

EDITORIAL

AMELIA LOUGHLAND*

Just like the classical common law barrister, the *University of New South Wales Law Journal* ('*Journal*') prides itself on its generalist focus.¹ This cross-jurisdictional ability allows it to be an appropriate forum for academic engagement across a wide variety of legal issues: from corporate law,² to criminal justice,³ to the legal rights of cyclists.⁴ In fact, the number of outstanding general submissions we receive was a key reason behind our shift to a new publication structure featuring three generalist Issues and one thematic Issue per year. The recent launch of our online *Forum* has also allowed the *Journal* to play a more responsive role in public discourse on legal issues, as illustrated by the media debate sparked by our publication of an article questioning the legality of Centrelink 'robo-debt'.⁵ Appropriately in the age of 'fake news', within weeks of its inception, the *Forum* was the subject of a Twitter conspiracy regarding the suspicious disappearance of said article from our website (for entirely banal server issues). It is my hope that the *Forum*, alongside each generalist Issue, continues to promote (informed) debate on the law.

Issue 41(2) is no exception to the excellent generalist tradition of the *Journal*, featuring high quality scholarship from authors that aptly reflect the diversity of the legal profession: PhD scholars, barristers, professors, and a former High Court judge for good measure. The article by Harry Hobbs and Andrew Trotter: 'Lessons from History in Dealing with Our Most Dangerous' has been chosen to provide the organising theme for the launch event and for later academic engagement on the *Forum*. Their insightful historical analysis reveals that legal responses to 'dangerous' sexual offenders have been primarily mobilised in

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1 See Duncan Graham, 'Specialisation at the Bar' [2008] Winter *Bar News* 9.

2 See, eg, Emma Armson, 'Flexibility in Decision-Making: An Assessment of the Australian Takeovers Panel' (2017) 40 *University of New South Wales Law Journal* 460.

3 See, eg, Heather Douglas and Mark Burdon, 'Legal Responses to Non-Consensual Smartphone Recordings in the Context of Domestic and Family Violence' (2018) 41 *University of New South Wales Law Journal* 157.

4 See, eg, Gabrielle Appleby and Adam Webster, 'Cycling and the Law' (2016) 39 *University of New South Wales Law Journal* 129.

5 Terry Carney, 'The New Digital Future for Welfare: Debts Without Legal Proofs or Moral Authority?' [2018] *University of New South Wales Law Journal Forum*; see media discussion in Doug Dingwall, "'Robo-debt" an Unlawful Exercise, Former Appeals Tribunal Member Says', *Sydney Morning Herald* (online), 5 April 2018 <<https://www.smh.com.au/politics/federal/robo-debt-an-unlawful-exercise-former-appeals-tribunal-member-says-20180405-p4z7x9.html>>.

response to salient – yet isolated – offences and tend to be over-zealous, *ad hominem*⁶ and disproportionate. I hope this discourse will promote greater scrutiny of whether the governance of risk through ‘dangerous offender’ policies is justified by an evidence-based approach to probability,⁷ or is simply a cathartic management of public fear.

Despite its generalist nature, it is possible to detect thematic concerns running through this Issue. The first tranche of articles explore and critique the various interpretive issues faced by legal decision-makers. For example, the Hon Michael Kirby AC CMG offers a unique insight into the complexities of judicial fact-finding, and the need to approach this exercise with care, scepticism and self-awareness regardless of the legal forum. Jowett, Carpenter and Tait then argue for a more principled and coherent approach to findings of suicide in Australian coronial law. Parkinson and Chen respectively engage with unique aspects of Australian statutory interpretation, through the role of judicial restraint in ‘just and equitable’ property division, and in the High Court’s contested development of the principle of legality under the Chief Justiceship of Robert French.

The second tranche of articles provide an internationalist perspective on contemporary legal developments. Handsley and Reeve make the case for greater accountability of companies advertising unhealthy food to children through international human rights instruments, while Douglas offers a nuanced legal solution to choice-of-law questions arising in cross-border breaches of privacy. Ferguson then unpacks the uncritical adoption of domestic administrative law concepts in international investment law.

The final two articles offer compelling analyses of contemporary issues in the Australian legal climate. Taylor-Sands critiques the rights-based rationale behind recent Victorian legislation giving donor-conceived individuals an unfettered legal right to access identifying information on their donors. The final article by Poynton and her colleagues makes an important contribution to the empirical literature on mental health issues in the legal profession through their comprehensive findings from a four-year study of the effectiveness of wellbeing initiatives in a legal organisation.

It has been a privilege to cultivate such an outstanding collection of articles, with each making a unique contribution to the practise and study of law in Australia. I would like to thank the authors for entrusting the *Journal* with your work, and it was a pleasure to work with each of you throughout the editing and publication process. I am also indebted to the anonymous peer reviewers for donating their time and intellectual energy by providing feedback on the articles. This is invaluable in helping the all-student Executive Committee in reaching informed and responsible publication decisions.

I am extremely grateful to the three eminent individuals who have agreed to participate in the first speaker panel at a launch event for the *Journal*: former High Court judge, the Hon Michael Kirby AC CMG, the Hon Justice Lucy

6 See the High Court’s treatment of such legislative attempts in *Kable v DPP (NSW)* (1996) 189 CLR 51; *Baker v The Queen* (2004) 223 CLR 513; *Fardon v A-G (Qld)* (2004) 223 CLR 575.

7 Cass Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press, 2005) 74.

McCallum of the NSW Supreme Court and Professor Arlie Loughnan from the Sydney Law School. It is an honour to have such brilliant legal minds with a wealth of experience sharing their views with us.

The publication of the *Journal* and its launch events would not be possible without the steadfast support of our Premier Sponsors. I am especially grateful to Herbert Smith Freehills for hosting the launch of Issue 41(2). The *Journal* is also very fortunate to share a strong relationship with our other premier sponsors, King & Wood Mallesons and Allens.

I also extend my gratitude to our Faculty Advisors and particularly Professor Rosalind Dixon for providing me with wise counsel at each stage of the Issue Editor process. As a student-run *Journal*, I am grateful for the trust placed in us by the UNSW Law Faculty and particularly by our Dean, Professor George Williams AO. I also thank Professor David Dixon for his insights and feedback in developing the launch event for this Issue.

The *Journal*'s reputation for outstanding legal scholarship is in large part due to its exceptionally diligent student Editorial Board. Their meticulous attention to detail, work ethic and good humour made my job as Issue Editor a smooth and enjoyable one. I have also been very grateful for the ready support and advice offered by the Executive Committee over the past year – particularly with regard to my technological incapacities. I am especially grateful to Rose Vassel for her hard work in forging a new path in the first generalist Issue of 2018, and for passing on her newly learned wisdom to me. The Executive Editors do an enormous amount of unseen work behind the scenes of the *Journal*, and I sincerely thank both Justin Kardi and Lachlan Peake for their leadership and professionalism, which has been instrumental to the success of our new initiatives in 2018 and beyond.

Finally, I am grateful to my friends and family for their support and understanding over the past year as my life has been consumed by this publication. My especial gratitude goes to my partner Lachlan, who has had to shoulder a far greater emotional and intellectual burden than would ever be expected of an Executive Editor. Thank you for your love, ever-rational advice and remarkable patience.