

THE *ADELAIDE LAW REVIEW* AT (VOLUME) 40: REFLECTIONS AND FUTURE DIRECTIONS

I INTRODUCTION

It is an enormous pleasure and privilege to introduce this special issue to mark the publication of volume 40 of the *Adelaide Law Review*. In the 59 years since its establishment in 1960, the *Adelaide Law Review* has become the pre-eminent home of legal scholarship in South Australia, and its alumni (consisting of former academic and student editors) have made remarkable contributions to the law not only in Adelaide but around Australia and the world.

Every author contributing to this special issue has been involved with the *Adelaide Law Review* and Adelaide Law School. It is a testament to the impact of the *Review*, and the wonderful scholars who have been involved with it, that the authors of this volume include current and former judges of the International Court of Justice, High Court of Australia, Federal Court of Australia and Supreme Courts of South Australia and Queensland. As is well known, relationships between academia and the judiciary are not universally friendly.¹ One of the important lessons of the contributions to this special issue is the ability of the *Adelaide Law Review* to continue to be of service to practitioners, judges and academics. The *Review* has been living proof of Lord Wilberforce's observation that 'no single strand in the tapestry of the law, however brilliant, can do without the support of others'.² Indeed, the interaction between the scholarship published in the *Review* and the legal profession and judiciary is an essential aspect of the strength of the *Review*. The *Review* is also, of course, a quintessentially academic endeavour, and contributors to this special issue also include distinguished academics from leading law schools around Australia, North America and the United Kingdom. The diversity of authors and topics in this volume reflect the extensive scope of contemporary legal scholarship, and the ability of the *Adelaide Law Review* to address a great range of important legal matters.

The theme for this special issue is 'The *Adelaide Law Review* at (Volume) 40: Reflections and Future Directions'. Our intent was to bring together diverse contributions which look back on the previous 39 volumes of the *Review* and look forward to the

* Associate Professor and Associate Dean (Learning and Teaching), Adelaide Law School, University of Adelaide; Editor in Chief, *Adelaide Law Review* (since 2015); BFin, BEc, HonsLLB, GDLP, PhD (Adel).

¹ See, eg, Frank Maher, 'Ivory Towers and Concrete Castles: A Hundred Years War' (1986) 15(4) *Melbourne University Law Review* 637.

² Lord Wilberforce, 'The Academics and Lord Denning' (1985) 5(3) *Oxford Journal of Legal Studies* 439, 445.

next 40 volumes, the common link being that each contribution is situated in relation to the *Adelaide Law Review*. I hope all readers will find intellectual food for thought in the following pages.

II A BRIEF HISTORY OF THE *ADELAIDE LAW REVIEW* IN THE WORDS OF ITS EDITORS

There is no extant history of the *Adelaide Law Review*, and this piece does not attempt to offer a comprehensive story of the evolution of the *Review*.³ Nonetheless, on the occasion of the publication of its 40th volume, it is appropriate to reflect on the path of the *Review*. I do so here in the words of some of those who have been involved with the *Review* over its history.

The *Adelaide Law Review* was established in 1960,⁴ during the Deanship of Norval Morris, as a joint project of Morris and Alex Castles, and with a student editorship. As the Honourable David Bleby QC, one of the early student editors,⁵ recounts

the principal drivers of the publication were Norval Morris and Alex Castles – mainly the latter who was the consistent Faculty Adviser, at least for the first three years. The Editor and Assistant Editors were graduates of the previous year, having done most of the work on the *Review* during their final year. Other Committee members were spread over all years from second year onwards. I am unaware of the process of selection of the Editorial Board within the Faculty, but I am fairly sure that all were invited to hold their positions by Alex.

Major contributors were either persons well-known by Alex, staff members, or practitioners who lectured at the time, I think mostly enlisted by Alex. I think there were few editorial decisions made by the students themselves without Faculty advice or assistance. The principal functions of those of us who were “Committee” members was to write case notes or notes on personal injury awards or legislation, and to prepare a draft index of the previous year’s edition.

As Bleby notes, whilst in theory a student-run journal at its establishment, academic guidance was never far away. The *Review* formally ceased to be student-run and became faculty-run instead from volume 4(2) in 1972, although in practice this has

³ Very brief details can be found in: Alex Castles, Andrew Ligertwood and Peter Kelly (eds), *Law on North Terrace 1883–1983* (Faculty of Law, University of Adelaide, 1983) 61; Victor Allen Edgeloe, ‘The Adelaide Law School 1883–1983’ (1983) 9(1) *Adelaide Law Review* 1, 37.

⁴ The first tranche of Australian university law journals were established in the period 1948–64: see Michael Blakeney, ‘The University of Western Australia Law Review — The First Seventy Years’ (2018) 43(1) *University of Western Australia Law Review* 1, 1.

⁵ LLB student 1959–1962, member of the Editorial Committee of the *Review* 1960–1963 (vols 1(2)–2(1)).

meant only that editorial decisions as to the selection of articles are managed by academic staff of the Adelaide Law School using a double-blind peer review process. Student editors remain the lifeblood of the *Review*, as the article by Isabella Dunning, Irene Nikoloudakis and Caitlyn Georgeson in this volume details.

Emeritus Professor Horst Lücke AO, among the longest serving members of the academic staff of the Adelaide Law School,⁶ and a contributor to this special issue, recalls the establishment of the *Review* as one of Morris' important reforms:

Morris remodelled the Law Course and took three further important initiatives: he had Latin abolished as a prerequisite for legal studies, thus opening the Law School to a greatly enhanced influx of law students, he established the *Adelaide Law Review* and he set up the Committee for Continuing Legal Education.

The initiator [of the *Review*] was Norval Morris, probably assisted by Alex Castles. ... One of the great supporters of the *Review* was Commissioner John Portus who taught Industrial Law from 1961 to 1981. He donated all his fees to the Law School for the benefit of the *Law Review*. ... It would be nice if the generosity of John Portus could be recognised.

For a time, the *Adelaide Law Review* issued each year a John Portus Prize for the author(s) of the best article. This tradition had fallen into disuse, but will be reintroduced from 2019, to be awarded by the Student Editors of the *Review* at the end of each year to the author(s) of the best work published that year in the *Review*.

Michael Harris, whose association with the *Review* spans service on the first editorial board as a student followed by extensive involvement as a long-time member of academic staff,⁷ has reflected on the significance of the establishment of the *Adelaide Law Review* to the development of the research reputation of Adelaide Law School:

The creation and first publication in 1960 of a scholarly journal under the auspices of the Adelaide Law School was, in my view, the greatest contribution to the school's emergence as a crucible of world legal excellence. Henceforth the high quality of legal scholarship, always nurtured in our school but not as well-known as it deserved, would be made manifest to the legal world at large. When I reflect on my association with the Adelaide Law School, first as student and later as teacher, two things I am proudest of are that I was a student member of the first editorial board of the *Adelaide Law Review* and thereafter served over many years as a faculty member and editor.

Anthony Moore reflects on his involvement with the *Adelaide Law Review* from 1977–1981 and 1985–1994 elsewhere in this special issue, explaining how the *Review* has changed and grown in sophistication since its early days. He further

⁶ Academic staff Adelaide Law School 1959–1984; Emeritus Professor since 1984; Editor, *Adelaide Law Review* 1983.

⁷ LLB (Adel) and LLM (Adel) student 1959–1963; Member of academic staff 1964–1994.

highlights the value of the *Review* as a platform for the presentation of research, and the opportunities it provides for students to develop their legal writing and analytical skills.

Emerita Professor Rosemary Owens AO,⁸ who with Emerita Professor Judith Gardam was Editor of the *Review* from 1995–1999, recalls this period in the life of the *Review*:

As editors our aim was always to publish the highest quality material, and thereby to enhance the reputation of the [Adelaide Law Review] as one of the premier legal journals in Australia.

Some of the noteworthy aspects to the way we approached our role:

First and foremost, we were resolved to ensure that reviewers we selected were first rate scholars in the relevant fields, and that their advice was always followed. We never hastened to publication, merely to meet a time deadline. If quality material was not available we waited.

Secondly, we decided that, where appropriate, we would seek to present some thematic issues, but always on the proviso that each of the papers met with the approval of the journal's own two independent referees.

Thirdly, there were some other developments — we welcomed longer 'review essays' in the book review section.

One change that we implemented during our period as editors was to return the journal to a larger format. In the early 1990s the physical paper size of the *Review* had been reduced — it looked small and we did not want that to carry any symbolic overtones. So we instituted the change. The only thing we did not anticipate was that several practitioners/judges contacted us to indicate that the changes in size had created a very untidy look on their bookshelves!

During our time as editors we had assistance from a very fine team of assistant editors and a student editorial committee — and working closely with them became an important part of maintaining the quality of the journals.

The themes that emerge from these vignettes — the value of the partnership between students and staff that is at the heart of the *Review*, the drive to ensure only the very highest quality of research is published in the *Review*, and the role of the *Review* as part of the intellectual life of Adelaide Law School — are perennial. Since I took over the editorship with Dr Adam Webster in 2015, and more recently working with Associate Professor Judith Bannister, these have been our aims. They remain the goals of the new academic editorial team that I now have the pleasure of serving as a member of with Dr Michelle Lim and Dr Stacey Henderson.

⁸ Emerita Professor, University of Adelaide Law School; Dame Roma Mitchell Chair of Law (2008–2015); Dean of Law (2007–2011).

III THE *ADELAIDE LAW REVIEW* AND ADELAIDE LAW SCHOOL

Some important contributions to this special issue touch particularly on the *Adelaide Law Review* itself and on its home at the Adelaide Law School. The Honourable Michael Kirby AC CMG — perhaps the *Review*'s most prolific contributor⁹ — offers a celebration of the 40 volumes and 60 years of the *Adelaide Law Review*. He situates the intellectual development of the *Review* within a broader survey of the intellectual progress of the law in Australia. As one of the most intellectually transparent of Australia's judges, Kirby's observation of the drift away from positivism towards the acceptance of the reality of judicial choice — and the related intellectual move towards realism in the *Adelaide Law Review* — is of particular interest.

Kirby charts in the *Review* the continuing analysis of legal doctrine in traditional areas alongside the influences of new developments — including increasing numbers of women in the legal profession and academy, the growing importance of international law, the development of understandings regarding the law and sexuality, ongoing debates about the protection of human rights generally and religious freedom more specifically, and the challenges and opportunities posed by new technologies. Kirby's article is a fitting introduction to this special issue which illustrates both the intellectual values that have guided and continue to sustain the *Adelaide Law Review* and its broadening focus as we continue to reassess the scope of what Kirby aptly describes as 'the abiding concern of many practitioners about the attainment of the elusive goal of justice that gives nobility to the law as a profession'.¹⁰

Two current Student Editors of the *Adelaide Law Review*, Christian Andreotti and Holly Nicholls, also offer a reflection on the *Review* over time. They discern changes including an increasingly critical and normative approach by authors replacing earlier more narrow and descriptive work; a progressively more international and comparative outlook on the law; and the rise to prominence of topics of social importance such as women's rights, Aboriginal and Torres Strait Islander legal issues, and LGBTIQ rights. In this way, they demonstrate that the *Adelaide Law Review* has moved with the times in both the intellectual approaches and topics examined by its contributors.

⁹ Michael Kirby, 'T G H Strehlow and Aboriginal Customary Laws' (1981) 7(2) *Adelaide Law Review* 172; Michael Kirby, 'The Politics of Achieving Law Reform' (1988) 11(3) *Adelaide Law Review* 315; Michael Kirby, 'Black and White Lessons for the Australian Judiciary' (2002) 23(2) *Adelaide Law Review* 195; Michael Kirby, 'A Century of Jumbunna — Interpretative Principles and International Law' (2010) 31(2) *Adelaide Law Review* 143; Michael Kirby, 'The Growing Impact of International Law on the Common Law' (2012) 33(1) *Adelaide Law Review* 7; Michael Kirby, 'Marriage Equality: What Sexual Minorities Can Learn from Gender Equality' (2013) 34(1) *Adelaide Law Review* 141; Michael Kirby, 'Dr George Ian Duncan Remembered' (2016) 37(1) *Adelaide Law Review* 1; Michael Kirby, 'Book Review: John Jefferson Bray — A Vigilant Life' (2016) 37(2) *Adelaide Law Review* 537; Michael Kirby and Rebecca LaForgia, 'Fact-Finding and Report Writing by UN Human Rights Mandate Holders' (2017) 38(2) *Adelaide Law Review* 463.

¹⁰ Michael Kirby, 'Volume 40: Sixty Years On!' (2019) 40(1) *Adelaide Law Review* 15, 28.

Vice-Chancellor and President of the University of Adelaide, Professor Peter Rathjen AO, provides a compelling look at the past, present and future of Adelaide Law School on the occasion of its 135th anniversary. He recalls the great minds who have passed through the School, the contribution the School has made to social justice and law reform in South Australia, and the School's enduring commitment to producing law graduates of the highest calibre who are ready to carry its legacy forward.

Professor John Williams, Dame Roma Mitchell Chair of Law at Adelaide Law School,¹¹ undertakes a masterly survey of the treatment of constitutional law in the *Review* over the years. As with other areas, we see in Williams' work an evolution of the *Review's* focus from a narrower consideration of particular decisions to more extensive and holistic examinations of areas of law informed by a greater theoretical critique. We see here an increasing maturity and broadening perspective in the legal scholarship published in the *Review*.

Professor Melissa De Zwart, Dean of Adelaide Law School, examines South Australia's role in the space race from its inception to all the burgeoning possibilities of the present. This journey from military-based space activities at Woomera to South Australia's emerging role at the forefront of Space 2.0 in Australia illustrates the distinguished space heritage upon which Adelaide Law School is now building as a centre of excellence for space law.

Professor Ian Leader-Elliott — long-time staff member of Adelaide Law School — pays a fitting homage to Norval Morris' contribution to both the Adelaide Law School and the *Adelaide Law Review*, which was established as a key initiative of his Deanship. With reference to Morris' own scholarship in the *Review*, Leader-Elliott follows the development of excessive self-defence and the 'New Manslaughter' from its uncertain beginnings through to its statutory enactment. Leader-Elliott demonstrates how Morris' work in the *Review* influenced the evolution of the law, and reflects on the law's subsequent path.

IV DOYENS OF THE ADELAIDE LAW SCHOOL IN THE *REVIEW*

Every author in this special issue has a significant connection to Adelaide Law School and the *Adelaide Law Review*. Two contributions in particular, however, come from scholars with extraordinary associations that span most (or all) of the 59 years of the *Review*.

Applauding Isaiah Berlin's commitment to individual liberty, Horst Lücke offers a reflection on the philosopher's life. Lücke tests Berlin's hypothesis that Adolf Hitler was influenced by the work of the 19th century German Romantics. His erudite analysis is aided by intimate reflections on his own youth in 1930s and '40s Germany.

¹¹ Executive Dean, Faculty of the Professions, The University of Adelaide; Associate Provost and Chair, Academic Board, The University of Adelaide; Dean of Law (2011–2016); Director, South Australian Law Reform Institute.

Lücke's thesis is that Berlin's values of individual freedom and cosmopolitanism are as important today as in his own times — an antidote to the worst excesses of the present-day world's political climate.

Associate Professor John Keeler AM engages in a theoretical analysis of the development and evolution of personal injury law over the course of the *Review's* history. In Keeler's work, we are shown how recovery of compensation in personal injury matters can perform an essential social security function, albeit one that is threatened by adverse policy and legislative change.

These two contributions — from giants of the Adelaide Law School — are sure to resonate with the many students whose intellectual growth these two great scholars nurtured over their extraordinary tenures.

V WHY, HOW AND FOR WHOM WE PUBLISH THE *ADELAIDE LAW REVIEW*

The literature on law reviews is well known, and I will not traverse it here. Contributions in this special issue add interesting perspectives on the questions of why, how and for whom we publish the *Adelaide Law Review*. Importantly, the *Review* is not principally a means to disseminate research by Adelaide Law School staff — indeed, in the law reviews of the Group of Eight law schools from 2000–2010, the *Adelaide Law Review* published the fewest articles written by academics within the school of any of the journals.¹² This is not a reflection on the quality of Adelaide Law School's research; on the contrary, the intellectual diversity represented in the *Review* is a sign of its strength.

While law reviews have been subject to many vigorous criticisms and equally passionate defences over the years, Isabella Dunning, Irene Nikoloudakis, and Caitlyn Georgeson bring a unique perspective to answer the question 'Why Law Reviews'¹³ — that of the Student Editors and Associate Editors whose countless hours of careful proofreading and painstaking fact-checking bring the *Review* to life. With a combined seven years of experience as editors of the *Review*, the authors offer insights into the value of the *Review* to the students who are its lifeblood, and reflect on the future of law reviews in a changing academic and technological environment.

Dr John Gava reflects on the nature of legal scholarship. He remains amongst the most eloquent critics of the 'publish or perish' mentality of the modern university. Gava is also deeply sceptical of academic legal scholarship which attempts to appeal to the legal profession as its audience. In this piece, Gava launches a powerful defence of insightful and considered legal scholarship — scholarship that, in his view, is threatened by the 'production line mentality' that is forced upon legal academics.

¹² Russell Smyth, 'Who Publishes in Australia's Top Law Journals?' (2012) 35(1) *University of New South Wales Law Journal* 201, 245.

¹³ Michael Tilbury, 'Why Law Reviews?' (2003) 25(1) *Sydney Law Review* 21.

In a nod to the past, Gava emphasises the need for legal scholarship to draw upon, and ground itself, in the authors that have come before.

A somewhat contrary argument is made by Professor Paul Babie, who takes up the challenge of articulating what it would mean to ‘publish and collaborate’ with the legal profession and judiciary in an academically rigorous way. Drawing upon the American experience, Babie argues that the contemporary law journal represents an exciting opportunity for collaboration between the academy and the profession — which can eventually develop into a constant dialogue on current legal issues that enriches the fabric of the law.

Professor John Orth brings a different perspective — viewing the *Adelaide Law Review* through the eyes of a leading American academic. He examines two great South Australian legal innovations — Torrens Title in property law and the dispensing power in succession law. Orth traces the rise and fall of the adoption of these innovations in the United States, demonstrating the intricacies of American exceptionalism, highlighting both the value of legal scholarship in being a source of legal innovation, and the limits of the power of legal scholarship to sustain innovations which must ultimately be accepted and sustained by the social and political landscape into which they are brought.

VI ABORIGINAL AND TORRES STRAIT ISLANDER ISSUES

This special issue contains a rich vein of scholarship addressing legal issues of particular importance to Aboriginal and Torres Strait Islander peoples. I am thrilled that it includes the scholarship of two distinguished Aboriginal graduates of Adelaide Law School — Professor Irene Watson and Andrea Mason OAM.

Irene Watson offers an insightful personal reflection on her engagement with an article on the Coorong massacre published in the *Adelaide Law Review* shortly before she enrolled at Adelaide Law School.¹⁴ As a member of the First Nations peoples whose experience of British ‘justice’ was the subject of that article, Watson locates that experience and the resulting discourse within a broader international context, observing that the ‘welfare of a colonial state has historically come at the expense of Aboriginal Peoples’.¹⁵ She powerfully observes the continuing impacts of colonialism on Australia’s Aboriginal peoples, and asks us as readers to contemplate how today we can empower and respect Aboriginal truths and ways of being.

Andrea Mason’s contribution reflects on the path to reconciliation that lies ahead for all Australians. As Watson did, Mason also examines questions of legal pluralism, highlighting her experience at Adelaide Law School in forming her view that

¹⁴ S D Lendrum, ‘The “Coorong Massacre”: Martial Law and the Aborigines at First Settlement’ (1977) 6(1) *Adelaide Law Review* 27.

¹⁵ Irene Watson, ‘Colonial Logic and the Coorong Massacres’ (2019) 40(1) *Adelaide Law Review* 167, 169.

‘Australian ‘modern’ laws are a *malpa* — the Pitjantjatjara word for friend — to the ancient protocols, manners and rules I had learnt about in my Aboriginal community’.¹⁶ Mason — who has recently been appointed a Commissioner of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability — explores the potential for greater respect and engagement with Aboriginal justice systems, noting that the initiative that commenced with the 2017 Uluru Statement from the Heart can advance Australians down the path of reconciliation, by enabling ‘the Indigenous governance operating rhythm and the mainstream government operating rhythm to work in a synergistic relationship...for the greater benefit of all Australians’.¹⁷ Mason persuasively argues for the voice in Australian governance that the Uluru Statement from the Heart asks for Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander legal issues are also the topic of the Honourable Justice Martin Hinton’s contribution to this special issue. His Honour recounts the experience of being the judge deciding an application for review by the Supreme Court of a refusal of bail concerning a young Aboriginal man who, facing allegations of assault and breaching an intervention order, sought bail to attend sorry camp. This piece gives a rare insight into the thought processes of a judge, and highlights some of the challenges faced by the colonial legal system in dealing with Aboriginal people.

VII INTERNATIONAL LAW

The increasing international engagement of the *Review* is an important theme of its evolution. In part, this reflects Adelaide Law School’s great strength in international law — the pantheon of its international lawyers over many decades includes D P O’Connell, Ivan Shearer, James Crawford, Hilary Charlesworth and Judith Gardam. In this special issue, His Excellency James Crawford AC SC, Judge of the International Court of Justice and former student and member of academic staff of Adelaide Law School, with Rose Cameron, reflects on the evolution of Australia’s engagement with, and attitude towards, international law. The article showcases Australia’s increasing presence on the international legal stage, evidenced by its involvement in the international dispute resolution system and by its expanding partnerships with other countries and regions. The authors provide a very positive outlook for the future of international law in Australia, noting the key role that is to be played by educational institutions in continuing to provide strong teaching and research in this vital field.

Emerita Professor Judith Gardam’s contribution to this special issue reflects upon the feminist project in international law, a topic addressed in depth in volume 19 of the *Review*. Gardam offers a critical analysis of the insights and contributions arising

¹⁶ Andrea Mason, ‘Where Do a Bird and a Fish Build a House? An Alumna’s View on a Reconciled Nation’ (2019) 40(1) *Adelaide Law Review* 173, 181.

¹⁷ *Ibid* 182.

from the feminist intervention in international law, reflecting on both the successes and failures of that project, and identifying the modern challenges confronting the effective implementation of feminist insights into the evolution and use of international law.

VIII WHAT LEGISLATORS AND JUDGES REALLY DO

Two contributions to this volume provide rare insights into the processes of law-making and judging. The Honourable Vickie Chapman MP, Attorney-General and Deputy Premier of South Australia, gives an expert account of the legislative processes of the South Australian Parliament. It remains the case, as Blackstone observed centuries ago, that

it is perfectly amazing that there should be no other state of life, no other occupation, art or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any ... but every man of superior fortune thinks himself born a legislator.¹⁸

As the Attorney's insightful contribution demonstrates, effective and appropriate law-making requires intellectual engagement by elected representatives, making politics a worthy calling for law graduates. As already noted, Martin Hinton's contribution to this special issue provides rare insights into the nature of judging, complementing the Attorney's observations about the operation of our parliamentary democracy.

IX GRAND CHALLENGES

A number of the contributions in this special issue address some of the grand challenges that confront Australian lawyers. The Honourable Catherine Branson AC QC, who brings a unique perspective to issues of human rights having served both as a Justice of the Federal Court of Australia and President of the Australian Human Rights Commission, compels readers to re-evaluate their understanding of human rights protections in Australia, by critically analysing the merits of a hypothetical Commonwealth Human Rights Act. Branson demonstrates that the role of the judiciary under a Human Rights Act is consistent with our understanding of the judicial role more generally, and she concludes with a convincing invitation for Australia to abandon its 'human rights exceptionalism' and join comparable liberal democracies by enshrining human rights in legislation.

¹⁸ William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) vol 1, 9, quoted in David Lieberman, 'Professing Law in the Shadow of the Commentaries' in Anthony Page and Wilfrid Prest (eds), *Blackstone and His Critics* (Hart Publishing, 2018) 153, 156.

Dr Adam Webster reflects on the key challenges facing the regulation of water resources in Australia's Murray-Darling Basin. This timely piece, closely following South Australia's Murray-Darling Basin Royal Commission, situates these challenges within their historical context. Webster then considers the pressing legal questions raised by the recent Royal Commission and reflects on the continuing relevance of observations made by Sandford Clark in the 1983 volume of the *Adelaide Law Review*. Webster calls for a significant change in approach if the Basin is ever to be managed sustainably.

The Honourable Margaret White AO examines legislative responses to youth offending across Australia, drawing on insights gained from her service as Commissioner of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory. She examines the correlation between anti-social behaviour and adverse childhood experiences to demonstrate that Australia's existing 'justice-based' model for youth offending is outdated and in need of reform. Raising the age of criminal responsibility from 10 years old, as well as increasing the emphasis on public health and welfare in the youth justice system, are suggested as ways to achieve more favourable outcomes for young offenders and reduce rates of youth offending.

X DIVERSITY

In continuing with the *Review's* consideration of issues facing Australia's cultural groups and the law (a topic addressed in the three contributions addressing Aboriginal and Torres Strait Islander peoples and the law), the Honourable Justice Melissa Perry's article considers the relationship between cultural diversity and the law. In particular, her Honour engages with the challenges that Australia's linguistic diversity poses to effective participation in the justice system, and the work of the Judicial Council on Cultural Diversity. Although anti-discrimination laws have been critical in progressing Australia's acceptance of its culturally diverse society, her Honour's article highlights the need to be proactive in learning from diversity and to be self-reflective of biases and prejudices, not only to improve the legal profession, but to continue in the pursuit to eradicate discrimination.

XI CORPORATE CRIME

The recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has re-ignited debate regarding corporate crime in Australia. Two contributors to this special issue explore the challenges to the law posed by corporate behaviour. Brent Fisse critically re-assesses the fundamental methodologies underlying the Criminal Cartel Provisions. In doing so, Fisse builds on previous works in the *Review* to skilfully argue that the current Australian law fails to understand the *corporateness* of corporate conduct. Emeritus Professor Suzanne Corcoran examines the failure of law to effectively deter misconduct in the banking industry, advancing the thesis that the law as it stands intervenes only to prevent the worst excesses of corporate conduct, but is blind (perhaps wilfully so)

to the commission of ‘ordinary corporate vices’. Corcoran advocates the implementation of a general duty of good faith and fair dealing for all corporations, increased use of statutory presumptions to facilitate proof of the mental elements of relevant corporate offences, and the introduction of a legal requirement for corporations and their officers to consider social as well as economic factors in decision-making. Collectively, Fisse and Corcoran provide us with significant food for thought as to how the law deals with the (mis)conduct of corporations.

XII LOOKING BACK, LOOKING FORWARD

Many of the contributions to this special issue embrace the theme of ‘reflections and future directions’. Associate Professor Judith Bannister examines contemporary administrative law through the lens of a 1977 article on the subject in the *Adelaide Law Review* by Michael Harris.¹⁹ She traces the growth of administrative law in the common law, before addressing the ‘new’ statutory administrative law of the 1970s. Bannister’s study offers a fascinating perspective on the rise of statutory administrative law, and then the re-growth of common law administrative law with (what seems at the moment to be) the inexorable rise of jurisdictional error. The interplay between common law and statute in securing the legality of administrative action is a phenomenon of interest to all lawyers, not merely those with an interest in administrative law.

In his article on succession law, the Honourable Thomas Gray QC surveys key legal developments over the past two centuries and contextualises each one by reference to underlying trends. Starting with the first modern legislation on wills — and the underlying principle of testamentary freedom — Gray tracks how the law has spread across the common law world and changed to meet specific challenges, such as excessive formality requirements, family maintenance needs, the loss of capacity and technological innovations. Against this background, Gray offers his expert outlook on the field while reminding readers that flexibility is essential and that testamentary freedom should remain the cornerstone of succession law.

Her Honour Judge Katrina Bochner explores the role of mediation in the Australian court system. She questions whether the so-called ‘alternative dispute resolution’ really is alternative and examines its efficacy in providing access to justice. While acknowledging its positive role in facilitating the court process, her Honour concludes that relying on mediation alone to resolve disputes ultimately leads to a more impoverished legal system, limiting access to justice and negatively impacting the development of the common law.

Marie Shaw QC and Ben Doyle trace the battles between the legislature and the judiciary in attempting to strike a balance between the protection of the vulnerable and the protection of the rights of the accused in cases of persistent sexual offending

¹⁹ Michael Harris, ‘South Australian Administrative Law: A Survey of Recent Developments’ (1977) 6(1) *Adelaide Law Review* 77.

against children. This exercise ultimately reveals that despite being in the ‘age of statutes’, we cannot escape the influence of the fundamental common law principles that underlie our legal system.

Professor Vicki Waye looks to the future by examining Regtech and its use of automated solutions to introduce potentially groundbreaking developments in legal research. She explores the law’s ability to adapt to changing times and advancing technology through illuminating examples. Waye illustrates Regtech’s capabilities, but also acknowledges that the ambiguities of language and the need for judgement will always require a human element in the law. Thus, for Waye it is the assimilation of technology such as Regtech in the current legal landscape, and overcoming the practical difficulties brought about by its implementation in current legal scholarship, which will prove the challenge for legal researchers in the coming years.

XIII THANK YOU!

I have enjoyed the happy coincidence of being Editor in Chief of the *Adelaide Law Review* as it reaches its 40th volume. There are many people to whom I express both my sincere gratitude, and that of the *Adelaide Law Review*:

- the remarkable contributors to this special issue;
- the Dean of Adelaide Law School, Professor Melissa de Zwart, for her enthusiastic support of the *Review* and of this special issue;
- the Honourable Michael Kirby AC CMG for launching this special issue;
- the authors from the academy, profession and judiciary who continue to submit innovative, exciting and insightful work to the *Review*;
- the expert reviewers who continue to cheerfully volunteer their time and expertise to referee submissions and ensure the *Review* continues to publish legal scholarship of the highest quality;
- the Student Editors and Associate Editors who maintain the editorial standards of the *Review* and are its lifeblood;
- the distinguished members of our Advisory Board;
- my colleagues on the Editorial Board, Dr Michelle Lim and Dr Stacey Henderson, and all of our distinguished predecessors who have served as Editors of the *Review*;
- the marketing team led by Charles Jackson who created the spectacular new cover art for this special issue in homage to the famous cover art featuring judge’s wigs from 1967–70; and
- the readers of the *Review*, whose belief in the value of legal scholarship of the highest quality is what sustains and justifies the *Review*.

XIV CONCLUSION

The publication of volume 40 of the *Adelaide Law Review* is an important milestone; I hope one day to have the privilege of reading volume 80. That happy occasion will no doubt see a *Review* addressing some topics unimaginable to the readers of volume 40, and perhaps some others anticipated in this special issue. I have no doubt that the partnership between students and staff that has always been the great strength of the *Review* will remain central in the future. Equally, though, it seems likely that a more automated production process, and the end of the hard copy version of the *Review* in favour of an online-only format, are also inevitable at some point. Irrespective of the topics it will cover, the reason the *Review* can be expected to endure is that whilst we still care about understanding and improving our legal system, and whilst we still see value in promoting intellectual engagement between the academy, profession and judiciary, we will find these timeless values reflected in the *Adelaide Law Review*.