

# FOREWORD

The fifteenth issue of the *University of Notre Dame Australia Law Review (UNDALR)* contains an interesting selection of articles.

In the first article on the constitutionality of same-sex marriage, James McLean examines the constitutional issues associated with a legislative extension of marriage nomenclature to homosexual unions. Through an application of the established principles of constitutional interpretation, the article explains why same-sex marriage lies beyond the competence of the Commonwealth Parliament, and argues that s 109 of the *Constitution* would render inoperative for inconsistency with the *Commonwealth Marriage Act* any same-sex marriage law enacted by the Parliament of a state.

In the next article on the subject of intervening causation law in a medical context, Douglas Hodgson adopts a comparative law perspective to examine the judicial approaches and tests adopted by the courts of the United Kingdom, Canada, the USA and Australia to resolve the intervening causation issues. The article suggests that the current approach of classifying the degree of negligence may be problematic in some circumstances and that an assessment of the degree of causal potency of the negligent medical treatment vis-à-vis the harm sustained may be more appropriate.

In an article which raises the question as to when a judge should stop a criminal trial, Andrew Hemming uses two recent cases, *Wood v R* and *Patel v The Queen*, as the vehicle for carrying out such analysis.

Alexis Henry-Comley's article considers the common law principle of legality and the human rights protection afforded under the *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). It compares the interpretive obligations placed on the courts by the principle of legality and the current Australian human rights legislation to determine whether there is any weight to the proposition that the principle of legality is a common law bill of rights in Australia.

As appears from the title of his article 'Litigating Human Rights in Western Australia: Lessons from the Past' Peter Johnston surveys cases and litigation involving civil liberties and human rights issues in Western Australia over a period of time to reflect upon what lessons may be learnt from the past.

In a case note on the High Court's recent decision in *Google v ACCC*, Rosanne Sands examines the liability of internet intermediaries for misleading and deceptive conduct under s 52 of the *Trade Practices Act 1974* (Cth).

It is with great pleasure and pride that I commend this issue of the *UNDALR* to our readership.

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