' (2012) 40(3) *Federal Law Review* 317, 337–9; Carrie Leonetti, 'References to Social-Science Research in the Family Court' (2025) 22(2) *Indiana Health Law Review* 281. For similar reflections on tort law judgments in the United Kingdom, see Kylie Burns, '"In this Day and Age": Social Facts, Common Sense and Cognition in Tort Law Judging in the United Kingdom' (2018) 45(2) *Journal of Law and Society* 226.

4 See, eg, a 2009 survey of 29 law school curricula which demonstrated little express focus on training in empirical research methods: Kylie Burns and Terry Hutchinson, 'The Impact of "Empirical Facts" on Legal Scholarship and Legal Research Training' (2009) 43(2) *The Law Teacher* 153, 164.

5 See, eg, Michael Adler and Jonathan Simon, 'Stepwise Progression: The Past, Present, and Possible Future of Empirical Research on Law in the United States and the United Kingdom' (2014) 41(2) *Journal of Law and Society* 173.

research in the Australasian context.[6] Thus, the dataset is not necessarily representative, nor does it claim representativeness, of all Australasian legal empirical research. Instead, the study aims to provide (a) a methodological framework for future, more expansive studies into empirical research; and (b) initial hypotheses to guide those further investigations,[7] including the areas of law surveyed, jurisdictions covered, research funding, the types of methods applied and more. These hypotheses are likely to prove fruitful for comparison against broader datasets, particularly given they engage long-held anecdotal assumptions about generalist law journals in Australasia[8] being reticent to publish empirical legal research or publishing empirical legal research of lesser quality. This article does not aim to answer these assumptions, but to build a platform for future research to more holistically engage them.

Part II provides a background to empirical legal research, concentrating on meta-research: reflections *about* research, focusing on methodological approaches. Parts III and IV then set out the methodology and results of the pilot study. Part V discusses these trends, highlighting pathways for legal research and education in Australia and New Zealand. Part VI concludes.

II Background

There is no accepted definition of empirical legal research, and the scope of this article makes it unnecessary to critically evaluate different definitional approaches. Accordingly, this article adopts the following definition, developed from previous definitions in the legal scholarship:[9]

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6 Wing Hong Chui, 'Quantitative Legal Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press, 2nd ed, 2017) 63.

7 See also David Tan et al, 'How Does the High Court Interpret the Constitution? A Qualitative Analysis between 2019–21' (2024) 47(1) *University of New South Wales Law Journal* 177, 178; William van Caenegem and Violet Atkinson, 'Observing Creativity in Fashion: Implications for Copyright' (2021) 16(12) *Journal of Intellectual Property Law and Practice* 1398, 1413–14, discussing how another pilot study's results can usefully inform discourse and set the groundwork for future studies.

8 In this article, Australasia is used to denote Australia and New Zealand, without diminishing the need for similar research to be conducted on empirical legal scholarship in the broader Oceanic region. See C Gibson, 'Australasia' in Rob Kitchin and Nigel Thrift (eds), *International Encyclopedia of Human Geography* (Elsevier, 2009) 225, 232–3.

9 See, eg, Rachel Cahill-O'Callaghan and Linda Mulcahy, 'Where are the Numbers? Challenging the Barriers to Quantitative Socio-Legal Scholarship in the United Kingdom' (2022) 49 (Suppl 1) *Journal of Law and Society* S105, S108: 'any research that drew upon quantitative, qualitative, mixed, or experimental methods to understand a legal problem'; Christina L Boyd, 'In Defense of Empirical Legal Studies' (2015) 63(2) *Buffalo Law Review* 363, 365–6 (emphasis in original, citations omitted):

> Empirical legal scholarship, as the above definition suggests, relies on objective observation and/or experience of some facet of the world. The empirical evidence (data) resulting from this exercise can be quantitative (numerical) or qualitative (non-numerical), and the resulting conclusions that we draw on the legal world are called *inferences*. These data and the inferences drawn from them hold the potential to advance *scientific knowledge* of the law

> Research that applies systematic quantitative or qualitative methods to systematically analyse a body of primary data to generate new observational data about the nature, interpretation, and/or practical implications of legal instruments.

In doing so, this article deliberately avoids using the language of socio-legal research, which 'examines law in its social context, often by utilising perspectives and research techniques from the social sciences'.[10] Such research is not *necessarily* empirical even though it can and often does involve empirical methods.[11] Studies do focus on scholarship in the overlap between the two definitions,[12] but this article focuses solely on empirical legal research as defined above. Further, 'primary data' covers both original (eg interview or survey responses) and secondary data (eg judgments or legislation).

As indicated above, critically reflecting on how empirical legal research is conducted encourages methodological rigour, with the aim of impacting legal discourse and policy reform. Such critical reflections can be termed meta-research: studies *about* the use of empirical methods in legal scholarship, which may or may not themselves involve the use of empirical methods.[13]

Meta-research on legal scholarship in Australasia is limited. Some scholars conduct meta-research on empirical research in particular areas of law or the legal system.[14] Others have analysed research from one publication to identify trends like the type of research method.[15] Some have also approached empirical legal research from an educational perspective: for example, examining how empirical legal skills are taught in law schools, the reliability of new technologies for empirical research, and how researchers can enhance the quality of their

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> and legal actors, something that differs rather significantly from 'knowledge derived from myth, casual observation, intuition, belief, or common sense.'

10 Alysia Blackham and Amy Ludlow, 'Introduction' in Alysia Blackham and Amy Ludlow (eds), *New Frontiers in Empirical Labour Law Research* (Bloomsbury, 2015) 3.

11 Ibid 3–4.

12 See, eg, Cahill-O'Callaghan and Mulcahy (n 9).

13 See also the definition in Jason M Chin, Malgorzata Lagisz and Shinichi Nakagawa, 'Where is the Evidence in Evidence-Based Law Reform?' (2022) 45(3) *University of New South Wales Law Journal* 1124, 1129–30.

14 Alysia Blackham, 'Empirical Research and Workplace Discrimination Law' (2019) 3(2) *Brill Research Perspectives in Comparative Discrimination Law* 1; Kylie Pappalardo, 'Empirical Methods for Researching Copyright in Australia' in Estelle Derclaye (ed), *Research Handbook on Empirical Studies in Intellectual Property Law* (Edward Elgar, 2023); Russell Smyth, 'Empirical Studies of Judicial Behavior and Decision-Making in Australian and New Zealand Courts' in Nuno Garoupa, Rebecca D Gill and Lydia B Tiede (eds), *High Courts in Global Perspective: Evidence, Methodologies, and Findings* (University of Virginia Press, 2021) 108.

15 Benedict Sheehy and John Dumay, 'Examining Legal Scholarship in Australia: A Case Study' (2021) 49(1) *International Journal of Legal Information* 32; Lin Mei Tan and Adrian Sawyer, 'Reflections on Tax Research: An Analysis of Over 25 Years of Research Published in the New Zealand Journal of Taxation Law and Policy' (2020) 26(4) *New Zealand Journal of Taxation Law and Policy* 431; Christian Boulanger, Naomi Creutzfeldt and Jennifer Hendry, 'The *Journal of Law and Society* in Context: A Bibliometric Analysis' (2024) 51(1) *Journal of Law and Society* 3.

empirical research.[16] Accordingly, there is space for new meta-research into empirical legal scholarship in Australasia to provide visibility as to where scholars are methodologically strong and where there may be areas of improvement. These reflections are likely to have implications for scholars seeking to undertake empirical research and institutions considering how to equip those scholars. As shown below, however, the potential corpus of data from which this analysis will be derived is too vast for a conventional literature review to be undertaken.[17] Accordingly, this article presents a pilot study of empirical research over a confined, recent (at the time of writing) period and set of publications, which provides a methodological basis and hypotheses to be developed, tested and compared against in more expansively scoped studies.

III Method

This Part sets out the method adopted in this pilot study. Preliminary searches indicate the corpus of empirical scholarship is likely to be too large to conduct a conventional literature review.[18] Systematic content analysis ('SCA') was therefore selected as the most appropriate analytical method by which to derive both quantitative and qualitative data from the dataset of empirical legal journal articles. Schrepel's definition of SCA of legal texts is applied here to journal articles:

> SCA consists of collecting a … corpus [of data], documenting consistent features expressed in the corpus, and drawing conclusions from them … [it] allows specialists to break down the language of [the] … texts and identify themes, concepts, and arguments …[19]

There were two stages to applying this SCA approach in this pilot study: building the dataset and analysing the data.

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16 See, eg, Burns and Hutchinson (n 4); Alysia Blackham, 'Empirical Legal Research Teaching in Australia: Building an Empirical Revolution' (2023) 49(1) *Alternative Law Journal* 62; Alysia Blackham, 'Interrogating New Methods in Socio-Legal Studies: Content Analysis, Case Law and Artificial Intelligence' (2025) 50(2) *Alternative Law Journal* 85; Jason M Chin et al, 'Improving the Credibility of Empirical Legal Research: Practical Suggestions for Researchers, Journals and Law Schools' (2021) 3(2) *Law, Technology and Humans* 107.

17 A conventional literature review may be more achievable in relation to particular phenomena: see, eg, Smyth (n 14).

18 Screenshots of preliminary searches are available from the author upon request.

19 Thibaut Schrepel, 'A Systematic Content Analysis of Innovation in European Competition Law' (2024) 58 *European Journal of Law and Economics* 355, 357.

A *Stage 1: Building the Dataset*

1 Search Terms

Prior studies into empirical legal research have used collections of search terms (eg 'empirical', 'quantitative', 'behavioural', 'statistical') to identify articles for inclusion in datasets.[20] To ensure wide coverage, the approach taken in this pilot study was to search relevant databases for the word 'empirical'. Other phrases may have generated more results, but even a search for the word 'empirical' led to voluminous results lists that would have been unrealistic to manually code, given resource constraints. A search for phrases as alternatives to each other (eg 'empirical' OR 'quantitative') would likely generate considerably more results.

Given resource constraints, the exploratory nature of this pilot study and the need for a reproducible search method, it is reasonable to assume a study adopting empirical methods will at some point include the word 'empirical', particularly given the field is known as 'empirical legal studies' or 'empirical legal research'. Thus, a search for 'empirical' is likely to identify a significant proportion of empirical legal scholarship in the journals identified.

An inherent limitation is that some studies that would otherwise be categorised as empirical may be missed using this search mechanism. For instance, empirical papers may instead use terms like 'surveys', 'interviews', 'experiments', etc in their titles, abstracts and/or text of the paper.[21] This may be problematic in a whole-of-universe study, where the aim is to identify all relevant data points to make authoritative descriptive claims. However, it is a justifiable limitation for a smaller pilot study, the goal of which is to identify points of interest for further examination as to the development of empirical legal research. This study thus does *not* make broader claims of representativeness or holistic coverage of the body of empirical legal research. It instead uses the same philosophy articulated by Heise in his study of empirical legal research from 1990–2009: 'one should regard the findings presented … as suggestive of basic trends rather than specific point estimates.'[22] In that context, the assumption that 'empirical' will cover a reasonable enough proportion of the relevant literature to identify hypotheses for further investigation is justified, as it is by the significant amount of literature identified using this search method.

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[20] Michael Heise, 'An Empirical Analysis of Empirical Legal Scholarship Production, 1990–2009' [2011] (5) *University of Illinois Law Review* 1739, 1742; Robert C Ellickson, 'Trends in Legal Scholarship: A Statistical Study' (2000) 29(2) *Journal of Legal Studies* 517, 528–30; Tracey E George, 'An Empirical Study of Empirical Legal Scholarship: The Top Law Schools' (2006) 81(1) *Indiana Law Journal* 141, 147; Mark A Hall and Ronald F Wright, 'Systematic Content Analysis of Judicial Opinions' (2008) 96(1) *California Law Review* 63, 71 n 29; Jason Chin et al, 'The Transparency of Quantitative Empirical Legal Research Published in Highly Ranked Law Journals (2018–2020): An Observational Study' (2024) 12 *F1000Research* 144:1–32, 8.

[21] Thanks to a reviewer for identifying this point.

[22] Heise (n 20) 1742.

2 *Journal Selection and Data Sources*

The source of the data was the top-ranked generalist Australian and New Zealand law journals in the 2022 Australian Business Deans Council's Journal Quality List ('ABDC List').[23] Journal ranking in legal research is a complex and questioned process, and there is no reliable metric for determining ultimate quality.[24] There have been attempts to build bespoke rankings of Australian law journals from various other rankings systems and data sources.[25] However, the ABDC List appears the most comprehensive and accessible journal ranking list in the region (there being no New Zealand equivalent). It is also the most current, with similar lists prepared by the Council of Australian Law Deans and Excellence in Research Assessment, dated 2009 and 2010, respectively.[26]

This ameliorates concerns of conflicting rankings between the three systems,[27] as only one continues to be updated. Using this list also ensures replicability for future studies. Rather than using subjective factors to determine a group of research subjects, future studies can use the ABDC List to track the development of the trends identified here. Last, while Australasian scholars doubtless publish empirical research in leading journals around the world,[28] limiting the scope to journals in the Australasian region increases the likelihood that the subject matter will be so jurisdictionally limited, increasing the usefulness of the study's findings to scholars writing and working in this region.

The journals chosen from the ABDC List all had the two highest rankings (A or A*), and have otherwise been generally regarded as high-quality publications in the legal academic field in Australasia.[29] Generalist journals were purposely selected over subject-matter journals (eg *Australian Intellectual Property Journal*

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23 'ABDC Journal Quality List', *Australian Business Deans Council* (Web Page) <https://abdc.edu.au/abdc-journal-quality-list/>.

24 See generally Kathy Bowrey, *A Report into Methodologies Underpinning Australian Law Journal Rankings* (Report, February 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2734017>; Janja Hojnik, 'What Shall I Compare Thee To? Legal Journals, Impact, Citation and Peer Rankings' (2021) 41(2) *Legal Studies* 252; Dan Jerker B Svantesson, 'International Ranking of Law Journals: Can It Be Done and at What Cost?' (2009) 29(4) *Legal Studies* 678, 691.

25 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(2) *University of Western Australia Law Review* 220; Russell Smyth, 'Who Publishes in Australia's Top Law Journals?' (2012) 35(1) *University of New South Wales Law Journal* 201.

26 Bowrey (n 24) 31.

27 Ibid 33.

28 See, eg, Christine Parker, Tahlia Gordon and Steve Mark, 'Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales' (2010) 37(3) *Journal of Law and Society* 466; Pushkar Maitra and Russell Smyth, 'Judicial Independence, Judicial Promotion and the Enforcement of Legislative Wealth Transfers: An Empirical Study of the New Zealand High Court' (2004) 17 *European Journal of Law and Economics* 209.

29 See, eg, Dennis Warren, 'Australian Law Journals: An Analysis of Citation Patterns' (1996) 27(4) *Australian Academic and Research Libraries* 261, 267; Ian Ramsay and GP Stapledon, 'A Citation Analysis of Australian Law Journals' (1997) 21(2) *Melbourne University Law Review* 676, 685–6.

and *Torts Law Journal*).[30] Empirical studies doubtless exist in those journals.[31] However, generalist law journals, particularly from leading law schools like the Group of Eight, are typically regarded as the most prestigious among Australasian legal academics. The strong reputations such journals have built up over (in most cases) decades create an incentive to rigorously maintain a high level of quality control, such that empirical work published in those journals can appropriately be regarded as leading and influential over future scholarship.[32]

As indicated above, the goal of this pilot study is *not* to provide an overview of the 'breadth of empirical legal studies research focused on Australasia'.[33] To do so would require considerably more research using book chapters, specialist and generalist journals, white papers and more, over a longer date range. However, this pilot study is intended to be the *first step* in that broader research initiative. In capturing empirical legal research in the leading generalist Australian and New Zealand law reviews, the goal is to provide a picture of the kinds of empirical research these leading publications consider would appeal to a wide audience, and to offer a platform for the trends identified in that dataset to be interrogated in wider contexts like specialist journals and book chapters. For instance, one may hypothesise that generalist law journals are reticent to publish empirical legal research, or may not publish complex or advanced empirical legal studies (such studies being likelier to be published in specialist socio-legal or empirical journals like *Journal of Empirical Legal Studies, Law & Society Review, Journal of Law and*

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30 Prior scholarship has generally accepted the category of generalist journal without the need for further definition: see, eg, Ilija Vickovich, 'Law Journals: From Discourse to Pedagogy' (2015) 25(1) *Legal Education Review* 65, 65 n 3; Svantesson (n 24) 687–8; Lionel Bently, 'The Past, Present and Future of the Cambridge Law Journal' (2021) 80 (S1) *Cambridge Law Journal* s8, s22.

31 Alison McLennan and Sarah Maslen, 'Impact of Patents on the Practice of Synthetic Biology in Australia: A Qualitative Study' (2023) 34(2) *Australian Intellectual Property Journal* 89; Michael Fielding, 'Exemplary Damages and Police Wrongdoing: An Empirical Analysis' (2024) 29(1) *Torts Law Journal* 53; Paula McDonald and Sara Charlesworth, 'Settlement Outcomes in Sexual Harassment Complaints' (2013) 24(4) *Australasian Dispute Resolution Journal* 259; Alexander Fullarton and Dale Pinto, 'Tax Accounting for Livestock: Mother or Meat/Capital or Revenue?' (2021) 27(1) *New Zealand Journal of Taxation Law and Policy* 39; Christopher Perry, 'An Empirical Study of Applications for Protection Orders Made to the Christchurch Family Court' (2000) 3(6) *New Zealand Family Law Journal* 139; Christine Forster, Jennifer Schulz and Jeni Engel, 'The Gendering of Future Loss of Earnings Damages in New South Wales, Australia: An Empirical Analysis, 2002–2003' (2025) 29(3) *Tort Law Review* 257.

32 See Cahill-O'Callaghan and Mulcahy (n 9) S107–8, where the authors included the leading generalist British periodicals (*Modern Law Review*, *Oxford Journal of Legal Studies*, *Public Law* and *Feminist Legal Studies*) as examples of 'where the best socio-legal work might also be placed': at S108. That study did include various socio-legal publications (*Journal of Law and Society*, *Social & Legal Studies*, *Journal of Social Welfare*, *Family Law*) in its examination of quantitative socio-legal scholarship, but there appears to only be one equivalent journal in the Australasian region: *Legalities*, the official journal of the Law and Society Association of Australia and New Zealand. Given the need for a replicable journal selection method and the scope of this pilot study, and the fact that *Legalities* was not listed on the ABDC ranking list, it was reasonable to exclude this journal, though studies of broader scope should certainly consider it for inclusion.

33 Thanks to a reviewer for this wording, which helped clarify this article's scope.

Society, Legal Studies and others).[34] This article freely acknowledges this assumption, but how can this or other assumptions be tested without hypotheses, namely, initial trends from the generalist law reviews? Thus, the selection is not only methodologically justified; it has utility to future research projects investigating the wider phenomenon of empirical legal research and its dissemination.

The 2022 ABDC List — the most recent at the time of writing — was filtered for all A and A* journals (n=852). From this list, nine Australian or New Zealand-based generalist law journals were identified:

1. *Adelaide Law Review*
2. *Australian Law Journal*
3. *Deakin Law Review*
4. *Federal Law Review*
5. *Melbourne University Law Review*
6. *Monash University Law Review*
7. *New Zealand Universities Law Review*
8. *Sydney Law Review*
9. *University of New South Wales Law Journal* ('*UNSW Law Journal*')

Of the eight Australian law journals in this list, most can be found in Murray and Skead's 2020 analysis of publication patterns in Australian law journals as being the top law journals in the country.[35] They also reflect a 2022 journal ranking list published by the Flinders University College of Business, Government and Law, the only exception being the inclusion of the *New Zealand Law Review* ('NZLR') as an 'A*' journal (despite being ranked B on the ABDC List).[36] Given this discrepancy and the need for a replicable data selection method, the NZLR was excluded from this pilot study.

3 Search Process: Journal List and Date Range

Each journal was searched on a commercial database the author had access to (HeinOnline, Westlaw, Informit, etc) because those searches would permit time range limits.[37] The date range was then reduced to the six years up to 31 December

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34 Thanks to reviewers for this point.

35 Murray and Skead (n 25) 235.

36 'CBGL Law Journal Ranking List 2022', *Flinders University* (Web Page) <https://staff.flinders.edu.au/content/dam/staff/documents/cbgl/cbgl_law_journal_ranking_list_2022.pdf>.

37 An earlier stage of the search process involved searching the Australasian Legal Scholarship Library on Austlii, which purports to be the most comprehensive source of Australasian legal

2024. The *Deakin Law Review* was also removed from the dataset because it ceased publication in 2019. With these date ranges applied and irrelevant material (eg book reviews, comments, tables of contents) removed automatically or manually, there were 475 results for the term 'empirical' (Table 1).[38]

Table 1: Results of Search for 'Empirical' in Leading Australian and New Zealand Generalist Law Journals

Journal	Articles
UNSW Law Journal	145
Australian Law Journal	64
Melbourne University Law Review	61
Monash University Law Review	55
Adelaide Law Review	53
Federal Law Review	41
Sydney Law Review	31
New Zealand Universities Law Review	25
Total	475

The six-year date range is justifiable because of the pilot nature of the study. A longer date range (eg 2000–25) would doubtless produce richer data for analysis. For example, Farrell and Smyth analysed co-authorship trends in the Group of Eight law reviews from 1975–2010, enabling them to draw more exhaustive conclusions.[39] The point of this study is not to produce a representative dataset nor draw implications that are *necessarily* representative of all empirical legal research conducted by Australasian researchers. The aim is to produce (a) a methodological framework for adoption in future studies; and (b) trends to be investigated in future studies. Inherent in that methodological framework is the

scholarship. While a large database (a search for 'empirical' generated 1,750 results), it did not include the ability to filter by specific date ranges *and* a customised selection of journals. Further, neither the *Australian Law Journal*, *New Zealand Universities Law Review*, nor the *Federal Law Review* were hosted on this library. Future studies may wish to incorporate this database for completeness or checking, but doing so was not within the scope of this pilot study.

38 The inherent malleability of the commercial databases means there was potential for some result numbers to shift depending on the search 'path' taken on the website (eg selecting the journal first or doing a general search, then filtering for the journal and date). The final numbers reflect multiple searches undertaken for the 2019–24 date range, increasing confidence and replicability. Searches on HeinOnline were filtered to remove 'Table of contents', 'Notes', 'Comments', 'Review essays' and 'Editorial' as these were most likely *not* to provide original empirical scholarship. Book reviews, case notes, current issues reports and other summative documents were manually removed from Westlaw searches, as there was no option to automatically filter them out.

39 James Farrell and Russell Smyth, 'Trends in Co-Authorship in the Australian Group of Eight Law Reviews' (2014) 39(3) *Monash University Law Review* 815.

potential for those trends to be disproved in future studies; however, identifying these trends still advances the scholarship. To that end, the six-year period is methodologically justifiable.

4 Search Process: Identifying Original Empirical Research

A second filtering stage was needed to identify original empirical research from these search results. Among the various matrices previously used,[40] Diamond and Mueller's four-category matrix of empiricism was a useful starting point:

> Category 1: No empirical content
>
> Category 2: Minimal empirical content (either solely in footnotes or a simple citation of a statistic in the text)
>
> Category 3: Some analysis of empirical work or a section devoted to discussion of empirical work performed by others.
>
> Category 4: Original empirical work.[41]

The goal of this study is to identify trends in empirical legal research, earlier defined as research that applies systematic quantitative or qualitative methods to systematically analyse a body of original data to generate new observational data about, methods to analyse or hypotheses regarding, the nature, interpretation and/or practical implications of legal instruments. This definition was applied to the phrase '[o]riginal empirical work' in Category 4 of the Diamond and Mueller taxonomy, such that only Category 4 papers would be selected.

5 Coding

Given resource constraints, the author used the abstracts, titles, prior knowledge of the papers in the dataset and/or the full text to determine whether the paper was an original empirical paper.[42] General descriptions of legislative frameworks or doctrinal research were excluded — for example, how courts had interpreted legislative provisions, unless there was some systematic qualitative or quantitative method applied to the collection of that data, its analysis and the

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40 See, eg, Lynn M LoPucki, 'Disciplinary Legal Empiricism' (2017) 76(2) *Maryland Law Review* 449, 461.

41 Shari Seidman Diamond and Pam Mueller, 'Empirical Legal Scholarship in Law Reviews' (2010) 6 *Annual Review of Law and Social Science* 581.

42 For an analogous approach, see, eg, Gijs van Dijck, Shahar Sverdlov and Gabriela Buck, 'Empirical Legal Research in Europe: Prevalence, Obstacles, and Interventions' (2018) 11(2) *Erasmus Law Review* 105, 109. For the *New Zealand Universities Law Review*, access was not available to the full articles via Westlaw, so the author used another database to manually search for each article to obtain a full-text version. Eleven papers were initially coded as 'borderline' or 'unsure'. On further review, the author coded them as empirical or non-empirical based on the coding matrix. The definition of empirical work was slightly amended as the author coded, reflecting the iterative nature of this pilot study. Nevertheless, unlike Stage 2, the definition stayed broadly consistent, making it reasonable to use the final definition as the basis of reliability testing.

presentation of results.[43] This also applied to the use of 'case study': where a paper used that phrase merely to explain how an illustrative example was used, this did not meet the criteria.[44] By contrast, a paper that did not use 'case study' but systematically compared a transcript of cross-examination against the science could be considered empirical.[45]

In some instances, an overview of all the cases on a particular matter, though a 'whole-of-universe' study, was presented descriptively and doctrinally, so it was not coded as empirical; but in other instances, where there had been some quantitative data derived from a 'whole-of-universe' dataset, that was coded as empirical.[46] Likewise, tabulated legislative comparisons were not considered empirical unless accompanied by some further qualitative or quantitative methodology or analysis.[47] Studies that reported findings from an empirical project previously done were included,[48] but these findings needed to be the main focus of the article rather than part of a literature review or ancillary.[49] Studies that also reinterpreted, combined or represented data from government sources in an original empirical fashion were also included.[50]

6 Limitations

While the data selection method has the following limitations, those limitations are accompanied by reasonable justifications and/or mitigations.

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43 Laurie Berg, Sara Dehm and Anthea Vogl, 'Refugees and Asylum Seekers as Workers: Radical Temporariness and Labour Exploitation in Australia' (2022) 45(1) *University of New South Wales Law Journal* 35, 48; cf Carolyn Sutherland, 'Judging the Employment Status of Workers: An Analysis of Commonsense Reasoning' (2022) 46(1) *Melbourne University Law Review* 281, 295: even though the author indicated it was not 'systematic', the study still adopted a discourse analysis method and was therefore included in this pilot study.

44 See, eg, Benjamin Hayward, 'Fantastic Precedents and Where to Find Them: An Argument for Limiting the Operation of Common Law Binding Precedent Rules When Interpreting the *UN Sales Convention (CISG)*' (2024) 47(4) *University of New South Wales Law Journal* 1348, 1372; Julian R Murphy et al, 'An Ancient Remedy for Modern Ills: The Prerogative of Mercy and Mandatory Sentencing' (2020) 46(3) *Monash University Law Review* 252.

45 Gary Edmond et al, 'Forensic Science Evidence and the Limits of Cross-Examination' (2019) 42(3) *Melbourne University Law Review* 858.

46 See, eg, Kevin O'Rourke, Ann Kayis-Kumar and Michael Walpole, 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *Sydney Law Review* 1.

47 See, eg, Megan Prictor, 'Mandatory Data Breach Notification Laws and Australian Health Data Privacy: Fragments and Fault Lines' (2021) 47(2) *Monash University Law Review* 21, 31.

48 Tania Sourdin and Margaret Castles, 'Is the Tail Wagging the Dog? Finding a Place for ADR in Pre-Action Processes: Practice and Perception' (2020) 41(2) *Adelaide Law Review* 479.

49 See, eg, Amanda Scardamaglia, 'Reflecting on the Trade Marks Act 1995 (Cth)' (2022) 96(1) *Australian Law Journal* 36, 40–1.

50 Brian Opeskin, 'Rationing Justice: Tempering Demand for Courts in the Managerialist State' (2022) 45(2) *University of New South Wales Law Journal* 531; cf Samuel C Duckett White, 'God-Like Powers: The Character Test and Unfettered Ministerial Discretion' (2020) 41(1) *Adelaide Law Review* 1.

(a) Non-Representative Sample

First, the sample is not necessarily representative of all empirical legal research conducted by Australasian academics or in Australasian publications, nor is intended to be. It does not include empirical trends published in specialist journals or other forms of research, including white papers, law reform reports, doctoral dissertations and books/book chapters.[51] There is also a risk of bias in selecting 'top' generalist journals, as generalist journals may be regarded highly because more academics will be familiar with them than specialist ones.[52] Top generalist journals may also have their own patterns of acceptance and publication which skew the type of research eventually published (eg due to editorial preference, peer review outcomes, etc). Thus, the results cannot necessarily be regarded as representative of all empirical legal scholarship in the Australasian region.

However, this limitation is reasonable. The aim of the pilot study is to explore empirical legal research in leading generalist law journals in Australasia, with a view to identifying trends that can be examined in future research incorporating a wider range of sources and regions. Further, using journals as the data source is consistent with the goal of examining Australasian legal scholarship. Australian or New Zealand journals can generally be expected to focus on Australian or New Zealand law even if they cover other jurisdictions.[53] However, there are no other equivalent 'repositories' of books, reports or other sources that can readily be analysed in the same way. That there is a regional limitation makes it reasonable to restrict the enquiry to sources more likely than not to reflect that region's research focus.

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[51] See, eg, Jinhua Cheng, 'Empirical Legal Studies Made in China: An Empirical Study of Legal Doctoral Dissertations' (2023) 53(3) *Hong Kong Law Journal* 1085, 1089; Jennifer Moore, *Coroners' Recommendations and the Promise of Saved Lives* (Edward Elgar Publishing, 2016); Andrew Kenyon, *Defamation: Comparative Law and Practice* (UCL Press, 2006); Russell Smyth, 'Judicial Robes or Academic Gowns? Citation of Secondary Authority and Legal Method in the New Zealand Court of Appeal' in Rick Bigwood (ed), *Legal Method in New Zealand: Essays and Commentaries* (Butterworths, 2001); Alysia Blackham, 'Does Removing Default Retirement Ages Benefit Individuals? A Comparative Empirical Case Study of the University Sector' (2021) 21(2) *International Journal of Discrimination and the Law* 77.

[52] Dan Jerker B Svantesson, Jim Corkery and Bernard McCabe, 'The Ghost of Rankings Past: The Lasting Harmful Impact of Journal Rankings, and What We Should Do Instead' (2014) 26(2) *Bond Law Review* 71, 77.

[53] See, eg, 'Submission', *University of New South Wales Law Journal* (Web Page) <https://www.unswlawjournal.unsw.edu.au/submission>: '[w]e seek to publish contributions … which will be of interest to a generalist Australian legal audience'; 'Submissions Guidelines: Volume 49', *Melbourne University Law Review* (Web Page) <https://law.unimelb.edu.au/___data/assets/pdf_file/0005/5319815/9b3cefc974f2a391544522ac7f4e772cf303f119.pdf>: '[s]ubmissions must have a discernible connection to Australia or Australian law, or be of interest to an Australian audience'; 'Submitting an Article', *Monash University* (Web Page) <https://www.monash.edu/law/research/monulr/submissions>: '[t]he *Monash University Law Review* welcomes submissions by authors in any area of current legal interest or importance to its Australian readership'.

The peer-reviewed journal publishing system also provides an indicator of quality (and therefore influence) that non-peer-reviewed publications cannot: 'we [can] presume … that, in academic publication, each article went through [a] … rigorous process and met the standards that were established for the given discipline'.[54] Of course, books and book chapters may be peer-reviewed, but each book and edited collection would require verification of peer review, which is an unduly onerous step for a pilot study, given resource constraints.

This approach is also consistent with prior research using 'top' or highly regarded journals like the Group of Eight law reviews as a proxy for trends in Australian legal scholarship generally,[55] in similar studies of empirical legal scholarship in Europe, the United Kingdom and the United States[56] and studies of journal articles in other disciplines.[57]

Accordingly, it is methodologically reasonable to use generalist law journals in Australia and New Zealand to highlight trends in academic research, both for policy reform and further study. This conclusion holds even if Australian generalist law reviews are typically more reticent to publish empirical legal research; the trends identified in this pilot study can form even more useful hypotheses for testing and comparison against results from studies of a larger scope.

(b) Exclusion of Most New Zealand Journals

The second limitation is the exclusion of most New Zealand generalist law journals except the *New Zealand Universities Law Review*. This limitation is reasonable for two reasons: the limited accessibility of New Zealand journal articles across the 2019–24 date range and the need for a replicable journal selection method (A and A* generalist law journals from the ABDC List).

Most generalist law journals in New Zealand were not available to search for the full 2019–24 period when the study was conducted. Online access to the most recent two years of *NZLR* articles is not available on HeinOnline. On Informit, access is not available beyond 2021. Accordingly, it would not be possible to undertake a word search for empirical papers within the 2019–24 date range until

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54 Mitsunori Misawa, Josie L Andrews and Kathy M Jenkins, 'Women's Experiences of Workplace Bullying: A Content Analysis of Peer-Reviewed Journal Articles Between 2000 and 2017' (2019) 31(4) *New Horizons in Adult Education and Human Resource Development* 36, 42.

55 Farrell and Smyth (n 39) 816; Russell Smyth and Vinod Mishra, 'Academic Inbreeding and Research Productivity and Impact in Australian Law Schools' (2014) 98(1) *Scientometrics* 583, 589.

56 van Dijck, Sverdlov and Buck (n 42) 108–9; LoPucki (n 40) 461; Christopher A Cotropia and Lee Petherbridge, 'Gender Disparity in Law Review Citation Rates' (2018) 59(3) *William and Mary Law Review* 771, 781; Cahill-O'Callaghan and Mulcahy (n 9).

57 Stephanie Geise et al, 'The Normativity of Communication Research: A Content Analysis of Normative Claims in Peer-Reviewed Journal Articles (1970–2014)' (2022) 25(4) *Mass Communication and Society* 528, 536; Ryan K Boetteger and Erin Friess, 'Content and Authorship Patterns in Technical Communication Journals (1996–2017): A Quantitative Content Analysis' (2020) 67(3) *Technical Communication* 5, 8–9.

2026 at the earliest even if an amendment to the search method were adopted. Similar problems affected most other generalist law journals in New Zealand. The *Canterbury Law Review* was only available until 2023 on HeinOnline and the New Zealand Legal Information Institute ('NZLII'), while the *Otago Law Review* and *Waikato Law Review* were only available until 2023 and 2022 on NZLII respectively. These access limitations meant it would not have been practicable to include those New Zealand generalist law journals within the scope of the study.

The need for a replicable search method further means the only other generalist law journal in New Zealand,[58] the *Victoria University of Wellington Law Review* ('VUWLR'), was excluded, as it had a B ranking on the ABDC List. A search for 'empirical' papers in this journal on HeinOnline produced 40 papers, 11 of which would have been coded as empirical by the author.[59] While analysing those papers would have doubtless provided further insights into empirical legal research in New Zealand, including the VUWLR in the sample would have raised legitimate questions about why empirical research from other non A/A* Australian generalist journals was not also included, like the *University of Western Australia Law Review* (also ranked B on the ABDC List). To avoid data selection subjectivity or bias, it was therefore reasonable to exclude the VUWLR.

The eventual inclusion of only one New Zealand journal in the study suggests there should be particular caution applying the trends to empirical legal research training in the New Zealand context. Nevertheless, they can still be used within the broad aims of this pilot study: as hypotheses to be tested by future studies of New Zealand scholarship that can surmount access limitations (for example, by reviewing hard copies of the journals and manually identifying empirical legal studies) and include both generalist journals like the VUWLR and specialist New Zealand journals which may also publish empirical research.[60]

(c) Potential Subjectivity

The last limitation is the potential subjectivity of one individual applying the definition to the dataset.[61] This is an inherent limitation to coding, but one which is not fatal. Disagreement among readers as to categorisation by a researcher is

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58 The *Auckland University Law Review* is not included as it only publishes scholarship by University of Auckland law students: 'About the AULR', *Auckland University Law Review* (Web Page) <https://www.aulr.org/about-1>. Likewise, the *New Zealand Law Journal* is not included because while it publishes content on the law generally, it is not consistently peer-reviewed: 'The NZLJ is a peer-edited journal. *Selected articles may also be refereed by a third party at the Editor's discretion*': '*New Zealand Law Journal*', *LexisNexis* (Web Page) <https://www.lexisnexis.com/en-nz/products/legal-content-library/general-practice/new-zealand-law-journal> (emphasis added).

59 The list of papers is on file with the author.

60 Nikki Chamberlain, 'Class Actions in New Zealand: An Empirical Study' (2018) 24(2) *New Zealand Business Law Quarterly* 132.

61 Hall and Wright (n 20) 112. Subjectivity can also be ameliorated by prospectively registering a study, which will be considered for future research in this area.

an expected part of the content analysis method.[62] The only question is whether the coding process has been shown to be reliable enough *to an accepted degree*.[63] To ensure an appropriate degree of coding reproducibility, a research assistant coded a random sample of the articles (n=95, 20%) using only the definition and the Diamond and Mueller definition of original empirical research, without seeing how the author had coded the same articles.[64] The coding results for both samples were compared using the widely accepted Krippendorff's α threshold of inter-rater reliability.[65] This resulted in a Krippendorff's α value of 0.882. An α value at or above 0.80 is generally considered reliable across different disciplines.[66] Given the sample was 20% of the overall sample, this result provides assurance that the criteria for selecting 'empirical' papers according to the instructions above are, *to an acceptable degree*, consistent and replicable. Importantly, reliability testing can be done even if the definition of empirical research is changed; the value to future research initiatives examining empirical legal research is the demonstration of how they can use this method to establish the reliability of their coding matrices, and therefore enhance confidence in their results.

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62 For example, one reviewer suggested that Nick Wray-Jones and Jason M Chin, 'Can ADR Improve Expert Evidence?' (2021) 95(12) *Australian Law Journal* 467, was not an empirical study because it involved a single interview; however, this was still the application of a qualitative research method to derive new data (a single interview) which would not have existed otherwise.

63 Hall and Wright (n 20) 112. Following manual review, one paper originally coded as an empirical paper was removed from the dataset: Aesha Ziad and Kelley Burton, 'Supporting Law Student Wellbeing: Integrating Trauma-Informed Practices in Legal Education' (2024) 47(3) *University of New South Wales Law Journal* 785. Thanks to a reviewer for highlighting this.

64 The sample was generated by creating a spreadsheet with data for all articles (n=475), creating another column with random numbers allocated to each column, then sorting the data by those random numbers (largest to smallest). The first 95 were selected as the random sample: Wayne Winston, 'How to Take a Random Sample in Excel', *Becker* (Web Page, 14 April 2025) <https://www.becker.com/blog/cpe/how-to-take-a-random-sample-in-excel>.

65 Michal Ovádek, Philipp Schroeder and Jan Zglinski, 'Where Law Meets Data: A Practical Guide to Expert Coding in Legal Research' (2024) 3(4) *European Law Open* 820, 841. Microsoft Copilot was used to generate code in the Python programming language for preparing dataframes (sheets of data) and to compare the two coders' results, although the code was independently run on Python to verify that it operated as claimed and to rectify any bugs. The data was also analysed using k-alpha.org, a free online calculator for Krippendorff's α, for verification; for why this site is reliable and useful, see Giacomo Marzi, Marco Balzano and Davide Marchiori, 'K-Alpha Calculator — Krippendorff's Alpha Calculator: A User-Friendly Tool for Computing Krippendorff's Alpha Inter-Rater Reliability Coefficient' (2024) 12 *MethodsX* 102545. Both methods produced the same Krippendorff's α value of 0.882. Coding results included one paper for which the research assistant was unsure, but eventually coded the paper as non-empirical (having been instructed to note down both uncertainty and to reach an eventual conclusion between the two options). To ensure the reliability testing process did not overstate its findings, that paper was coded as 'unsure', and marked as a disagreement with the author's coding. The final α value of 0.882 reflects this discrepancy.

66 Marzi, Balzano and Marchiori (n 65) 3.

B *Stage 2: Analysing the Dataset*

A coding matrix (Table 2) was then applied to the eventual dataset (n=145). The matrix was based on a 2024 study of transparency in empirical legal scholarship in US law reviews by Chin et al.[67] However, the complexity and variation of empirical legal scholarship in the dataset meant the Chin et al coding matrix was developed iteratively as the author went through the material. For instance, some of the Chin et al variables were found to be not reasonably practicable to apply to this pilot study,[68] while others needed to be clarified.[69]

The number of variables, the options available for each variable, the iterative nature of the development of the matrix and resource constraints meant reliability testing was not feasible. This is a reasonable limitation for a pilot study designed to test the efficacy of an analytical framework. To ameliorate coding subjectivity concerns, the full dataset has been posted on the University of Auckland's institutional data repository to enable the coding to be examined, replicated and/or challenged.[70]

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67 Chin et al (n 20) 10.

68 For example, 'Jurisdiction surveyed' became too difficult to reliably code because some studies survey the behaviour of populations rather than any specific jurisdiction. It also became too difficult to identify the use of research assistants (given some were acknowledged as providing 'assistance', 'editorial assistance', 'research assistance' or statistical consultation, and some were simply acknowledged without the particulars of their assistance specified). Likewise, 'data availability' (whether authors made their raw data available for interrogation elsewhere) would have required visiting external sites hosting that data and assessing whether that should be considered 'available'.

69 For example, the list of research methods needed to be amended to add new methods that were applied, like economic modelling, topic modelling and more.

70 Hall and Wright (n 20) 112; Joshua Yuvaraj, 'Data and Reliability Testing Results for Joshua Yuvaraj's, "Empirical Legal Research in Leading Generalist Australian and New Zealand Law Journals (2019–2024): A Pilot Study"' (Dataset, University of Auckland, 2026) <https://doi.org/10.17608/k6.auckland.32796423>.

Table 2: Coding Questions and Explanations (Based on Chin et al, 2024)

Variable	Further Details
Ethics approval	Does the article include a statement indicating whether ethics approval was obtained for the research? If so, what is the organisation providing ethics approval?
Funding	Does the article include a statement indicating whether there were funding sources? If so, include the statement and list each funder separately. Funding includes 'This research was supported by X'.
Research method	What empirical method was used to analyse and report the findings? Non-exhaustive list of options: case coding, interviews, documentary analysis, surveys, case study, descriptive statistics, content analysis, discourse analysis, focus groups, round table, economic modelling, dataset curation, thematic analysis, topic modelling. Multi-method studies is a broad category used for any combination of research methods reported in one paper. Where other methods are referenced as being done in the same project but reported elsewhere, only the main method reported in that paper should be reflected.[71]
Original or secondary data	For our purposes, original data are data the authors collected or generated that did not exist before (eg interviewing humans). Secondary data are data that already existed (eg analyses of judicial decisions or contracts). If both, indicate both.
Area of law	What area(s) of law is/are being studied?[72] A non-exhaustive list includes: Socio-legal (including critical legal theory); Criminal law; International trade law; Environmental law; Health law; Intellectual property law; Public international law; Regulation; Aboriginal and Torres Strait Islander legal research; Ethics; Evidence; Media law. However, use discretion to label as appropriate.
Authorship	How many authors are listed?[73] List by number of authors.[74]

[71] See, eg, Carolyn Johnston, 'User-Led Modification of Standard Medical Care for Children: An Analysis of Parents' and Healthcare Professionals' Legal Duties of Care' (2022) 48(1) *Monash University Law Review* 42, 49; Anita Foerster et al, '"Paris" at the Sub-National Scale? An Exploration of the Role and Potential of Framework Climate Change Laws' (2022) 45(3) *Melbourne University Law Review* 1045, 1062 n 105.

[72] Murray and Skead (n 25) 254.

[73] See also ibid 251–2. This variable can be used to compare against the trends found in a detailed study of co-authorship in Australian Group of Eight law reviews, which found 'that collaboration has not been important in the evolution of Australian legal scholarship, certainly when compared with the social sciences': Farrell and Smyth (n 39) 828.

[74] Cf single, co-authored or multiple-authored, as in Boetteger and Friess (n 57) 9.

IV Analysis

This Part outlines the results of this pilot study in three parts: research into *secondary data* (eg judgments and other documents), research into *original data* (eg interviews) and *multi-method studies* (combinations of different types of methods).[75] For context, the total number of articles published in each journal from 2019–24 was identified to enable an analysis of empirical legal research as a proportion of total scholarship.[76] The analysis revealed that empirical papers comprised around 12% of the total papers published in the journals studied in the same time period. They were most prominent in the *UNSW Law Journal* (n=50, 19%), and least prominent in the *New Zealand Universities Law Review* (n=4, 5%). For the other Australian law reviews on the list, the proportion hovered between the 6–15% mark.

These findings are consistent with the fact that greater resources, methodological expertise and time are generally required to undertake empirical legal research relative to conventional doctrinal or theoretical research.[77] However, these trends are only from generalist law journals; there may be higher or lower proportions in specialist law journals, books and other publication sources. Thus, these findings could also reflect an inbuilt scepticism towards empirical research in law journals, and the difficulty of converting 'expansive' empirical data projects into the more narrow, doctrine and theory-centric forms

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75 Thanks to a reviewer for suggesting the phrase. The definition of multi-methods research used in this article is deliberately broader than the conventional understanding of mixed methods, which involves combining quantitative and qualitative methods: Alysia Blackham, 'Mixed Methods Research' in Alysia Blackham and Sean Cooney (eds), *Research Methods in Labour Law* (Edward Elgar, 2024) 399. The broader definition enabled accurate grouping of research methods without enlivening the specific technical features that come with the mixed methods definition. The broader definition is also appropriate to use in this study, given (a) the difficulty defining mixed methods research and (b) the proliferation of papers in the dataset from this pilot study, where various methods were used. See also Alysia Blackham, 'When Law and Data Collide: The Methodological Challenge of Conducting Mixed Methods Research in Law' (2022) 49 (Suppl 1) *Journal of Law and Society* S87, S88–9. All figures are reported as whole rather than decimal numbers, which may cause percentages not to add to 100% in all tables.

76 The data was drawn from the commercial databases searched for the empirical papers to ensure consistency and cross-checked against journal websites. The only exception was the *Australian Law Journal*, which did not have its own website, meaning Westlaw was the only source available. The *Monash University Law Review* website indicated there were 123 papers, but there were 124 on HeinOnline. For consistency, and given the immaterial nature of the variations, the figure from the commercial database has been selected. Obituaries, book reviews, tributes, indexes, case notes and the like have been excluded from the total count to ensure the proportion of empirical papers relative to all other papers is more accurate. The manual nature of some of these exclusions (eg for the *Australian Law Journal* several articles needed to be manually removed because they appeared to be 'sector updates' or 'comments') means there may be some malleability in the figures if the study were re-conducted. However, this is a reasonable approach given the goal of this analysis is to provide an approximation of how much empirical legal research is a proportion of the overall papers published in the journals studied from 2019–24.

77 Peter H Schuck, 'Why Don't Law Professors Do More Empirical Research?' (1989) 39(3) *Journal of Legal Education* 323, 330–3.

of many law journals.[78] As Allen and Blackham note, difficulties locating suitable journals may mean that work cannot be published, 'inhibit[ing] other scholars from undertaking empirical projects'.[79]

Table 3: Proportion of Empirical Legal Research in Leading Australasian Law Journals, 2019–24

Journal	Total Publications 2019–24	Empirical Studies	Proportion of Empirical Studies to Total Publications
UNSW Law Journal	269	50	19%
Monash University Law Review	124	19	15%
Melbourne University Law Review	125	18	14%
Sydney Law Review	88	12	14%
Federal Law Review	150	16	11%
Adelaide Law Review	144	14	10%
Australian Law Journal	216	12	6%
New Zealand Universities Law Review	82	4	5%
Total	1,198	145	12%

A *Secondary Data Research*

Secondary data research was the main focus of just over half the papers in the dataset (n=74, 51%), using a range of methods (Table 4).[80] The two most prominent categories were case coding and documentary analysis. These categories involved studies of cases and other documents without a necessarily established, discrete method of analysis. Where such a method was specified (eg content analysis, discourse analysis), the papers are analysed separately.

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78 Dominique Allen and Alysia Blackham, 'Using Empirical Research to Advance Workplace Equality Law Scholarship: Benefits, Pitfalls and Challenges' (2018) 27(3) *Griffith Law Review* 337, 340.

79 Ibid.

80 This figure excludes 'multi-methods' papers which adopted secondary data research methods. Those studies are analysed separately later.

Table 4: Breakdown of Secondary Data Research Method Papers, 2019–24

Secondary Data Research Methods	Papers	Proportion of Secondary Data Papers
Case coding	33	45%
Documentary analysis	18	24%
Descriptive statistics	7	9%
Case study	3	4%
Discourse analysis (cases)	3	4%
Content analysis (non-cases)	3	4%
Content analysis (cases)	2	3%
Thematic analysis	1	1%
Dataset curation	1	1%
Topic modelling	1	1%
Economic analysis	1	1%
Economic modelling	1	1%
Total	74	100%

1 Case Coding

Generic case coding was the most common research method applied across the secondary data subset (n=33, 45%). These were studies where scholars analysed groups of cases for trends, without expressly adopting formal coding research methods.

(a) Data Sources

Cases were drawn from a range of sources. Given the Australian-centric emphasis of the dataset, it is unsurprising that Australian sources dominated. Of the 33 papers, nearly half (n=16) sourced data from the Australasian Legal Information Institute ('Austlii'). This included seven papers which used Austlii alone. The outsized position of Austlii in this dataset could be explained by its free-to-access mode, its comprehensive coverage of much of Australian case law and a stable, reliable search mechanism. While New Zealand has an equivalent resource (NZLII), there were no empirical papers that expressly indicated using it. Two studies from New Zealand that undertook case coding were a pair of investigations into misconduct proceedings against lawyers, and cases in those instances were sourced from the Lawyers and Conveyancers Disciplinary

Tribunal. These decisions are available on NZLII from 2009,[81] but further information was not specified.

Most case coding papers either sought data from multiple sources (some including Austlii) or cross-checked data against other sources to ensure they did not miss relevant cases. This included combinations of commercial publishers like LexisNexis, Westlaw, CCH Intelliconnect and Barnet Jade, and court/government department websites. The most commonly accessed non-Austlii databases were LexisNexis (n=11, 33%) and Westlaw AU or NZ (n=8, 24%). The popularity of these two sources is consistent with their dominant roles as legal sources in Australia and New Zealand.

(b) Areas of Law

Of the case coding papers, the most prominent area of law was criminal law (n=8, 24%), covering both substantive (financial crime, manslaughter, rape, assisted suicide) and procedural (sentencing, appeals, immigration crime) aspects of criminal law. The relative popularity of criminal law for empirical research is worthy of further examination, given criminal law decisions are no more available to researchers than decisions in other areas of law.

Beyond criminal law there was a range of areas of law covered. These areas include tax, trade mark law, construction law, corporate law and estate law. Of interest was the meta-examinations of court processes and the judiciary through the examination of court decisions. There were at least six papers that fit this category.[82] Five focused on the High Court of Australia: two examined its citation practices, two were collations of the High Court's approach to constitutional law from 2018 and 2019 respectively,[83] while the other examined the High Court's approach to special leave applications. The focus on the High Court's practices coheres with its chief law-making role in Australia.

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81 'New Zealand Lawyers and Conveyancers Disciplinary Tribunal', *NZLII* (Web Page, 25 August 2025) <https://www.nzlii.org/nz/cases/NZLCDT/>.

82 Andrew Lynch, 'The High Court on Constitutional Law: The 2019 Statistics' (2020) 43(4) *University of New South Wales Law Journal* 1226; Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2018 Statistics' (2019) 42(4) *University of New South Wales Law Journal* 1443; Russell Smyth and Ingrid Nielsen, 'The Citation Practices of the High Court of Australia, 1905–2015' (2019) 47(4) *Federal Law Review* 655; Pam Stewart and Anita Stuhmcke, 'Litigants and Legal Representatives: A Study of Special Leave Applications in the High Court of Australia' (2019) 41(1) *Sydney Law Review* 35; Alexander Ferguson, 'Patterns of Use: Foreign Cases in High Court Judicial Review Judgments from 1980 to 2018' (2019) 45(2) *Monash University Law Review* 366; Antonia Glover, 'What's Plainly Wrong in Australian Law? An Empirical Analysis of the Rule in *Farah*' (2020) 43(3) *University of New South Wales Law Journal* 850.

83 Lynch (n 82); Lynch and Williams (n 82). A search of the UNSW Law Journal website for 'the high court on constitutional law' reveals no further collections of statistics as to the High Court's constitutional law reasoning: see *UNSW Law Journal* (Web Page, 13 August 2025) <https://www.unswlawjournal.unsw.edu.au/?s=%22the+high+court+on+constitutional+law%22>.

(c) Authorship

Nearly half of the case coding papers (n=16, 48%) had a single author, while the next most common arrangement was two authors (n=10, 30%) (Table 5). There were only six papers with three authors (n=6, 18%), while one study of sentencing of Indigenous defendants using cases from the ACT Supreme Court website had five authors (two full-time academics, one academic with a magistrates' appointment at the ACT Magistrates Court and two practitioners).[84]

Table 5: Number of Authors for Case Coding Papers, 2019–24

Number of Authors of Case Coding Papers	Papers	Proportion of Case Coding Papers
1	16	48%
2	10	30%
3	6	18%
5	1	3%
Total	33	100%

These figures broadly track with the authorship figures for the overall secondary data subset, which indicate a preference for sole authorship (n=33, 45%), followed by two (n=20, 27%) and three-author (n=15, 20%) arrangements (Table 6).

Table 6: Number of Authors for Secondary Data Papers, 2019–24

Number of Authors of Secondary Data Papers	Papers	Proportion of Secondary Data Papers
1	33	45%
2	20	27%
3	15	20%
4	4	5%
5	1	1%
6	1	1%
Total	74	100%

[84] Anthony Hopkins et al, 'Indigenous Experience Reports: Addressing Silence and Deficit Discourse in Sentencing' (2023) 46(2) *University of New South Wales Law Journal* 615.

2 *Formal Case Coding*

The proliferation of generic case coding papers indicated scholars undertaking empirical legal research within this dataset were comfortable analysing cases without adopting more formal research methods, with the description of data sourcing and coding deemed to be sufficient. This approach may be partly explainable by the fact that many studies involve a 'whole-of-universe' approach rather than sampling, meaning they are authoritatively commenting on an area of jurisprudence rather than seeking to identify a representative sample (which may require more established methodological approaches). It may also be explainable by the tendency of scholars to code cases themselves rather than adopt more formal methods of codebook development and reliability testing, as is typically recommended for best practice content analysis.[85] Last, there are often different meanings attributed to methods like content analysis,[86] such that the focus may be less on the labelling of the method and more on the methodological steps undertaken in each study.

However, six studies adopted formal methods to code cases: discourse analysis (n=3),[87] content analysis (n=2)[88] and topic modelling (n=1).[89] The advantage of this approach is a more systematic, reproducible methodology, though there may be additional costs for training, software and research assistance. Tan et al adopted critical discourse analysis to code High Court judgments because it was better suited to 'a systemic review that will be used to make empirical claims', rather than 'doctrinal legal analysis [which] thrives upon taking individual or isolated cases and extrapolating general principles from these selectively chosen incidences'.[90] Sutherland used discourse analysis to 'examin[e] … language of the judgment to draw out underpinning assumptions and to highlight the varieties of worker experience that may be excluded by these assumptions', specifically contrasting it against 'a systematic study of cases dealing with the status of workers'.[91] Roff and Easteal used discourse analysis

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85 Hall and Wright (n 20) 107–8, 112–16.

86 See, eg, Paul Verbruggen and Lianne Wijntjens, 'Methodological Accountability in Systematic Case Law Analysis: Insights from an Empirical Analysis in the Netherlands' (2025) 2(1) *European Journal of Empirical Legal Studies* 1, 21.

87 Emma Roff and Patricia Easteal, 'Engaging with the Survivor's Reality of Domestic Violence: A Discourse Analysis of Judicial Understanding in Survivor-Perpetrated Homicides' (2021) 47(1) *Monash University Law Review* 252; Sutherland (n 43); Tan et al (n 7).

88 Alysia Blackham, 'Why Do Employment Age Discrimination Cases Fail? An Analysis of Australian Case Law' (2020) 42(1) *Sydney Law Review* 1; Benjamin Hayward, '"Text, Context, and Purpose": Australian Lawmakers' Adoption of the CISG, and the Use of Legislative Histories as Aids in Statutory Interpretation' (2024) 47(2) *Melbourne University Law Review* 303.

89 David J Carter and Adel Rahmani, 'Proximity and Neighbourhood: Using Topic Modelling to Read the Development of Law in the High Court of Australia' (2019) 45(3) *Monash University Law Review* 785.

90 Tan et al (n 7) 188.

91 Sutherland (n 43) 295.

because it enabled them to evaluate how language contributed to identity in the domestic violence context.[92]

Meanwhile, Blackham's study of employment age discrimination cases employed content analysis because of its greater suitability to analysing larger bodies of text than doctrinal analysis, alongside the focus on textual themes (as opposed to 'harmonising, rationalising or systematising legal texts').[93] Content analysis was particularly useful to that study because 'most decisions are of low precedential weight (being heard and decided in lower courts, and with few decisions establishing weighty legal precedent)', making it more important to identify collective 'trends in how cases are decided'.[94] Hayward applied systematic content analysis to CISG cases in Australia but did not specify a motivation for doing so.[95]

Meanwhile, Carter and Rahmani used topic modelling — 'extract[ing] *latent* (ie abstract) topics from a corpus of text'[96] — to document how certain doctrines developed in the jurisprudence of the High Court of Australia, using native title and tort law developments as case studies.[97] The resources and training needed to execute this method (eg programming skills and software) may be considerable, but the value is the ability to generate potentially different insights about the development of legal doctrine than other doctrinal or even empirical methods for examining case law.

3 Documentary Analysis

Outside cases, the analysis revealed a rich variety of secondary documentary data sources, and analytical methods applied to that data. Four expressly adopted formal empirical methods of analysis, three of them using content analysis and one using thematic analysis. The range of data analysed via content analysis was varied, covering legislation,[98] equality agreements[99] and university subject information.[100] Thematic analysis was applied in Alexander's study of Internet regulation in Australia over content analysis — the range of documents covered

92 Roff and Easteal (n 87) 254.
93 Blackham (n 88) 3.
94 Ibid.
95 Hayward (n 88) 355.
96 Carter and Rahmani (n 89) 795 (emphasis in original).
97 Ibid 788.
98 Guzyal Hill, 'Categories of the "Art of the Impossible": Achieving Sustainable Uniformity in Harmonised Legislation in the Australian Federation' (2020) 48(3) *Federal Law Review* 350.
99 Alysia Blackham, 'Collective Action, Voice and Equality: Equality Bargaining to Achieve More Equal Futures?' (2024) 45(3) *Adelaide Law Review* 554.
100 Kathy Douglas and Lola Akin Ojelabi, 'Civil Dispute Resolution in Australia: A Content Analysis of the Teaching of the Topic of ADR in the Core Legal Curriculum' (2024) 45(2) *Adelaide Law Review* 339.

('draft bills; explanatory memoranda; factsheets; and speeches'[101]) in that paper may more readily suit that method rather than content analysis, which typically involves the analysis of a set of one type of data.

A general category of 'documentary analysis' proved reasonable to apply to 18 papers which did not specify a discrete, formal method of analysis (eg content analysis, discourse analysis). These studies drew from sources as wide as university policies and subject information, legislative Bills, Hansard, legislative documents, legislation, journal articles, criminal charges, social media images, company policies, court transcripts and more. They typically involved a form of 'coding' to draw out notable trends from the data, but did not expressly adopt more formal methods to do so.

These papers covered a range of areas of law. Criminal law was again the most prominent (n=3, 17%), with scholars examining university policies on sexual assault and misconduct sourced from university websites,[102] County Court of Victoria transcripts as to the use of intoxication evidence in rape trials,[103] and information from the HIV Justice Network as to criminal charges related to HIV transmission.[104]

However, as with case coding, various other areas of law were also covered under documentary analysis. There was still an emphasis on information about the operation of the parliamentary and judicial branches of government, though (n=8). These included studies into special leave applications in the High Court of Australia using court transcripts,[105] harmonisation patterns in Australian uniform legislation,[106] how Australia's human rights record is scrutinised in Parliament,[107] how Australian parliaments operated during the COVID-19 pandemic,[108]

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101 Sam Alexander, 'A Uniquely Australian Approach: A Thematic Analysis of the Normative Foundations of Australia's Approach to the Regulation of the Internet' (2022) 43(1) *Adelaide Law Review* 345, 352.

102 Jianlin Chen, 'The Hidden Sexual Offence: The (Mis)Information of Fraudulent Sex Criminalisation in Australian Universities' (2020) 42(4) *Sydney Law Review* 425.

103 Julia Quilter et al, 'Intoxication Evidence in Rape Trials in the County Court of Victoria: A Qualitative Study' (2023) 46(2) *University of New South Wales Law Journal* 579.

104 David J Carter, 'Transmission of HIV and the Criminal Law: Examining the Impact of Pre-Exposure Prophylaxis and Treatment-as-Prevention' (2020) 43(3) *Melbourne University Law Review* 937.

105 Pamela Stewart and Anita Stuhmcke, 'Open Justice, Efficient Justice and the Rule of Law: The Increasing Invisibility of Special Leave Appeal Applications in the High Court of Australia' (2020) 48(2) *Federal Law Review* 186.

106 Guzyal Hill, 'How Does the Area of Law Predict the Prospects of Harmonisation?' (2020) 41(1) *Adelaide Law Review* 267.

107 Daniel Reynolds, Winsome Hall and George Williams, 'Australia's Human Rights Scrutiny Regime' (2020) 46(1) *Monash University Law Review* 256.

108 Harry Hobbs and George Williams, 'Australian Parliaments and the Pandemic' (2023) 46(4) *University of New South Wales Law Journal* 1314.

Australia's counterterrorism law framework,[109] class action remedies[110] and gender equality in barristers appearing before the High Court.[111] This data was sourced from courts, Lawlex (a commercial database for legislative research in Australia), the Federal Parliament, Austlii and other court websites.

However, there were some papers that went beyond these oft-used resources to illuminate different trends. One study involved a meta-analysis of research methods undertaken in modern slavery research, using 165 journal articles identified using the Scopus database.[112] Another drew on statistics and promotional material from the Australian Prudential Regulation Authority and other public sources to assess the performance of superannuation funds against climate-related goals.[113] Yet another analysed nearly 5,000 images on Instagram to evaluate the platform's content moderation processes as related to the portrayal of women's bodies.[114]

4 Other Secondary Research Methods

There were 13 other papers analysing secondary data that did not fit into the case coding or documentary analyses criteria. The most common approach in this subset was to provide descriptive statistics (n=7) from existing data repositories to identify trends in different markets.[115] Intellectual property law was particularly well-represented here, with two papers directly reporting statistics on grants of patents (one focused on 'secondary patents' which cover 'follow-on innovations relating to the active pharmaceutical ingredient … of [a] drug', and one examining the gender of patent filers),[116] one covering the availability status

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109 Keiran Hardy and George Williams, 'Two Decades of Australian Counterterrorism Laws' (2022) 46(1) *Melbourne University Law Review* 34.

110 Vince Morabito, 'Looking into the Fishbowl: Open Justice and Federal Class Action Settlements' (2019) 93(6) *Australian Law Journal* 446.

111 Winsome Hall and George Williams, '100 Years of Speaking: Gender Equality among Barristers before the High Court' (2020) 94(12) *Australian Law Journal* 960.

112 Fiona McGaughey et al, 'Modern Slavery Research: A Commentary on Methods and Themes' (2024) 45(3) *Adelaide Law Review* 489.

113 Anita Foerster, Kym Sheehan and Daniel Parris, 'Investing for a Safe Climate?' (2021) 44(4) *University of New South Wales Law Journal* 1409.

114 Alice Witt, Nicolas Suzor and Anna Huggins, 'The Rule of Law on Instagram: An Evaluation of the Moderation of Images Depicting Women's Bodies' (2019) 42(2) *University of New South Wales Law Journal* 557.

115 The conception of descriptive statistics applied in this article is consistent with that used in Chin et al's study of empirical legal research: Chin et al (n 20) 7, 11.

116 Andrew F Christie, Chris Dent and David M Studdert, 'Evidence of "Evergreening" in Secondary Patenting of Blockbuster Drugs' (2020) 44(2) *Melbourne University Law Review* 537, 537; Vicki Huang, Sue Finch and Cameron Patrick, 'Patents and Gender: A Big Data Analysis of 15 Years of Australian Patent Applications' (2022) 45(3) *University of New South Wales Law Journal* 927.

of books when they enter the public domain following the expiry of copyright,[117] and one examining the filing of non-English trade marks in Australia.[118]

Two of those papers used the Intellectual Property Government Open Data Set, which now appears to be called the IP Refreshed Automated Product for Information and Data (IP RAPID). The dataset 'provides access to over 100 years of information on IP rights applications'[119] in Australia, making it a rich source of data which more IP scholars may seek to investigate in the future. The other four papers drew data from a range of sources including Australian Statistics on Medicines, PATSTAT, AusPat and Overdrive. The other three non-IP papers examined state resourcing of the judicial system using data from the High Court, Australian Bureau of Statistics and the 2021 Report on Government Services, and how claimants seeking compensation for traffic accident injuries engage legal representation.[120]

The next most common method was the case study (n=3). This is a flexible method involving the in-depth examination of events, circumstances, locations, people and more to derive a deep understanding of how the law operates in practice in that context. The case studies covered a broad range of areas: financial market regulation,[121] forensic science[122] and food regulation at the local government level.[123]

While the advantage of the case study approach is the depth of insight, it is more labour-intensive and typically involves examination of phenomena over time. It is therefore unsurprising that all three studies were undertaken with funding support from the Australian Research Council, with Svetiev's paper on financial market regulation also receiving financial support from his employer, Sydney Law School.

The remaining three secondary research papers involved a high degree of specialist skills, which explains why they were much fewer relative to other papers. These comprised economic analyses (n=2) and the curation of a new

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117 Jacob Flynn, Rebecca Giblin and François Petitjean, 'What Happens When Books Enter the Public Domain? Testing Copyright's Underuse Hypothesis Across Australia, New Zealand, the United States and Canada' (2019) 42(4) *University of New South Wales Law Journal* 1215.

118 Mitchell Adams and Amanda Scardamaglia, 'Non-English Word and Character Trade Marks in Australia: Before and After *Cantarella Bros Pty Ltd v Modena Trading Pty Ltd*' (2024) 98(3) *Australian Law Journal* 190.

119 'Open IP Data', *IP Australia* (Web Page) <https://www.ipaustralia.gov.au/tools-and-research/professional-resources/data-research-and-reports/open-ip-data>.

120 Opeskin (n 50); Clare E Scollay et al, 'Claimant Lawyer Use in Road Traffic Injury Compensation Claims' (2020) 43(1) *University of New South Wales Law Journal* 82; Alysia Blackham and Jeromey Temple, 'Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework' (2020) 43(3) *University of New South Wales Law Journal* 773.

121 Yane Svetiev, 'Transnational Peer Review for Regulating Financial Stability' (2023) 51(4) *Federal Law Review* 442.

122 Edmond et al (n 45).

123 Belinda Reeve, 'Healthy, Sustainable, and Equitable Food Systems: Growing the Role of Local Government' (2023) 46(3) *University of New South Wales Law Journal* 962.

dataset using computational methods (n=1). One paper used economic data from a range of Australian integrated gas projects to populate an established economic model used by the International Monetary Fund.[124] Another used data from the Reserve Bank of Australia to analyse the economic impact of the statutory interest rate (payable on judgment debts) relative to other interest rates (credit cards, cash rates, etc).[125] The other paper constructed a novel dataset of family law cases to train predictive machine learning models that can advance analysis by reliably classifying case law.[126]

B *Original Data Research*

1 Research Methods

There were fewer papers adopting mainly original data research (n=46, 32%): that is, research generating new data rather than analysing pre-existing secondary data. This predominantly involved engaging with humans and documenting responses (Table 7). Interviews and surveys were by far the most common research methods (n=28, 61% and n=14, 30%). The remainder involved focus groups, roundtable discussions and one case study.

Table 7: Original Data Methods, 2019–24

Method	Papers	Proportion of Original Data Papers
Interviews	28	61%
Survey	14	30%
Focus groups	2	4%
Round table	1	2%
Case study	1	2%
Total	46	100%

The overrepresentation of interviews and surveys is not surprising, as these are common social science methodologies of engaging with human research subjects.[127] Of note was the almost total preference for semi-structured

[124] Diane Kraal, Machiel Mulder and Peter Perey, 'Taxation and Pricing of Natural Gas: The Dutch Transition to a Gas Market Hub and Lessons for Australia's Integrated Gas Projects' (2020) 43(1) *University of New South Wales Law Journal* 39, 47–8.

[125] Ashton East, 'Interest Rates in Dispute Resolution: Comparing Simple Statutory Interest Against Compound Indices' (2019) 93(1) *Australian Law Journal* 26, 30–1.

[126] Aaron Snoswell, Anthony Skelton and Dan Hunter, 'Calderbank.AI: Toward the Fair Resolution of Civil Litigation Using Machine Learning and Procedural Mechanisms' (2023) 97(2) *Australian Law Journal* 106.

[127] Interviews were not divided into studies involving individual or group interviews, given the difficulty of ascertaining that information from articles that described their methods differently.

interviews, with all but one of the papers adopting this approach. The one paper that did *not* adopt this approach was a paper reporting on an interview with a single subject (the judge for whom the lead author was an associate), which perhaps explains the lesser need to adopt a particular interview method: there was no interview method specified.[128]

Semi-structured interviews are flexible because they rely on open-ended questions.[129] They allow researchers to consider the nuances of questions and responses in ways that may be more challenging to achieve with structured interviews.[130] When considering law in practice it makes sense to use this method; the experiences of research subjects are likely to be wide and diverse, in ways that a structured interview (which involves more 'closed' questions and set answer options) may not fully capture.[131]

2 *Areas of Law*

The original data papers covered a range of areas of law (Table 8). The most common was examinations of the judiciary (n=6, 13%). Half of these papers involved Ingrid Nielsen and Russell Smyth as authors, examining various aspects of the High Court of Australia's legitimacy in the eyes of the public.[132] The other three analysed challenges judges faced in Australia,[133] judicial education[134] and the take-up of technology by judges in Australia.[135] These papers all involved surveys, though, as we will see later, there are other studies of the judiciary involving the use of multiple methods. The popularity of studies into the workings of the

Group interviews are an accepted sociological method of information-gathering, and could be examined further in future research. For more on group interviews, see, eg, Svend Brinkmann, 'Unstructured and Semistructured Interviewing' in Patricia Leavy (ed), *The Oxford Handbook of Qualitative Research* (Oxford University Press, 2nd ed, 2020) 424, 436, 440–1.

128 Wray-Jones and Chin (n 62).

129 Lioness Ayres, 'Semi-Structured Interview' in Lisa M Given (ed), *The SAGE Encyclopedia of Social Science Research* (Sage Publications, 2008) vol 2, 1020–1.

130 Ibid; Michael W Firmin, 'Structured Interview' in Lisa M Given (ed), *The SAGE Encyclopedia of Social Science Research* (Sage Publications, 2008) vol 2, 838.

131 See also Kees Van Den Bos, *Empirical Legal Research: A Primer* (Edward Elgar, 2020) 34.

132 Ingrid Nielsen, Zoe Robinson and Russell Smyth, 'Keep Your (Horse) Hair On? Experimental Evidence on the Effect of Exposure to Legitimising Symbols on Diffuse Support for the High Court' (2020) 48(3) *Federal Law Review* 382; Ingrid Nielsen and Russell Smyth, 'What the Australian Public Knows About the High Court' (2020) 47(1) *Federal Law Review* 31; Shiri Krebs, Ingrid Nielsen and Russell Smyth, 'What Determines the Institutional Legitimacy of the High Court of Australia?' (2019) 43(2) *Melbourne University Law Review* 605.

133 Gabrielle Appleby et al, 'Contemporary Challenges Facing the Australian Judiciary: An Empirical Interruption' (2019) 42(2) *Melbourne University Law Review* 299.

134 Andrew Henderson, 'Judicial Education and Judicial Learning Styles: Are Judges Different to Other Learners?' (2024) 98(12) *Australian Law Journal* 915.

135 Tania Sourdin, 'Technology and Judges in Australia' (2023) 97(9) *Australian Law Journal* 636.

judiciary is consistent with the fact that judges often have limited public output beyond their judgments for reasons of propriety.[136]

Table 8: Areas of Law Covered by Original Data Papers, 2019–24

Area of Law	Papers	Proportion of Original Data Papers
Judiciary	6	13%
Corporate law	5	11%
Discrimination law	5	11%
Family law	4	9%
Health law	3	7%
Financial services	2	4%
Civil procedure	2	4%
Insurance	2	4%
Legal practice	2	4%
Employment law	2	4%
Education	1	2%
Dispute resolution	1	2%
Legal education	1	2%
Charities law	1	2%
Human rights	1	2%
Evidence law	1	2%
Communications	1	2%
Criminal law	1	2%
Negligence	1	2%
Copyright law	1	2%
Public law	1	2%
Environmental law	1	2%
Equality	1	2%
Total	46	100%

136 Matthew Groves, 'Public Statements by Judges and the Bias Rule' (2014) 40(1) *Monash University Law Review* 115, 116–19.

3 Authorship

It was most common for original data papers to have two authors (n=18, 39%), while papers with one and three authors were also common (n=11, 24%) each. Accordingly, multi-authored papers comprised over 75% of the original data papers (Table 9). This contrasts with the 55% (n=41) figure for secondary data papers.

The higher figure for original data papers is unsurprising. Empirical research involving original data is typically resource-intensive, especially where interviews and surveys are concerned.[137] A project is much likelier to reach completion if there are multiple authors to share the load. Further, secondary data research is likelier to involve larger amounts of 'desk'-based time, rather than the fieldwork which characterises original data research. The prominence of single or two-author arrangements is, however, consistent with the equivalent result for the secondary data papers.[138]

Table 9: Authorship of Original Data Papers, 2019–24

Number of Authors	Papers	Proportion of Original Data Papers
2	18	39%
1	11	24%
3	11	24%
4	6	13%
Total	46	100%

4 Research Funding

Most original data papers in the dataset reported being funded by at least one institution, research centre or other organisation (Table 10). This is again consistent with the resource needs of original data research: funding is typically required to engage research assistants, obtain software and hardware necessary to collect and analyse the data, and to buy out the teaching time of academic staff to enable uninterrupted focus on the research.[139] By contrast, 70% of the secondary data papers which did not use mixed methods (those are analysed separately) (n=52) reported no external funding, potentially reflecting the

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137 See Sean Rehaag and Hilary Evans Cameron, 'Making Space for Online Research Experiments in Law School Courses' (2022) 9 *Canadian Legal Education Annual Review* 113, 121.

138 Cf the larger author numbers typically associated with social science disciplines: Dorte Henriksen, 'The Rise in Co-Authorship in the Social Sciences (1980–2013)' (2016) 107 *Scientometrics* 455, 471–2.

139 See also Allen and Blackham (n 78) 339–40, 352.

relatively greater ability of academics to undertake desk research without further resources, even using empirical methods.

Academic funding for original data papers typically came from internal faculty/university funds or dedicated external funders like the Australian Research Council. Notably, though, some authors secured funding from non-academic funders like law firms (eg Maurice Blackburn, Herbert Smith Freehills, Norton Rose Fulbright), the Victorian Legal Services Board and the Victorian Government.

Table 10: Funders of Original Data Papers, 2019–24

Listed Funders in Original Data Papers	Papers	Proportion of Original Data Papers
None	22	48%
Australian Research Council	8	17%
Flinders University, CSIRO	2	4%
Maurice Blackburn Lawyers	1	2%
University of Technology Sydney Social Impact Grant, University of Newcastle New Staff Grant, Norton Rose Fulbright	1	2%
University of Melbourne Networked Society Institute	1	2%
Australian Research Council, Professional Standards Councils, Centre for Law, Markets and Regulation, UNSW Law	1	2%
Australian Communications Consumer Action Network, Faculty of Law, University of Technology Sydney, School of Law, University of New England	1	2%
Australian Research Council, Victorian Legal Services Board Grants Program	1	2%
Australian Government Research Training Program Scholarship	1	2%
Centre for International Finance and Regulation, University of Adelaide, University of New South Wales, Herbert Smith Freehills	1	2%
University of Sydney	1	2%
Victorian Government	1	2%
UTS Early Career Research Grant	1	2%
Australian Academy of Law	1	2%
Law Foundation of South Australia	1	2%
La Trobe Law School	1	2%
Total	46	100%

5 Ethics Approval

Original data research typically requires institutional ethics approval because it involves engaging with human subjects to generate new data. Ethics approval assures the reading public that the collection of personal information has been

done in accordance with accepted norms and oversight.[140] Accordingly, it was unsurprising that most original data papers surveyed reported ethics approval by at least one institution (n=40, 87%, Table 11). However, four papers reported ethics approval without indicating the institution providing it.[141] In each paper it is likely the institution of at least one of the authors provided ethics approval, but the lack of information makes accountability more difficult. Further, six papers (13%) did *not* report any ethics approval information. Notably, four of those papers reported on interviews, which ordinarily would require ethics approval.[142] The other two papers also involved the collection of original data that would ordinarily require ethics approval, via focus groups[143] and a survey.[144]

The omission of ethics approval in some papers is not a surprising finding, with some studies reporting a variance in ethics approval reporting even in conventionally original data-heavy academic disciplines.[145] It is possible that the omission of ethics approval from these papers is a simple oversight and that ethics approval was granted by the relevant institution. The papers may also have been part of broader research projects where ethics approval had been reported for other outputs.

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140 See also Martin A Rotenberg and Abraham Rudnick, 'Reporting of Ethics Procedures in Psychiatric Rehabilitation Peer-Reviewed Empirical Research Publications in the Last Decade' (2011) 14(2) *American Journal of Psychiatric Rehabilitation* 97, 98.

141 Evgenia Bourova, Ian Ramsay and Paul Ali, '"Honest, Fair, Transparent and Timely"? Experiences of Australians Who Make Claims on Their Building, Home Contents or Comprehensive Car Insurance Policies' (2020) 46(3) *Melbourne University Law Review* 1, 22; Rosemary Teele Langford and Malcolm Anderson, 'Restoring Public Trust in Charities: Empirical Findings and Recommendations' (2023) 46(2) *University of New South Wales Law Journal* 535, 543; Stephen Clibborn, 'It Takes a Village: Civil Society Regulation of Employment Standards for Temporary Migrant Workers in Australian Horticulture' (2019) 42(1) *University of New South Wales Law Journal* 242, 254; Sourdin (n 135) 638.

142 Alexandra Gray, 'Communicative Justice and COVID-19: Australia's Pandemic Response and International Guidance' (2023) 45(1) *Sydney Law Review* 1, 36; Foerster et al (n 71) 1062–3; Kylie Pappalardo and James Meese, 'In Support of Tolerated Use: Rethinking Harms, Moral Rights and Remedies in Australian Copyright Law' (2019) 42(3) *University of New South Wales Law Journal* 928, 930; Wray-Jones and Chin (n 62).

143 Evgenia Bourova, Ian Ramsay and Paul Ali, 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems Caused by Economic Abuse' (2019) 42(4) *University of New South Wales Law Journal* 1146, 1163–4.

144 Appleby et al (n 133) 304–6.

145 Wyke Stommel and Lynn de Rijk, 'Ethical Approval: None Sought. How Discourse Analysts Report Ethical Issues Around Publicly Available Data' (2021) 17(3) *Research Ethics* 275, 280–3; Ghaiath Hussein and Khalifa Elmusharaf, 'Why Did Not All Studies Conducted During Darfur's Armed Conflict Obtain Ethics Approval? Insights from a Qualitative Study' (2025) 26(1) *BMC Medical Ethics* 58; Fiona Mayne and Christine Howitt, 'Reporting of Ethics in Early Childhood Journals: A Meta-Analysis of 10 Journals from 2009 to 2012' (2014) 39(2) *Australasian Journal of Early Childhood* 71.

Table 11: Ethics Approval Providers for Original Data Papers, 2019–24

Providers of Ethics Approval for Original Data Papers	Papers	Proportion of Original Data Papers
Monash University	7	15%
None	6	13%
University of Melbourne	5	11%
Provider unspecified	4	9%
University of New South Wales	4	9%
University of Adelaide	3	7%
University of Technology Sydney	3	7%
Flinders University	2	4%
RMIT	2	4%
La Trobe University	1	2%
Department of Justice (Vic), Monash University	1	2%
Monash University, Deakin University	1	2%
Macquarie University	1	2%
University of Queensland	1	2%
CSIRO, Flinders University	1	2%
University of Auckland	1	2%
Australian National University	1	2%
Deakin University	1	2%
Queensland University of Technology	1	2%
Total	46	100%

The predominance of ethics approval in original data papers contrasted with the secondary data papers, of which the vast majority did *not* report ethics approval (n=69, 93%, Table 12). This contrast makes sense because secondary data is often available, and/or the emphasis is not on the personal information in those documents, but on other trends (eg in case coding).

Table 12: Ethics Approval Providers for Secondary Data Papers, 2019–24

Provider of Ethics Approval for Secondary Data Papers	Papers	Proportion of Secondary Data Papers
None	69	93%
University of Technology Sydney	1	1%
University of Melbourne	1	1%
University of Wollongong	1	1%
Monash University	1	1%
Queensland University of Technology	1	1%
Total	74	100%

The five secondary data papers that *did* report ethics approval involved ethics approval from a range of institutions across Australia, including the University of Melbourne, Queensland University of Technology and the University of Wollongong. In all cases it was clear why ethics approval was needed: the secondary data used had a clear personal information emphasis. For example, Blackham and Temple used survey data collected by the Australian Bureau of Statistics, which was made confidential and provided to the authors under an agreement between the ABS and Universities Australia.[146] Witt, Suzor and Huggins examined the images of women's bodies on Instagram,[147] which clearly involves personal information. Scollay et al constructed and analysed a dataset of deidentified compensation claim data from the Transport Accident Commission.[148] Quilter et al examined trial transcripts from rape trials in the County Court of Victoria, which are likely to involve particularly sensitive personal information.[149] And Carter made FOI requests for information about public health power exercise which likely involved some personal information (eg names of officials), though it seemed personal information was ancillary rather than central to the documentation and research questions.[150]

Notably, all five secondary data papers reporting ethics approval were published in the *UNSW Law Journal*. The fact that different journals had different numbers of articles published in total over the time period makes it inappropriate to draw inferences by comparing the frequency of subcategories of papers in any one journal. Nevertheless, the fact that secondary data papers published in no

146 Blackham and Temple (n 120) 786.
147 Witt, Suzor and Huggins (n 114) 581.
148 Scollay et al (n 120) 89.
149 Quilter et al (n 103) 588.
150 David J Carter, 'The Use of Coercive Public Health and Human Biosecurity in Australia: An Empirical Analysis' (2020) 43(1) *University of New South Wales Law Journal* 117, 133–4.

other journals reported ethics approval could suggest the *UNSW Law Journal* was, across the 2019–24 period, particularly amenable to imaginative analyses of personal information in secondary data sources — a finding consistent with the fact that the *UNSW Law Journal* reported the highest proportion of empirical legal research across the studied journals (n=50, 19%). More qualitative research, for example by interviewing *UNSW Law Journal* editors, would help to contextualise this finding.

C *Multi-Method Studies*

1 Method Combinations

The last category reported in this study is multi-method studies, where scholars used a combination of empirical methods to analyse trends in the data they were exploring. This category was reported separately because of the difficulty of delineating trends where authors combined empirical methods. A rich variety of methods was combined by authors, like surveys, focus groups, interviews, case coding and workshops. Of the 25 papers, nearly half (n=12) used both secondary and original data, while a further 11 used original data.

Only two papers adopted multiple methods to analyse secondary data only. One was a response to a statistical critique of the Victorian Court of Appeal's ('VSCA') criminal appeal reversals at the High Court of Australia, where the authors used both case coding (re-coding 41 sets of VSCA decisions, including High Court appeals) and descriptive statistics (documenting the VSCA's workload) to support their conclusion.[151] The other used descriptive statistics about the length of federal legislation alongside a documentary analysis of a sample of legislation to assess how frequently those statutes had been amended.[152]

These findings are consistent with the fact that original data research can often benefit from a combination of data collection methods with different emphases. Surveys and questionnaires can allow for a more abstract, macro-level collection of data with broader scope to identify trends, while interviews allow researchers to delve into the reasons behind those trends in much more detail. Similarly, combining both original and secondary data analyses can lead to multifaceted findings. Half (n=6) of the multi-methods papers combining original and secondary data sources involved interviews and documentary analysis, with a further three papers using combinations of interviews, documentary analysis, surveys, case coding and focus groups. For example, Allen

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[151] Brian Opeskin and Gabrielle Appleby, 'Responsible Jurimetrics: A Reply to Silbert's Critique of the Victorian Court of Appeal' (2020) 94(12) *Australian Law Journal* 923, 927, 932–3.

[152] Lisa B Crawford, 'The Rule of Law in the Age of Statutes' (2020) 48(2) *Federal Law Review* 159, 163–4.

examined 188 cases involving systemic discrimination in Victoria, supplementing that analysis with semi-structured interviews of practitioners and staff from the Victorian Equal Opportunity and Human Rights Commission.[153]

2 *Research Funding*

The prominence of original data research in the multi-methods subset makes it unsurprising that the rate of external research funding was similar to the original data subset: while 56% of the multi-methods papers (n=14) reported no external funding, the remainder (n=11) reported a range of funding mostly from government or institutional sources, including the Australian Research Council, the New South Wales Government, the Fair Work Ombudsman, the Law Foundation of South Australia and the Data to Decisions Cooperative Research Centre. However, private corporations were mostly absent from external research funding, with only Lotterywest providing funding for a study on how charities treat restricted philanthropic gifts.[154]

3 *Ethics Approval*

Of the 25 multi-methods papers, 48% (n=12) reported no ethics approval. The remaining 13 papers reported ethics approval from a range of institutions, with Monash University (n=3) and the Australian National University (n=2) the most commonly occurring. There were no clear favourites in terms of the areas of law covered by the multi-methods papers which reported ethics approval: there were papers on legal practice, information law, discrimination law and more.

However, 83% of the multi-methods papers reporting no ethics approval (10/12) involved original data methods. Six involved semi-structured interviews, which would typically require ethics approval. As discussed above, the lack of ethics approval information for interviews and other similar methodological approaches could be an oversight.

V Discussion

Several hypotheses emerge from this pilot study of empirical legal scholarship in leading Australian and New Zealand generalist law journals from 2019–24. They merit further consideration in subsequent research, and can be compared against other time periods (before/after and including 2019–24) and jurisdictions (eg journals from the United Kingdom, Canada, European Union, United States, Singapore and specialist law journals). Examining these hypotheses may lead to

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153 Dominique Allen, 'An Evaluation of Mechanisms Designed to Promote Substantive Equality in the Equal Opportunity Act 2010 (Vic)' (2020) 44(2) *Melbourne University Law Review* 459, 475–6.

154 Ian Murray et al, 'Restricted Philanthropic Gifts: Paradigm Clash between Law and Practice or Simply a Muddle?' (2024) 47(1) *University of New South Wales Law Journal* 139.

novel conclusions as to the particular features of empirical legal research published in leading Australian generalist law journals relative to other publications. Given the prominence of the journals in which the empirical articles are published, the hypotheses are also useful insofar as they highlight potential pathways for enhancing the conduct and quality of empirical legal research in Australasian contexts — value that remains notwithstanding the non-representative nature of the pilot study's sample.

A *Preference for Established Data Sources and Methods*

First, there was a preference for established data sources and methods in the papers surveyed. For original data research, for example, interviews and surveys comprised over 90% of the papers. That figure was nearly 70% for case coding and documentary analysis among the secondary research papers. Scholars generally showed a comprehensive grasp of the available data sources for case coding in Australia and New Zealand, with Austlii a prominent feature — unsurprising, given its free and relatively comprehensive nature. Commercial databases like Lexis Advance and Westlaw were also well-represented.

The popularity of these methods and sources suggests scholars seeking to undertake empirical analyses of cases, legislation and other documents, or to conduct interviews or surveys to examine the operation of different areas of law, will generally be well-served with prior literature which they can use to build their methodologies, enhancing the robustness of future studies, in addition to equivalent literature in other fora like specialist journals. This matters because scholars using these methods and sources will not need to 'reinvent the wheel' — readers can have greater confidence in the robustness of the methods and sources used — and the findings emerging therefrom — when they are grounded in regularly used methodological approaches.

However, studies using company policies, university websites and other less prominent documentary data sources illuminate pathways for more holistic observations about how the law is operating in practice, and how norms are developing in different industries independently of legal materials. Policies and terms of use, for example, can highlight how parties engage with each other in the marketplace, and the extent to which legal norms are influencing that behaviour (directly or indirectly). The study of Instagram images to document the platform's content moderation success is another example: one of its many utilities is the light shone on how private regulation of content may be limited.[155] Studies using such sources may be more prominent in specialist journals and other fora with the skills and experience necessary to evaluate that level of empirical research. However, this finding is a reminder of the richness of these less conventional data sources, allied with the increased availability of large

[155] Witt, Suzor and Huggins (n 114) 592–6.

datasets (eg those hosted by IP offices), and an encouragement for scholars to both investigate how the use of those datasets could enhance understanding about the law in practice, and to develop the analytical skills, particularly where they involve computational methods, necessary to properly interrogate these large datasets.

B *Emphasis on 'Informal' Research Methods (Secondary Data)*

Second, there was a corresponding lack of emphasis on more formal research methods applied to secondary data. Case coding and documentary analysis were broad categories applied to papers which systematically coded documentary data, but without adopting any specific research methodologies beyond a description of how the data was coded. By itself that is not necessarily a negative, as long as the methodology is described in appropriate detail. While a detailed review of the adequacy of methodological descriptions was not undertaken here, the overall impression was that in most cases those descriptions gave readers enough information about what the authors had done.

Relatively fewer papers adopted established research methods, namely content analysis, discourse analysis and thematic analysis. Other approaches included topic modelling, economic analyses and statistical analyses. The lack of focus on these more specialised methods is unsurprising. Legal scholars are not generally trained in a wide range of empirical methodologies, and the specialised skills necessary to execute these more formal methods take time, resources and perhaps interdisciplinary collaborations. However, these methods can enrich empirical legal scholarship by illuminating different aspects of how the law operates, and how future research and policy might develop. They also provide methodological frameworks which can be replicated to generate reliable inferences in subsequent studies. Last, formal methods of data analysis come with established understandings around their strengths and weaknesses,[156] allowing audiences to more confidently assess the results and inferences of studies adopting those methods.

C *Willingness to Combine Research Methods*

Third, there was a willingness to combine research methods in the papers surveyed, showing a methodological flexibility well-suited to analysing bespoke issues arising from the operation of the law. Seventeen per cent of the papers used multiple research methods, with the majority involving original data methods or a combination of original and secondary data methods. The combination of

[156] See, eg, Naomi Burstyner and Genevieve Grant, 'Australian Coronial Litigation: An Empirical Profile' (2025) 48(2) *University of New South Wales Law Journal* 679, 705–7.

research methods can yield novel, nuanced findings, particularly when the methods combined are macro (eg a large survey or content analysis of documents) and micro (eg an in-depth set of interviews with a smaller sample of participants) in emphasis. To that end, empirical research training in doctoral programs and law schools could be encouraged to train scholars in multiple methods, and how to combine those methods in a single project.

D *Preference for Sole-Authorship or Small Authorship Teams*

Fourth, empirical research in the papers surveyed was still often conducted by scholars alone, despite the increased resources, skill and time necessary to properly undertake data collection and analyses. Co-authorship was common but author groups of three or more were rare, whether for original or secondary data papers. To the extent that authorship data is not impacted by 'gift' authorship — where authorship is given to people as a gift or in recognition of their seniority, irrespective of the nature of their contribution — this finding is consistent with a perception in the legal academy that scholarship is largely a solitary pursuit, and a general reticence towards collaborative author 'teams'. It is also consistent with Meyerson's 2015 observation that 'law professors conducting empirical research in law and economics do not collaborate at the same rate as economics professors in their empirical research',[157] though empirical legal scholarship in the US has been associated with an increased rate of co-authorship.[158]

This finding can serve as an encouragement for proactive authorial collaboration on empirical research, notwithstanding that such collaboration may already be found to take place in subsequent larger studies into empirical legal research. Authorial collaboration at its best combines the skills and experience of the group such that the eventual output is greater than the sum of the group's parts. In empirical legal scholarship in particular, this has two significant benefits: (a) increasing the number of scholars who can undertake the labour-intensive work of data collection and analysis; and (b) ensuring the methodological approach is rigorously debated throughout the writing process (rather than being the predominant brainchild of one or two authors with similar disciplinary expertise). Team-based approaches are also likely to enhance the potential for empirical legal research with First Nations/mātauranga Māori (Māori knowledge system)/tikanga Māori (Māori custom and practices)

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157 Michael I Meyerson, 'Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others?' (2015) 93(3) *Nebraska Law Review* 547, 574.

158 Tom Ginsburg and Thomas J Miles, 'Empiricism and the Rising Incidence of Coauthorship in Law' [2011] (5) *University of Illinois Law Review* 1785, 1823–4: 'empirical and interdisciplinary work, with their increasingly sophisticated methodologies, are driving much of the coauthorship trend' in the United States; LoPucki (n 40) 466–7.

elements, for example by including as authors Indigenous community partners in community-based participatory research.[159]

E *Research Funding Predominantly from Government/Philanthropic Sources for Original Data Research*

Fifth, discrete research funding was most commonly reported for original rather than secondary data research. Funders tended to be government, institutional (universities) or philanthropically based. There was a general lack of funding from private organisations, with the exception of funding from some law firms and a project partly funded by Lotterywest.

While these findings are non-representative, they are intuitive. Academic research tends to be funded by industry stakeholders where there is a clear market impact-based outcome (eg a new patentable invention). By contrast, humanities research is observational in nature: it aims to generate new observations and theories about society, in this case the operation of law. This finding is consistent with Newfield's observation about research in the US: 'disciplines with little or no commercial potential are likely to get nearly all of their funding from government rather than business. Business looks for financial return on investment, *not to make a contribution to human knowledge.*'[160]

In addition to its value as a hypothesis, the funding analysis provides three reminders. First, funding matters for empirical legal research more than doctrinal or theoretical research traditionally conducted by legal scholars. This is unavoidable, particularly for original data work that may require travel, external expertise, resources, training and time. Second, academic independence is central. This suggests that industry funding for empirical legal research should be pursued cautiously, if at all, to avoid even the appearance of a conflict of interest in the conduct and reporting of research.

Third, philanthropic funding sources are key, but they can only ever be supplementary. Governments and universities have a central role to play in maintaining funding for empirical legal research. The de-emphasis on humanities and social sciences in the research funding spaces in Australia and New Zealand in recent years has been well-documented.[161] When considering the

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159 Heather Castleden, Vanessa Sloan Morgan and Aelita Neimanis, 'Researchers' Perspectives on Collective/Community Co-Authorship in Community-Based Participatory Indigenous Research' (2010) 5(4) *Journal of Empirical Research on Human Research Ethics: An International Journal* 23; see also Steven J Cooke et al, 'Contemporary Authorship Guidelines Fail to Recognize Diverse Contributions in Conservation Science Research' (2021) 2(2) *Ecological Solutions and Evidence* e12060, 4.

160 Christopher Newfield, 'Humanities Decline in Darkness: How Humanities Research Funding Works' (2025) 1 *Public Humanities* e31, 5 (emphasis added).

161 See generally Kanishka Jayasuriya and Greg McCarthy, 'Australia's Politics of Research Funding: Depoliticization and the Crisis of the Regulatory State' in Rainer Eisfeld and Matthew Flinders (eds), *Political Science in the Shadow of the State: Research, Relevance, Deference* (Springer Nature,

structure of research funding, institutions and governments must consider how to preserve, and enhance, funding for scholars to undertake empirical legal research, so that scholars can receive 'better research training, skill development and investment … to ensure they have the skills, time, funding and capacity to execute' empirical projects that advance knowledge about how the law operates.[162] This is particularly important where scholars are encouraged to use more formal methods or those requiring specialist training, and as computational methods become more common with the availability of large datasets.

F *Ethics Approval Predominantly for Original Data Research (But Not Always)*

Sixth, ethics approval was generally, but not always, reported where it appeared to be needed. The majority of original data research, and a small minority of secondary data research, reported ethics approval. This is unsurprising — the former typically requires the collection of personal information of varying degrees of sensitivity, of the kind that has typically been recognised as requiring oversight by institutional ethics committees.

Some papers involving original data methods like interviews did not report ethics approval. Where research involving personal information may have been conducted without ethics approval, there may be adverse consequences for researchers. These may be mere oversights in the writing process — the need for ethics approval is typically well-articulated whenever original data research is involved. This may also be a feature of the generalist law journal system; specialist journals, or those with greater socio-legal expertise, may be likelier to make ethics disclosures mandatory. However, the absence of this information in the pilot study dataset is a timely reminder: ethics approval is key to maintaining public trust in the conduct of research. Providing ethics approval information, including the institution providing approval and the project number, allows the public to effectively raise complaints about research with the institution. This is even more important where complaints are raised by research subjects about data collection and research involving them. The absence of such information, even where some papers report ethics approval *was* obtained (but provided no further information), can be an additional, unnecessary hurdle to effective accountability in the conduct of research.

The positive is that the vast majority of papers provided ethics information where it appeared to be required. However, law schools may wish to use this

2021) 119; 'Statement on Cuts to Marsden Funds for Humanities and Social Sciences', *Te Pōkai Tara Universities New Zealand* (Web Page, 4 December 2024) <https://www.universitiesnz.ac.nz/latest-news-and-publications/statement-cuts-marsden-funds-humanities-and-social-sciences>.

[162] Blackham, 'Mixed Methods Research' (n 75) 413. Blackham's argument was in relation to mixed methods labour law research, but it is more broadly applicable to the conduct of empirical legal research.

finding to strengthen training on ethics approvals for both scholars and postgraduate research degree candidates. Journals should also take this finding as a reminder to have consistent processes about the kinds of ethics disclosures that are required on submission, to ensure that research which *should* have ethics approval is only published if the authors have obtained the appropriate approvals.

VI Conclusion

Empirical legal research illuminates how the law operates in practice, and where the law can or should be reformed. Improving the quality of that research in the Australasian region starts with understanding what its features are. As a first step, this pilot study analysed papers from leading generalist law journals from Australia and New Zealand across a six-year period. It identified trends including the types of methods applied, sources of funding and data, ethics approval and authorship.

The study's utility is threefold. First, the study provides a methodological framework for further studies on empirical legal research within and outside the Australasian region. The coding matrix, selection method and reliability testing can all be applied for future studies, ensuring rigour, consistency and replicability. The methodology can also be developed further, for example to identify ways of deriving insights about data availability,[163] the use of research assistants and statisticians and the jurisdictions surveyed.

Second, the trends identified in the study can be used as hypotheses for further study. The findings are not necessarily generalisable to all empirical legal research in the Australasian region. However, these trends can be tested against datasets broader in nature (eg books, white papers, reports, doctoral theses, etc), region (eg comparative studies between empirical scholarship in the United Kingdom, European Union, United States, Asia and Australasia) and date range (before and after the 2019–24 study period).[164] They can also usefully highlight areas of comparison between empirical research published in generalist law journals and other fora.

Third, the findings can serve as useful reminders and pathways for scholars, institutions and governments in the following ways. The preference for established data sources and methods (eg coding cases, legislation and other parliamentary documents) in the dataset, for example, suggests training in more formal research methods (content analysis, topic modelling) could add even more nuance, rigour and impact to the body of empirical legal scholarship.[165] The

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163 See, eg, Abigail A Matthews and Jason Rantanen, 'Legal Research as a Collective Enterprise: An Examination of Data Availability in Empirical Legal Scholarship' (2025) 41(2) *Journal of Law, Economics, and Organization* 570, 579–80.

164 See also Adler and Simon (n 5), who compare the developments of empirical legal research in the United States and the United Kingdom.

165 See also Cahill-O'Callaghan and Mulcahy (n 9) S107.

combination of research methods undertaken by scholars also deserves further investigation because it can produce multifaceted empirical analyses relative to single-method projects. Meanwhile, the apparent absence of ethics approval information in some papers is a reminder of the need to ensure scholars are trained in disciplinary requirements for ongoing public confidence in the research.

The preference for smaller authorship teams or sole authorship could suggest larger teams and interdisciplinary collaborations are worth investigating to enhance research capacity for larger-scale analyses, which can lead to findings of greater magnitude and influence on policy reform. Further, the dominance of government and philanthropic funding for original data research suggests dedicated funding is vital for the resource-intensive, costly and time-consuming work of empirical research — a need governments and universities would do well to consider when structuring funding regimes, even as scholars should be encouraged to maintain academic independence in the pursuit of external research funding. Of course, these recommendations should be considered secondary to the main goal of this pilot study: to provide a methodological framework and hypotheses for testing in future research on the phenomenon of empirical legal research from the Australasian region.