

EDITORIAL

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In his (in)famous polemic, ‘Goodbye to Law Reviews’, Professor Fred Rodell lamented what he perceived as the decline of law journals, claiming that legal academic articles were no longer ‘serving society’.¹ Respectfully, I disagree. In support of my position, I point to the articles of Issue 44(2) of the *University of New South Wales Law Journal* (‘*Journal*’) as Exhibits 1–12.

The great value of a generalist law journal issue, such as Issue 44(2), lies in its ability to provoke debate and inspire commentary on a sweeping array of topics. The articles in this Issue explore diverse questions arising out of the realities of our contemporary Australian legal system.

Several articles in this Issue challenge the present legal status quo and provide compelling reasons for reform. This is most evident in this Issue’s lead article, Part 2 of ‘Trade Mark Law’s Identity Crisis’, authored by Professor Michael Handler. Where the first part of this article explored the development of the interpretation of substantial identity in trade mark law,² this second part challenges the Federal Court of Australia’s new, more expansive approach to this test. Handler argues that the Federal Court’s approach is unsupported by pre-existing authority and results in significant unintended, and unwanted, consequences. I hope that this article, on which the theme of the launch is based, will engender further dialogue on an important area of Australian intellectual property law. I am also very grateful to the Hon Justice Steven Rares of the Federal Court of Australia for agreeing to deliver the keynote address on the theme at the launch event of Issue 44(2), given his Honour’s expertise in this area.

The list of articles challenging the status quo, and inviting further discourse on reform, continues. Bhatia and Porceddu critique the current framework regarding the early release of superannuation to fund assisted reproductive technology. Next, Carey examines the difficulties caused by the application of the threshold of materiality in administrative law. Cohen asserts that the ‘political exemptions’ in the *Privacy Act 1988* (Cth) threaten privacy and key democratic values in the digital age. Dimopoulos then disputes the interpretation of the decision in *Re Kelvin*³ as a key advancement in transgender rights. Quilter and Hogg contend that the mandatory helmet laws in New South Wales have produced serious harms which overshadow their public safety origins, and Waldman explores the conflicts

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1 Fred Rodell, ‘Goodbye to Law Reviews’ (1936) 23(1) *Virginia Law Review* 38, 42.

2 Michael Handler, ‘Trade Mark Law’s Identity Crisis’ (Pt 1) (2021) 44(1) *University of New South Wales Law Journal* 394.

3 (2017) 351 ALR 329.

and incompatibilities that arise in resolving priority disputes between security interests under the *Personal Property Securities Act 2009* (Cth) and property interests outside of statute.

The other articles in this Issue make thought-provoking inroads into new or historically overlooked matters. Al-Alosi and Hamilton consider the promising possibility of using restorative justice principles to facilitate resolutions in environmental offending proceedings. Deem makes a case for the use of supportive subsidiarity as a principle for federal reform, and Gligorijevic argues that the Australian common law should recognise a tort of interference with privacy. Finally, in their articles, Hynard and Lerch, and Reynolds each examine presently little-scrutinised and ‘curiously under-litigated’⁴ concepts: Hynard and Lerch explore the tort of collateral abuse of process, whilst Reynolds investigates the history and future direction of section 117 of the *Constitution*.

Evidently, therefore, each article in Issue 44(2) contributes meaningful commentary on, and proposes reforms to, real legal issues faced by diverse pockets of Australian society.

It has been a privilege to bring such an exceptional collection of ideas together. Of course, the creation of Issue 44(2) has required the collaboration and support of many people. My thanks must first go to the authors of Issue 44(2) for entrusting the *Journal* with their work. I feel very fortunate to have played a small role in bringing such important contributions to wider legal academia. Thank you all for your patience and generosity – it has been a pleasure working with you. I am equally grateful for the continuing support of the *Journal*’s peer reviewers. Your expertise and incisive comments are invaluable to ensuring that the *Journal* continues to publish relevant and intellectually robust work.

Furthermore, the *Journal* would not have the reputation for producing first-rate legal scholarship that it does without the extraordinary efforts of the Editorial Board. I am deeply indebted to each and every one of you who have generously contributed your time and labour to this Issue. Your enthusiasm, diligence and uncanny aptitude to identify italicised full stops border on the obsessive. I am proud to count myself as one of those obsessives and to be a part of this remarkable group of people.

I have also been fortunate enough to have worked alongside, in the Executive Committee, some of the most capable, thoughtful and good-humoured students at law school – in particular, two brilliant Executive Editors, Antonia Xu and Tina Wu. Thank you for the laughs, the good advice and the dedication through thick and thin.

I would like to extend my gratitude to the University of New South Wales Faculty of Law & Justice and especially to Professor Andrew Lynch, Acting Dean, and the *Journal*’s Faculty Advisers, Professors Rosalind Dixon and Gary Edmond. Thank you for your encouragement, guidance and trust.

I would also like to thank the *Journal*’s premier sponsors, Herbert Smith Freehills, Allens and King & Wood Malleasons, without whose support the

4 Daniel Reynolds, ‘Defining the Limits of Section 117 of the *Constitution*: The Need for a Theory of the Role of States’ (2021) 44(2) *University of New South Wales Law Journal* 786.

publication of the *Journal* would not be possible. I would particularly like to thank Herbert Smith Freehills for hosting the Issue 44(2) launch event.

Finally, to my family and friends who have had to put up with all of the behind the scenes moments – your steadfast support, belief and optimism continue to sustain me. I owe it all to you.