

## EDITORIAL

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Stigma is a negative mark.<sup>1</sup> Its origins derive from Ancient Greece, where the stigma was a mark placed on the body in order to easily identify the morally corrupt. Of the stigmatised individual, Erving Goffman states: ‘we are likely to give no open recognition to what is discrediting of him, and while this work of careful disattention is being done, the situation can become tense, uncertain and ambiguous for all participants, especially the stigmatized one.’<sup>2</sup> Arguably, the law seeks to overcome uncertainty by drawing bright lines. Indeed, it has been argued that the law has an ‘impulse to use categories and draw lines to understand and simplify complex concepts’.<sup>3</sup> This is a theme that emerges throughout the thematic articles. Yet, this practice of categorisation appears to only intensify concerns about stigmatisation. These concerns resonate in very different areas of law. Structural stigma can encompass ‘conditions, cultural norms, and institutional practices that constrain the opportunities, resources and wellbeing’ of affected populations.<sup>4</sup> This thematic component aims to explore the ways in which the law enacts, counteracts and codifies stigma.

The six articles in the thematic component are diverse in subject matter, yet they remain consonant with each other. Resounding in each article is a reminder of the inextricable relationship between social norms, cultural practices and lawmaking. The individual is marked differently: in their personal lives, their work lives, and in the eyes of the law.

Like Charlie Chaplin in *Modern Times*,<sup>5</sup> Jessup and McIlwraith remind us that our legal personalities as ‘workers’ are bound by place and purpose.<sup>6</sup> Even though it can be described as ‘a universal incident of human life’,<sup>7</sup> the stigma of

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<sup>1</sup> Adam Brett, ‘Psychiatry, Stigma and Courts’ (2003) 10 *Psychiatry, Psychology and Law* 283, 283–4.

<sup>2</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Penguin Books, 1968) 57.

<sup>3</sup> Laura Grenfell and Anne Hewitt, ‘Gender Regulation: Restrictive, Facilitative or Transformative Laws?’ (2012) 34 *Sydney Law Review* 761, 761.

<sup>4</sup> Hatzenbuehler et al, ‘Structural Stigma and All-Cause Mortality in Sexual Minority Populations’ (2014) 103 *Social Science and Medicine* 33, 34.

<sup>5</sup> *Modern Times* (Directed by Charles Chaplin, 1936).

<sup>6</sup> Brad Jessup and Clare McIlwraith, ‘The Sexual Legal Geography in *Comcare v PVYW*’ (2015) 38 *University of New South Wales Law Journal* 1484.

<sup>7</sup> Transcript of Proceedings, *Comcare v PVYW* [2013] HCATrans 169 (7 August 2013) 2989–90 (L T Grey).

sex marks a boundary between productivity and pleasure. Despite the seeming stability of legal categories, they are in fact shifting with the movements of those who carry legal personhood. They are fragile. It is this fragility that Karpin and O'Connell seek to expose in the legal definitions of disability – an area where stigma is decidedly corporeal.<sup>8</sup> Once again, the debate focuses on what is *normal*. The authors seek to complicate the dichotomy between normalcy and disability, and challenge the diagnostic criteria used to construct it.

The articles by Howell and Mason, and Ali, O'Brien and Ramsay both explore the subject of bankruptcy stigma. Ali, O'Brien and Ramsay trace through its history and show how old associations with deviance and immorality continue to permeate Australian bankruptcy law, without distinguishing the 'honest' from the 'culpable' debtor.<sup>9</sup> Howell and Mason focus on how the 'fresh start' philosophy of bankruptcy law is undermined by measures that reinforce stigma associated with bankrupt status.<sup>10</sup> Read together, these articles deepen the reader's understanding of how bankruptcy stigma remains an influential factor in reforming modern insolvency law.

In a different discussion of self-stigmatisation, Ragusa and Groves unpack how stigma related to bullying and psychological injury is manifested in workers' compensation claims.<sup>11</sup> They perceptively argue that legal analyses focus on the vulnerability of the claimant, rather than the bullying behaviour, forcing claimants to self-stigmatise in order to receive compensation.

The articles are replete with examples of legal contradictions. It is fitting to use words from the Issue to summarise: 'Law has a part to play in attempting to redress existing categories of stigma. However, we must be vigilant to the way in which it may also shore up the very categories it seeks to undo.'<sup>12</sup>

This Issue is the culmination of a year-long production process and the efforts of a number of dedicated individuals. I would like to extend my sincere gratitude to all who have contributed their time, knowledge and creativity to this Issue.

First, I would like to thank Dr Marc De Leeuw and Dr Kristen Rundle for their assistance in the early stages of developing the thematic topic. I would also like to thank Ms Mehera San Roque and Dr Ben Golder for their helpful guidance in the peer review process. I have sincerely appreciated their support in taking the thematic component into uncharted territory. I would also like to thank Professor David Dixon, Dean of the UNSW Faculty of Law, for his ongoing

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<sup>8</sup> Isabel Karpin and Karen O'Connell, 'Stigmatising the 'Normal': The Legal Regulation of Behaviour as a Disability' (2015) 38 *University of New South Wales Law Journal* 1461, 1481.

<sup>9</sup> Paul Ali, Lucinda O'Brien and Ian Ramsay, "'Short a Few Quid": Bankruptcy Stigma in Contemporary Australia' (2015) 38 *University of New South Wales Law Journal* 1575.

<sup>10</sup> Nicola Howell and Rosalind Mason, 'Reinforcing Stigma or Delivering a Fresh Start: Bankruptcy and Future Engagement in the Workforce' (2015) 38 *University of New South Wales Law Journal* 1529.

<sup>11</sup> Angela T Ragusa and Philip Groves, 'Stigmatisation and the Social Construction of Bullying in Australian Administrative Law: You Can't Make an Omelette without Cracking an Egg' (2015) 38 *University of New South Wales Law Journal* 1507.

<sup>12</sup> Karpin and O'Connell, above n 8, 1481.

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Of course, I must thank the authors for traversing such fertile ground in the articles that compose this Issue. The subject matter in both the general and thematic components is wide-ranging and I thank the authors for the intellectual vigour they have brought to each of their contributions. I also wish to acknowledge the anonymous peer reviewers for their thoughtful feedback on each submission. Their assessments are the backbone of any peer-reviewed journal, but particularly so in the case of a student-run publication such as this.

I am deeply grateful to Professor Paula Baron for her excellent foreword, which should be required reading before one enters the thematic component. She has captured its essence perfectly and guides the reader through the thematic nuances of the Issue, bringing an added richness to the reader's experience.

A two-fold thank you must go to the Hon Michael Kirby AC CMG for his contribution to this Issue. First, my heartfelt thanks to Mr Kirby for his written contribution to this Issue and for his role in the continuing dialogue on mental health in the legal profession. Second, I thank him for generously launching the Issue at King & Wood Mallesons on 27 November 2015.

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