



Deakin University School of Law
Research Report No.10

11/8/14

Congratulations to the following staff on recent publications and research activities:

Professor Mirko Bagaric:

'The Punishment Should Fit the Crime – Not the Prior Convictions Of the Person That Committed the Crime: An Argument for Less Impact Being Accorded to Previous Convictions in Sentencing' (2014) 51 *San Diego Law Review* 343 (****Special congratulations on publishing in one of the top ranked law reviews in the United States**)

Professor Danuta Mendelson and A. Rees:

'Medical Confidentiality and Patient Privacy', in *Health Law in Australia* B White, F McDonald & L Willmott (Eds), 2nd Edition, Thomson Reuters, 2014 Chapter 9, pp 371-411.

Professor Jean Du Plessis and Stephen Alevras

'The Payment of Dividends: Legal Confusion, Complexities and the Need for Comprehensive Reform in Australia (2014) 32 *Company and Securities Law Journal* 312-333.

Dr Firew Tiba:

'The Prosecution of Sitting Heads of States by the International Criminal Court,' (2013) 21(2) *Willamette Journal of International Law and Dispute Resolution*, 134-154.

Dr Jason Taliodoras:

Laws of Australia (Thomson Reuter): Subtitle 29.1 'Restitution' Chs 6-10

Professor Samantha Hepburn

Laws of Australia (Thomson Reuter): Subtitle 15.4: 'Equitable Defences' Chs 1-5

Professor Samantha Hepburn

Research Consultancy: Draft Audit Issues Paper - Victorian Auditor-General Office (Environmental Regulation of Unconventional Gas)

Professor Louis De Koker

Research Consultancy: Draft Audit Issues Paper - Victorian Auditor-General Office (Financial Crime)

Dr Luca Siliquini-Cinelli

Europe and Its (Tragic) Statelessness Fantasy: The Lure of European Private Law, Post-National Governance and Political Order Lake Mary (FL): Vandepias Publishing, 2014 - v-386pp.

Dr Dominique Allen

Media Interview: Pregnancy discrimination in the workplace: 'Barriers to Women at Work', *The Weekend Australian*, 9-10 August 2014 available at <http://www.theaustralian.com.au/business/barriers-to-women-at-work/story-fn71714s-1227018100692>

Reflections: The Launch of the External Research Seminar Series: Free Speech and the Racial Discrimination Act

Last week, the Deakin University Law School joined with Sladen Legal to host Professor Simon Rice, OAM and Director of the Law and Social Justice Institute at the ANU as part of our seminar series that seeks to analyse and discuss topical legal issues in our community. Professor Rice's paper, 'Why Free Speech Comes at a Price: Reflections on Race, Civility and the Law' examined the direct and indirect harms flowing from the proposed amendments. Four days later the Federal Government announced that it was abandoning the proposed amendments. Some reflections on the launch, the speech and the government's decision:

The Government's decision to wind back race hate laws represents an acknowledgment that there is no room for hate speech in a diverse and multi-cultural society such as Australia. The decision came after six months of pressure from the community that was clearly opposed to repealing Section 18c of the Racial Discrimination Act. Sixty-seven percent of in excess of 5000 submissions to the Department on this issue

opposed the amendments. The government indicated that a 'united front' is crucially important if we are to be more sophisticated and effective in addressing emergent and nuanced terrorism threats. The Federal Attorney-General, George Brandis had argued that the now dumped amendments were necessary because the racial vilification laws represented an unreasonable incursion into the fundamental right to freedom of speech. This right embodies the democratic notion that the law should protect the right of others to say things with which we may disagree. But turns out that promoting free speech, that fundamental stalwart of a democratic society, is suddenly not the most important thing.

Reducing protections against racial vilification can provide a justification for a society in which hate speech becomes free speech. The scrapping of the amendments represents a clear acknowledgement by the Government that invective can create a situation where those who are attacked become less able to defend themselves against the abuse generated by the promotion of free speech. And that is not conducive to a 'united front', particularly given the evolving terrorism concerns.

Abandoning the proposed changes to section 18C show that the Government is now cognizant of the importance of protecting vulnerable minority and religious groups against hate speech and perhaps even indirect racism.

In a civilised society, it is reasonable to expect that the right to freedom of speech will be overridden when it proves injurious to other more crucial social values such as the protection of minorities, the protection of individual dignity and the preservation of democratic order.

Racial discrimination has no place in the contemporary law of this country.

Any dilution to current laws that diminishes the protections against racial vilification is potentially dangerous. Invective can contribute to the perception in society that those attacked are 'less than human' (Remember pre-Mabo when our Indigenous peoples were considered 'barbaric and uncivilised'?).

Speech, language and the choice of words, have powerful consequences. Within such an environment, victims are often silenced. This is all the more concerning when the victims represent marginalised groups who lack a clear voice and therefore expect and deserve the protection of our national law.

Reducing protections against racial vilification can provide a justification for racially or religiously bigoted expression. If we are to sustain our 'united front' and promote a just and civil society, where racial intolerance is unacceptable and terrorist concerns are effectively addressed by a cohesive framework, protection against racial vilification is imperative.

In referencing the current Beyond Blue advertising campaign against discrimination, Professor Rice noted that advocates of a right to free speech should be honest and show how it is good for 'society, for social cohesion, for public health, for a productive and happy community, to make someone 'feel like crap just for being who they are.'

Australia needs to have an open, honest, confident racism discussion and face up to exactly the sentiments that the Beyond Blue campaign is confronting us with. There is no doubt that this will assist in promoting a unified front against terrorism. It is indeed heartening that Prime Minister Tony Abbott today described the

proposed repeal as “off the table”. Let’s hope it stays that way. Those who enjoy freedom of expression must always be aware of the harm that can be caused by it.

The full presentation is available at:

http://www.youtube.com/playlist?list=PLZpUqD3KFbtP6IHwBHVRHepUkIFf-ZK_X

PLEASE ATTEND THE NEXT SEMINAR:

The second external research seminar will be held on Thursday August 14th at 6pm at the Deakin Prime CBD, Level 3, 550 Bourke Street, Melbourne. The keynote presentation, ‘Legal Regulation and Professional Standards’ will be given by Mr Michael McGarvie.

IMPORTANT RESEARCH FUNDING NEWS:

The Faculty Management Team has agreed to a new funding for research from 2015 onwards. It is the model outlined by Professor Bagaric at the most recent law school meeting and is similar to the current school funding formula, however, there is a weighting for journal ranking. The proposal that has been agreed to and the reasons are as follows:

Principles:

1. Research funding should be tied to performance;
2. Research funding should be transparent;
3. Research funding should be efficient to administer;
4. Research funding should be tied to Faculty research expectations and ERA objectives.

From 2015 the Faculty will centrally administer all research funding. All research funding except 25% of the total amount available to the Faculty (which is to be allocated for early career staff and the faculty research centres) should be allocated as follows:

- A. Each staff member accrues research points in accordance with the Faculty formula, eg, 3 points for an A* article and 1.5* for a B (or whatever the formula is in 2015);
- B. Each staff member's research points are calculated for the most recent 3 year period;
- C. The total research points for all B&L staff are calculated over the most recent 3 year period;
- D. The total research funds are divided by the total number of points over the 3 year period;
- E. Each staff member is allocated funds in accordance with their points multiplied by the amount of dollars that is available for each point (i.e. the amount from point D above).

For example: staff member A has 10 points over three years and the total faculty points in that time frame are 500 and the pool of total research funds is \$300,000.

This means that the funding per point is \$300,000 divided by 500 = \$600. Thus staff member A is allocated \$6,000 for that year.

Internal Research Hubs

Following the discussion at the last law school meeting we now have four hubs:

1. Tort and Medical Law (Professor Danuta Mendelson)
2. Intellectual Property, Innovation and the Environment (Prof Christoph Anton and Samantha Hepburn)
3. Criminal Law and Justice (Ass Prof Cindy Davids)
4. International Corporate Law (Prof Jean Du Plessis)

The internal hubs should coordinate meetings every four weeks and must report to the Associate Head of Research regarding research activities. The objective is to collaborate/discuss ideas/present work in progress and focus upon grants and high-ranking journal publications. All staff should contact the relevant persons assigned to the hubs to indicate their interest in joining. Hub leaders need to be proactive in organizing activities.

Important Grant Information:

1. Central Research Grant Scheme

The Central Research Grant Scheme round (2015 funding) is now **open** for the Faculty of Business & Law, for grant applications in the range of \$15,000 to \$20,000.

Faculty Guidelines, the Notice of Intention to Submit (NOIS) template, Application Form and relevant dates are available at <http://www.deakin.edu.au/research/grants/opportunities/central-research-grant-scheme.php>

In summary -

- NOIS due by Friday 5 September.
- Full application due by Thursday 9 October.
- Faculty review conducted thereafter; applications and reviews to be considered by the Faculty Research Committee Thursday 13 November.
- Outcomes to be determined by Monday 17 November, with Deakin Research to advise applicants of outcome, coordinate acceptance documentation etc.

2. ARC Discovery Grants

Revised National Competitive Process: Streamlined Faculty Focus upon: Communication, Commitment, Focus and Expert Review

Communication

- Strategy commenced with Faculties/IFM Timelines
- Lead times will be increased substantially
- Decisions on whether an application will proceed to submission will be made early in the process

Roles & Responsibilities

- Will be documented and defined
- Expert review panel role will be clarified

Commitment/Acceptance

- The process will be non negotiable BUT it will
- Focus on the development of applications, researchers & reviewers
- Allow time for Faculties/Institutes and SRCs to implement their processes
- Require Faculties/Institutes and SRCs to offer alternatives for those asked to withdraw or withhold applications

Faculties and IFM:

- Should be working with applicants NOW to assess the competitiveness of applicants and projects
- Should involve internal and external experts to discuss applications with applicants to honestly assess ideas and track record, to build proposals and to identify alternate funding sources where appropriate