

INTRODUCTION

This issue opens with acknowledgements to those whose dedication and contributions made it possible. As general issue student leads, we would first like to express our gratitude to the General Editor of the UWA Law Review, Dr Jessica Kerr. Putting together an academic journal involves considerable coordination between authors, students and academics, and Dr Kerr's support was essential to bringing this issue together seamlessly. We are sincerely grateful for the opportunity to contribute to the publication of this issue under Dr Kerr's guidance.

We would like to thank our student editorial colleagues for their commitment throughout the production of this issue. Their meticulous attention to detail and careful editorial work have ensured that each manuscript has been refined to the highest standard. Beyond the pages, the issue also showcases the breadth of talent within our student community. In particular, we would like to acknowledge the artwork featured internally and on the cover, which was created by student editors Melanie Fraser and Gracelyn Oakley. We also extend our sincere appreciation to the members of the UWA Law Review's newly-formed Advisory Board, including our new Patron, the Hon Justice James Edelman of the High Court of Australia. We deeply value their professional contributions and thank them for their dedication in supporting the journal's continued success.

Finally, we thank our authors and peer reviewers for the time and effort they have invested in the manuscripts, which allowed us to curate a diverse collection of articles and commentaries we are confident readers will find insightful and thought-provoking. We are grateful to each author for entrusting us with their work and for contributing to the scholarly scope of this issue.

The issue begins with a multi-faceted exploration of vicarious liability and relationships akin to employment, following recent High Court decisions. Allison Silink's article, first published as an advance last year, considers the relationship between the non-delegable duty of care and negligence in light of the High Court's decision in *AA v Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle* (2026) 100 ALJR 170. In this case, the Court found that the non-delegable duty of care and ordinary duties in negligence could be breached by intentionally inflicted harm. Silink argues that the decision opens new avenues for compensating survivors of sexual assault and identifies residual uncertainty regarding how this expanded non-delegable duty interacts with vicarious liability. In the next article, Anthony Gray considers the recognition of vicarious liability beyond traditional concepts of employment by both courts in Australia and the United Kingdom ('UK').

Gray argues that the approach adopted in the UK, which accepts that relationships akin to employment can attract vicarious liability, is preferable to the Australian position. Joshua Yuvaraj then unites the topics of the preceding articles in his analysis of the High Court decision in *Bird v DP (A Pseudonym)* (2024) 98 ALJR 1349 ('*Bird*'). Yuvaraj argues that the majority finding in *Bird* is characterised by undue judicial restraint in its reasoning for maintaining restricted application of the doctrine of vicarious liability, in contrast with UK jurisprudence. Yuvaraj emphasises the Court's role in shaping the law to reflect evolving social norms, including by way of protecting those most vulnerable.

Maintaining an employment law lens, Darshana Sumanadasa's article considers Australia's 2025/26 budget proposal to ban non-compete clauses for workers earning below the *Fair Work Act 2009* (Cth)'s high-income threshold. Given current common law restrictions on non-compete clauses and related employer protections, Sumanadasa argues that a fair balance must be struck between employer and employee interests. While legislative intervention may assist, Sumanadasa also considers alternative solutions. Careful consideration of commercial interests continues in Nyssa Bull's commentary on the High Court's decision in *Taylor v Killer Queen LLC* (2026) 100 ALJR 335 ('*Taylor*'). This case considered a long-standing dispute regarding the cancellation of a trademark. Bull's commentary sets out the background to the case and the Court's treatment of reputation-based cancellation under the *Trade Marks Act 1995* (Cth). The commentary provided inspiration for a presentation and panel discussion organised by student editors Hannah Skinner and Grace Wholley. Bull, a member of the UWA Law School faculty, was joined by the Hon Justice Jackson of the Federal Court and Amy Rumble of Bennet Law to discuss the *Taylor* decision and trademark law more generally.

The issue then shifts focus to Western Australia, providing analysis of current legislation and consideration of recent and upcoming reforms including by two members of the UWA Law School faculty. Renae Barker presents an analysis of occurrence, frequency and legislative context of religious terminology in Western Australian legislation, building on earlier work at the federal level. Barker argues that linguistic patterns reflect convergence with Commonwealth legislative practices as well as the ongoing embedding of Christian privilege in state legislation. This article is presented as a scoping study, providing the foundation for further analysis regarding state-religion relations in Australian law. Next, Sara Smyth considers the evolution of the law governing delayed complaint directions in sexual offence trials following the High Court decision in *Longman v The Queen* (1989) 168 CLR 79 ('*Longman*'). Smyth argues that *Longman* warnings have resulted in contradictory directions which both reject and invite delay-based credibility

reasoning. She explains how the new *Evidence Act 2025* (WA) works to reduce discreditation of delayed disclosure by abolishing mandatory *Longman* warnings and restricting judicial commentary on delay. Amy Thomasson then considers the long-anticipated *Assisted Reproductive Technology and Surrogacy Act 2025* (WA) ('*ART Act*'), which seeks to update many of Western Australia's antiquated laws governing artificial reproductive technology. Thomasson's commentary outlines key changes imposed by the *ART Act* and highlights a number of missed opportunities for reform. While the reform provides a key step towards a more contemporary regulatory framework, Thomasson argues that some issues were overlooked, including parentage for international surrogacy arrangements.

Next, the issue shifts to consideration of liberty and dignity at the national level. In their article, which was also previously published as an advance, Rebecca Ananian-Welsh and Peter Billings explore the constitutional scope of administrative power to constrain the liberty of non-citizens, identifying gaps, rifts and trends in recent caselaw invoking the '*Lim* principle' established in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1. Ultimately, the authors argue for a values-centred and substantive approach to the *Lim* principle, in which 'proportionality' is recognised as the relevant assessment standard. This is followed by Sylvia Villios' critical evaluation of Australian guardianship laws and the recognition of functional decision making. Villios argues that the key issue in Australian guardianship frameworks is the lack of formal and autism-responsive support pathways which can be utilised prior to substituting decision-making. Villios proposes a shift away from capacity recognition and toward capacity access by introducing a tribunal-adapted model of voluntary supporter authorisations, structured support orders, and tightly confined representative orders.

Finally, the issue concludes with an Australian-Chinese cross-jurisdictional analysis. Han Lu examines youth restorative justice under Australia's settler-colonial governance and China's state-led correctional governance. Lu argues that, in both jurisdictions, vocabularies embedded in legal and bureaucratic structures manage voice, emotion and agency, thereby limiting State-led restoration.

We believe this issue brings together a very interesting body of scholarship addressing a range of significant and timely issues in the Australian legal landscape and beyond. We hope that the contributions will both engage the UWA Law Review's readership and prompt thoughtful consideration on their broader implications.

Jacinta Kingsbury, Melanie Fraser and Grace Wholley
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