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EDITORIAL – *Editor: Ian Freckelton AO KC*

Acute Rheumatic Fever and Rheumatic Heart Disease: Public Health Insights from Coroners’ Inquests – *Ian Freckelton AO KC*

This editorial reviews the state of clinical knowledge about acute rheumatic fever (ARF) and rheumatic heart disease (RHD). It uses the lenses of public health and coronial law to consider the phenomenon which is significantly over-represented in the First Nations Peoples of Australia, Aotearoa New Zealand and the Pacific. Noting that it is comparatively rare for deaths from natural illness to be scrutinised by coroners, it identifies the importance of a series of inquests, heard in New South Wales, the Northern Territory, Western Australia and Queensland between 2012 and 2022, that scrutinised deficits in health care that contributed to deaths from ARF and RHD, including in custody and within remote Indigenous communities. It argues that it is important that further inquests into RHD deaths be held to evaluate whether there have been suitable responses to the lessons that have needed to be learned for the diagnosis and treatment of ARF and RHD, including as to implementation of previous coroners’ recommendations, especially within First Nations communities. 653

MEDICAL ISSUES – *Editor: David Ranson*

AI and Expert Medical Evidence – *David Ranson*

Courts and legal processes are being challenged by the increasing utilisation of artificial intelligence (AI) applications. At the same time practitioners in many disciplines involved in providing expert evidence are increasingly using artificial intelligence tools in their investigations, examinations and analysis. These technologies, while increasingly of value in analytical techniques including interpretation and diagnostics, raise significant challenges for the legal system charged with evaluating, reviewing and testing expert opinion evidence. At a simple level, is it possible to distinguish between the evidence of an expert that is based purely on their knowledge and expertise and evidence they may give which is based to a variable degree on an analysis undertaken by an artificial intelligence-like expert system? This challenge is not new; medical practitioners have used information technology systems to enhance diagnostic and therapeutic processes for decades, yet these have rarely been subject to detailed challenge in court. With the rise in AI applications this may well change, especially in some of the areas where AI systems seem to offer increased diagnostic accuracy to that of medical experts. 675

LEGAL ISSUES – *Editor: Joanna Manning*

New Zealand’s Once-visionary Accident Compensation Scheme and Australia’s Revolutionary Vision in Its National Disability Insurance Scheme: A Tale of Two Countries – *Joanna Manning*

New Zealand’s “visionary” accident compensation scheme came into force in 1974. Described as “the original sin” of the scheme, eligibility was confined, largely for affordability reasons, to accidental injury, leaving disability from sickness, disease and

congenital conditions out in the cold, dependent on much less generous support. The scheme’s architect, Justice Owen Woodhouse, intended its eventual extension to all forms of disability, regardless of cause. But repeated attempts to do so have all failed. Nearly 40 years later, it is now New Zealand’s turn to look with envy at Australia’s revolutionary National Disability Insurance Scheme, a comprehensive scheme that provides support for all forms of disability, regardless of cause. The article traces the forces that aligned resulting in the NDIS, summarises its key elements, and briefly considers its challenges and how its future can best be secured. I argue that the NDIS should inspire the final achievement of Woodhouse’s “unfinished business” for the benefit of all New Zealanders.

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HEALTH LAW REPORTER – *Editor: Cameron Stewart*

End-of-Life Decisions and the Need for Greater Rigour in the Determination of a Child’s Best Interests – *James Cameron, Cameron Stewart and Julian Savulescu*

This column discusses the New South Wales Supreme Court decision in *H v OL* [2024] NSWSC 271. That decision raises a number of issues about how the “best interests” principle is employed in cases where disputes arise about whether life-sustaining treatments should be withheld or withdrawn from children. The column argues that these cases would be better served by adopting the “balance sheet” approach that is employed in England and Wales.

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ARTICLES

Suicide, Ethics and the Law: Parliamentary Debates on Suicide in South Australia – *Margaret Brown and Kate Leeson*

In recent years, the South Australian Parliament has debated Bills related to suicide in three different contexts. A review of these debates demonstrates that not all Members of Parliament fully appreciated the complexity of the issues raised nor the competing ethical principles involved. This article reviews the meaning of suicide and how it is treated in Australian law, relevant principles of medical ethics, and the recent Australian literature on law, ethics and suicide. It describes the recent South Australian parliamentary debates related to suicide and the ethical principles that parliamentarians called upon in those debates. The article concludes with recommendations to increase parliamentarians’ understanding of ethical principles, with the intention of improving their ability to make good law.

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Legal Issues in End-of-Life Care for Paramedics: A Scoping Review – *Rachel Feeney, Lindy Willmott and Ben White*

The law plays an important role in governing end-of-life decision-making in paramedic practice. A scoping review was undertaken to identify and examine the extent, range and nature of literature on the legal issues relevant to end-of-life clinical practice for Australian paramedics. Documents (scholarly works and/or policies) were identified by searching electronic databases, Google Scholar, professional organisation and State/Territory health department websites, scanning reference lists and drawing on authors’ existing knowledge. Sixteen of the 22 documents identified were policies, including clinical practice guidelines or similar documents from the various State/Territory Ambulance services, and policies from State/Territory Health Departments or resuscitation organisations. Common legal issues were consent to treatment, decision-making capacity, withholding and withdrawing life-sustaining treatment, advance care planning, substitute decision-making, emergency

treatment and children and end-of-life decision-making. Gaps included documents focusing on paediatric clinical practice and broad practice guidelines on end-of-life care for paramedics working in some jurisdictions. 721

Coronial Oversight of the Operation of and Access to Voluntary Assisted Dying Regimes – Ian Freckelton AO KC

This article considers the role of coroners as a porthole into the content and operation of voluntary assisted dying (VAD) regimes. In their role as investigators of unexplained, unnatural, violent and accidental deaths, coroners are uniquely positioned by legislation to identify abuses and anomalies in VAD deaths. They also have an informed perspective enabling them to identify issues and patterns of deaths among persons who cannot avail themselves of VAD because of how eligibility criteria have been framed. Coroners have an ability too to chronicle the human toll of such ineligibility for persons determined not to satisfy qualifying requirements for access to VAD. This article reviews an important set of findings and comments by the Victorian Coroners Court late in 2024 which addressed the issues and identified other such findings in an attempt to assist reform processes for VAD legislation to be informed by coronial experience. It also notes safety issues highlighted by a strongly worded 2024 decision by the Queensland Coroners Court which is likely also to prompt discussion about VAD processes and the need for controls over unintended access to VAD and other euthanasia medications. 743

Chronic Traumatic Encephalopathy (CTE) and the Characterisation of “Obvious Risk of Harm”: Dangerous Recreational Activity, Assumption of Risk, and Other Defences – David Thorpe

As athletes who are said to be suffering with the symptoms of Chronic Traumatic Encephalopathy (CTE) move towards prosecuting their Sport Governing Body (SGB) in negligence, a critical aspect of a plaintiff’s claim is how a court of law will characterise “risk of harm” in the form of CTE. A general, broad characterisation of CTE as a type of concussion or head trauma would operate to bring defences associated with “obvious risk” into operation and perhaps threaten the athlete’s case irredeemably. This article argues, however, that a narrow characterisation of CTE – as a neurodegenerative disease or tauopathy – or specifically as CTE, is appropriate in law and fact. It must be accepted as a matter of logic that the “risk of harm” in the form of CTE is today an “obvious risk” to premier-level contact sport athletes, such that an athlete’s claims in negligence against an SGB will, all things being equal, be defeated. 751

A Doctor’s Death by Central Chest Stabbing – Suicide or Murder? – Russ Scott and Allan Cala

Although the function of a coronial inquest is to determine the time, manner and cause of death, in cases of an unexpected or suspicious death or putative suicide, the coroner relies upon an analysis of the evidence collected from the death scene and the autopsy and any toxicology report. Particularly in cases of suspected suicide in which the decedent had a history of depression or alcohol abuse, the initial investigation should include a comparison of the statements from family members and witnesses and also from any medical practitioner the decedent attended before death. In the case of Dr Karen Mahlo, her ex-de-facto partner, who was the principal beneficiary of her considerable estate, reported finding her lying on her bed with a large kitchen knife imbedded in her central chest. The evidence given during the subsequent coronial inquest raises many questions about the time, manner and cause of Dr Mahlo’s death. A further inquest should be convened. 783

Understanding Legal Barriers to Abortion Access During the COVID-19 Pandemic: Australian Pregnant People’s Experiences – Jennifer Schulz and Christine Forster

The Australian regulatory framework for abortion shifted recently from criminalisation to a health model. Decriminalisation is only one step towards the realisation of full reproductive rights for pregnant people. Numerous barriers persist. Legal barriers include inconsistent abortion laws, medical oversight, variable gestational cut-offs, and conscientious objection provisions. Non-legal hurdles (such as financial and geographical barriers) also persist despite the reforms. These barriers were amplified during the COVID-19 pandemic. This article uses empirical data to illustrate the barriers to abortion access faced by Australian pregnant people during the pandemic. The data illustrate the need for further abortion law reform in Australia that fully realises reproductive rights for pregnant people. We argue that pregnant people’s experiences of abortion services during COVID-19 demonstrate that a non-restrictive regulatory approach to abortion law (combined with affordable, accessible and safe abortion services) is essential to provide equal access to abortion to all pregnant people in Australia.

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Access to General Practice Data for Research in Australia: The Need for Greater Clarity in Relation to Privacy and Confidentiality – Carolyn Adams, Annette Braunack-Mayer and Felicity Flack

While the demand for access to general practice data for research in Australia is strong, the current legal and policy framework regulating this activity does not provide clear guidance for stakeholders. The use of general practice data is regulated by two bodies of law: the equitable duty of confidence and data protection legislation. General practitioners must comply with both bodies of law in using or disclosing general practice data for research. The *Privacy Act 1988 (Cth)* (Privacy Act) recognises and supports the use of personal health information for research, including without consent in specific circumstances where it is impracticable to obtain consent. The equitable duty of confidence only allows the use of health information for research with express, voluntary, and informed consent. This distinction has the potential to place general practitioners who release information for research under the Privacy Act in breach of their duty of confidence.

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BOOK REVIEW

Do Right and Fear No One: A Life Dedicated to Fighting for Justice, by L Thomas, Simon & Schuster – Reviewed by Professor Ian Freckelton AO KC

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