FOREWORD

PROFESSOR CHRIS DOEPEL

It is with great pride and pleasure that I present the fourteenth issue of the *University of Notre Dame Australia Law Review* ('*UNDALR*'). This issue presents an interesting array of articles and case notes on a broad range of topics.

Chris Davies discusses the 'comfortable satisfaction' standard of proof, as applied by the Court of Arbitration for Sport ('CAS'), an international sports arbitration body, in drug-related cases. He describes the comfortable satisfaction standard of proof as lying between the criminal law 'beyond reasonable doubt' and the civil law 'balance of probabilities' standards.

On a different note, Bilal Hayee critically analyses the impact of blasphemy laws on the core human rights which are enshrined in various human rights treaties ratified by Pakistan and argues for repeal of these discriminatory laws. He highlights that these blasphemy laws not only discriminate against the minorities' right to freedom of thought, conscience and religion, but also breach the crucial rights of security of the person, protection against torture and freedom from arbitrary deprivation of the right to life.

Jessica Blanchett and Bruno Zeller then discuss the Australian Government's temporary ban on live exports to Indonesia in June 2011 (which was in response to footage released of the inhumane slaughter of cattle). They note that although the ban may be legally justified, it was a commercially unwise decision which caused hardship to cattle farmers, exporters and Indonesian consumers. They see the issue as a clear failure of Australian public policy decision-making and conclude that whether legislative reform in Australia will make any difference and save the northern Australian cattle industry depends on the Government's ability to convince the relevant parties that a new legal framework can prevent such an occurrence in the future.

In his article Jack Wright Nelson examines the *Australian Competition and Consumer Commission (ACCC) Merger Guidelines 2008*, which plays a pivotal role in the Australian commercial environment. In discussing the strengths and weaknesses of these *Guidelines*, he specifically identifies some areas of concern and suggests recommendations for consideration when these *Guidelines* come up for revision in the future.

Ruth Loveranes examines a number of concerns and difficulties which 'termination for convenience' clauses raise, including the limit which good

faith may place upon the broad termination power of these clauses. She notes that although these clauses are increasingly being used to provide flexibility in contracts they have been given little judicial consideration.

In his article Andrew Hemming contends that Bentham's vision of a comprehensive criminal code, which displaces the common law and minimises the scope for judicial interpretation, is both viable and desirable today. He states that Bentham identified the characterisation problem nearly two hundred years before modern element analysis emerged in the form of the United States *Model Penal Code* in 1962. He further states that the conventional wisdom that Blackstone and the adaptability of the common law triumphed over Bentham's grand scheme of codification is challenged now that criminal law theory has developed sufficiently to put Bentham's vision into practice.

In a case note Gregor Urbas discusses the High Court's decision in *Bui v DPP* in which the application of State legislation and common law principles to sentencing appeals involving federal offences was considered. He makes the point that although the High Court's analysis brings a much needed clarification to the interaction in federal sentencing proceedings between State or Territory laws and common law principles, it however leaves unresolved some general questions about double jeopardy in sentencing.

In another case note, Elizabeth Warr discusses the High Court's decision in *Australian Crime Commission v Stoddart* which found that spousal privilege (the right not to give evidence that might incriminate one's spouse to conviction for a crime) did not exist under Australian common law. She highlights that this decision overturned what many previously accepted as an established common law principle and that although the decision is championed by legal commentators there is, however, strong criticism from civil libertarians.

I commend this issue of *UNDALR* with its interesting and broad range of topics to our readership.

PROFESSOR CHRIS DOEPEL
Editor, *The University of Notre Dame Australia Law Review*,
Interim Dean, School of Law, Fremantle
Chair of College Committees for Colleges of Arts and Sciences,
Business and Law