INTRODUCTION

This, the second issue of *Canberra Law Review* for 2020, appears during the COVID-19 – a pandemic that as one article notes is not unique and like preceding public health crises provokes thought about rights, responsibilities and regulation. Articles in this issue engage with principles and practice regarding law, spanning from the operation of the Australian Capital Territory court system and best practice for Legal Aid Commissions through to DeepFakes, placentophagy, wedding cakes and professional football.

Bede Harris offers an insightful critique of the Corporate Opportunity Doctrine and Directors' Duties. His article examines the statutory and common law rules on directors' duties with specific reference to corporate opportunities. It argues that in interpreting the *Corporations Act 2001* (Cth), and in developing the common law, the courts should extend fiduciary duties so as to require a fiduciary to advise a corporation of opportunities falling within the corporation's area of business, even when the opportunities were discovered in circumstances unconnected with the fiduciary's role in the corporation. The article also argues that the current ambiguity in the case law over whether a fiduciary who is a shareholder in a corporation may vote his or her shares when seeking permission from shareholders to take a corporate opportunity ought to be resolved in the negative. Finally, although the fiduciary duties extend to employees, the article argues that since not all employees are fiduciaries, the word 'employee' both in the Act and under the common law should be given a qualified meaning, and that whether an employee is bound by fiduciary duties should depend on the circumstances of the relationship, and in particular on the scope of authority given to the employee and their level within the corporation.

'The Associate Judge Of The Supreme Court Of The Australian Capital Territory' by the Hon David Mossop outlines the history of the position of Master, now referred to as Associate Judge, of the Supreme Court of the Australian Capital Territory. The article demonstrates how the nature of the position has evolved as a result of changes in the Court rules and, only latterly, with legislative intervention. The Associate Judge now performs a role very close to that of a resident judge of the Court. A principled consideration of the structure of the Court may indicate that the maintenance of a separate position, Associate Judge, as distinct from resident judge, is no longer appropriate.

'Transactional sex and the peacekeeping economy' by Nicholas Felstead explores the practical application of United Nations policy on women in post-conflict societies. His article argues that the UN zero-tolerance policy response to sexual exploitation and abuse has ostensibly laudable intentions that are not fulfilled in practice. Women in post-conflict societies are rational and autonomous economic actors; the real operation of the policy has a deleterious impact, stripping these women of their economic autonomy. His article reconciles research into transactional sex, peacekeeping economies and the zero-tolerance policy. In doing so it examines the impact of the policy on local women who participate in the market for transactional sex in the peacekeeping economy. Felstead concludes that the UN must consider the lived experience of local women in order to create policy directives that achieve their protective goals.

John Boersig and Romola Davenport offer insights about the ways in which Australian Legal Aid Commissions monitor the quality of legal aid work, and how a national scheme could be remodelled in light of the experiences of other jurisdictions and

emerging evidence as to best practice. Their 'Distributing the legal aid dollar - effective, efficient, and quality assured?' argues that peer review is the 'gold standard' of quality control. Legal Aid Commissions must evaluate the existing evidence base, implementing a peer review system that operates in parallel to existing performance and financial audits while minimising costs through targeted audits. In this way the Commissions will fulfil not only their statutory obligation to provide efficient and effective legal services, but also their ethical obligation to promote access to justice through delivering high quality legal services to disadvantaged people.

'The Legality of Denial of Service to Same-Sex Partners and Organisations: Developments in the United Kingdom, United States and Australia' by Anthony Gray draws on jurisprudence in the United Kingdom and the United States regarding refusals of service (specifically wedding cakes) in the context of same-sex marriage. After outlining existing anti-discrimination and free speech protection in Australia, the article considers how such conflicts would likely be resolved according to Australian law. In so doing, it includes some general reflections on the recent decisions, in the context of larger trends in how the law views sexuality, as well as the relationship between law and religion.

Bruce Baer Arnold's 'Not your standard smoothie: Placentophagy, Influencers and Regulation' considers autonomy, fact-based medicine and regulatory incapacity in discussing challenges posed to health law, consumer law, community education and health practitioner ethics by the consumption of raw or processed human placenta. He suggests that it is a social-media fueled practice in the latest era of 'fake health news'. Arnold asks whether potential harms are sufficient to justify intervention through regulation by therapeutic goods regulators or consumer protection agencies, for example addressing potentially misleading claims by providers of encapsulated placenta services.

'The Australian Government's Use of Creative Commons Licences: Pushing the Boundaries of Contract?' by Dilan Thampapillai deals with browsewrap contracts, agreements that operate without any explicit act of assent, relying on the notice of terms and the purported acquiescence to those terms. Although browsewrap contracts have been controversial in the United States there is yet to be a case in Australia. However, the Australian Government has emerged as an unlikely actor in the browsewrap contract space through its prolific use of Creative Commons licences. The Australian Government makes content available under CC licences and users knowingly take these materials on that basis. Thampapillai's article considers whether browsewrap contracts could legitimately arise in this context.

Canberra Law Review also includes work by current students and recent graduates, typically a version of their LLB dissertations. This issue of the *Review* features the following articles

Huw Warmenhoven's 'Searching for Self: Realising the Right of Self-Determination for the Palestinian People' explores the principle and right of self-determination, applies the international law concerning self-determination to the Palestinian context and identifies key limitations of scope, status and subject. Occupation of Palestinian territory by Israel raises the issue of whether the status of an occupying power can move from lawful to unlawful as a result of actions contrary to international law. The article discusses the applicability of international legal enforcement mechanisms available to the Palestinian people, including UN Resolution 377 (Uniting for Peace) and its potential application in the contemporary Palestinian context through the realisation of the latent potential of the General Assembly to maintain peace and security where the Security Council has failed to execute its responsibilities.

Vanisha Babani's 'Does Australia Have The Laws It Needs In The #MeToo Era?' considers the adequacy of Australian laws for tackling complaints of sexual assault and harassment in relation to defamation. It discusses the positive and negative effects of #MeToo in Australia, arguing that although the *Sex Discrimination Act* (Cth) is able to deal with sexual harassment complaints and compensate victims, it does not encourage change in the behaviour of perpetrators. Babani argues that the current legal framework is insufficient for adequate justice, particularly in relation to Australia's defamation regime. This has resulted to victims being cautious about sharing their stories on digital platforms. In order to provide victims with the justice they deserve, further changes to defamation law and a uniform approach is needed.

'Standing Down Athletes Facing Criminal Charges' by Ryan Waters considers the introduction of a policy to the NRL in 2019 that made it mandatory for players charged with certain criminal offences to be stood down from their sport. The article compares this policy with principles found in general employment law, examining why athletes may be subject to higher behavioural standards. It examines in detail the test case for this policy heard in 2019, looking at the impacts of that judgment, and how the motivations for the policy were justified in court. The article compares the approach adopted by the NRL to other sports, domestically and internationally, looking at the issue of the off-field conduct of athletes. It concludes with recommendations for sporting organisations seeking to write similar policies, and how these can be constructed to best balance a range of competing interests.

Federica Celli's 'Deepfakes Are Coming: Does Australia Come Prepared?' considers the phenomenon of 'deepfakes', a computer-aided appropriation of persona. The article suggests that the dangers to democracy as well as to individuals' reputation are significant. It discusses the adequacy of Australian laws, analysising the technology behind deepfakes and their misuse. It then offers a comparative analysis of European personality rights, the US right of publicity, and the US Deep Fakes Accountability Act before evaluating Australian tort, consumer and intellectual property law. It concludes that Europe's personality rights model provides an effective and desirable legal response to deepfaking.

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