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Quarantine in times of emergency: The scope of s 51(ix) of the Constitution – *Christopher Reynolds*

This article explores the scope of s 51(ix) of the *Constitution*, the power of the Commonwealth to make laws with respect to “quarantine”. While this power has sustained the *Quarantine Act* without a challenge since 1908, it may be that future national public health emergencies, such as epidemics or bioterrorism, will (as has happened in other countries) demand a level of federal preparedness that requires augmented public health powers at a national level. If so, will the scope of the quarantine power, as determined by the High Court, be wide enough to allow the Commonwealth to implement these powers? While there is some advantage in a national approach, there is also some authority suggesting that the quarantine power could not extend to domestic public health controls. If there is uncertainty about the scope of the power, what are the options? Should there be another approach, with the States, Territories and the Commonwealth moving towards uniform legislation and co-operative arrangements? 166

Litigation and the medical indemnity crisis – *Richard Travers*

The medical indemnity crisis in Australia forced doctors, lawyers and insurers to re-appraise the way they handle claims for compensation for medical error. This article examines some of the new approaches available in Australia when patients claim compensation from their doctors. 178

Stem cell technologies: Regulation, patents and problems – Shih-Ning Then

Human embryonic stem cell research promises to deliver in the future a whole range of therapeutic treatments, but currently governments in different jurisdictions must try to regulate this burgeoning area. Part of the problem has been, and continues to be, polarised community opinion on the use of human embryonic stem cells for research. This article compares the approaches of the Australian, United Kingdom and United States governments in regulating human embryonic stem cell research. To date, these governments have approached the issue through implementing legislation or policy to control research. Similarly, the three jurisdictions have viewed the patentability of human embryonic stem cell technologies in their own ways with different policies being adopted by the three patent offices. This article examines these different approaches and discusses the inevitable concerns that have been raised due to the lack of a universal approach in relation to the regulation of research; the patenting of stem cell technologies; and the effects patents granted are having on further human embryonic stem cell research. 188

Surrogacy: Is there a case for legal prohibition? – Imogen Goold

Surrogacy arrangements are a complex and challenging issue for legal regulation. On the one hand, if we wish to promote personal autonomy and enable the infertile to experience parenthood, there is a case for allowing these arrangements to proceed. However, objections to legal sanctioning of surrogacy include concerns for the surrogate and the child born through the surrogacy arrangement. Legally sanctioning surrogacy may also adversely affect social conceptions of women's roles or may be considered a form of commodifying women's reproductive capacities. This article examines these challenges to allowing surrogacy, but concludes that surrogacy should not be legally prohibited. 205

Oregon: Does physician-assisted suicide work? – Alan Rothschild

Since November 1997, Oregon, a State in the United States of approximately 3.3 million people, has allowed physician-assisted suicide, although not euthanasia, by virtue of the *Death with Dignity Act*. Before the Act, physician-assisted suicide, as in Australia and other common law jurisdictions, was illegal. Under the Act, the Oregon Department of Human Services is required to collect information and provide an annual report. The Sixth Annual Report on Oregon's *Death with Dignity Act* was released on 10 March 2004. 217

The construction of socially remedial legislation in Australia: The strange case of hydrotherapy – Frank Bates

The article examines the canons of construction of socially remedial statutes in Australia and the utility and acceptance of hydrotherapy as a means of medical treatment. It considers cases from various administrative bodies in Australia as they have applied to this mode of treatment and notes that the canons have not been applied uniformly. The results have sometimes been unhappy. The article suggests why that might be the case and argues that the process may have undermined the medical utility of the treatment. 226

Duty to warn of genetic harm in breach of patient confidentiality – Sharon L Keeling

Harm caused by the failure of health professionals to warn an at-risk genetic relative of her or his risk is genetic harm. Genetic harm should be approached using the usual principles of negligence. When these principles are applied, it is shown that (a) genetic harm is foreseeable; (b) the salient features of vulnerability, the health professional's knowledge of the risk to the genetic relative and the determinancy of the affected class and individual result in a duty of care being owed to the genetic relative; (c) the standard of care required to fulfil the duty to warn should be the expectations of a reasonable person in the position of the relative; and (d) causation is satisfied as the harm is caused by the failure of intervention of the health professional. Legislation enacted subsequent to the Report of the Commonwealth of Australia, Panel of Eminent Persons (Chair D Ipp), *Review of the Law of Negligence Report* (2002) and relevant to a duty to warn of genetic harm is considered. The modes of regulation and penalties for breach of any future duty to warn of genetic harm are considered. 235

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