

Advancing Open Access in Australia: to be Inspired by the Dutch?

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Introduction

Information is power, which in today's digital society, can be, and should be, freely and openly shared.³ This proposition is supported by the concept of Open Access ("OA"), an international movement seeking to grant open online access to academic information, without financial, legal or technical barriers. There exist multiple types of OA. Those relevant to this article are green and gold. Green OA refers to a process whereby authors publish their work openly, by depositing an accepted version into a repository or freely accessible database, after a specific period of time, referred to as an "embargo period". Meanwhile, gold OA consists of making works immediately freely accessible online, through the websites of publishers.⁴

The OA movement acknowledges the onset of the "information age" has seen a plethora of information produced, by virtue of great technological advancements. Such developments have modernised academia, enabling vast volumes of scholarly literature to be published electronically. However, despite evident viability of widespread dissemination of scholarly information,⁵ it has become apparent that a large quantity of academic knowledge remains "locked up" by private corporations.⁶

In response, certain countries such as the Netherlands, have proceeded to "lead the way" towards an OA world. The Dutch have taken progressive OA action, notably enacting an OA provision into national copyright legislation, to assist increasing OA engagement. The provision was introduced to further enhance OA for *publicly funded* research in pursuit of the nation's OA objective. Meanwhile, Australia does not appear to have significantly engaged OA and thus has not experienced notable uptake of the practice. This presents a significant issue, as access to the large volume of scholarly works published in Australia is currently restricted. This article explores whether Australia should be inspired by the Dutch, to integrate OA into the *Copyright Act 1968* (Cth), to assist increasing OA engagement in Australian institutions.

The OA Landscape

OA in the Netherlands

Recognising the increasing necessity for OA, the Netherlands has adopted a progressive approach to OA implementation, placing the nation at forefront of the OA movement.⁷ Dutch commitment to OA is demonstrated by the Government having set an ambitious national objective of achieving 100 per cent OA.⁸ In pursuit of this goal, several Dutch authorities, such as the Association of Universities in the Netherlands ("VSNU"), the Dutch Research Council ("NWO"), the National Library of the Netherlands, and the Dutch Government, have each played an instrumental role in the nation's OA approach.⁹ Such authorities have unitedly provided strong OA support and encouragement,¹⁰ whilst taking vital OA action.

A crucial and unique aspect of the Dutch approach, is that all key stakeholders are "on the same page, at the highest level" in regard to the nation's OA goal.¹¹ The Dutch Government has guided OA efforts, offering unparalleled OA support.¹² In a letter written to the Dutch

House of Representatives in November 2013,¹³ the Government expressed its view that “publicly funded research should be freely accessible”.¹⁴ Since then, the future of OA in the Netherlands has been secured by the Government having formally establishing the nation’s 100 per cent OA goal.¹⁵ To support efforts advanced by the Dutch Government, the VSNU has taken responsibility for managing the Netherlands’ transition to a complete OA regime.¹⁶ Its support is demonstrated by direction of OA negotiations with publishers, efforts to encourage international cooperation in the OA movement, and its involvement in raising OA awareness.¹⁷ Such coordinated efforts have, thus far, been vital in bringing the Netherlands closer to realising its ambitious OA goal.

The Taverne Amendment

In pursuit of this OA objective, in 2015, the Dutch Parliament took a progressive step, by integrating OA into national copyright legislation. Article 25fa of the *Dutch Copyright Contract Act*,¹⁸ also known as the Taverne Amendment, was enacted and enforced as of 1 July 2015.¹⁹ The provision provides:²⁰

The maker of a short scientific work, the research for which has been paid for in whole, or in part, by Dutch public funds, shall be entitled to make that work available to the public for no consideration, following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

In regard to legal application, the amendment does not restrict copyright.²¹ If an author meets conditions of the provision, they “possess and retain” the right to publish their work OA.²² Though, the provision does prescribe this right cannot be assigned,²³ also preventing publishers restricting the right, through contracts to which Dutch copyright law applies.²⁴ Thus, once the prescribed embargo period has lapsed,²⁵ authors are permitted to publish their work OA, irrespective of pre-existing publishing agreements entered into.²⁶ This intends to afford freedom to academics to engage with OA practice, without fear of legal repercussions.

The Taverne Amendment was enacted to provide a practical alternative of green OA, where the preferred gold route is not viable.²⁷ The explanatory memorandum stipulates the provision intends to address the “growing need to make academic work available in the form of OA”.²⁸ Thus, whilst the amendment does not directly expedite the Netherlands’ gold OA preference, it was enacted as a key instrument, intended to valuably contribute towards the nation’s 100 per cent OA goal.²⁹ Authors of peer-reviewed publications, who are affiliated with institutions, are the focus of this provision, and the group intended to directly benefit from its enactment.³⁰ Though, as the amendment seeks to make academic works openly accessible, the wider research community and society generally, also stand to benefit from its introduction.

Impacts of the Taverne Amendment are multidimensional. First, by superseding pre-existing publishing agreements, the provision affords authors greater control over dissemination of their work. By removing publication restraints, authors are afforded freedom to engage with OA. On the other hand, the amendment also provides an alternative means of achieving OA to academic works, which are not typically covered in agreements made directly with publishers. This is evidence of Dutch authorities recognising the importance of OA being all-inclusive and investment in multiple methods of achieving OA, such as ensuring availability of scholarly works through institutional repositories. By providing an alternative of green OA,³¹ the Dutch Government has also offered a sense of flexibility on the path to establishing

a complete OA regime.³² This is intended to encourage authors to be more receptive of OA and the multiple ways the nation's ambitious objective can be achieved. Finally, the retrospective application of the amendment removes time restraints upon works which can be made OA, expanding OA opportunity, by allowing authors to make works published prior to its enactment OA. The multiple positive impacts the Taverne Amendment has on OA in the Netherlands, indicate its true value to the Dutch OA approach.

Though the Taverne Amendment is considered “a great step forward” towards an OA world,³³ its enactment has not been without criticisms. Critics have noted various aspects of the amendment have required further interpretation, due to its broad nature. Questions have arisen as to whether a broad or limited application of particular terms should be afforded. For example, the words “short scientific work” have been interpreted, in accordance with the explanatory memorandum,³⁴ as meaning a work intended for peers, by persons employed by a university or publicly-funded research institution.³⁵ The term “short” suggests the provision applies only to academic articles, though has been applied to various types of academic works.³⁶ The general phrase “reasonable period of time” has been further interpreted as meaning a period of six months, uniformly applied to all academic fields.³⁷ This six-month “embargo period” has been said to “strike a balance” between publishers’ interests in recovering publishing costs, and society’s interest in scholarly works being shared in a timely fashion.³⁸ Despite such criticisms, the Taverne Amendment has been regarded as a vital instrument in the process of achieving the Dutch Government’s 100 per cent OA goal,³⁹ whilst representing a progressive approach to OA implementation.

The Dutch Approach: A Literature Review

As the Netherlands is currently one of the most rapidly growing countries in the OA world,⁴⁰ several academics⁴¹ have engaged in discussion of the Dutch OA approach. Margoni et al.⁴² explain legislative integration of OA intends to provide a solid foundation for “better access” to information and to “boost” public investment in research.⁴³ In addition, academics argue that legislative initiatives are crucial in the process of adopting OA.⁴⁴ Though, also indicating complementary “bottom-up” measures are equally important to a successful OA approach.⁴⁵ Bosman et al.⁴⁶ note OA legislative provisions are extremely valuable.⁴⁷ The scholars explain the Taverne Amendment is no exception, emphasising the provision demonstrates that a “legally enshrined right to share” can be very strong and effective.⁴⁸ The academics explain value of the amendment is evident through its provision of a flexible alternative and retrospective application.⁴⁹ De Vries notes many researchers prefer the Taverne Amendment for the reasons of practicality and principle.⁵⁰ Academics⁵¹ also indicate the strength and efficacy of the amendment has sparked consideration of similar provisions in other European countries.⁵² Thus, further advancing the proposition that Australia should also be inspired by legislative integration affected by the Dutch.

Additional OA Efforts Undertaken

Dutch efforts towards achieving a complete OA regime have not been limited solely to enactment of the Taverne Amendment. The Dutch have recognised it must be supported by complementary measures to be effective. Key Dutch authorities have sought added support from entities such as Dutch universities, the European Commission and European Research Council.⁵³ These bodies have assisted in further facilitation of OA, by initiating various complementary measures. These measures include OA initiatives on both an international scale, such as the “Horizon 2020” program,⁵⁴ and in the domestic landscape, initiatives such as the “You share, we take care” pilot.⁵⁵ These measures have been employed to support OA

progress advanced by the Taverne Amendment. Such support has also contributed critically to the Dutch OA approach.

Despite the Netherlands being considered one of the most rapidly growing OA nations,⁵⁶ Dutch authorities have explained to ensure continued progression, OA action must be affected on a global scale.⁵⁷ Due to its size, currently the Netherlands only produces approximately 2 per cent of annual academic publications made globally.⁵⁸ Thus, the Dutch seek to inspire other countries with their OA approach,⁵⁹ and have called for international jurisdictions to follow suit, to increase OA worldwide.⁶⁰ Accordingly, in response to the Netherlands' request for corresponding international action, this article proposes Australia take inspiration from the Dutch, specifically in regard to legislative integration.

OA in Australia

In contrast to the Netherlands, although Australia is a country from which a large volume of scholarly works are published, existing information⁶¹ suggests OA adoption has been a long, slow process.⁶² Preliminary research⁶³ indicates in 2020 only approximately 46 per cent of academic works were published with OA in Australia.⁶⁴ When compared to countries such as the Netherlands, with approximately 66 per cent⁶⁵ and Switzerland with 53 per cent,⁶⁶ this indicates deficiency of Australia's OA engagement, in relation to comparable countries. The lack of OA engagement in Australia indicates a severe issue, requiring immediate action.

Current Copyright Legislative Framework

The current Australian copyright legislative regime intends to balance the provision of legal rights to owners of copyright, with the public interest of accessing materials subject to copyright.⁶⁷ To give effect to this balance, and most relevant to open accessibility of research, there are a few "fair dealing" exceptions, included in the Copyright Act, to permit use of materials without permission of the copyright owner. Such exceptions indicate the Australian legislature's recognition that certain works should be freely dealt with, for additional societal benefits. Though, these exceptions are only applicable in four circumstances, with the added restriction of satisfying dealings are "fair",⁶⁸ indicating their limitations.

The current legislation also acknowledges copyright protections for technological works, though not in the context of open accessibility specifically. Thus, it is evident, although acknowledgement of digitalisation is made, and public access to academic information somewhat alluded to, in Australian copyright legislation, the provision for such is extremely limited. Though, Australian authorities have recognised legal adaptations are required to address these limitations,⁶⁹ the concept of OA continues to remain absent from the current legislative regime.

Although Australian copyright legislation does not currently include OA, the country is subject to several international agreements, which provide a legal basis for OA. For example, Article 27 of the *Universal Declaration of Human Rights*,⁷⁰ to which Australia is subject, provides every person has the right to "freely participate" in community culture, to "enjoy the arts", and "share in scientific advancement and its benefits".⁷¹ Article 27 is also supported by other international covenants such as Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights*,⁷² which further provides for the right to education, to enable free participation within society.⁷³ These international treaties are highly valuable components with regard to the current framework of protection for intellectual property

endeavours in Australia, as they are legal bases denoting key concepts of OA. Thus, they may assist the drive for OA enhancement, by way of legislative reform, in Australia.

OA Efforts Thus Far

Despite the evident lack of OA uptake and absence of OA in Australian copyright legislation, Australia has taken OA action, albeit limited. Existing research infrastructure in Australia is, in fact, well-established for the purposes of OA.⁷⁴ For example, every one of the 37 publicly-funded universities in Australia has a repository for academic works,⁷⁵ 30 of which have OA policies.⁷⁶ However, being solely available to those affiliated with universities, it seems that approximately 10 per cent of the Australian population have access to the academic knowledge published in these repositories.⁷⁷ Moreover, though establishment of such repositories represents a step in the right direction, many of the existing OA policies are weak, and thus have been largely ineffective.⁷⁸ In the majority of cases, OA is not mandated, with authors merely “encouraged” to publish OA, rather than required to do so.⁷⁹ Furthermore, restrictions imposed by publishers are commonly prioritised, with such policies often being “subject to separate publishing agreements”.⁸⁰ Thus, OA does not have to be afforded where agreements entered into with publishers require otherwise.⁸¹ This substantially limits the application and efficacy of current Australian OA policies. Certain Australian entities, such as the Council of Australian University Librarians (“CAUL”)⁸² and Open Access Australasia (“OAA”)⁸³ have committed to enhancing OA.⁸⁴ Though, similarly they currently lack the power to enforce binding policies, practices, and standards, limited to advocacy and mere encouragement.

Government funding has also comprised a substantial part of Australian academia over the years, often provided to support Australian institutions.⁸⁵ The fact that a large proportion of Australian research is publicly funded,⁸⁶ reinforces the argument that such research should be openly accessible. Two primary research funding bodies have been established, namely the Australian Research Council (“ARC”)⁸⁷ and National Health and Medical Research Council (“NHMRC”).⁸⁸ Prior to 2011, these bodies merely encouraged academic authors to “consider the benefits of depositing” their work into OA institutional repositories.⁸⁹ Thus, maintaining a very weak position. In July 2012 and January 2013,⁹⁰ the NHMRC and ARC respectively, announced revised OA policies. The policies align to require that within 12 months of publication, all publicly funded research be deposited into an OA institutional repository.⁹¹ If authors do not elect to deposit their work in an OA repository, the policies require justification to be provided.⁹² This requirement is intended to encourage authors to consider their reasons for refraining from engaging with OA practice. The limitation of these policies is that their application is restricted to research funded by the NHMRC and ARC specifically. The success rate for grants from these funding bodies has continuously been very low, commonly sitting at around 25 per cent.⁹³ This indicates the proportion of Australian research to which these policies apply is minimal. Nevertheless, revision of such policies represents a “renewed focus on OA” by Australian authorities,⁹⁴ a positive indication for the future of the practice in Australia.

Another optimistic step in the evolution of OA in Australia, is the inclusion of access to publicly funded research in discussions of Australian authoritative bodies. It has been recognised technological advancements have increased the scope of intellectual property protection required to be afforded under Australian copyright legislation.⁹⁵ This has sparked discussion as to reform of the current legislative regime. In 2016, the Australian Productivity Commission, in its Intellectual Property Arrangements Inquiry Report,⁹⁶ addressed copyright restrictions on access to publicly-funded research in Australia.⁹⁷ The purpose of which, was

to ensure continued efficacy of the country's intellectual property system, in providing opportunities for innovation and investment in research.⁹⁸ The report acknowledged OA was not compelled under Australian OA arrangements,⁹⁹ with compliance and implementation remaining the responsibility of authors.¹⁰⁰ Thus, recommendations for prospective reform of copyright policies were made. The Commission recommended Australian State and Territory Governments each develop an OA policy for all research published through universities, using public funds.¹⁰¹ A 12-month embargo period was proposed, after which it was suggested, such research should be made available OA, with minimal exemptions.¹⁰² Though such proposals originally appeared promising, there still does not exist a comprehensive national OA approach in Australia, meaning the nation's OA position remains far from strong.

Overall, it is evident that Australia has not significantly engaged OA practice. Ineffective use of the well-established research infrastructure has failed to generate a substantial OA presence, whilst the flaccid nature of OA policies evidence a weak OA position.¹⁰³

The Australian Approach: A Literature Review

The limited literature pertaining to OA in Australia acknowledges the country currently has majority of the “necessary structures in place”¹⁰⁴ to facilitate OA. Though, they are yet to be used to “the fullest extent”.¹⁰⁵ Kingsley notes this is particularly evident by the substantial number of Australian institutional repositories which have been established.¹⁰⁶ Nevertheless, statistics published by CAUL Australian Institutional Repository Support Service,¹⁰⁷ indicate the number of OA works available in such repositories has been extremely inconsistent,¹⁰⁸ indicating OA engagement in Australia remains highly unstable.

Australia's research structures have failed to translate to increased OA engagement, which the literature¹⁰⁹ indicates is primarily due to lack of coordinated national leadership and the absence of complementary measures.¹¹⁰ Thus, scholars insist further OA action is required.¹¹¹ Kingsley¹¹² argues making a series of “simple changes” would allow Australia to take “full advantage” of existing research structures.¹¹³ Emeritus Fellow Colin Steele, from the Australian National University, explains another prominent issue is the relevant governmental divisions, such as the Australian Department of Industry, Innovation, Science, Research and Tertiary Education, have “not been significantly engaged” in OA policy.¹¹⁴ In 2013, Kingsley noted that Australia did not have an established OA advocacy body, a major impediment to generating OA support.¹¹⁵ Later that year, the first Australian OA advocacy body, OAA, was founded.¹¹⁶ Thus, the literature evidences the major delay in establishment of a significant support base for OA in Australia, another indication of the country's slow OA progress.

Australia's current OA policies have also been criticised in the literature. Kingsley¹¹⁷ identifies the non-binding nature of institutional repositories' policies as an issue requiring alteration.¹¹⁸ It is acknowledged many of these policies, though often referred to as OA mandates, are in fact “not actually mandates”,¹¹⁹ as they merely encourage authors to publish their work OA.¹²⁰ It is suggested to increase their efficacy, policies must be strengthened, particularly to omit restrictions which can be imposed by publishers.¹²¹ Kingsley¹²² also recommends Australian institutions change their reporting requirements, to permit repositories to make a “full complement of research output” OA.¹²³ It is acknowledged, due to the non-binding nature of current policies, granting OA is highly dependent on institutional rules and each works' copyright, limiting enforcement of such measures.¹²⁴ Collectively, existing literature pertaining to OA in Australia suggests although the nation has the potential

to affect OA, with a majority of the “necessary research structures in place”,¹²⁵ several issues indicate deficiency of the system, requiring immediate improvement.

Outcomes of OA Integration: The Dutch Case

This component of the article examines statistics pertaining to OA publications made through Dutch institutions, both prior to, and since, enactment of the Taverne Amendment. The purpose of which is to assess whether legislative integration affected by the Dutch has assisted to increase OA engagement through Dutch institutions.

OA Figures: Pre-enactment

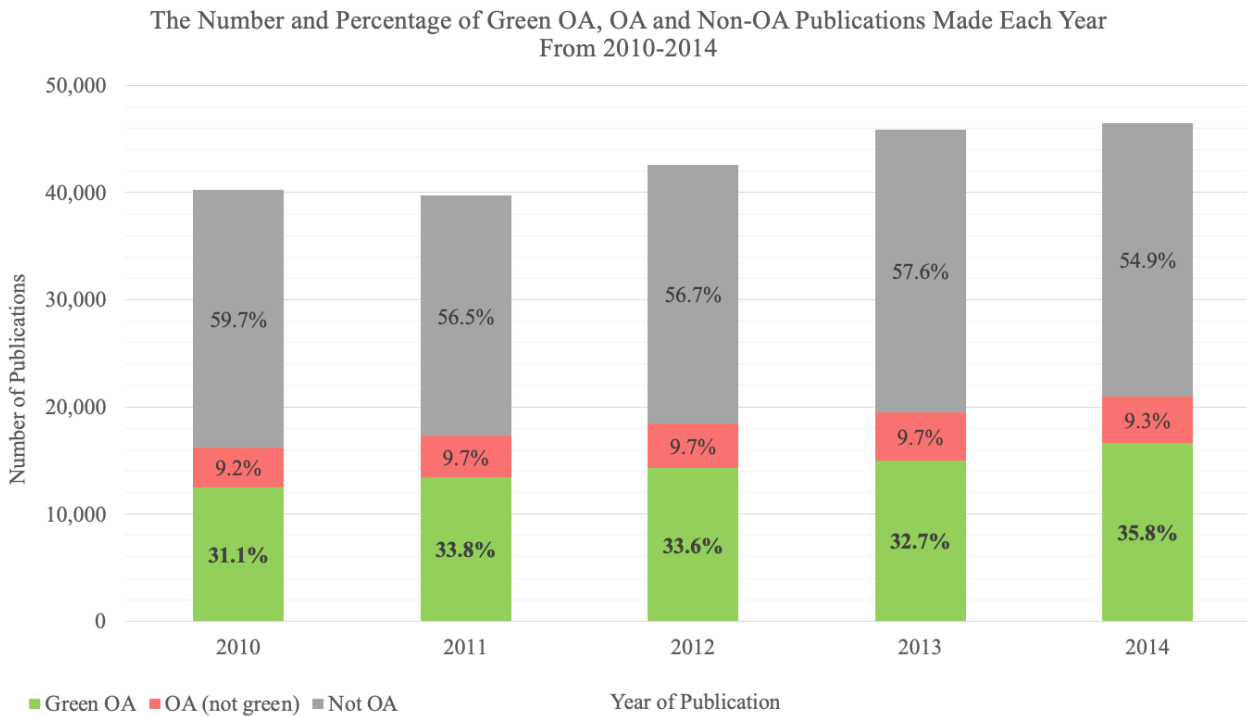


Figure 1: Bar graph displaying the number and percentage of publications made through Dutch institutions prior to enactment of the Taverne Amendment

As evident from Figure 1, prior to 2015, an average of 42,988 academic works were published through Dutch institutions per year. Of these annual publications, approximately 18,480 works were made OA. This indicates just shy of half (43 per cent) of total publications were made openly accessible over this period. Thus, prior to enactment of the Taverne Amendment, access to the majority of publications made through Dutch institutions remained restricted.

The Number and Percentage of OA Publications Made Green OA Each Year
From 2010-2014

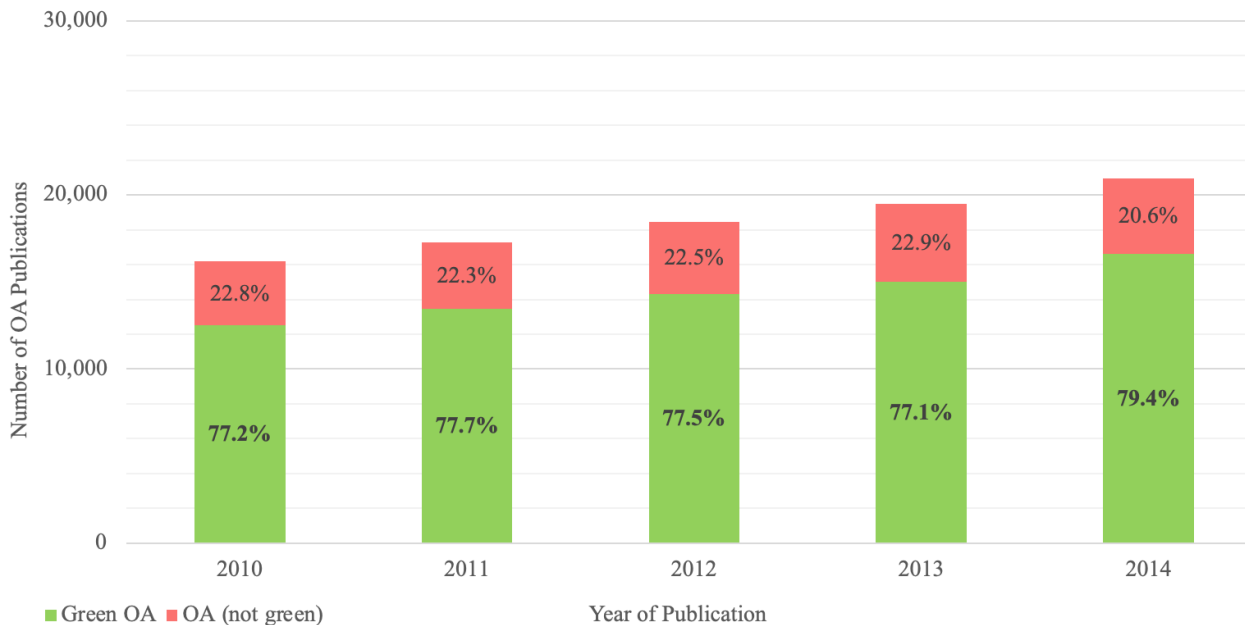


Figure 2: Bar graph displaying the number and percentage of OA publications made green OA through Dutch institutions prior to enactment of the Taverne Amendment

Focusing on OA publications exclusively, Figure 2 demonstrates of the average 18,480 works made OA per year, approximately 14,382 were published with green OA. Thus, green OA was granted to a substantial majority (78 per cent) of OA publications. Over this five-year period, green OA engagement rose by an average of 1,033 publications per year. These figures demonstrate the prevalence of green OA in Dutch institutions throughout this period and a rise in engagement with the practice, albeit slight.

It is evident from pre-enactment figures, that prior to 2015, OA facilitated through Dutch institutions was stable, though not prevalent, with less than half of publications made openly accessible. Dutch national leadership, recognising the need to “boost” OA engagement in their country, evidently capitalised upon the opportunity presented by the prevalence of green OA. Thus, the Taverne Amendment was enacted, to provide authors with the practical alternative to publish green OA, offering a sense of familiarity on the route to achieving the ambitious national goal.

OA Figures: Post-enactment

The Number and Percentage of Green OA, OA and Non-OA Publications Made Each Year From 2016-2020

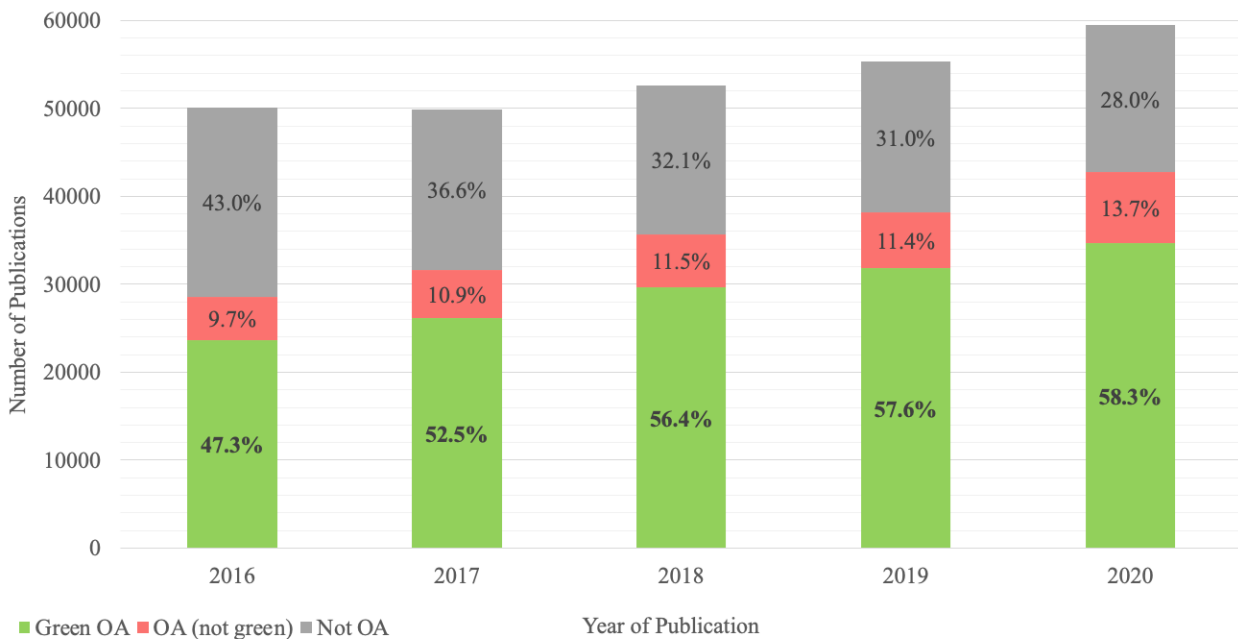


Figure 3: Bar graph displaying the number and percentage of publications made through Dutch institutions since enactment of the Taverne Amendment

Statistics derived from Figure 3, indicate an average of 53,463 scholarly works have been published through Dutch institutions annually, over the past five years. Of these annual publications, approximately 35,368 were made OA. Thus, since 2015, 66 per cent of published works have been made openly accessible. These statistics demonstrate a clear and consistent increase in the number of publications made OA through Dutch institutions, since enactment of the Taverne Amendment.

The Number and Percentage of OA Publications Made Green OA Each Year From 2016-2020

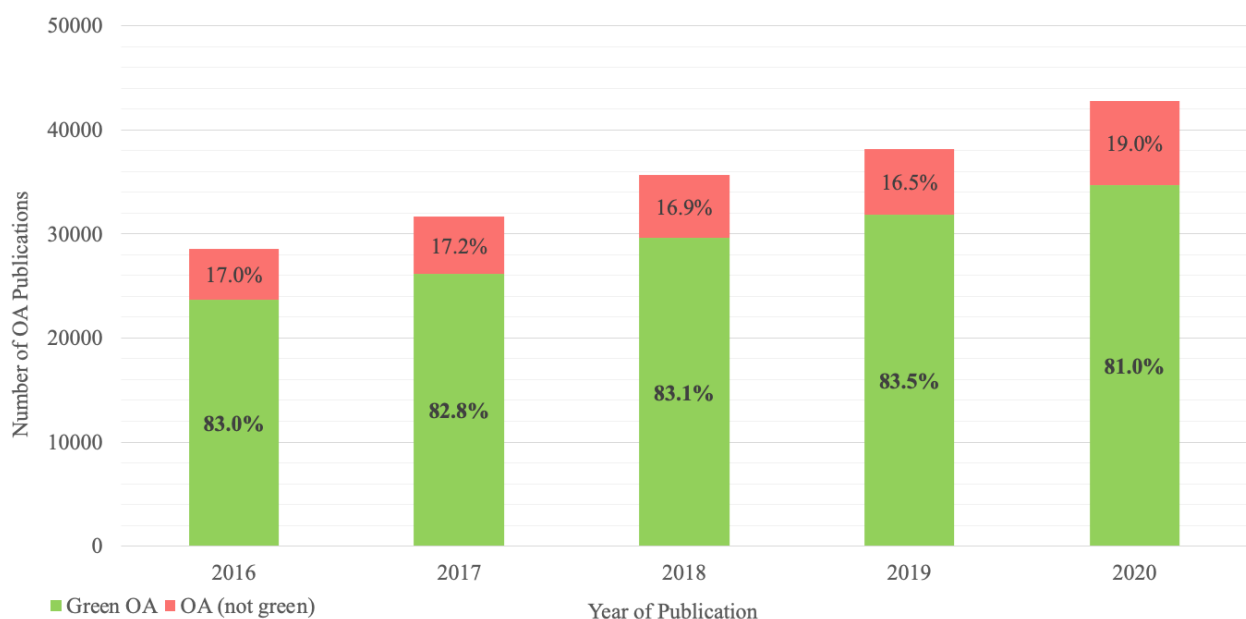


Figure 4: Bar graph displaying the number and percentage of OA publications made through Dutch institutions since enactment of the Taverne Amendment

Figure 4 demonstrates of the 35,368 annual OA publications made throughout this period, an average of 29,220 were published with green OA. In terms of growth, the number of green OA publications has increased by approximately 2,741 publications annually. This indicates although the number of green OA publications continue to rise, prevalence of this practice has not increased at the same rate. As explained, 2,741 of which represent green OA publications, whilst only 814 were published with other forms of OA.

These results are synonymous with the intention of the Dutch Government when enacting the Taverne Amendment. Such findings are indicative of the amendment contributing to increasing green OA publications, which have continually grown throughout this period. As green OA works evidently constitute a large proportion of the increase in total publications made OA, the amendment has also concurrently contributed to the increase in OA engagement generally. Thus, post-enactment statistics indicate the Taverne Amendment appears to have effectively assisted to increase OA engagement in the Netherlands.

“You share, we take care” Pilot

The limitation of these results is it cannot be ascertained as to the number of green OA publications made through use of the Taverne Amendment specifically. Though, the “You share, we take care” pilot provides guidance in this regard. This seven-month pilot, launched on 31 January 2019, was initiated by Dutch universities.¹²⁶ The study was intended to determine the level of academic support for the Taverne Amendment,¹²⁷ whilst testing how the provision would contribute to the national OA objective.¹²⁸

This pilot is significant for multiple reasons. First, the results indicate the Taverne Amendment has been successful in generating OA engagement. High participation from academics, combined with their evident willingness to engage the provision, indicate it is likely at least a substantial proportion of the increase in green OA engagement through Dutch institutions over the past five years, is attributable to the Taverne Amendment. Secondly, this pilot also demonstrates the provision having an effect on continued OA commitment in the Netherlands, having inspired this initiative to be undertaken, in years subsequent to its enactment.

Pre- and Post-enactment Compared

The Number and Percentage of Green OA, OA and Non-OA Publications Made Each Year From 2010-2020

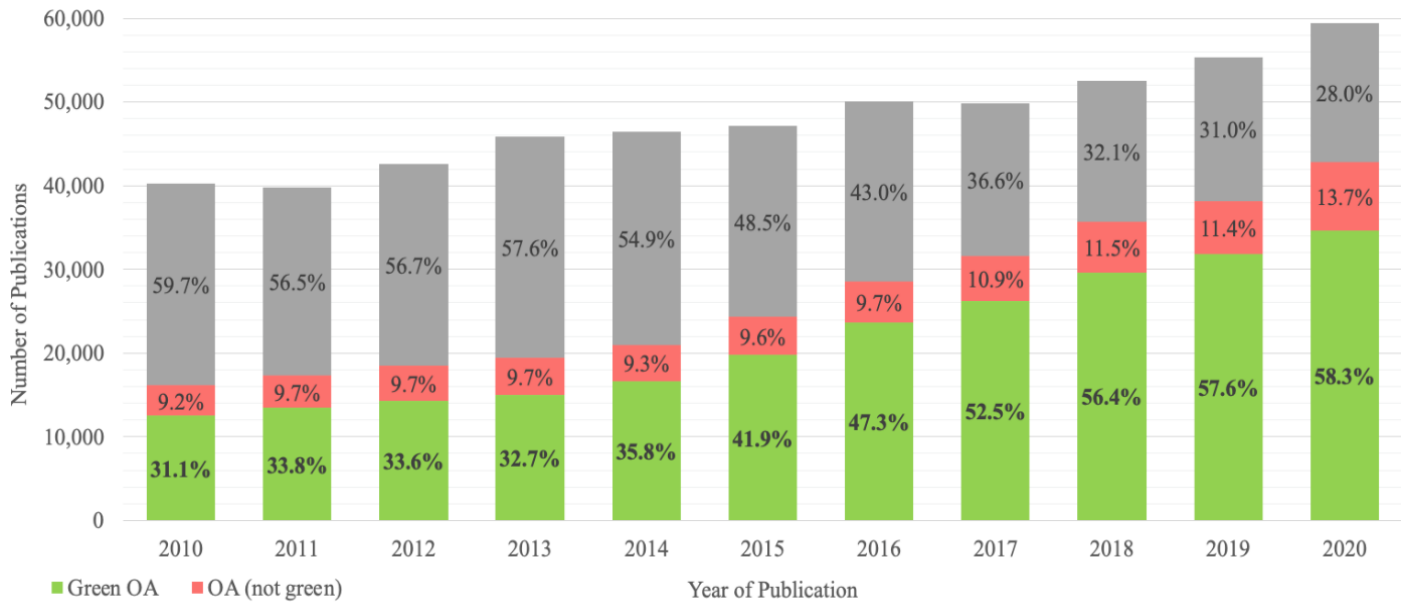


Figure 5: Bar graph displaying the number and percentage of publications made through Dutch institutions, pre and post-enactment of the Taverne Amendment (inclusive of year of enactment (2015))

The Number and Percentage of OA Publications Made Green OA Each Year From 2010-2020

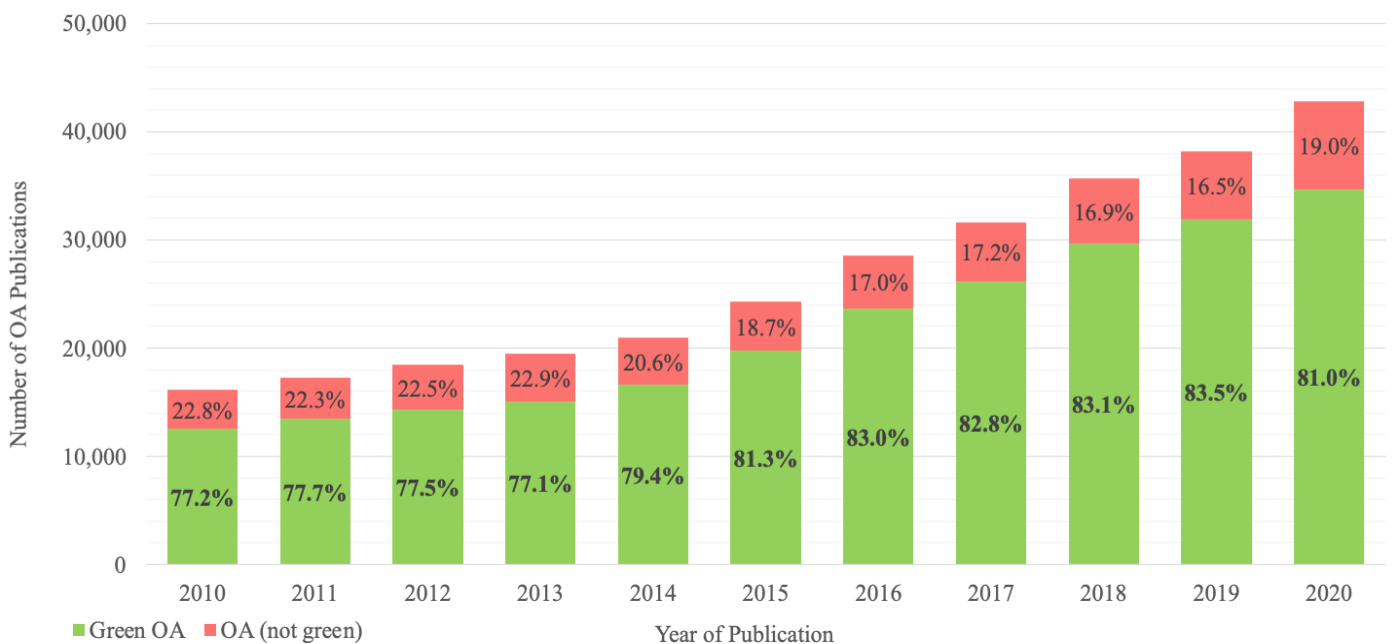


Figure 6: Bar graph displaying the number and percentage of OA publications made through Dutch institutions, pre and post-enactment of the Taverne Amendment (inclusive of year of enactment (2015))

As evident from Figure 5, the total number of publications made through Dutch institutional repositories over the past decade has varied. Though, despite moderate instability, Figures 5 and 6 demonstrate the number of publications made OA has continuously risen. This increase is particularly evident when comparing pre- and post-enactment periods. Prior to the introduction of the Taverne Amendment, only 43 per cent of works published through Dutch institutions were made OA. Conversely, since its enforcement, OA works have accounted for 66 per cent of total publications.

Comparatively, an average of 29,220 green OA publications have been made since enactment. Thus, the number of works published with green OA has increased by more than 200 per cent since the Taverne Amendment was introduced. Supporting this indication of growth, between 2010-2014, green OA was granted to an average of 78 per cent of OA publications. Whilst over the past five years, green OA has constituted approximately 83 per cent of OA works. This represents a 5 per cent increase in the number of green OA publications between the pre- and post-enactment periods examined.



Figure 7: Line graph displaying an increase in the number of green OA publications made through Dutch institutions over the last decade

Figure 7 further supports this notion, demonstrating the trend of green OA growth evidently commences between 2014-2015, the year during which the Taverne Amendment was enacted. From the end of 2014 to the end of 2015, the number of green OA publications rose by 3,126 works. Comparing this figure to the preceding year (2013-2014), only 1,618 additional green OA publications were made.

Analysis, and subsequent comparison, of figures from pre- and post-enactment periods, indicate the Taverne Amendment has been effective in multiple ways. First, the substantial increase in green OA publications over the last five years, is likely due, at least in part, to the Taverne Amendment providing the workable alternative of green OA. This conclusion is

reinforced by results of the “You share, we take care” pilot, which indicate academics’ engagement with the amendment and collective willingness to utilise the provision.¹²⁹

Findings also evidence green OA has comprised a significant proportion of total OA publications made through Dutch institutions over the last decade. Moreover, the increase in total OA publications has been evidenced as largely attributable to the increase in green OA works. Hence, whilst assisting to increase green OA engagement, the Taverne Amendment has concurrently contributed to the rise in OA publications generally. Thus, it is concluded, legislative integration of OA affected by the Dutch, has assisted, at least in part, to increase OA engagement in Dutch institutions.

Towards Efficient Operationalisation of OA: The Australian Case

Despite being an advanced, highly developed country, Australia does not appear to have significantly engaged OA practice. This component of the study critically analyses statistics pertaining to OA publications made through Australian institutions, to determine the condition of current OA engagement in Australia.

Total Publications

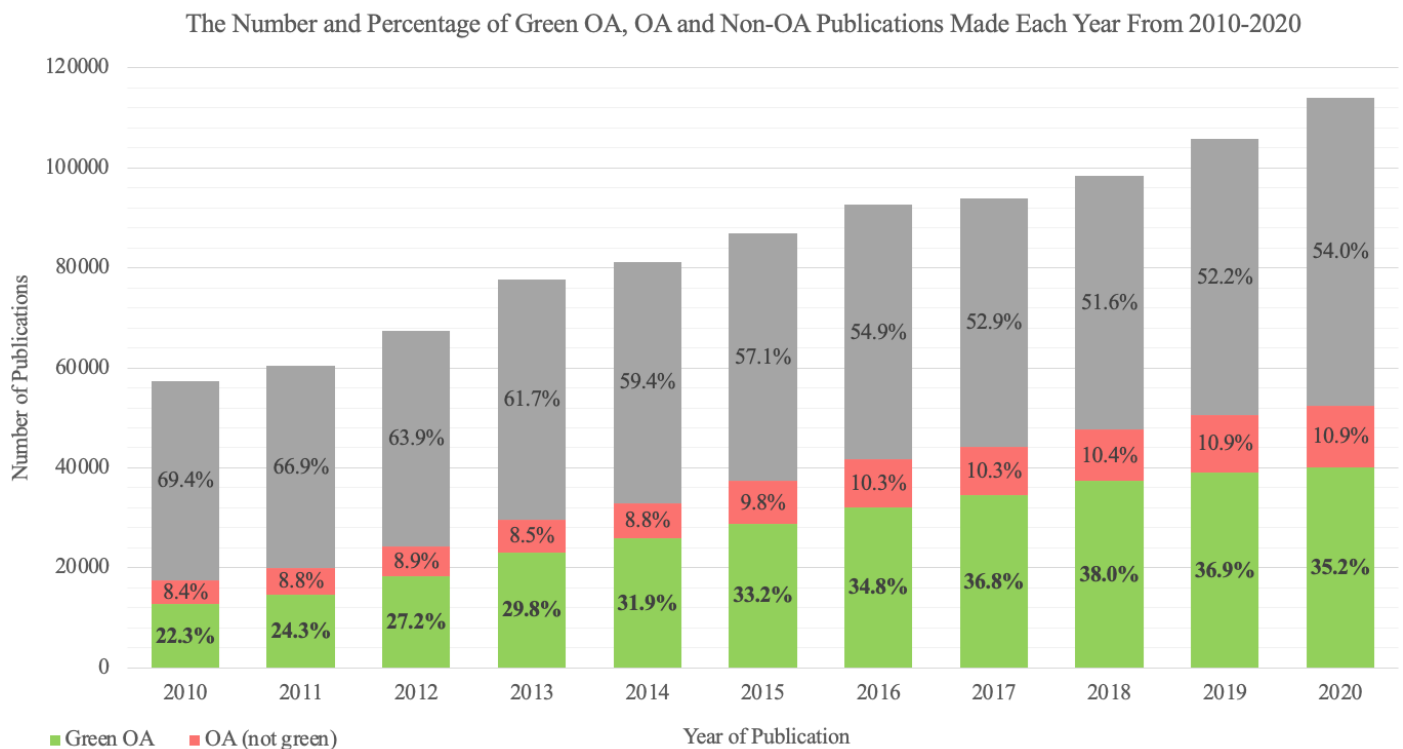


Figure 8: Bar graph displaying the number and percentage of total publications made through Australian institutions over the last decade

As evident from Figure 8, a significant number of academic publications are made through Australian institutions, with an average of 85,084 works published annually. In recent years, annual publications have surpassed 100,000 works, indicating the true academic prosperity of the nation. Though, despite high publication rates, currently, approximately only 36,240 annual publications are made OA. Though this number may seem somewhat sizeable in comparison to smaller nations, such as the Netherlands, this figure only equates to a mere average of 43 per cent of publications being made openly accessible.

Despite OA works having only comprised a minority of publications over the past decade, engagement with OA has risen, albeit gradual. An average of 3,490 additional OA works have been published each year over the past decade. This is a positive indication, particularly when compared to the growth of non-OA publications, which have only increased by an average of 2,175 works per year. Such statistics suggests OA in Australia is on the rise. Though, in light of the substantial number of total publications made per year, it is clear Australia has the potential to considerably contribute to the OA movement. However, lack of engagement with OA practice has meant the country is yet to do so. This article is a step towards fulfilment of this potential.

OA Publications Exclusively

The Number and Percentage of OA Publications Made Green OA Each Year From 2010-2020

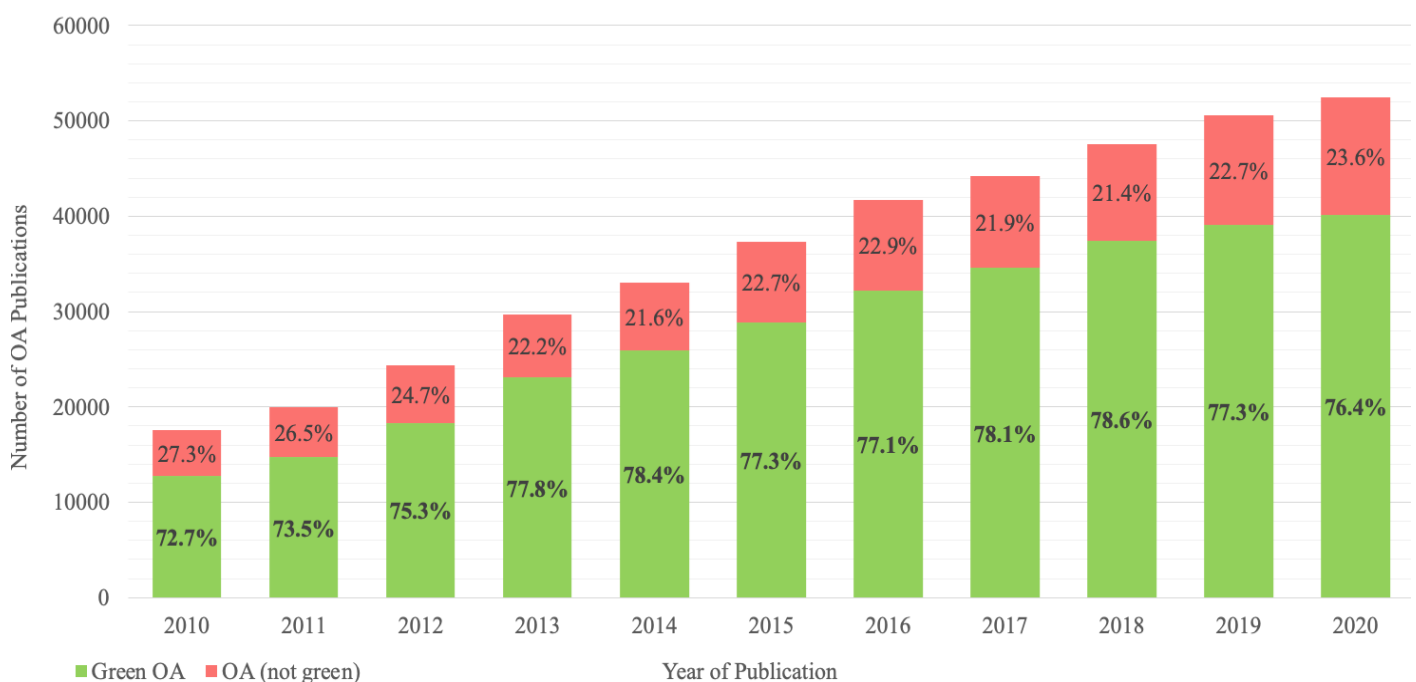


Figure 9: Bar graph displaying the number and percentage of total OA publications made through Australian institutions over the last decade

Figure 9 further indicates of the 36,240 publications made OA annually in Australia between 2010-2020, an average of 27,909 works were published with green OA. Thus, 77 per cent of OA works have been published with green OA each year. Accordingly, green OA is evidently the primary form of OA engaged with in Australian institutions. Though, despite a consistent increase in the number of publications, percentage figures from the last two years indicate the primacy of green OA may be declining. Such results suggest engagement with other forms, such as gold OA, may be on the rise in Australian institutions.

Collectively, statistics analysed demonstrate despite gradual growth in OA over the past decade, openly accessible works remain limited in Australia. Currently, accounting for less than half of total publications made through Australian institutions. Of the limited works made OA, green OA currently constitutes the majority. Though, engagement with this form of OA, as a percentage of total publications, also remains inadequate. The evident primacy of green OA presents an opportunity for Australian authorities to capitalise upon this engagement, as the Dutch Government did with enactment of the Taverne Amendment.

Nevertheless, the recent trend in Australian statistics, indicating potential declination of the primacy of green OA, emphasises to take advantage of this opportunity, immediate action is required. Thus, reinforcing time is truly of the essence for affecting OA change in Australia.

Statistics analysed in this component of the article reinforce Australia has failed to significantly engage OA practice. The primary issue is the limited number of works made OA, despite the large number of publications made through Australian institutions per year. The current ratio, indicating less than half of publications are made OA, is inadequate. As an evidently academically prosperous country, it is clear Australia's potential to significantly contribute to the OA movement is currently inhibited by failure to significantly engage OA practice. Thus, immediate improvement of Australian OA engagement is required.

Country Comparison

Total Publications

As evident from previous chapters, the Dutch have taken progressive OA action, which has seen the country "lead the way" in the OA world. Contrastingly, OA has not been significantly engaged in Australia. To assess how OA engagement through Australian institutions compares to that in Dutch institutions, a comparative analysis is conducted between the countries. As Australia and the Netherlands differ in terms of size and available research infrastructure, to ensure accuracy of the comparison, the percentage of works made OA in each country are compared. This intends to remove any bias, which may otherwise arise. Thus, the percentage of publications made OA through Australian and Dutch institutions, from 2010-2020, are compared.

The Percentage of Total OA Publications Made in Australian and Dutch Institutions Each Year From 2010-2020

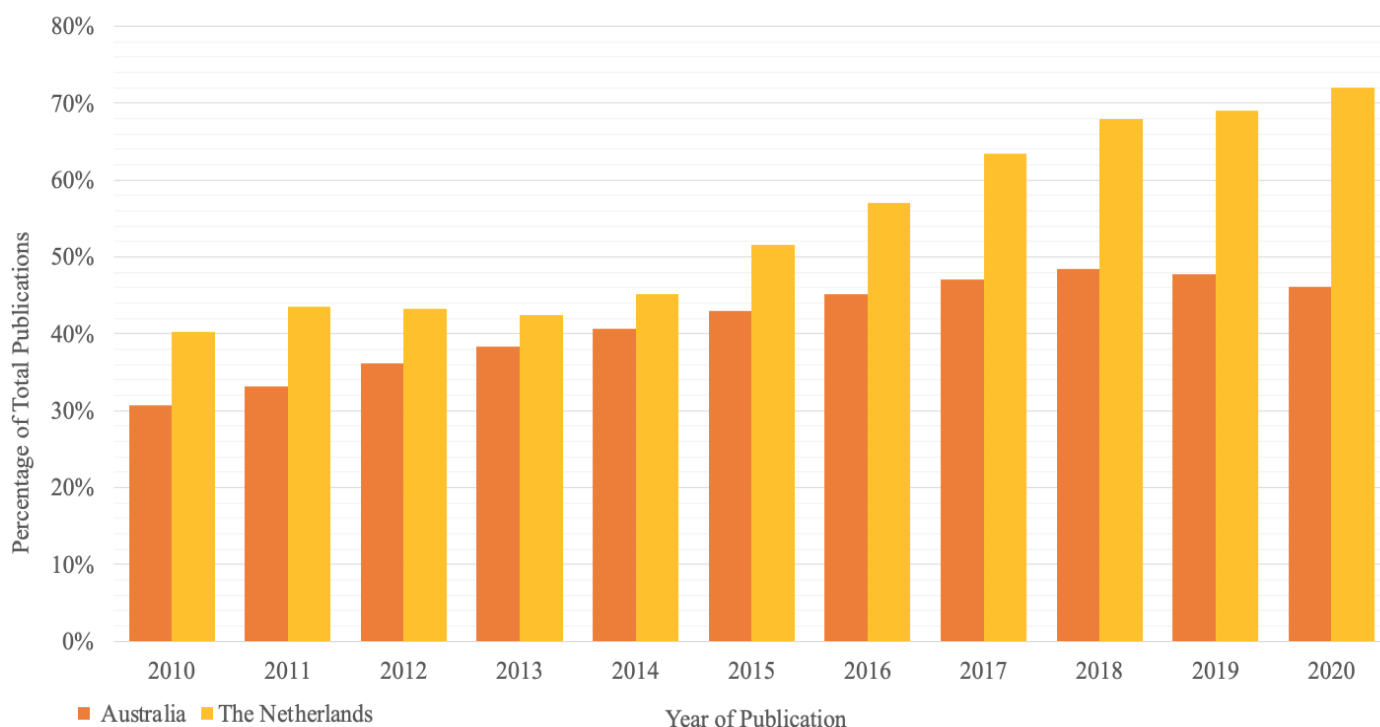


Figure 10: Bar graph displaying the percentage of OA publications made through Australian and Dutch institutions over the last decade

As evident from Figure 10, despite Australia having almost double the number of institutional repositories,¹³⁰ the percentage of total publications made OA in the Netherlands has consistently exceeded that in Australia over the past ten years. In 2020, the greatest variance was evident, with a difference of 26 per cent between the percentage of OA publications made through Dutch institutions, as opposed to Australian institutions. Putting this difference into perspective, in 2020, 46 per cent of publications were made OA in Australia. This figure is equal to the percentage of works made OA in the Netherlands six years ago, in 2014. Not only does this comparison indicate the gap between the countries' engagement is ever-increasing, it emphasises Australia is currently "years behind" the Netherlands in regard to OA implementation. When considering Australia has a much larger volume of research infrastructure, through which OA could be facilitated, it is clear the nation is currently failing to utilise such structures effectively.

Most apparent from Figure 10, is the increased variance between the countries' engagement since enactment of the Taverne Amendment. Whilst OA publications in the Netherlands have increased by an average of 3.8 per cent annually over the past five years, Australian OA publications have only increased by 0.25 per cent. Moreover, prior to 2015, the percentage of OA works published in Dutch institutional repositories surpassed those in Australia, by an average of 7 per cent. In the years since 2015, this percentage has nearly tripled, having risen to almost 20 per cent. Thus, it is clear, since enactment of the Taverne Amendment, OA engagement in the Netherlands has grown at a much greater rate, whilst Australian engagement has remained somewhat stagnant.

These statistics indicate the true value of introducing an OA provision into national copyright legislation. In this instance, it appears legislative integration has seen Dutch OA engagement accelerate far beyond that in Australia, a nation which is yet to adopt any notable OA

measures. These results reinforce both the value of an OA provision and the true urgency for OA action to be undertaken in Australia, to ensure the country is not “left behind” in the OA world.

OA Publications Exclusively

The Percentage of OA Publications from Total Publications Made Each Year in Dutch Institutions From 2010-2020

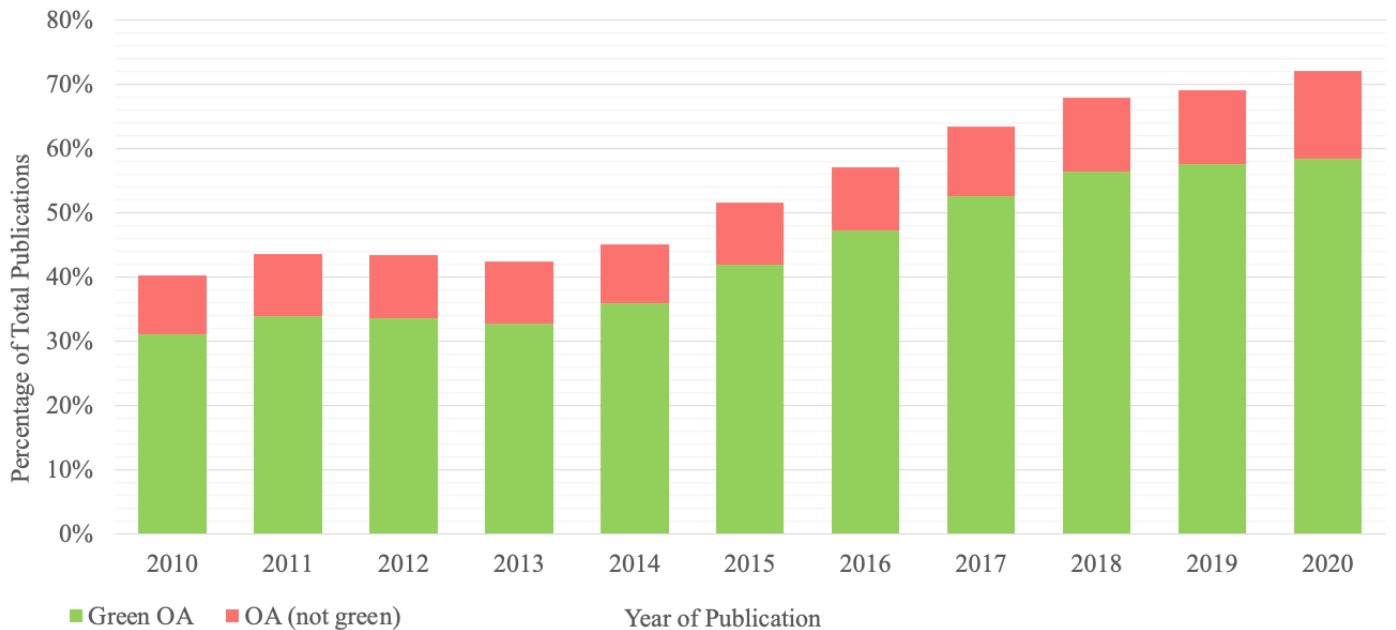


Figure 11: Bar graph displaying break down of the percentage of OA publications through Dutch institutions over the

The Percentage of OA Publications from Total Publications Made Each Year in Australian Institutions From 2010-2020

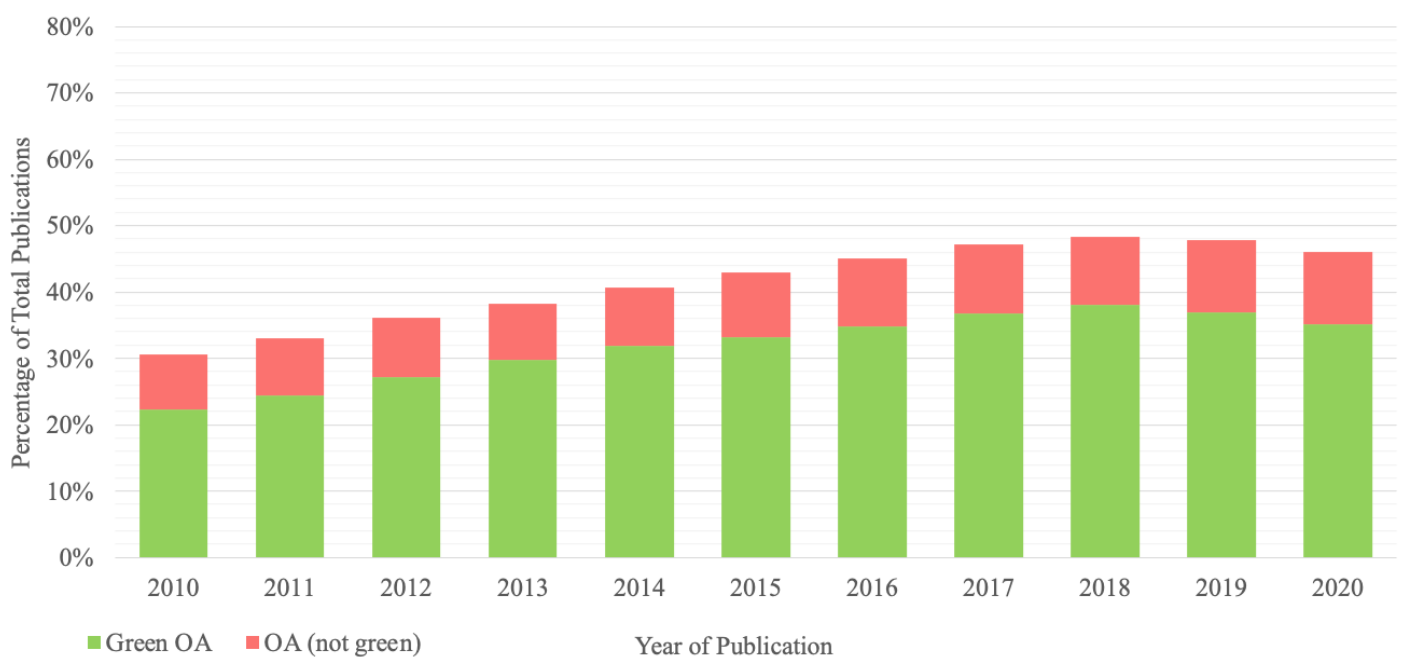


Figure 12: Bar graph displaying break down of the percentage of OA publications through Australian institutions over the last decade

Focusing upon OA exclusively, Figures 11 and 12 demonstrate green OA has been maintained as the primary form of OA in both countries over the last decade. Though, despite this trend indicating a point of similarity, in the context of total publications, the percentage made green OA in Australia still remains inferior to that in the Netherlands. Over the last decade, green OA has been granted to an average of 44 per cent of total publications made through Dutch institutions per year. Meanwhile, only 32 per cent of works have been published with green OA in Australian institutions. In regard to OA publications exclusively, 80 per cent of OA publications were made green OA in the Netherlands, as opposed to 77 per cent in Australia. Thus, although green OA engagement in Australian institutions is deficient in comparison to that in Dutch institutions, when viewed in the context of OA publications exclusively, the variance is less severe.

Interpreting these statistics, it is clear OA engagement through Australian institutions is deficient in comparison to that in Dutch institutions. This is a major issue, as a large volume of publications are made through Australian institutions annually. Thus, indicating many more Australian academic works can be, and should be, made OA. Nevertheless, the prevalence of green OA engagement in Australia, appearing somewhat similar to that in the Netherlands, when viewed as a percentage of OA publications, indicates an opportunity for improvement of Australian OA engagement. It is suggested the nation capitalise upon the primacy of green OA, as the Dutch evidently did with enactment of the Taverne Amendment.

Recommendations

As findings in this article have demonstrated, since its enactment, the Taverne Amendment has assisted to increase OA engagement in the Netherlands. It is also clear OA engagement through Australian institutions is deficient, when compared to that in Dutch institutions. As an academically prosperous country, from which a large volume of scholarly works are evidently published, this presents a live issue, requiring immediate improvement. Thus, it is proposed, to assist increasing the country's currently lacking OA engagement, Australia be inspired by the Dutch, to integrate OA into the Copyright Act. This poses the question as to how legislative reform could be undertaken in Australia to affect integration of OA.

Drawing Upon Preliminary Efforts

Measures Undertaken

Certain Australian authorities have begun to take action towards advancing OA, albeit limited. As previously discussed, in 2016, the Productivity Commission held an inquiry into Australian intellectual property arrangements.¹³¹ OA was addressed in the Final Report, in which it was recommended all Australian State and Territory Governments establish OA policies.¹³² In response to this Inquiry, in 2018, the Australian Department of Communication and the Arts ("DCA") published a "Copyright Modernisation Consultation Paper".¹³³ The paper proposed a series of amendments to the Copyright Act, recognising the legislation requires updating, to bring it in line with digital developments which have occurred in the research landscape. As part of this Consultation, a number of roundtable discussions were held between key Australian research stakeholders, with attendees from organisations such as the Australian Copyright Council, CAUL, State Governments and several Australian universities.¹³⁴ Though, despite being initiated in light of the previous Inquiry by the Productivity Commission, which identified OA as a copyright issue,¹³⁵ this Consultation failed to substantially address open accessibility of Australian research in any depth. Thus, whilst OA has previously been acknowledged as an issue relevant to amendment of the

Copyright Act, reform to integrate OA is yet to be substantially considered or affected in Australia.

Other key OA stakeholders, such as the OA advocacy body, OAA, have also commenced minor action. OAA has begun consulting with research organisations with an interest in OA, committed to making a case for development of a national OA strategy in Australia. In 2020, the group hosted a series of roundtables, attended by representatives from organisations such as the FAIR Steering Group,¹³⁶ CAUL and the Australian Council of Learned Academies.¹³⁷ These organisations' efforts demonstrate those passionate about OA are beginning to come together, to advocate for reform, in a bid to increase OA awareness and affect OA change in Australia.

Uniting Key Stakeholders

A crucial aspect of the Dutch OA approach is that all key stakeholders are on the “same page, at the highest level” in regard to OA.¹³⁸ Thus, it is suggested, uniting efforts of key Australian OA stakeholders, is an effective way by which integration of OA into Australian copyright law may be affected.

It is recognised Australia currently has a majority of the key OA stakeholder groups established. Though, to affect OA change, their efforts must be united. Previous inquiries, consultations and roundtables undertaken by Australian authorities, are evidence of key OA stakeholders such as the ALRC, Copyright Law Review Committee and Productivity Commission, having united, to drive legislative change in the Australian research landscape. Uniting the ALRC with OA organisations is particularly crucial, as the Commission is “one of the most effective and influential” bodies in moving legislative reform in Australia.¹³⁹ To date, over 85 per cent of ALRC recommendation reports have been, either wholly or partially, implemented by the Australian legislature.¹⁴⁰ This demonstrates the true ability of Australian authorities to affect legislative reform. Thus, it is crucial the efforts of these key stakeholders are combined, if integration of OA is to be affected.

As part of this union, OAA and the numerous organisations with which it has collaborated,¹⁴¹ should also be “brought onto the same page”, to cooperate with these Australian authorities. The advantage of which, is organisations dedicated to OA, could contribute directly to legislative reform discussions and accordingly, influence proposals for reform of current copyright law. This would ensure OA is afforded greater attention by Australian authorities with the power to affect legislative reform. This union is considered a crucial basis upon which to facilitate OA change in Australia, and a means by which OA could be integrated into the Copyright Act.

Renewed Focus on OA as a Copyright Issue

In conjunction with the union of key OA stakeholders, it is suggested Australian authorities renew their focus on OA. Past consultations and inquiries evidence Australian authorities having previously acknowledged modernisation of the Copyright Act is required, to maintain its relevance in today's digital world. Despite having previously been identified as a copyright issue in this regard, minimal action has been taken to further address OA in Australia. Thus far, only a mere, non-binding recommendation for OA policies to be introduced throughout Australia has been made, in 2016.¹⁴² Since then, OA appears to have been put on the back burner.

Thus, it is recommended discussions dedicated to OA exclusively, be placed at the top of the shared agenda of Australian authorities. The DCA's 2016 Inquiry,¹⁴³ shows that OA has previously been considered in the context of legislative reform. This suggests if Australian authorities prioritise OA, reform of the Copyright Act to integrate the practice is viable. Thus, a renewed focus on OA as a copyright issue is recommended, as an effective means by which OA could be integrated into Australian copyright law.

Approach Informed by Findings

Capitalising Upon Green OA Engagement

Despite findings in this article demonstrating a great variance between OA engagement in Dutch and Australian institutions, a common trend identified is the prevalence of green OA. This presents an opportunity for the Australian legislature to capitalise upon the primacy of this form of OA, as the Dutch evidently did with the Taverne Amendment.

In regard to suitability in the current Australian research landscape, statistics analysed indicate over the last decade, an average of 77 per cent of OA works have been published with green OA in Australian institutions. This suggests Australian authors are currently most familiar with this form. Thus, it is proposed introducing a legislative provision, which affords the option to publish green OA, would be suitable in the current Australian research landscape for multiple reasons. First, primacy of green OA provides a well-founded basis upon which the Australian legislature can justify enactment of such a provision. Evidence of green OA engagement indicates perceived efficacy of a legislative provision in this regard, likely to assist passage of an amendment proposal through Australian Parliament. Secondly, familiarity and mitigation of drastic change are expected to be crucial for encouraging OA uptake from Australian authors. Particularly to reduce uncertainty, as majority have not previously engaged with the practice. Thus, capitalising upon the opportunity presented by the current primacy of green OA, not only provides a sense of assurance to the Australian legislature, but also presents as an effective means to encourage OA uptake by authors, who are largely unaccustomed to OA practice.

In this regard, it must be noted, despite current primacy of green OA in Australia, statistics indicate this prevalence may potentially be declining, with declination evident in last two years analysed. This trend reinforces time is truly of the essence for Australia. Not only if the country seeks to capitalise upon current green OA engagement, as a basis for legislative reform, but also to ensure the country remains academically competitive and is not left behind in the OA world.

Inspiration Taken from the Taverne Amendment

OA Provision as an Alternative

In adopting an OA provision, it is recommended Australia also take inspiration from key elements of the Taverne Amendment, which appear to have contributed to its effectiveness in elevating OA engagement. The Taverne Amendment was enacted as a provisional alternative to the Dutch preference of a gold OA route. As a somewhat conservative country, this approach appears most appropriate in Australia, for two primary reasons. First, as many academic authors are yet to engage with OA practice, measures which are flexible and encouraging, rather than arbitrary, are likely to be the most effective. Secondly, when affecting legislative reform, subtle amendments to current legislation are often favoured over

major changes. Thus, the Australian legislature is likely to be more receptive of passing a provisional alternative, than a bill proposing to enforce stringent requirements upon academic authors. In this regard, a provision of this nature may be enacted as a preliminary measure, before further, more comprehensive change is affected in the future, once OA has been sufficiently established in Australia.

Key Elements of the Provision

It is further proposed specific features of the Taverne Amendment be adopted. First, it is suggested the 12-month embargo period, prescribed by the Taverne Amendment, be assumed in the prospective Australian provision. This period is currently denoted to in research policies of the ARC, NHMRC and several Australian universities.¹⁴⁴ Such policies are evidence of this period of time being considered appropriate and workable in the current Australian research landscape. The Taverne Amendment's retrospective application is a crucial element of the provision, which could also be usefully embraced in Australia. As statistics analysed throughout this article have shown, a large volume of scholarly works has been published in Australia over the last decade, the majority of which have not been published OA. Enacting an OA provision which applies retrospectively, would reduce current concern as to the many Australian academic works to which access has been, and is currently, restricted. This invites the prospect that not only would an OA provision of this nature assist to increase future OA engagement in Australia but would also permit improvement of the country's deficient engagement in years past.

Another desirable element of the Taverne Amendment which could be usefully adopted is the precedence of the provision over publishing agreements. In Australia, one of the major problems identified with current OA policies, is their application being subject to publishing contracts.¹⁴⁵ Introducing a legislative provision which eradicates such restrictions, is likely to encourage greater engagement with OA, by removing authors' concerns as to legal repercussions arising from pre-existing publishing agreements. This feature, which would be unique in the Australian research landscape, represents a desirable way by which to integrate OA into Australian copyright law.

Additional Considerations

Complementary measures

As evident from findings in this article, an OA provision presents as an effective means to contribute to increasing OA engagement. Though, it is acknowledged the prospect of integrating of OA into Australian copyright law is not a "quick fix" solution to the issue of Australia's deficient OA engagement. The process of legislative reform in Australia can be extensive, as once a final report is provided by the ALRC to the Government for consideration, there is no established time frame in which a response is required.¹⁴⁶ Thus, reform recommendations, can in some instances, take years to be adopted into the relevant legislation.¹⁴⁷

To ensure Australian OA engagement does not remain stagnant in the meantime, it is recommended complementary OA measures, in addition to an OA provision, be affected. Such measures are considered likely to both "kick start" enhancement of OA engagement immediately, and support the prospective provision once enacted. It is suggested complementary measures adopted in Australia also be inspired by those implemented by the Dutch, particularly as such efforts have played a crucial role in the Dutch OA approach. In

this regard, it is recommended domestic OA initiatives be established, whilst OAA and associated organisations drive heightened advocacy. Adopting a systematic approach, by commencing efforts at Australian research institutions, before broadening the scope, to raise OA awareness throughout Australia, is recommended. Such complementary measures are recognised as a future direction for OA in Australia. Thus, this article intentionally leaves scope for further studies to explore the prospect of introducing such measures, to assist increasing Australian OA engagement.

Conclusion

In conclusion, analysis of OA engagement through Australian institutions, alongside that in Dutch institutions, has confirmed concerns as to the deficiency of OA in Australia. As a country in which a large volume of academic works is published, this indicates a major issue. This article attempts to address this problem, “looking outside of the borders” to the Dutch OA approach, considering the progressive method of legislative integration as a potential solution. This study argues that immediate improvement of Australian OA engagement should be undertaken. Not only for the benefit of Australia itself, by securing its future academic competitiveness, but also for the greater good, by realising the country’s true potential to significantly contribute to the global OA movement. In conclusion, to reduce the issue as to the large proportion of Australian academic works to which access is restricted, it is proposed Australia be inspired by effective legislative integration undertaken by the Dutch, to integrate OA into the Copyright Act, to assist increasing the currently deficient OA engagement in Australian institutions.

¹ Honours Law Graduate, Edith Cowan University.

² Lecturer in Law, Edith Cowan University.

³ Nikos Koutras, *Building Equitable Access to Knowledge Through Open Access Repositories*. (IGI Global, 2019) 30; Aaron Swartz, ‘Guerilla open access manifesto’, *Aaron Swartz [Internet]* (Online document, 2008) <https://archive.org/stream/GuerillaOpenAccessManifesto/Goamjuly2008_djvu.txt>; Aaron Swartz and Lawrence Lessig, *The boy who could change the world: The writings of Aaron Swartz* (The New Press, 2016) 7.

⁴ See Jonathan Tennant et al., ‘The academic, economic and societal impacts of Open Access: an evidence-based review’ (2016) *F1000Research*, 4; Heijne and van Wezenbeek (2018) 36,1; Association of Universities in the Netherlands, ‘The Netherlands: paving the way for open access’, *open access.nl* (Pamphlet, 2016) 6 <<https://vsnu.nl/files/documenten/Domeinen/Onderzoek/Open%20access/Ezine-OpenAccess-ENG-mrch2016.pdf>> (“AOUN (2016)”).

⁵ Papiya Sengupta, ‘Open Access publication: Academic colonialism or knowledge philanthropy’ (2021) 18(1) *Geoforum* 203,203.

⁶ Aaron Swartz, ‘Guerilla open access manifesto’, *Aaron Swartz [Internet]* (Online document, 2008) <https://archive.org/stream/GuerillaOpenAccessManifesto/Goamjuly2008_djvu.txt>.

⁷ Declan Butler, ‘Dutch lead European push to flip journals to open access’ (2016) 529 (7584) *Nature News* 1,13 (“Butler (2016)”).

⁸ In 2013, this national goal was originally set with a target of achieving 100 per cent OA by 2024, with a preference of gold OA. The objective was further intensified in 2016, with Dutch universities aiming to have all peer-reviewed articles published OA by 2020. See Jeroen Bosman et al., ‘Advancing open access in the Netherlands after 2020: from quantity to quality’ (2021) 34(1) *Insights* 1, 2 (“Bosman (2021)”); AOUN (2016).

⁹ Bosman (2021) 3.

¹⁰ AOUN (2016) 12.

¹¹ AOUN (2016) 14.

¹² AOUN (2016) 6, 7, 12.

¹³ Maria AM Heijne and Wilma JSM van Wezenbeek, ‘The Dutch approach to achieving open access’ (2018) 42(1) *Bibliothek Forschung und Praxis* 36, 7 (“Heijne and van Wezenbeek (2018)”); Bosman (2021) 1, 2;

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- AOUN, 'The Netherlands: paving the way for open access', *open access.nl* (Pamphlet, 2016) 6 <<https://vsnu.nl/files/documenten/Domeinen/Onderzoek/Open%20access/Ezine-OpenAccess-ENG-mrch2016.pdf>> 6, 8, 12.
- ¹⁴ Heijne and van Wezenbeek (2018) 36,7; Bosman (2021) 1, 2; AOUN (2016) 6, 8, 12.
- ¹⁵ AOUN (2016) 12; Wilma van Wezenbeek et al., 'National plan open science' (2017) *Ministerir van Onderwijs, Cultuur en Wetenschap* 1,9.
- ¹⁶ Open access.nl, 'The 100% open access ambition', *In the Netherlands* (Web Page) 1 <<https://www.openaccess.nl/en/in-the-netherlands>>.
- ¹⁷ Open access.nl, 'The 100% open access ambition', *In the Netherlands* (Web Page) 1 <<https://www.openaccess.nl/en/in-the-netherlands>>.
- ¹⁸ *Copyright Contract Act* (the Netherlands) ("CCAN") 1 July 2015, no.257, 2015.
- ¹⁹ CCAN.
- ²⁰ CCAN.
- ²¹ Dirk Visser, 'The Open Access provision in Dutch copyright contract law' (2015) 10(11) *Journal of Intellectual Property Law & Practice* 1,3 ("Visser (2015)").
- ²² Visser (2015) 1,3.
- ²³ CCAN art 25h(1); Visser (2015) 1,1.
- ²⁴ Visser (2015) 1,1.
- ²⁵ CCAN Art 25fa.
- ²⁶ CCAN Art 25fa.
- ²⁷ Open Access.nl, 'Q&A: You share, we take care!', '*You share, we take care!*' (Web Page, 2019) 2 <https://www.openaccess.nl/sites/www.openaccess.nl/files/documenten/qas_taverne_algemeeneng_def.pdf>; AOUN (2016) 7.
- ²⁸ Visser (2015) 1, 1.
- ²⁹ Arjan Schalken, *Evaluation Report 'You share, we take care' pilot* (Public Report, 2019) 1, 5, 11 ("Schalken (2019)").
- ³⁰ Visser (2015) 1,2.
- ³¹ Open Access.nl, 'Q&A: You share, we take care!', '*You share, we take care!*' (Web Page, 2019) 2 <https://www.openaccess.nl/sites/www.openaccess.nl/files/documenten/qas_taverne_algemeeneng_def.pdf> ("Open Access.nl (2019)").
- ³² Mark de Vries, 'The Dutch Road(map) to Full Open Access', *Harnessing the Power of Green Open Access: Implementing the 'Taverne' law in the Dutch Academy* (Web Page, 2018) 1,7 <<https://septentrio.uit.no/index.php/SCS/article/view/4527/4143>>.
- ³³ Quotation from Mr Paul Ayris, Head of library services at University College London and a spokesperson for the League of European Research Universities cited in Butler (2016) 1, 13.
- ³⁴ Visser (2015) 1, 2.
- ³⁵ Visser (2015) 1, 2.
- ³⁶ Visser (2015) 1,2; CCAN Art 16(2).
- ³⁷ Open Access.nl (2019) 2.
- ³⁸ Open Access.nl (2019) 2.
- ³⁹ Open Access.nl (2019) 2.
- ⁴⁰ AOUN (2016) 12.
- ⁴¹ Thomas Margoni et al., *Open Access, Open Science, Open Society* (Research Paper, no.27, 2016) 6 ('Margoni (2016)'); Visser (2015) 1,1-7; Diana Kwon, 'Dutch Universities, Journal Publishers Agree on Open Access Deals', *The Scientist* (Online article, 2018) 1 <<https://www.the-scientist.com/news-analysis/dutch-universities-journal-publishers-agree-on-open-access-deals-30860>> ("Kwon (2018)"); Elsevier, 'Dutch research institutions and Elsevier initiate world's first national Open Science partnership' (Press release, 19 May 2020) 1 ("Elsevier (2020)").
- ⁴² Margoni (2016).
- ⁴³ Margoni (2016) 11.
- ⁴⁴ Margoni (2016) 10 citing Jerome H. Reichman and Ruth L. Okediji 'When Copyright Law and Science Collide: Empowering Digitally Integrated Research Methods on a Global Scale' (2012) 96(4) *Minnesota Law*

Review 1,41; Eric Priest, 'Copyright and the Harvard Open Access Mandate' (2012) *Northwestern Journal of Technology and Intellectual Property* 10, 377.

⁴⁵ Margoni (2016) 10.

⁴⁶ Bosman (2021) 1.

⁴⁷ Bosman (2021) 13.

⁴⁸ Bosman (2021) 111.

⁴⁹ Bosman (2021) 1, 3.

⁵⁰ Mark de Vries, 'The Dutch Road(map) to Full Open Access', *Harnessing the Power of Green Open Access: Implementing the 'Taverne' law in the Dutch Academy* (Web Page, 2018) 1,7

<<https://septentrio.uit.no/index.php/SCS/article/view/4527/4143>>.

⁵¹ Bosman (2021) 1.

⁵² Bosman (2021) 1, 11.

⁵³ Bosman (2021) 1, 5.

⁵⁴ The "Horizon 2020" program was a funding program, developed by the European Commission (European Regulation No 1291/2013), intended to improve access to scholarly information. The program ran from 2014-2020 and prescribed all academic articles produced with "Horizon 2020" funding during this time, had to be made openly accessible, either by way of green or gold OA. See Dagmar Sitek and Roland Bertelmann, 'Open access: a state of the art' (2014) *Opening science* 139,140; Nikos Koutras, 'Open access publishing in the European Union: the example of scientific works' (2020) 36(3) *Publishing Research Quarterly* 418, 418.

⁵⁵ Discussed in Chapter IV.

⁵⁶ AOUN (2016) 12.

⁵⁷ AOUN (2016) 19.

⁵⁸ AOUN (2016) 6.

⁵⁹ AOUN (2016) 6.

⁶⁰ AOUN (2016) 6.

⁶¹ Curtin University, 'Public Country Dashboard [Australia]', *Curtin Open Knowledge Initiative Dashboard* (Web Page, 2020) <<https://openknowledge.community/dashboards/coki-open-access-dashboard/>> ("Curtin (2020)").

⁶² Colin Steele, 'Open access in Australia: an odyssey of sorts?' (2013) 26(3) *Insights* 282, 282, 287.

⁶³ Curtin (2020).

⁶⁴ Curtin (2020).

⁶⁵ Curtin (2020).

⁶⁶ Curtin (2020).

⁶⁷ DCA, *Copyright modernisation* (Consultation Paper, March 2018) 4.

⁶⁸ The *Copyright Act* 1968 (Cth) does not define "fair". Whether a particular dealing is to be considered "fair" is determined with regard to the circumstances of the case. General guidance as to "fairness" includes considerations as to the character, purposes and effect of the dealing and the nature of the work. See *Copyright Act* s. 40; Australian Law Reform Commission ("ALRC"), 'Fair Dealing Exceptions' *Copyright and the Digital Economy (IP 42)* (Web Page, 16 August 2012) <<https://www.alrc.gov.au/publication/copyright-and-the-digital-economy-ip-42/fair-dealing-exceptions/>>.

⁶⁹ Australian Productivity Commission ("APC"), *Intellectual Property Arrangements* (Inquiry Report, no.78, 23 September 2016) 4 ("APC (2016)"); DCA, *Copyright modernisation* (Consultation Paper, March 2018) 4, 5.

⁷⁰ *Universal Declaration of Human Rights* GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) Art 27.

⁷¹ *Universal Declaration of Human Rights* GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) Art 27.

⁷² *International Covenant on Economic, Social and Cultural Rights* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Art 13(1).

⁷³ *International Covenant on Economic, Social and Cultural Rights* opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Art 13(1).

⁷⁴ Danny Kingsley, 'Build It and They Will Come? Support for Open Access in Australia' (2012) 4(1) *Scholarly and Research Communication* 1, 8 ("Kingsley (2012)").

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- ⁷⁵ Kingsley (2012) 1, 2.
- ⁷⁶ Registry of Open Access Repository Mandates and Policies, ‘Australia’, *Policies Adopted by Quarter* (Web Page, 26 October 2021) <<http://roarmap.eprints.org/view/country/036.html>>.
- ⁷⁷ Virginia Barbour and Martin Borchert, ‘Open Science: after the COVID-19 pandemic here can be no return to close working’, *Why is openly accessible science important?* (Online article, 7 April 2021) <<https://oaaustralasia.org/2021/04/07/why-is-openly-accessible-science-so-important/>>.
- ⁷⁸ Kingsley (2012) 1, 10.
- ⁷⁹ Kingsley (2012) 1, 8, 10.
- ⁸⁰ Kingsley (2012) 1, 9.
- ⁸¹ Australian Research Council (“ARC”), ‘Open Access Policy’ (Policy, 30 June 2017) 7 <<https://www.arc.gov.au/policies-strategies/policy/arc-open-access-policy-version-20171>>.
- ⁸² The “peak leadership organisation” for libraries of Australian Universities. The organisation’s objective is to contribute to policy and strategy, regarding matters pertaining to higher education in Australia. Advancing open access to knowledge, data and information, is one of the organisation’s primary goals. See Harry Rolf, ‘About CAUL’, *Council of Australian University Librarians* (Web Page, 26 August 2021) <<https://www.caul.edu.au/about-caul>>.
- ⁸³ Australia’s OA advocacy body, originally founded in 2013. The group’s primary goal is to make the research outputs of Australia and New Zealand “open for all”. Advocating for OA and raising awareness are the group’s primary undertakings. See Open Access Australasia (“OAA”), ‘Our goal is to make Australasian research outputs open for all’, *About us* (Web Page, 2021) <<https://oaaustralasia.org/about/>>.
- ⁸⁴ OAA, ‘Our goal is to make Australasian research outputs open for all’, *About us* (Web Page, 2021) <<https://oaaustralasia.org/about/>>.
- ⁸⁵ Kingsley (2012) 1, 2.
- ⁸⁶ Scott D. Kiel-Chisholm et al., ‘Creating a legal framework for copyright management of open access within the Australian academic and research sector’ (2011) *ResearchGate* 264, 287.
- ⁸⁷ The ARC is a Commonwealth entity within the Australian Government, established under the *Australian Research Council Act 2001* (Cth). This independent body advises the Australian Government in regard to research matters and provides funding through grants programs. The ARC comprises a substantial part of Australia’s investment in development of research. See ARC, ‘About the ARC’ *Australian Research Council Profile* (Web Page, 10 July 2018) <<https://www.arc.gov.au/about-arc/arc-profile>>.
- ⁸⁸ The NHMRC has a long history in Australia, having held its first meeting in February 1937. Since its establishment, the Council has supported health and medical research in Australia, by providing funding through various grants. See National Health and Medical Research Council (“NHMRC”), ‘Who we are’, *About us* (Web Page, 2021) <<https://www.nhmrc.gov.au/about-us/who-we-are>>; Kingsley (2012) 1, 6.
- ⁸⁹ Kingsley (2012) 1, 17.
- ⁹⁰ Colin Steele ‘Open access in Australia: an odyssey of sorts?’ (2013) 26(3) *Insights* 282, 284.
- ⁹¹ ARC, ‘Open Access Policy’ (Policy, 30 June 2017) 5 <<https://www.arc.gov.au/policies-strategies/policy/arc-open-access-policy-version-20171>>; NHMRC, ‘Open Access Policy’ (Policy, November 2018) 5.
- ⁹² ARC, ‘Open Access Policy’ (Policy, 30 June 2017) 7 <<https://www.arc.gov.au/policies-strategies/policy/arc-open-access-policy-version-20171>>; NHMRC, ‘Open Access Policy’ (Policy, November 2018) 5.
- ⁹³ Kingsley (2012) 1, 6.
- ⁹⁴ Kingsley (2012) 1, 7.
- ⁹⁵ APC (2016) 4.
- ⁹⁶ APC (2016) 4.
- ⁹⁷ APC (2016) 4, 24.
- ⁹⁸ APC (2016) 4.
- ⁹⁹ APC (2016) 4, 468, 469.
- ¹⁰⁰ APC (2016) 4, 468, 469.
- ¹⁰¹ APC (2016) 4, 38.
- ¹⁰² APC (2016) 4, 24.
- ¹⁰³ Kingsley (2012) 1, 7.
- ¹⁰⁴ Kingsley (2012) 1, 13.

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- ¹⁰⁵ Kingsley (2012) 1, 13.
- ¹⁰⁶ Kingsley (2012) 1, 2.
- ¹⁰⁷ Kingsley (2012) 1, 11.
- ¹⁰⁸ Kingsley (2012) 1, 11.
- ¹⁰⁹ Kingsley (2012) 1, 11.
- ¹¹⁰ Ginny Barbour and Fiona Bradley, 'A renewed impetus for open research in Australia', *Open Access Australasia* (Online article, 11 May 2021) 1 <<https://oaaaustralasia.org/2021/05/11/a-renewed-impetus-for-open-research-in-australia/>>; Kingsley (2012) 1, 5.
- ¹¹¹ Richard Poynder, 'Open access, brick by brick'(2012) *Blog Open and Shut* 13 [61] cited in Kingsley (2012) 1, 8.
- ¹¹² Kingsley (2012) 1.
- ¹¹³ Kingsley (2012) 1, 12, 13.
- ¹¹⁴ Richard Poynder, 'Open access, brick by brick' (2012) *Blog Open and Shut* 13 [61] cited in Kingsley (2012) 1,8.
- ¹¹⁵ Kingsley (2012) 1,1, 8.
- ¹¹⁶ Open Access Australasia, 'Our goal is to make Australasian research outputs open for all', *About us* (Web Page, 2021) 1 <<https://oaaaustralasia.org/about/>>.
- ¹¹⁷ Kingsley (2012) 1.
- ¹¹⁸ Kingsley (2012) 1, 6-9.
- ¹¹⁹ Kingsley (2012) 1, 8,9.
- ¹²⁰ Kingsley (2012) 1, 8.
- ¹²¹ Kingsley (2012) 1, 9.
- ¹²² Kingsley (2012) 1, 9.
- ¹²³ Kingsley (2012) 1, 12.
- ¹²⁴ Kingsley (2012) 1, 12.
- ¹²⁵ Kingsley (2012) 1, 13.
- ¹²⁶ Schalken (2019) 1, 1.
- ¹²⁷ AOUN, 'Results of the VSNU open access pilot 'You Share, We Take Care', based on article 25fa of the Dutch Copyright Act' (Online document, 2019) 1 <https://www.openaccess.nl/sites/www.openaccess.nl/files/documenten/summery_taverne_pilot_vsnu_200330.pdf> ("AOUN (2019)").
- ¹²⁸ Schalken (2019) 1,1.
- ¹²⁹ Schalken (2019) 1, 1.
- ¹³⁰ Australia currently has 75 institutional repositories registered with the Registry of Open Access Repositories, whilst the Netherlands has 39. See 'Registry of Open Access Repositories', *Australia* (Web Page, 26 October 2021) <http://roar.eprints.org/view/geoname/geoname=5F2=5FAU.html#group_institutional>; 'Registry of Open Access Repositories', *The Netherlands* (Web Page, 26 October 2021) <http://roar.eprints.org/view/geoname/geoname=5F2=5FNL.html#group_institutional>.
- ¹³¹ APC (2016) 4.
- ¹³² APC (2016) 4, 38.
- ¹³³ Department of Communications and the Arts ("DCA"), *Copyright modernisation* (Consultation Paper, March 2018) 4.
- ¹³⁴ DCA, *Routable on orphan works* (Consultation paper, May 2018) 3; DCA, *Roundtable on uses of copyright by the government* (Consultation Paper, April 2018) 2.
- ¹³⁵ APC (2016) 4, 24, 29, 38, 92, 461.
- ¹³⁶ The FAIR Steering Group comprises of organisations with an interest in OA, such as the ARC, NHMRC, CAUL and Universities Australia. Chaired by the CAUL, FAIR are dedicated to working towards establishing OA in Australia, primarily through the FAIR principles. See OAA, 'Making the case for a national approach for Open Research in Australia' (Online document, 31 January 2021) 2 <<https://oaaaustralasia.org/2021/01/31/making-the-case-for-a-national-approach-for-open-research-in-australia/>>; FAIR, 'FAIR Steering Group' (Web Page, 2021) <<https://www.fair-access.net.au/about/steering-group>>.

¹³⁷The Australian Council of Learned Academies is a forum whose members inform national policy, by providing expert advice, whilst developing ‘innovative solutions’ to issues, both within Australia and globally. See Australian Council of Learned Academies, ‘About us’ (Web Page, 2021) < <https://acola.org/about-us/>>; OAA, ‘Making the case for a national approach for Open Research in Australia’ (Online document, 31 January 2021) 2 <<https://oaaustralasia.org/2021/01/31/making-the-case-for-a-national-approach-for-open-research-in-australia/>>.

¹³⁸ AOUN (2016) 14.

¹³⁹ ALRC, ‘About’ (Web Page, 2021) < <https://www.alrc.gov.au/about/>>.

¹⁴⁰ ALRC, ‘About’ (Web Page, 2021) < <https://www.alrc.gov.au/about/>>.

¹⁴¹ The OAA has previously held roundtables with members of organisations such as the FAIR Steering Group, CAUL and the Australian Council of Learned Academies.

¹⁴² APC (2016) 4, 38.

¹⁴³ APC (2016) 4.

¹⁴⁴ ARC, ‘Open Access Policy’ (Policy, 30 June 2017) 7 <<https://www.arc.gov.au/policies-strategies/policy/arc-open-access-policy-version-20171>>; NHMRC, ‘Who we are’, *About us* (Web Page, 2021) <<https://www.nhmrc.gov.au/about-us/who-we-are>>.

¹⁴⁵ Danny Kingsley, ‘Build It and They Will Come? Support for Open Access in Australia’ (2012) 4(1) *Scholarly and Research Communication* 1, 9.

¹⁴⁶ ALRC, ‘Law reform process’ (Web Page, 2021) 1 <<https://www.alrc.gov.au/about/law-reform-process/>>.

¹⁴⁷ ALRC, ‘Law reform process’ (Web Page, 2021) 1 <<https://www.alrc.gov.au/about/law-reform-process/>>.