INTRODUCTION

This special issue of the UWA Law Review celebrates health law and policy scholarship, with a focus on the Western Australian context and an eye on national and international developments.

As guest editors of this edition, we would like to extend our gratitude to the general editor of the UWA Law Review, Dr Jessica Kerr, and her student editorial team who have been exceptional in their sourcing of referees and their review of manuscripts to ensure that they are meeting the very highest standard of scholarship. They have done a wonderful job.

We are also very thankful to the Honourable Justice Peter Quinlan for composing the foreword to this issue. Chief Justice Quinlan practised in health law prior to his appointment to the judiciary and we value his input to this collection of scholarly essays.

This publication also marks the launch of the UWA Law School Centre for Health Law and Policy. The Centre has been a long-held ambition for several academics in the Law School and it is wonderful that it came to fruition in early 2025. We are grateful to Professor Anna Nowak, Deputy Vice-Chancellor (Research), who has from the very start provided support for this endeavour, and to our Dean, Professor Sharon Mascher, for championing our efforts.

Before canvassing the contents of this special issue, we would like to set out the motivation for the Centre, its underlying ethos, and our ambitions for it moving forward.

We are fortunate at UWA Law School to have colleagues who believe in the contributions that research, teaching, and professional education in relation to health law and policy can make towards a fairer society and healthier communities locally and globally. Our collective belief in the values of inclusiveness, equality, and evidence-based and inter-disciplinary research is the foundational platform for our Centre. We are particularly conscious of the health needs and inequality experienced by our First Nations Peoples, and hope that, in time, and in ways that are driven by our Aboriginal colleagues, we can contribute to meaningful progression in this context. More generally, the Centre strives to make an impact across three principal pillars. First, the production and dissemination of high-quality research in health law and policy through scholarly publications, leadership of, and participation in, interdisciplinary research

projects, as well as the organisation of impactful conferences in the field. Secondly, direct engagement with relevant policy and law reform processes, through concise but highly evidence-based submissions (or other forms of appropriate contributions). Thirdly, contribution to ongoing professional development for legal and policy professionals engaged in the day-to-day practice of health law and policy, which we aim to achieve by taking an active role in CPD offerings as well as more structured formats as the Centre becomes more established.

The expertise in the Centre ranges across embryology, end-of-life decision-making, the regulation of therapeutic goods, the healthcare challenges for children and older people, issues arising in the treatment of mental illness, health related issues arising in the context of the criminal justice system, and contemporary public health challenges such as obesity, body image, and tobacco control.

We are proud to edit this special issue which represents a diverse range of articles, commentaries and reviews, mirroring (if only in part) the broad array of interests with which the Centre engages. For that, we are very grateful to the authors who have put such time and effort into their contributions. While most of the contributors are members of the Centre and on faculty at UWA Law School, we have also been pleased to welcome contributions from outside current staff, including former students.

The contributions to this special issue naturally cluster into a series of thematic groups. A first theme is that of mental health. Jamie Walvisch's article examines the High Court of Australia's decision in *KMD v CEO (Department of Health NT)* [2025] HCA 4, a case that raised critical questions about the obligations of forensic patients under indefinite custodial supervision orders. It argues that the High Court's judgment represents a necessary recalibration of forensic mental health law, steering it away from indefinite preventive detention and towards a more ethically grounded framework. In her contribution, Hayley Passmore looks at the issue of neurodiversity in relation to justice settings, and identifies urgent reforms required across Australia to ensure the rights of people with disability are upheld in our criminal justice system. She utilises learnings from prisons and youth detention centres in the United Kingdom, the United States of America, Canada, and Aotearoa New Zealand to make recommendations for the current Australian criminal justice context.

The COVID pandemic has presented a fertile opportunity for scholarship examining the various legal issues connected with this global public health emergency, and two of the articles in this issue explore two different perspectives associated with the Australian government's response to the pandemic. Amy Thomasson looks at the line between consent and coercion in connection with vaccine mandates and argues for internal logic and consistency in how the right to bodily integrity in its various legal forms is understood and treated by the law, particularly in the context of mandatory vaccination, and thinking prospectively about future public health emergencies. Sophia Stannard and Meredith Blake interrogate Western Australia's use of executive powers to create a range of restrictions associated with criminal penalties, questioning whether there was justification for these given the jurisprudence associated with risk-based offences, and their analysis of several court decisions involving the sentencing of those charged with these offences.

The benefits and challenges which Artificial Intelligence ('AI') brings to healthcare systems are explored in two articles. Kuen Yei Chin, Meredith Blake, and Marco Rizzi outline the ways in which Western Australian law could address patient harms connected with the use of AI in clinical settings (particularly diagnostics) and identify the specific challenges facing current civil liability schemes. They discuss possible alternative frameworks for addressing this type of harm in the local context, considering current international developments. Haris Yusoff examines the Australian government's policy agenda in relation to AI, including its intention to introduce legislation reflecting the European risk-based framework, arguing that this may not be the most suitable approach to mitigate the risks associated with healthcare. Rather, he suggests that the proposed legislation should have regard to existing regulation of gene technology and draw meaningful lessons from that experience.

The ability to access healthcare services has long been a topic in health law scholarship, particularly where that access is associated with complex ethical discourse. Mark Rankin engages in a comparative analysis of abortion legislation in each Australian jurisdiction, analysing whether these frameworks sufficiently recognise a woman's access to abortion services. His analysis concludes that the practical recognition of a woman's right to abortion occurs when the law regulates abortion care in the same manner as other standard healthcare. Meredith Blake tackles the issue of assisted dying, comparing provisions in the Terminally Ill Adults (End of Life) Bill 2024 (UK) with provisions in the Western Australian *Voluntary Assisted Dying Act 2019.* She focuses on the issue of access to each scheme, and questions whether the United Kingdom Bill, if passed, will

prove unduly obstructive for those seeking assisted dying services. Aidan Ricciardo's commentary considers two recent reviews of gender-affirming healthcare to minors in Australia and argues that national guidelines provide an evidence-based foundation for clinical practice, legal and regulatory certainty, supporting access to gender-affirming care for minors.

Two of the articles in this issue focus on specific doctrinal issues arising in connection with the healthcare system. Richard Maddever examines the doctrine of necessity, analysing medical treatment legislation in each Australian jurisdiction in seeking to establish first, whether the doctrine exists in Australian civil law, and second, if it does, the implications of this doctrine for healthcare professionals. Julie Falck critically examines the 2024 National Disability Insurance Scheme reforms. She argues that these represent a systematic hardening of discretionary soft law into binding rules to blunt the application of principles established by judicial and merits review. She concludes that this produces negative impacts for participants and circumvents accountability mechanisms provided for in administrative law.

The special issue concludes with two book reviews. Marco Rizzi reviews Penny Gleeson's recent book, *The Regulation of Medical Products: Dope, Drugs and Devices* (Routledge, 2025), which constitutes an important first attempt at analysing the Australian regulation of therapeutic goods as a standalone object of scholarly research.

Finally, Stephan Millett reviews our colleague Michelle de Souza's book, *The Regulation of Embryo Testing in Australia: A Principles-Based Approach* (Springer Nature, 2025), arguing for the conceptual fitness of the proposed regulatory approach for the purpose of tackling an inherently wicked legal and ethical topic.

We believe that this special issue offers a substantive range of engaging and important scholarship on a variety of issues pertaining to Australian healthcare. We trust it will provide the UWA Law Review's readership enjoyable reading and food for thought.

Meredith Blake and Marco Rizzi

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