

Editors' Note

2020 is certainly shaping up to be a year for the record books. This rather unique year in Australia is also seeing exciting developments in the privacy and defamation spaces. The June edition of the CLB features **Katherine Sainty** and **Belyndy Rowe's** (Sainty Law) take on the Privacy Commissioner's claim against Facebook in relation to Cambridge Analytica and the platform's alleged "serious and/or repeated interferences" with privacy in contravention of Australian privacy law. **Rachel Baker** (Clayton Utz) takes us through the recent bouts of fake news and disinformation in the coronavirus context, and looks at the legal responsibilities of internet intermediaries. **Will Sharpe** (HWL Ebsworth) discusses the recent *Smethurst v Commissioner of Police* decision where the High Court weighed up confidentiality, privacy and public interest considerations in refusing an order for destruction of material seized under warrant. This case makes some important observations on what practical recourse is available to a private citizen when a Commonwealth official exceeds its powers.

Defamation suits and injurious falsehood claims are also having their time in the sun. **Adaena Sinclair-Blakemore** (Baker McKenzie) analyses the recent *Omega Plumbing v Harbour Radio*

judgment, which looks at establishing malice in injurious falsehood proceedings and **Nicole Phillips** (Arnold Bloch Leibler) discusses the rise of Google review defamation suits in Australia. Big tech companies are not the only ones experiencing some pivots in this area. **Marlia Saunders** (News Corp Australia) takes us through the lessons from the recent Hubba Bubba case and why not to sue for defamation (or, at least, to settle early). Daniel Johns of Silverchair fame may have utilised these learnings in his recent stoush with the Sunday Telegraph case against him, which has since been settled with an apology.

Our CLB editor **Eli Fisher** (Baker McKenzie), profiles **Melissa Sequeira** Legal Manager and Company Secretary at ViacomCBS Networks (Pay) ANZ, to chat about her career and her reflections on this unique time. And we provide details within for the **CAMLA Young Lawyers Prepub 101 webinar on 25 June 2020** and the **CAMLA Essay Competition**.

We hope you enjoy the read as much as we enjoyed putting it together.

Ashleigh and Eli

News of a potential link became popular on Dutch speaking social media, then spread to the English speaking internet, but was mainly confined to relatively obscure talk show hosts and vloggers. What happened then – according to theories from some technology commentators – is that the engagement algorithms used by social media platforms detected that this content was becoming a viral trend, which propelled it to greater prominence.² Before long, Hollywood celebrities were passing on these rumours as fact. At one point, there were more than 50,000 posts about 5G and coronavirus within a 24 hour period.³ An online disinformation specialist at Khalifa University in Qatar, Marc Owen Jones, claimed the rumour had the hallmarks of a state-backed campaign.⁴ There is no confirmation yet of a state actor starting the 5G coronavirus rumour but *The New York Times* last year reported that Russian television network RT America has spread other falsehoods designed to undermine

5G technology (suggesting it causes brain cancer, infertility, autism and Alzheimer's disease), in an apparent effort to slow its rollout in the West (so that Russia can catch up and gain a competitive advantage).⁵ The rumours struck a chord with the general public: in mid-April, more than 50 mobile towers were vandalised over one weekend alone in the United Kingdom;⁶ there were similar incidents in other countries,⁷ apparently in protest at the supposed health risks posed by the technology. Australian telecommunications company Telstra issued a statement seeking to dispel the myth.⁸

Platforms acted to remove the content. YouTube announced that videos linking 5G and coronavirus breached its policies against promoting unsubstantiated coronavirus prevention methods and in early April began actively removing all such content.⁹ Soon after, Facebook followed suit.¹⁰ Many platforms are prominently displaying authoritative health information

from sources such as the World Health Organisation and Australian Government in an effort to drive traffic towards more reliable sources.

International regulation of fake news

Fake news of course pre-dates the coronavirus pandemic and many authorities have in recent years begun taking steps to reduce the harm it can cause. In some jurisdictions, this involves holding intermediaries responsible for false content that is not otherwise unlawful.

In May 2019 Singapore passed legislation criminalising the dissemination of false information online. The *Protection from Online Falsehoods and Manipulation Act 2019* makes it illegal to spread "false statements of fact" that compromise security or public safety. It gives any government Minister the power to direct an internet intermediary to disable access to false material and publish a correction notice. The legislation has been criticised by

² Ibid.

³ '5G Virus Conspiracy Theory Fueled by Coordinated Effort', Bloomberg, 9 April 2020, accessed online at <https://www.bloomberg.com/news/articles/2020-04-09/covid-19-link-to-5g-technology-fueled-by-coordinated-effort>.

⁴ Ibid.

⁵ 'Your 5G Phone Won't Hurt You. But Russia Wants You to Think Otherwise', *New York Times*, 12 May 2019, <https://www.nytimes.com/2019/05/12/science/5g-phone-safety-health-russia.html>

⁶ 'Over 50 Cell Towers Vandalized in UK Due to 5G Coronavirus Conspiracy Theories', *PC Mag*, 15 April 2020, accessed online at <https://au.pcmag.com/digital-life/66385/over-50-cell-towers-vandalized-in-uk-due-to-5g-coronavirus-conspiracy-theories>.

⁷ 'Coronavirus: Far North cell tower vandalism linked to Covid-19 conspiracy theory', *stuff.co.nz*, 13 April 2020, accessed online at <https://www.stuff.co.nz/national/crime/120985809/coronavirus-far-north-cell-tower-vandalism-linked-to-covid19-conspiracy-theory>

⁸ Telstra website: <https://exchange.telstra.com.au/5g-health-concerns-and-covid-19-the-facts/>

⁹ 'YouTube will delete videos that falsely link 5G to the novel coronavirus after reports of people setting phone masts on fire', *Business Insider Australia*, 6 April 2020, accessed online at <https://www.businessinsider.com.au/youtube-delete-5g-coronavirus-conspiracy-2020-4?r=US&IR=T>.

¹⁰ 'Facebook removes David Icke coronavirus-5G conspiracy video', *ITV Report*, 19 April 2020, accessed online at <https://www.itv.com/news/2020-04-09/facebook-removes-david-icke-coronavirus-5g-conspiracy-video/>.