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

Abstract

This article describes a research project exploring the diverse ways that Australian law schools offer alternative or appropriate dispute resolution ('ADR') as part of the core curriculum. Since an amendment to the 'Priestley 11' required areas of study for admission to practice, ADR is now a topic in the renamed area of Civil Dispute Resolution (formerly known as Civil Procedure). This article reports on a research project that uses content analysis to map and explore the provision of ADR core education in Australia. Our research shows most universities combined ADR into the teaching of Civil Procedure and gave less focus to ADR than civil procedure. A significant number of law programs used the term Civil Dispute Resolution, indicating an adoption of the Priestley 11 approach to this study area. The data shows a trend to integrate the two areas of ADR and civil procedure which resonates with a vocational view of legal education and recognises the mainstreaming of ADR in dealing with disputes.

I Introduction

The contemporary trend for legal practitioners to use alternative or appropriate dispute resolution ('ADR') to serve the needs of their clients is widespread in Australia and has impacted legal practice and legal education.[1] ADR includes

* Professor of Law at RMIT University.

** Professor of Law at RMIT University. We acknowledge the research assistance and original contribution of Dr Tanya Coburn to this article. We also acknowledge the editorial assistance of Laura Russo. The authors sincerely thank the reviewers of this article for their valuable suggestions.

1 'Appropriate' dispute resolution as a term may be seen to be preferable to the use of 'alternative' with ADR now routinely part of court processes: Michael King et al, *Non-Adversarial Justice* (Federation Press, 2nd ed, 2014) ch 7. For an argument regarding the vocational basis for including ADR in the legal curriculum see: James Duffy and Rachael Field, 'Why ADR Must Be a Mandatory Subject in the Law Degree: A Cheat Sheet for the Willing and a Primer for the Non-Believer' (2014) 25(1) *Australasian Dispute Resolution Journal* 9, 9–11; Rachael Field and Alpana Roy, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27(1) *Legal Education Review* 73.

a range of: facilitative practices, such as negotiation and mediation; advisory processes, such as conciliation; and determinative processes, such as arbitration.[2] In the court-connected context, the most embedded ADR process is mediation, as many courts and tribunals can direct parties to mediation.[3] Consequently, alongside this growth in the use of ADR by lawyers, particularly in the court system, there has been an impetus to teach the theory and skills of this discipline area.[4] Notably, this area of study has sometimes been combined with Civil Procedure.[5] ADR has also been referred to by some as 'dispute resolution', as many options (such as mediation and conciliation) are no longer necessarily viewed as 'alternative'.[6]

The requirements for admission to legal practice contribute to the content of legal education and reference legal practice.[7] The Law Admissions Consultative Committee ('LACC') is the body that promotes consensus among various states in Australia regarding admission requirements to practice in law.[8] Each state in Australia specifies requirements for admission to practice, which include the need for a university qualification in law.[9] This can be a Bachelor of Laws ('LLB') (an undergraduate degree) or a Juris Doctor ('JD') (a postgraduate degree). Law school degrees must include courses in the required knowledge areas, colloquially known as the 'Priestley 11', as they were first prescribed by a committee chaired by Justice Priestley in 1992.[10] Additionally, for admission to practice, graduates must also

2 Tania Sourdin, *Alternative Dispute Resolution* (Thomson Reuters, 6th ed, 2020) ch 1.

3 Ibid ch 8.

4 Field and Roy (n 1).

5 Kathy Douglas, 'The Role of ADR in Developing Lawyers' Practice: Lessons from Australian Legal Education' (2015) 22(1) *International Journal of the Legal Profession* 71, 79. See also John Lande and Jean Sternlight, 'The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering' (2010) 25(1) *Ohio State Journal on Dispute Resolution* 247, 294.

6 Rachael Field, *Australian Dispute Resolution* (Lexis Nexis, 2nd ed, 2022) 70–2 [3.11]–[3.13].

7 Sally Kift and Kana Nakano, Council of Australian Law Deans, *Reimagining the Professional Regulation of Australian Legal Education* (Report, 1 December 2021) 12–25; Richard Johnstone, 'Whole-of-Curriculum-Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 1, 3 [1.4].

8 'Law Admission Consultative Committee (LACC)', *Legal Services Council* (Web Page, 12 March 2024) <https://www.legalservicescouncil.org.au/about-us/law-admissions-consultative-committee.html>.

9 See Law Admissions Consultative Committee, *Model Admission Rules 2015* (at December 2016) r 2 ('*Model Admission Rules*') which provides the model rule that to be admitted a person must have completed an approved tertiary academic law course. See also Law Admissions Consultative Committee, *Accreditation Standards for Australian Law Courses* (at July 2018) s 4.1, which provides that for a course to be accredited it must lead to a degree or similar qualification in law.

10 *Model Admission Rules* (n 9) r 2, sch 1; Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by Australian Universities Teaching Committee* (Report, January 2003) 4–5.

undertake supplementary training completed through a practice-focused qualification referred to as practical legal training ('PLT') or a legal traineeship involving work-integrated learning at a law firm or government department.[11] Other factors that affect legal education in Australia include regulation via additional accrediting bodies, such as the Tertiary Education Quality Standards Agency and, up until 2024, the Council of Australian Law Deans ('CALD').[12] CALD is made up of representatives from the various law programs in Australia[13] and is also influential in legal education government policy.

To address the growing recognition of the prevalence of ADR, some Australian universities established specific subjects, parts of subjects, or skills programs on ADR, particularly in areas such as negotiation and mediation.[14] These included compulsory or elective subjects or part of a core subject for legal practice, such as civil procedure.[15] Importantly, in Australia, ADR is now a topic area in the revised Priestley 11 area of Civil Dispute Resolution, formerly categorised as Civil Procedure.[16] In late 2016 the LACC revised the *Model Admission Rules* to include ADR in the required areas of knowledge for admission to legal practice.[17] This led to a name change from Civil Procedure to Civil Dispute Resolution. This change was effective in 2017 and the impact is unclear, particularly regarding the way this topic area has been included in legal education.[18]

In this article we outline a research project using content analysis to map the offering of ADR in legal education several years after the inclusion of ADR as a topic in Civil Dispute Resolution in the Priestley 11. The parameters of our research concern

11 See *Model Admission Rules* (n 9) r 3.

12 CALD offered a voluntary certification system for law programs. For details of regulations and accreditation, see: Olivia Rundle and Lynden Griggs, 'Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 1: Over-Regulation in Australia' (2019) 93(5) *Australian Law Journal* 389, 389–90; Olivia Rundle and Lynden Griggs, 'Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 2: International Comparators and a Proposal' (2019) 93(6) *Australian Law Journal* 499.

13 'Deans and Law Schools', *Council of Australian Law Deans* (Web Page, 2024) <https://cald.asn.au/contact-us/deans-law-schools/>. For a discussion of CALD, see David Barker, *A History of Australian Legal Education* (Federation Press, 2017) 147–50.

14 Kathy Douglas, 'The Teaching of ADR in Australian Law Schools: Promoting Non-adversarial Practice in Law' (2011) 22(1) *Australasian Dispute Resolution Journal* 49, 51–2. For arguments to include ADR in the core curriculum see Tania Sourdin, 'Not Teaching ADR in Law Schools? Implications for Law Students, Clients and the ADR Field' (2012) 23(3) *Australasian Dispute Resolution Journal* 148.

15 Douglas (n 14) 51. See also John Lande, 'Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice' (2013) 1(1) *Journal of Dispute Resolution* 1.

16 Field (n 6) 24 [1.53].

17 *Model Admission Rules* (n 9) sch 1.

18 Field (n 6) 25–32 [1.57]–[1.74].

the impact of the Priestley 11, rather than other regulatory factors affecting legal education. We focus on subjects relating to ADR that are core in the curriculum, rather than subjects that may be offered as electives or subjects that are core where ADR is encompassed under wider legal practice skills. Our research is significant as it maps a trend to include ADR in the law curriculum in line with the changes to the Priestley 11. The study shows that ADR is now routinely part of legal education and therefore is arguably no longer operating at the margins. This acceptance and endorsement of ADR, however, is largely achieved through the integration of this area with civil procedure. Most core subjects identified in this study combined ADR with civil procedure and therefore potentially allow learnings in relation to civil procedure and court processes to dominate. These courses predominantly include ADR theory as an aspect of a combined subject rather than an exploration of both theory and practice of ADR. In this article we first discuss trends in litigation and ADR, and second we discuss ADR in legal education. Third, we outline the research method for this project and then lastly discuss the findings and conclude with the need for further research on this topic.

II Civil Dispute Resolution

The introduction of case management in conjunction with a greater focus on ADR in courts has meant that dispute resolution is routinely a part of court processes.[19] ADR, primarily through use of mediation,[20] was adopted to encourage swifter processes and higher rates of settlement of disputes.[21] Following from United Kingdom reforms based on the Woolf report that promoted case management,[22] jurisdictions such as Victoria enacted legislation intended to shift legal practice to a culture that supported the integration of ADR.[23] In some jurisdictions internationally, ADR is used in courts to encourage settlement.[24] ADR is traditionally

19 David Bamford and Mark J Rankin, *Principles of Civil Litigation* (Law Book Company, 4th ed, 2021) ch 9.

20 The definition of mediation provided by the national body in Australia for voluntary accreditation is 'a process that promotes the self-determination of participants and in which participants, with the support of the mediator: (a) communicate with each other, exchange information and seek understanding (b) identify, clarify and explore interests, issues and underlying needs (c) consider their alternatives (d) generate and evaluate options (e) negotiate with each other; and (f) reach and make their own decisions': Mediator Standards Board, *National Mediator Accreditation System (NMAS)* (at 1 July 2015) 2.

21 Bamford and Rankin (n 19) ch 9.

22 Lord Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales* (Report, June 1995).

23 See generally Corey Byrne, 'Changing the Culture of Litigation in Victoria: Ten Years of the Civil Procedure Act 2010 (Vic)' (2021) 10(1) *Journal of Civil Litigation and Practice* 31.

24 For example, in the United Kingdom and Singapore: Masood Ahmed and Dorcas Quek Anderson, 'Expanding the Scope of Dispute Resolution and Access to Justice' (2019) 38(1) *Civil Justice Quarterly* 1.

associated with providing improved access to justice due to the opportunity to address a dispute without a costly, formal hearing.[25] However, concerns have been raised about the impact of settlement on the assumed right to a trial, with all its procedural protections, and the potential for second-class justice through ADR to become the norm in dispute resolution.[26] There is also the potential to impact the development of precedents in case law that can affect the evolution of jurisprudence.[27] It is argued that courts value the use of ADR in order to reduce the costs of justice, and that this approach can decrease the opportunity for the public to litigate meritorious claims.[28] Changes to dispute resolution in courts also reflect the dominant premises of the ADR movement, such as collaborative problem-solving, which provide an alternative construction of the role of the lawyer.[29] This role can be described as more holistic in its approach to legal problems, as it includes attention to issues underlying the conflict and the client's needs, as well as the impact of the conflict on their lives and emotions.[30]

Paula Baron, Lillian Corbin and Judy Gutman maintain ADR should form part of an ecosystem that adapts to the context of a dispute.[31] Lawyers should shift their strategies depending on the process they are engaging with, and with attention to the best interests of their client.[32] This kind of flexibility in legal practice requires lawyers to possess the skills and understanding to make and responsively enact such strategic decisions.[33]

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25 Lola Akin Ojelabi, 'Ethical Issues in Court-Connected Mediation' (2019) 38(1) *Civil Justice Quarterly* 61, 67–9.

26 Martin Frey, 'Does ADR Offer Second Class Justice' (2001) 36 *Tulsa Law Journal* 727, 764–6.

27 Michael Legg and Sera Mirzabegian, 'The Vitality of Litigation' in Michael Legg (ed), *Resolving Civil Disputes* (Lexis Nexis, 2016) 37, 38–41 [3.4]–[3.9]. Linda Mulcahy and Wendy Teeder, 'Are Litigants, Trials and Precedents Vanishing After All?' (2021) 85(2) *Modern Law Review* 326.

28 Hazel Genn, 'What is Civil Justice For? Reform, ADR and Access to Justice' (2012) 24 *Yale Journal of Law and Humanities* 397. In the Australian context, it has been argued that appropriate funding to courts must be maintained and ADR should not simply be a way to save on costs: see Michael Black, 'The Relationship Between the Courts and Alternative Dispute Resolution' in Michael Legg (ed), *Resolving Civil Disputes* (Lexis Nexis, 2016) 49, 53–4 [4.19]–[4.26].

29 Julie Macfarlane, *The New Lawyer: How Clients Are Transforming the Practice of Law* (University of British Columbia Press, 2nd ed, 2017) 121–4, 154–9.

30 Michael S King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' (2008) 32(3) *Melbourne University Law Review* 1096.

31 See generally Paula Baron, Lillian Corbin and Judy Gutman, 'Throwing Babies Out with the Bathwater? — Adversarialism, ADR and the Way Forward' (2014) 40(2) *Monash University Law Review* 283.

32 Ibid 285–7.

33 See, eg, Lillian Corbin, Paula Baron and Judy Gutman, 'ADR Zealots, Adjudicative Romantics and Everything In Between: Lawyers in Mediation' (2015) 38 (2) *University of New South Wales Law Journal* 492, 512–13.

The intersection of lawyers' practice, the realisation of the benefits of ADR, and party experience is important when considering the potential benefits of ADR. For example, Carrie Menkel-Meadow famously warned that litigation paradigms could absorb and reshape processes such as mediation so that they mirror the traditional adversarial legal approach to dispute resolution.[34] In Australia rights-based discourses predominate in mediations that can sometimes look like 'mini-trials'.[35] Lawyers' practice in mediation can favour evaluative approaches, with legal representatives debating the likelihood of winning in court and commonly adopting positional bargaining strategies.[36] Although this kind of practice is not uniform, and may vary significantly due to context,[37] it can be argued that the anticipated shifts in legal practice and the benefits to parties[38] have not yet fully materialised.

Some commentators criticise the acceptance of ADR in legal and justice systems. For instance, in 1984 Owen Fiss wrote that courts and jurisprudence have a role in society to deliver precedents that provide indications of shared societal values.[39] ADR processes mean that matters are not fully litigated and, therefore, precedents are not set for society. Fiss observed that the drive for efficiency in courts, with the aim of moving cases expeditiously through lists, increased the prevalence of private ordering as part of case management.[40] Fiss' assessment of the dangers of ADR have largely proven accurate, with the driving force for many present-day court-connected initiatives, particularly in mediation, being court efficiency and cost considerations.[41] ADR is not necessarily better for parties who are unrepresented and unaware of their legal rights. However, many prospective litigants would face similar dilemmas without ADR, due to the prohibitive costs of legal advice and litigation.[42] Successive government reports have identified the potential improvement to access to justice through the widespread provision of ADR options that are

34 Carrie Menkel-Meadow, 'Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or "The Law of ADR"' (1991) 19(1) *Florida State University Law Review* 1, 1–2.

35 Michael McHugh, 'Mediation and Negotiation in Legal Disputes' (2021) 31(2) *Australasian Dispute Resolution Journal* 104, 106.

36 Ibid 105–6.

37 For instance, tribunals may encourage more collaborative problem solving than courts: Kathy Douglas and Becky Batagol, 'The Role of Lawyers in Mediation: Insights from Mediators at the Victorian Civil and Administrative Tribunal' (2014) 40(3) *Monash University Law Review* 758, 779.

38 Laurence Boulle, *Mediation and Conciliation in Australia: Principles, Process, Practice* (Lexis Nexis, 2023) 302–304 [9.4]–[9.7].

39 Owen Fiss, 'Against Settlement' (1984) 93(6) *Yale Law Journal* 1073, 1085.

40 Ibid 1088–9.

41 Ellen Waldman, 'What *Against Settlement* Got Right' in Art Hinshaw, Andrea Kupfer Schnieder and Sarah Rudolph Cole (eds), *Discussions in Dispute Resolution: The Foundational Articles* (Oxford University Press, 2021) 355, 356.

42 Ibid 357.

less costly, time-consuming and formal than litigation.[43] Historically, critics have argued that ADR can prioritise private ordering too easily, and this denies the public the opportunity for a contested hearing.[44] This may mean that the public do not have the same access to the courts due to the widespread uptake of ADR. This uptake is only likely to increase as the combination of ADR with technology is mooted as a way to provide cheaper and easier access to the justice system. This will be achieved through online dispute resolution and legal education for the public via the internet or specific apps.[45] Therefore emerging technologies combined with ADR may mean that the public use the court system progressively less in the future. But, although there are many benefits to technology in providing cost-effective innovations to improve civil dispute resolution, not all those who might interact with the justice system will have the ability to successfully engage with technology due to challenges with the use of both hardware and software.[46]

Lawyers' skills in, and understanding of, ADR may influence the ways that they practice in the various processes.[47] As noted previously, lawyers' adversarial

43 See, eg: Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000); Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System* (Final Report No 92, September 1999); Victorian Law Reform Commission, *Civil Justice Review* (Report No 14, March 2008) ch 4; Law Reform Committee, Parliament of Victoria, *Alternative Dispute Resolution and Restorative Justice* (Final Report, May 2009) chs 1–5; Productivity Commission, Australian Government, *Access to Justice Arrangements: Productivity Commission Inquiry Report* (Report No 72, September 2014) vol 1; Law Council of Australia, *The Justice Project Final Report — Part 2: Dispute Resolution Mechanisms* (Report, August 2018) 6–18; Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Final Report No 135, March 2019) ch 8. For a discussion of the evolution of ADR in legislation, see Lola Akin Ojelabi, 'Legislating Appropriate Dispute Resolution for the Public Good' (2023) 42(4) *Civil Justice Quarterly* 333.

44 See, eg, Genn (n 28) 397–8.

45 Law Council of Australia, 'Addressing the Legal Needs of the Missing Middle' (Research Paper, November 2021) 32–6. See also Maurits Barendrecht et al, Hague Institute for Innovation of Law, *Understanding Justice Needs: The Elephant in the Courtroom* (Report, November 2018) 44, 80–6.

46 Tania Sourdin, Bin Li and Tony Burke, 'Just, Quick and Cheap? Civil Dispute Resolution and Technology' (2019) 19(1) *Macquarie Law Journal* 17. Technology is now being included in the area of ADR/civil procedure through the teaching of online dispute resolution ('ODR'): Genevieve Grant and Esther Lestrell, 'Bringing ODR to the Education Mainstream' in Catrina Denvir (ed), *Modernizing Legal Education* (Cambridge University Press, 2019) ch 5.

47 Carrie Menkel-Meadow, 'The Trouble with the Adversarial System in a Postmodern, Multicultural World' (1996) 38(1) *William and Mary Law Review* 5, 37–9. Lawyers, on occasion, will need to act for the clients in ways that promote relationship concerns, including understanding the other party's point of view, as well as monetary issues: Jonathan M Hyman, 'Four Ways of Looking at a Lawsuit: How Lawyers Can Use the Cognitive Frameworks of Mediation' (2010) 34(1) *Washington University Journal of Law and Policy* 11.

orientation may influence court-connected ADR. The widespread use of mediation in courts has increased the use of evaluative mediation due to adversarial legal culture.[48] In the evaluative model, the mediator gives advice on the likely court outcomes and can exert pressure on the parties to settle.[49] Mediation thus may not enhance party self-determination due to the emphasis on achieving settlement.[50] Indeed, such practice can potentially undermine the quality of justice provided by the legal system.[51] The prevalence of evaluative mediation also risks decreasing parties' experience of procedural justice.[52] Research into procedural justice shows that being able to tell their story in full during a process, and being treated with respect by a third party, may be more important to parties than the ultimate outcome of a dispute.[53] However, the practice of lawyers in mediation can sideline the input of parties, focus on settlement and favour evaluation as a method of achieving settlement.[54] Despite the potential valuable contribution of procedural justice to parties, it can be difficult to convince some sections of the legal profession of the benefits of these types of respectful, validating experiences for their clients.[55]

Arguably, law students need to understand a variety of options in ADR, including mediation and associated skills.[56] The inclusion of ADR as a topic in the Priestley 11

48 Nancy Welsh, 'The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?' (2001) 6(1) *Harvard Negotiation Law Review* 1, 25–7. See also Tania Sourdin and Nikola Balvin, 'Mediation in the Supreme and County Courts of Victoria: A Summary of the Results' (2009) 11(3) *Alternative Dispute Resolution Bulletin* 41, 45.

49 Lela P Love, 'The Top Ten Reasons Why Mediators Should Not Evaluate' (1997) 24(4) *Florida State University Law Review* 937, 937–8. Compare this to the facilitative model, which focuses on party empowerment through collaborative problem solving and the mediator attempts to be impartial and refrain from giving advice: see Carole J Brown, 'Facilitative Mediation: The Classic Approach Retains Its Appeal' (2003–2004) 4(2) *Pepperdine Dispute Resolution Journal* 279.

50 Robert A Baruch Bush, 'Substituting Mediation for Arbitration: The Growing Market for Evaluative Mediation and What It Means for the ADR Field' (2002) 3(1) *Pepperdine Dispute Resolution Law Journal* 111, 115–16.

51 Nancy A Welsh, 'The Place of Court-Connected Mediation in a Democratic Justice System' (2004) 5(2) *Cardozo Journal of Conflict Resolution* 117, 138–42; Rebecca Hollander-Blumoff and Tom R Tyler, 'Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution' [2011] (1) *Journal of Dispute Resolution* 1, 1.

52 Nancy A Welsh, 'Disputants' Decision Control in Court-Connected Mediation: A Hollow Promise Without Procedural Justice' [2002] (1) *Journal of Dispute Resolution* 179, 185–7.

53 Ibid.

54 McHugh (n 35) 105–6.

55 Nancy A Welsh, 'Looking Down the Road Less Traveled: Challenges to Persuading the Legal Profession to Define Problems More Humanistically' [2008] (1) *Journal of Dispute Resolution* 45, 53–7.

56 Field (n 6) 25–32 [1.57]–[1.74].

can be said to be part of a trend in legal education to better prepare students for the realities of contemporary practice. Research by Australian academics Tom Fisher, Judy Gutman and Erika Martens demonstrated a link between non-adversarial orientations and concepts of conflict during students' legal education.[57] Their research focused on a core first-year offering entitled Dispute Resolution at La Trobe University in Victoria, Australia, and the impact on students' learning about ADR. In this subject, students learnt about ADR processes and engaged in mediation and negotiation skills role-plays.[58] The results of the study showed that after learning ADR theory and skills students shifted to a more collaborative approach to disputes than they showed at the beginning of the subject.[59] We next discuss in more detail the content and pedagogy of ADR subjects and what this area can contribute to legal education.

III ADR and Legal Education

Legal education is a significant site for the shaping of lawyers' practice, as law schools contribute to the knowledge, skills and ethical interpretations students experience in their education in becoming a lawyer.[60] The common framework of much contemporary ADR practice is due to lawyers' legal education.[61] This is because the experience of legal education generally promotes an adversarial frame of practice, a 'standard philosophical map' that privileges a rights-based focus in dispute resolution.[62] Vocationalism is often seen to be the dominant guiding paradigm of the content and pedagogy of legal education, with its focus on what lawyers must know and be able to do in the legal profession.[63] In terms of ADR, vocationalism provides a coherent narrative to include ADR as part of core learnings in law because ADR is increasingly common in legal practice.[64] Nick James argues that a more appropriate paradigm than vocationalism is the discourse of professionalism, as it provides a broad framework for legal education that encompasses critique of the legal

57 Tom Fisher, Judy Gutman and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students? Part 2: An Empirical Survey' (2007) 17(1–2) *Legal Education Review* 67.

58 Ibid 70–1. For a similar study in the subject in the US, see Ronald Pipkin, 'Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the Program at the University of Missouri–Columbia' (1998) 50(4) *Florida Law Review* 609.

59 Fisher, Gutman and Martens (n 57) 80, 84.

60 Macfarlane (n 29) 31–5.

61 Ibid 33.

62 Leonard L Riskin, 'Mediation and Lawyers' (1982) 43(1) *Ohio State Law Journal* 29, 43–51.

63 Nickolas J James, 'More than Merely Work-Ready: Vocationalism Versus Professionalism in Legal Education' (2017) 40(1) *University of New South Wales Law Journal* 186.

64 Kathy Douglas, 'Shaping the Future: The Discourses of ADR and Legal Education' (2008) 8(1) *Queensland University of Technology Law and Justice Journal* 118, 130–2.

profession and diverse student employment outcomes.[65] However, ADR can also fit this paradigm as, depending on the way it is taught, it can include critique of theoretical issues, such as power, neutrality and impartiality.[66] The *Carnegie Report*,[67] published in 2007, recognised the importance of ADR. This report provides insights into the content and pedagogy of law programs in the United States ('US').[68] Their research critiqued the teaching in US law schools as overly driven by precedent and substantive content.[69] The report noted that the discipline area of ADR has benefits for law students as it builds theory and practice in collaborative problem-solving.[70] The report also discussed the benefits of the commonly used strategy of experiential learning through role-plays in ADR, exploring the ways that simulation pedagogies can help build professional identity.[71] Recent follow-up research on the *Carnegie Report*, including a longitudinal analysis of the data, showed continued content-driven practice at law schools in the US with some increased focus on legal writing and research (including digital research methods).[72]

In Australia, for many years there has been at least some recognition of the importance of ADR in legal education. For example, the *Pearce Report*,[73] published in 1987, highlighted the focus on doctrine in legal education and called for an increase in legal skills teaching, including ADR, in Australian law schools. Similarly, the 2000 federal report *Managing Justice: A Review of the Federal Civil Justice System*[74] recommended greater attention to legal skills in legal education, including negotiation and dispute resolution options.[75] In 2010, the Learning and Teaching Academic Standards Project in Law, in consultation with many elements of the law discipline,

65 James (n 63) 206–9.

66 See, eg: Leah Wing, 'Mediation and Inequality Reconsidered' (2009) 26(4) *Conflict Resolution Quarterly* 383; Toran Hansen, 'Critical Conflict Resolution Theory and Practice' (2008) 25(4) *Conflict Resolution Quarterly* 403.

67 William Sullivan et al, Carnegie Foundation for the Advancement of Teaching, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

68 Ibid 16.

69 Ibid 87–9.

70 Ibid 111–14.

71 Ibid 114, 152–61. For a recent discussion of the various reports into legal education from around the world and suggestions for Australian law curriculum, see Kift and Nakano (n 7).

72 Gregory Camilli, Judith W Wegener and Ann Gallagher, 'Faculty Perception of Tasks Relevant to Academic Success in the First Year of Law School: A Longitudinal Analysis' (2022) 32(1) *Legal Education Review* 183, 203.

73 Denis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Report, 1987).

74 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, January 2000).

75 Ibid ch 2.

articulated threshold learning outcomes ('TLOs').[76] The standards require minimum education in legal knowledge, skills and ethics, and were developed to align with the bachelor level (Level 7) of the Australian Quality Framework.[77] The TLOs have now become widely adopted in legal education and many are supported by the study of ADR.[78] The impact of this influential construct of practice assists the argument for the compulsory study of ADR.[79]

The six TLOs are:

TLO 1: Knowledge.
TLO 2: Ethics and professional responsibility.
TLO 3: Thinking skills.
TLO 4: Research skills.
TLO 5: Communication and collaboration.
TLO 6: Self-management.

TLO 1 requires demonstration of doctrinal knowledge, and knowledge of the Australian legal system and the various dispute resolution processes operating in this system. This TLO requires knowledge of lawyers' roles, including in negotiation. Similarly, TLO 3 requires demonstration of thinking skills, including creativity, which can be included in the study of ADR. TLO 5 deals with communication and collaboration, and ADR courses commonly include these areas. TLO 6 relates to self-management, requiring the ability for students to learn and work independently, and to be able to reflect on their learning. ADR learning can assist with TLO 6 by covering substantive content and also requiring reflection in assessments, such as journal writing regarding theory and practice.

The former federal advisory committee on ADR, the National Alternative Dispute Resolution Advisory Council ('NADRAC'), noted in their 2012 research paper on the teaching of ADR in Australian law schools ('NADRAC Research Paper') that there was interest in this area from students, but that the cost of the experiential pedagogy and the availability of skilled ADR teachers hampered the teaching of ADR.[80] At the time of the research, there were 32 law schools in Australia and 27 responded to the survey on ADR. Of those law schools that responded, eight

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76 Learning and Teaching Academic Standards Project, *Bachelor of Laws; Learning and Teaching Academic Standards Statement* (Report, Australian Learning and Teaching Council, December 2010) 1–2, 6–7 ('*LLB Academic Standards Statement*'); Field (n 6) 25 [1.56].

77 *LLB Academic Standards Statement* (n 76) 9–10; Field (n 6) 27–8.

78 *LLB Academic Standards Statement* (n 76) 9–10; Field (n 6) 28–32.

79 Corbin, Baron and Gutman (n 33) 510–11.

80 National Alternative Dispute Resolution Advisory Council, 'Teaching Alternative Dispute Resolution in Australian Law Schools' (Research Paper, 2012) 13–14 ('NADRAC Research Paper'). This research was supplemented by the knowledge of the committee of eminent ADR practitioners and a forum on Legal Education and Wellbeing held at RMIT University in 2012.

included ADR as a core subject in the curriculum, with 50% of the content relating to ADR.[81] The content of ADR was often combined with Civil Procedure, likely due to the incorporation of ADR as part of case management, and the report also noted the many electives in the area of ADR being offered at the time.[82]

It was NADRAC's view that the amount of ADR teaching that was occurring in most Australian law schools was insufficient, considering the increasing role that lawyers play in advising clients about, and assisting them in, ADR processes.[83] Clients, professional bodies and courts/tribunals expect that lawyers will be knowledgeable about ADR options, and will also understand interest-based negotiation.[84] This expectation is evident in rule 7.2 of the *Australian Solicitor Conduct Rules*, requiring lawyers to advise clients of alternatives to litigation.[85] Explanations proffered by NADRAC for the lack of depth of focus on ADR include 'the ability of law schools to devote sufficient resources to teaching ADR',[86] specifically, staffing issues around '[t]he shortage of ADR-specific academics associated with Australian law schools'.[87] The staffing issues are attributed to a number of elements including: 'lack of staff interest; difficulty in finding suitably qualified staff; difficulty for staff to contribute sufficient time to preparing and teaching ADR subjects; and unwillingness of staff to integrate ADR into existing subjects they teach'.[88] Notably, in other research into the teaching of ADR in legal education conducted prior to the change to Civil Dispute Resolution in the Priestley 11, it was found that where ADR was combined with Civil Procedure, generally the ADR content was constrained by the focus on the processes of litigation.[89]

More widely, Menkel-Meadow highlighted the potential of ADR to shift dispute resolution from a myopic concern with a framework of rights, through the inclusion of insights from a range of disciplines, that can include the social sciences.[90]

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81 Ibid 9.

82 Ibid.

83 Ibid 12.

84 Ibid.

85 Law Council of Australia, *Australian Solicitors Conduct Rules 2021* (at November 2023).

86 NADRAC Research Paper (n 80) 13.

87 Ibid.

88 Ibid 15.

89 See, eg, Douglas (n 5). In this study, law school staff in two Australian states, Victoria and Queensland, who taught in ADR or ADR/Civil Procedure subjects were interviewed about the content and pedagogy of their offerings. In the study, one law school subject did combine the areas of civil procedure and ADR effectively. This study also noted the high cost of experiential learning via role-plays and the need for skilled staff to teach ADR.

90 Carrie Menkel-Meadow, 'From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context' (2004) 54(1) *Journal of Legal Education* 7, 16–17.

Howard Gadlin warned of the danger of settlement-driven ADR processes that fail to address the psychological nuances of conflict, and neglect the larger societal stories that impact upon conflict resolution processes.[91] Mediation has a history of experiential learning and reflection that assists with the development of the legal professional identity.[92] It therefore provides more than just skills and theory but also moulds professional identity for holistic problem-solving.[93]

One impetus for seeking to enhance professional identity is the concern for lawyer and law student wellbeing. Importantly, in several studies, Jill Howieson has researched ADR courses and argued from her findings that they have a positive impact on student mental wellbeing. ADR teachers routinely use role-plays, including debriefing, and Howieson notes these approaches have been found to promote belonging in student cohorts, improving their wellbeing.[94] In her latest research, Howieson and co-authors ran a study during the pandemic and found that:

> [o]verall, the results of the current study corroborate the findings of the 2007 and 2011 studies and mirrors the research in the field. An interactive learning environment can create a sense of belonging, engagement, and mental ease. Our findings confirm that the interactive nature of the DR unit and the enjoyment and nature of the exercises, role-plays and the work with fellow students are associated with a more positive sense of wellbeing.[95]

There are many areas of law that, arguably, can be core in the legal education curriculum: for instance, technology, Indigenous perspectives, clinical experiences and international law.[96] Recently, website content analysis was conducted to establish how many Australian law schools include international law as a core

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91 Howard Gadlin, 'Contributions from the Social Sciences' (2004) 54(1) *Journal of Legal Education* 34, 41.

92 Kathy Douglas, 'The Evolution of Lawyers' Professional Identity: The Contribution of ADR in Legal Education' (2013) 18(2) *Deakin Law Review* 315.

93 Ibid 335–6.

94 Jill Howieson, 'ADR Education: Creating Engagement and Increasing Mental Wellbeing Through an Interactive and Constructive Approach' (2011) 22(1) *Australasian Dispute Resolution Journal* 58.

95 Jill Howieson et al, 'Balancing Convenience and Connection Blending Law School Teaching and Learning During a Pandemic' (2022) 32(1) *Legal Education Review* 209, 224.

96 See, eg: Trevor Ryan, 'Coding for Critical Thinking: A Case Study in Embedding Complementary Skills in Legal Education' (2021) 31 *Legal Education Review* 81; Anna Cody, 'Reflection and Clinical Legal Education: How Do Students Learn about Their Ethical Duty to Contribute to Justice' (2020) 23(1–2) *Legal Ethics* 13. For a discussion of possible core areas of inclusion in legal education, see generally Kift and Nakano (n 7). In relation to the inclusion of technology, see also Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) 76–80.

subject.[97] The authors of the research noted the competition between various areas of law to be core in the over-full law degree curriculum as a significant source of tension.[98] However, they note the number of universities that include international law in the compulsory law curriculum has increased, likely since practice in international law has grown in the profession.[99] The question of what to include in the core of a law program also exists in relation to the inclusion of ADR in the law curriculum. For most law schools, combining ADR with the area of civil procedure is arguably the most appealing option.[100] Textbooks in this area show an inclusion of ADR and civil procedure in ways that acknowledge dispute resolution includes a range of options, culminating in a trial.[101] Some textbooks also include ethics, showing an integrated approach to dispute resolution with the ethical obligations of practice.[102] Our research, described in the next section of this article, provides valuable insights into dispute resolution as a core component of the law curriculum and in particular, what is being taught in law schools in the Priestley 11 area of Civil Dispute Resolution.

IV Methodology

This study assesses how and to what degree ADR theory and skills are taught as core in Australian law programs. Our research explores programs in each state and the core courses required to be completed for the undergraduate law degree, excluding electives. Our approach was to conduct a content analysis of publicly available information on university websites as well as examining course and subject information in online handbooks.[103] Content analysis provides a systematic approach to gathering data according to predetermined categories in a manner that is replicable.[104] The methodology chosen was influenced by the availability of data online. The methodology of a study is important to articulate in any research project.[105]

97 Irene Baghoomians, Emily Crawford and Jacqueline Mowbray, 'The Teaching of Public International Law in Australian Law Schools: 2021 and Beyond' (2022) 43(1) *Adelaide Law Review* 7.

98 Ibid 32.

99 Ibid 15.

100 Douglas (n 5) 74–5.

101 See, eg: Sonya Willis, *Civil Dispute Resolution: Balancing Themes and Theory* (Cambridge University Press, 2022); Bamford and Rankin (n 19).

102 Margaret Castles, Anne Hewitt and Stacey Henderson, *Ethical Resolution of Civil Disputes: South Australian Theory and Practice* (Thomson Reuters, 2nd ed, 2023) ch 2.

103 A similar content analysis was conducted prior to the change to the Priestley 11: Pauline Collins, 'Resistance to the Teaching of ADR in the Legal Academy' (2015) 26 *Australasian Dispute Resolution Journal* 64, 68.

104 Tom Clark et al, *Bryman's Social Research Methods* (Oxford University Press, 6th ed, 2021) ch 13.

105 Linda Mulcahy and Rachel Cahill-O'Callaghan, 'Introduction: Socio-Legal Methodologies' (2021) 48 (Special Supplement 1) *Journal of Law and Society* S1, S1–S2.

The research question sought to explore the teaching of ADR in the core curriculum. The content analysis interprets the data through the lens of the experience of the two researchers, who are both long-time teachers of ADR with decades of engagement with this area's content and pedagogy.

Although qualitative data, in the form of interviews with academic staff, would have provided this information and, additionally, thick descriptions of practice, the research team did not have the resources for a national study of this nature. Quantitative data through surveys was also considered, but the difficulty of achieving sufficient responses from the various law schools meant that this method was not considered suitable. The benefits of a content analysis of law program websites is the opportunity to gain the information needed in an accessible manner and at a low cost. The research involved a preliminary study in October 2022, followed by an updated, refined search in September 2023, which was further updated in March 2024, of publicly available information on the websites of Australian universities offering accredited law programs. The relevant institutions were identified from the CALD website listing certified Australian law schools.[106] Australian law school websites were then accessed to identify core courses available to law students which cover relevant content on ADR skills, knowledge and understanding. The focus was on undergraduate law programs, Bachelor of Laws, rather than postgraduate law programs, JD, as nearly all universities in the study offer an undergraduate law program, but not all offer a JD. However, two law schools, the University of Melbourne and the University of Western Australia, only offer a JD and so these two offerings were included in the study.[107]

Information sourced included lists of core subjects in an undergraduate law program structure and subject information for prospective students, which may include online subject pages or links to handbook pages. This method of data gathering relied on the information available to an individual who is not already enrolled as a student or who does not have staff member access to the institution. This meant that there was information inaccessible to the researchers, for example, in some cases, information on prescribed or recommended texts and details of assessment in each subject was restricted to a learning management system. An additional limitation of this research approach is that law programs may change their offerings over time and thus the accuracy of the information analysed is limited to the period the

106 Council of Australian Law Deans, 'Australia's Law Schools', *Studying Law in Australia* (Web Page, 2023) <https://cald.asn.au/slia/australias-law-schools/>.

107 Where a university offers both a LLB and a JD the approach to the teaching of ADR may differ. For example, at RMIT University in the JD there is a core stand-alone course, Negotiation and Dispute Resolution, and there is also a separate course on Civil Procedure that includes ADR as a topic: 'Masters by Coursework: Juris Doctor', *RMIT University* (Web Page, 2024) <https://www.rmit.edu.au/study-with-us/levels-of-study/postgraduate-study/masters-by-coursework/juris-doctor-mc161/mc161auscy>. In the LLB at RMIT University there is only a core course on Civil Dispute Resolution: 'Bachelor Degrees: Bachelor of Laws', *RMIT University* (Web Page, 2024) <https://www.rmit.edu.au/study-with-us/levels-of-study/undergraduate-study/bachelor-degrees/bachelor-of-laws-bp335/bp335auscy>.

data was accessed online. In this project the last update of the information was in March 2024.

As noted, the first step in the data collection was to access the structure of the law program. The second step was to identify the name of a subject(s) that dealt with ADR. Unlike the 2012 NADRAC Research Paper,[108] discussed earlier in this article, we did not require ADR to be 50% of a subject to be included in our analysis. As we were focused on the impact of the change to the Priestley 11 prescribed areas that included ADR as a topic amongst traditional civil procedure topics, our scope of study was wider than that of the NADRAC Research Paper. The methodology also differs in that NADRAC included predominately survey data.

In our research on the subject titles, we looked for indications of ADR content. For instance, a subject might be called ADR or Dispute Resolution, which might indicate a strong focus on ADR theory and skills. We were particularly interested in subjects that used the Priestley 11 term of Civil Dispute Resolution, which would generally indicate a focus on both ADR and civil procedure. Alternatively, a subject might include a title that combined Civil Procedure with ADR or the subject might simply be called Civil Procedure, but have a topic dealing with ADR in the content. A decision was made to identify separately Civil Dispute Resolution subjects, and combined Civil Procedure and ADR subjects, due to the likelihood that the adoption of the more recent nomenclature and the use of this title showed the staff developing or updating the program had reflected on the need to integrate ADR since the change to the Priestley 11.

The next step was to analyse the subject description and learning outcomes to ascertain the level of focus on ADR. Assessment tasks were also considered but were not uniformly available. Analysis included whether the subject provided learning in both the theory and practical skills of ADR. Attention was given to whether an assessment dealing with ADR required experiential learning, such as reflection on role-plays. Alternatively, a subject might only provide an understanding of the theory of ADR without the teaching of ADR skills in an experiential approach. Different levels of focus were discerned as the courses could be divided into three general categories, with a fourth category relating to situations where there was no publicly available information regarding course learning outcomes and assessment. The categories were:

- Strongest Focus on ADR: inclusion of both ADR theory and skills evident through an analysis of the subject description and/or learning outcomes.
- Strong Focus on ADR: inclusion of ADR in Civil Dispute Resolution or combined civil procedure and ADR subjects with a theoretical focus, but also with some skills focus.
- Medium Focus on ADR: Combined courses with a learning outcome concerning ADR that is theoretical.
- These subjects had limited information available to the public.

108 NADRAC Research Paper (n 80).

Tables 1 to 4 set out institutions and core subjects offered, including information on the extent to which there is a focus on ADR theory or skills according to the four categories above.

Table 1: Category 1 — Strongest Focus on ADR

Type of course	University	Subject
Standalone	University of Notre Dame	LAWS4620 Alternative Dispute Resolution[109]
	Western Sydney University	LAWS2001 Alternative Dispute Resolution[110]
	University of Southern Queensland	LAW1122 Dispute Management
	La Trobe University	LAW1DR Dispute Resolution
	University of Canberra	1152.2 Dispute Management[111]
Combined Civil Procedure with Ethics (in title) or another area	University of Western Australia (JD)	LAWS5109 Ethical Dispute Resolution

An example of a standalone subject which demonstrates the strongest focus on dispute resolution, as evidenced by the learning outcomes, descriptions and assessment focus on ADR, is La Trobe University's 'Dispute Resolution'. This subject addresses ADR separately to civil procedure, although it references litigation, and assesses the theory and skills of facilitative mediation. In the University of Western Australia's JD course, Ethical Dispute Resolution, there is evidence of a similar approach, but with the explicit addition of ethics. Other subjects in this category demonstrate a focus on both the theory and skills of ADR and attempt to explore deeply the discipline area.

109 The subject LAWS 4001 Civil Procedure is also core in this law program.

110 The subject LAWS 4013 Civil Procedure and Arbitration is also core in this law program.

111 The subject 11783.1 Civil Procedure is also core in this law program.

Table 2: Category 2 — Strong Focus on ADR

Type of course	University	Subject
Civil Dispute Resolution	Queensland University of Technology	LLB103 Civil Dispute Resolution
	RMIT University	LAW2582 Civil Dispute Resolution
	University of Newcastle	LAWS4003 Civil Dispute Resolution
	University of Queensland	LAWS4701 Civil Dispute Resolution[112]
	Bond University	LAWS11325 Civil Dispute Resolution
	University of New South Wales	LAWS2371 Resolving Civil Disputes
Combined with Civil Procedure	None	None
Combined Civil Procedure with Ethics (in title) or another area	University of Adelaide	LAW 3501 Dispute Resolution and Ethics
	University of Wollongong	LLB2225 Advanced Legal Skills[113]
	Australian National University	LAWS2244 Litigation and Dispute Management[114]
	Monash University	LAW4303 Litigation and Dispute Resolution
	University of Melbourne (JD)	LAWS90140 Disputes and Ethics

Those subjects we have categorised as having a strong focus on ADR have a clear direction of combining ADR with civil procedure in a manner that endorses the vocational nature of these two areas, and the integration of various dispute resolution processes. They usually reference some assessment of the skills in ADR practice. An example of a close integration of ADR with civil procedure is the Civil Dispute Resolution subject at Queensland University of Technology, which discusses litigation but includes an assessment of mediation. Notably, this subject has adopted the language of the Priestley 11 in the title. Notably, five of the subjects in this category explicitly name the core area of study as Civil Dispute Resolution, again mirroring the amended language of the Priestley 11. The three other subjects in this category use a variety of language with two adopting dispute resolution or management. This may reflect the view that ADR is part of a spectrum of processes

112 Inclusion of arbitration and the critical steps in mediation.

113 This course includes drafting and advocacy, but two of the course learning outcomes refer to dispute management, and planning and conducting a mediation. As such we include it because ADR is a major part of the subject curriculum. This program also has a course 'LLB 3300 Remedies and Civil Procedure', encompassing aspects of civil procedure.

114 This subject includes ethics in the learning outcomes.

that complements litigation.[115] The Australian National University combined litigation and dispute management undergraduate course is somewhat broader than other subjects in this category, with a focus on dispute management in the course title and a learning outcome.

Table 3: Category 3 — Medium Focus

Type of course	University	Subject
Civil Dispute Resolution Civil Procedure or Combined Civil Procedure/Litigation	University of New England	LAW310 Civil Dispute Resolution
	University of South Australia	LAWS3087 Civil Dispute Resolution[116]
	Southern Cross University	LAWS2013 Civil Litigation and Procedure
	Central Queensland University	LAWS13017 Civil Procedure
	Charles Sturt University	LAW217 Civil Procedure
	Charles Darwin University	LWZ317 Civil Procedure
	James Cook University	LA4022 Civil Procedure[117]
	University of the Sunshine Coast	LAW304 Civil Procedure
	Flinders University	LLAW3321 Civil Procedure
	University of Tasmania	LAW355 Civil Procedure
	Deakin University	MLL391 Civil Procedure and Dispute Resolution[118]
	Australian Catholic University	LAWS201 Civil Procedure and Alternative Dispute Resolution[119]
	Swinburne University	LAW30029 Civil Procedure and Alternative Dispute Resolution[120]
	Victoria University	LLW4000 Civil Procedure
	Edith Cowan University	LAW4207 Civil Procedure and Practice
	Murdoch University	LLB450 Civil Procedure
	University of Sydney	LAWS1014 Civil and Criminal Procedure
	University of Technology Sydney	70104 Civil Practice

115 Field (n 6) 11 [1.21]–[1.23].

116 This subject includes discussion of the theory and practice of negotiation, and mediation and online dispute resolution, but does not seem to have any experiential practice element.

117 There is an additional subject at James Cook University that is core to the law program, 'LA117 Contemporary Practice: The New Lawyer', that includes some ADR content and refers to skills-based learning. It appears to be wider than many ADR subjects but arguably encompasses ADR.

118 Deakin university law program offers a core subject in 'Advanced Legal Problem Solving and Persuasion' that includes reference to negotiation and mediation.

119 This subject includes ADR and a discussion of the trajectory of the area in dispute resolution. It does not appear to include a skills-based approach to content.

120 This subject includes ADR in the form of arbitration, mediation, negotiation and persuasion.

An example of a university offering subjects with a medium focus on ADR and less strong evidence of ADR skills is Charles Sturt University. The core course refers to ADR theory and it is a combined civil procedure and dispute resolution course entitled Civil Procedure. There is one learning outcome focused on ADR, which is to 'demonstrate personal autonomy in the use of professional judgement relating to mediation and other alternative dispute mechanisms, including extrajudicial determination of issues arising in the course of litigation'.[121] Other offerings in this category include ADR in the title, and incorporate discussion of the trajectory of ADR, but do not have a skills focus — such as the Australian Catholic University subject Civil Procedure and Alternative Dispute Resolution. Other subjects in this category do not include ADR explicitly but might include it in dispositions before trial.

Table 4: Category 4 — Lack of evidence of focus

Type of course	University	Subject
Standalone	None	None
Combined with Civil Procedure	Griffith University	5210LAW Civil Procedure
	Curtin University	LAWS3009 Civil Procedure[122]
Combined Civil Procedure with Ethics or another area	Macquarie University	LAWS3200 Civil and Criminal Procedure

The content of the above courses is difficult to discern due to a lack of evidence of ADR focus on the website.

V Analysis

Table 1 indicates the variety of ADR-focused subjects predominately termed ADR, Dispute Resolution or Dispute Management being taught as core in various law programs. These subjects showed a commitment to teaching both the theory and practice of ADR and included experiential learning in delivery and assessment. Arguably, these subjects represent 'best practice' of the teaching of ADR and due to being core in the curriculum, provide students with both the theory and skills needed for present day legal practice. These stand-alone subjects align with the desired teaching of ADR as articulated in the 2012 NADRAC Research Paper[123] and would equip students to pursue the opportunities that ADR can present for their clients.

121 'LAW217 — Civil Procedure', *Charles Sturt University* (Web Page, 2024) <https://handbook.csu.edu.au/subject/2023/LAW217>.

122 Includes reference to ADR in course description but limited additional information available online.

123 NADRAC Research Paper (n 80) 18–19.

In Table 2 are those subjects that had a strong focus on ADR. Five of these subjects were titled Civil Dispute Resolution and five further subjects had differing titles. Each combined ADR with civil procedure except the legal skills subject.[124] They had a learning outcome with ADR as the focus and included some skills-based learning. None of these devoted most of the subject to ADR, but they do contain numerous topics and some assessment in the area of ADR. Importantly, some law programs combined ADR, civil procedure and ethics (for example, the University of Adelaide) indicating a further integration of this area with the ethical responsibilities of lawyers.

In Table 3 are those subjects that are categorised as a medium focus on ADR. These courses sometimes combined Civil Procedure and ADR explicitly in the course titles by, for example, calling them 'Civil Procedure and Alternative Dispute Resolution' at Swinburne University and the Australian Catholic University. Alternatively, such courses were simply entitled Civil Procedure as, for example, at Flinders University and James Cook University, where these Civil Procedure courses include ADR material. Their classification as courses with a medium focus on ADR is because the information did not demonstrate practical or experiential treatment of ADR skills and approaches. If learning outcomes or assessment did include explicit attention to ADR, the attention in this category was generally framed in terms of students' ability to discuss, analyse or evaluate ADR approaches rather than their ability to practice, reflect on and implement ADR skills in simulated exercises. However, it did show evidence of the widespread adoption of the topic of ADR in courses focused on civil procedure. Together with the earlier two categories, it supports the proposition that ADR is accepted in line with the revised Priestley 11 Civil Dispute Resolution requirements. Arguably, this reflects an adoption of the vocationalism discourse in the teaching of this area, with a focus on what lawyers do in practice. In total, 35 subjects had a focus on at least the theory of ADR as part of a core subject, and for 3 subjects it was difficult to discern the inclusion of ADR. This represents a considerable change to the degree of ADR inclusion in the core curriculum of law programs since the NADRAC Research Paper.

However, only six of the 38 courses are standalone ADR courses with the strongest focus on ADR practice — again, from the information provided publicly. These address ADR theory and skills in-depth and include experiential learning via role-plays. One of the most comprehensive subjects is offered at the University of Western Australia. 'Ethical Dispute Resolution', which is a standalone course, has learning outcomes including: (1) knowledge; (2) understanding; and (3) practical experience — not only of ADR, but also, for example, of conflict dynamics underpinning litigation and ADR, and the socio-legal research informing policy development in the area.[125] Notably, this course also includes ethics, which is a trend in the data and arguably complements the study of ADR.

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124 'LLB2225 Advanced Legal Skills', *University of Wollongong* (Web Page, 2024) <https://courses.uow.edu.au/subjects/2023/LLB2225?year=2024>.

125 University of Western Australia, 'Ethical Dispute Resolution [LAWS5109]', *University of Western Australia Handbook 2024* (Web Page, 2024) <https://handbooks.uwa.edu.au/unitdetails?code=LAWS5109>.

Using the title, Civil Dispute Resolution, for a course which included ADR seemed to indicate commitment to inclusion of ADR skills and, where sufficient information was available publicly, were assessed as demonstrating a strong focus. However, two subjects named Civil Dispute Resolution were categorised with a medium focus, where theory is addressed but inclusion of skills is not. In total, seven subjects adopted the name of Civil Dispute Resolution, indicating an acceptance of the approach of the Priestley 11. Notably, it is not a requirement of adherence to the Priestley 11 to adopt the naming protocols of the areas of study.

Additionally, some law programs provided extensive electives in ADR. Although not systematically captured in this research with our focus on core courses, it is evident that electives are available for those students interested in ADR.

While NADRAC's research findings may still hold true in terms of limited opportunities in learning ADR, the conclusion that '[i]t is possible for students to leave law school with no exposure to ADR'[126] is no longer applicable. This can be linked to the inclusion of ADR in the Priestley 11 areas of knowledge, through the renaming of Civil Procedure to Civil Dispute Resolution, which has meant that a law student will at least have some theoretical acquaintance with the existence of ADR.

Regardless, there remains considerable challenge in relation to the level of content (theory and skills) covered in subjects across different law schools. Some graduates may complete law school with a focus on ADR skills, while others may graduate with theoretical knowledge only. Without a strong focus on ADR, the capacity of law school graduates to serve their clients with sufficient sophistication and skills to meet the demands of the contemporary legal landscape is reduced. Even when graduates do not go on to legal practice, the understanding achieved through a deeper study of ADR would potentially serve them in non-legal practice roles and in their personal lives with implications for society. As has been noted by NADRAC:

> Conflict management and resolution knowledge and skills are critical in many professional roles. Teaching ADR knowledge and skills to law students will assist them to handle conflict and disputes in all aspects of their life, such as preventing and managing disputes that arise in the workplace and in the commercial sector.[127]

The thin coverage, particularly where the focus is theoretical, also means that the benefit of improving professional identity through the study of ADR may not be realised for some Australian law graduates.

As discussed above, however, the use of ADR both within and outside of the justice system only continues to grow, making it more important for law students to learn relevant skills that could be applied when they enter the profession. The results of this study suggest that there should be further investigation of whether a deeper focus on ADR is required in core courses at Australian law schools.

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126 NADRAC Research Paper (n 80) 8.

127 Ibid 12.

Further research may take several forms. Assessing the impact on graduates of programs where there has been a strong focus on ADR in terms of their attitude to legal practice, their confidence in skills and approach, may be one area of research. More in-depth surveys, focus groups or interviews of academic leadership and teachers, across a range of law schools with differing levels of focus on ADR, as identified in this study, would help to assess the reasons for these differing levels, enhance these initial findings, and potentially provide possible pathways for remediation. In addition, a survey of the profession to assess the general confidence and skill level in ADR would be a useful tool.

VI Conclusion

Some institutions appear to strongly address the task of including ADR as a core element of teaching law to future legal practitioners. This may be due to the academic interests of existing staff, a strategic interest in supporting the shift in the law curriculum to reflect the reality of contemporary legal practice, or a future-focused approach, which recognises the limitations of a highly adversarial mindset for their graduates. Other institutions seemed to find it difficult to include both theory and skills of ADR as a core element of study for law students. Speculatively, this may be due to a lack of expertise of existing academic staff, or the inability to recruit academic staff with skills and interest in this area. It could also be the result of a failure to recognise and prioritise the shift in legal culture, which requires practitioners who are able to analyse, assess and discuss a range of non-adversarial skills and approaches. Lawyers need to be sufficiently familiar with, and skilled in the use of, these ADR approaches to enable them to serve the complex needs of clients. Additionally, the opportunity to address law student wellbeing through the area of ADR is neglected when ADR is only addressed in theoretical terms. It appears that significant change has occurred in the legal curriculum since the advent of Civil Dispute Resolution in the Priestley 11. This change is supported by the greater integration of ADR into the courts, and the consequent strengthening of the vocationalism discourse around the full range of dispute resolution options. Arguably, the full potential of ADR in the legal curriculum may yet to be realised in most law programs. Further research is required to explore why many law schools take this approach.