

Acknowledgments

This book is the third in a series of edited collections by Freckelton and Petersen on health law, published by The Federation Press, starting with *Controversies in Health Law* (1999) and then moving in the first decade of the 21st century to *Disputes & Dilemmas in Health Law* (2006). It does not seem so long ago that Belinda Bennett, then an Associate Professor at the University of Sydney, launched the first in our series on a riverboat on the Brisbane River to a bemused audience of unsuspecting passengers who until then had exhibited little interest in health law, and probably continue to do so.

We are grateful for the involvement along the whole journey of Danuta Mendelson of Deakin University, John Devereux of the University of Tasmania and then the University of Queensland, Marilyn McMahon of La Trobe University and then Deakin University, and Don Chalmers of the University of Tasmania.

This book, like the others, would not have come into being but for the industrious efforts of our talented contributors, many of them now rising international stars in health law. We acknowledge the dedicated and thoughtful contributions from each one of them, spanning England, Scotland, Canada, New Zealand and, of course, Australia. They have endured multiple requests, edits, reminders and adjustments to their text. We are grateful for their forbearance and hope they approve of the final product.

The editors are delighted to have Sheila McLean, Emerita Professor at Glasgow University, to write the Foreword to this, their third book together. Aside from being an international pioneer in health law, she has been an inspiration and a mentor to both editors and a generous friend.

The authors are appreciative too of the support of The Federation Press over the better part of 20 years in their work and, in particular, the encouragement of Chris Holt.

This latest volume has been edited expertly and with good humour and patience by Kathryn Fitzhenry whose professionalism has been a pleasure to work with and a reassurance against error and infelicity for the editors.

Controversies in Health Law was published as a collaborative exercise by Kerry and Ian shortly after Ian joined La Trobe University as an Adjunct Professor in the latter part of the 1990s. He still remembers with affection the kind gift of a professorial print given to him by Kerry when first he joined La Trobe University (it continues to adorn the wall above his writing desk at home) and commenced to work with Kerry on establishing a successful postgraduate Health Law program for La Trobe. Kerry's acute legal mind and sense of humour have been a source of pleasure and intellectual stimulation for two decades for Ian.

Ian would like to recognise too the vibrancy and collegiality of the postgraduate Health Law program at the University of Melbourne, under the Deanships of Carolyn Evans and Jenny Morgan, and the outstanding scholarly home that he has been lucky enough to enjoy at that institution for the past five years. In addition, he is pleased to have consolidated the University of Melbourne/Oxford University connection through

ACKNOWLEDGMENTS

the involvement of Jonathan Herring, Jane Kaye, Imogen Goold, and Jessica Bell from Oxford in the book. He is also delighted to have lured his colleague in his other intellectual home, Crockett Chambers in Lonsdale Street, Melbourne, Simon McGregor, into the project.

Most of all he would like to acknowledge the extraordinary love and inspiration of Trish, his wife and partner in life adventures and scholarly tourism – conferences from Macao (Brazil) to Baku (Azerbaijan), from Macau to Stellenbosch, and from Prato to Prague. The journey continues!

Kerry acknowledges the prolific publications in health law of both Sheila McLean and her co-editor, Ian Freckelton, both of whose work has shone new light on the importance of patients' human rights, an issue that is very important to her. As well, Kerry would like to record that she has found Ian to be a very supportive and helpful co-editor in the three books they have published together.

Ian Freckelton

Kerry Petersen

October 2017

About the Contributors

Sonia Allan (Chapters 9, 16) is an Associate Professor of Law at Deakin University. She holds an LLB (Hons), a BA (Psych) (Hons), a MPH (Merit), an LLM (Global Health Law) (Dist) and a PhD in law. Her work spans the ethical, legal and social issues raised by health and emerging technologies, and public and global health law. Sonia was a 2011 *Global Health Law Fellow* at Georgetown University, where in 2012 she also won the *Cali Award for Health and Human Rights*. She is also a *Churchill Fellow*. Sonia has participated in numerous federal and State government inquiries on health law related matters and has been influential in law reform. From 2015-17 she led the review of the South Australian *Assisted Reproductive Treatment Act* having been directly appointed by the Minister for Health. Her work has been published nationally and internationally, with books including *The Patient and Practitioner: Health Law and Ethics in Australia* (Lexis Nexis, 2014), and *Donor Conception and the Search for Information: From Secrecy and Anonymity to Openness* (Routledge, 2017). She also runs a community information website on health law.

Jessica Bell (Chapter 23) is a Research Fellow in Law and Emerging Technologies in Health at the University of Melbourne. Her research focuses on the legal and governance issues that arise from the establishment of large-scale research infrastructures such as biobanks and data-sharing networks. Her legal analysis examines the many obligations involved in private law and public law, as well as exploring the issues of research governance, privacy protection and the public interest. Before joining the Melbourne Law School, Jessica worked as a Researcher in Law at the HeLEX Centre for Health Law and Emerging Technologies (HeLEX), at the University of Oxford. Jessica provided legal support to the UK Economic and Social Research Council funded Administrative Data Research Network (ADRN) to develop standards and best practice for the linkage and secondary use of administrative data collected by the government and public authorities in the United Kingdom. Jessica has also spent time as a Visiting Researcher at the Brocher Foundation, Geneva, the Centre for Science, Technology, Medicine and Society, UC Berkeley, and at the Centre of Genomics and Policy, McGill University, Montreal. Jessica holds a PhD in Law from the University of Sheffield, an MA in Biotechnology, Law and Ethics from the same Institution, and has experience teaching Tort Law.

Belinda Bennett (Chapters 8, 37) is Professor of Health Law and New Technologies in the Australian Centre for Health Law Research (ACHLR) in the Faculty of Law at Queensland University of Technology (QUT), where she leads ACHLR's Governance and Regulation of Health Care research program. Before joining QUT in 2014 she worked at Sydney Law School for many years, most recently as Professor of Health and Medical Law (2008-14). Belinda has published extensively on a wide range of health law issues, with her current research interests including legal aspects of reproduction, law and global public health, regulatory aspects of new technologies, and regulation of

health practitioners. Belinda is the Deputy Editor of the *Journal of Law and Medicine*. She is a Community Member of the Medical Board of Australia and a former member of the NSW Medical Board and of the Medical Council of NSW. She is also a former member and former Chair of the Embryo Research Licensing Committee of the National Health and Medical Research Council.

Neera Bhatia (Chapter 13) is a Senior Lecturer in Law at Deakin University. She holds an LLB (Hons) and Masters in Law from the United Kingdom, and a PhD in Law from Deakin University. She is the author of *Critically Impaired Infants and End of Life Decision Making: Resource Allocation and Difficult Decisions* (Routledge Cavendish, 2015). Her research primarily focuses on end-of-life decision-making concerning infants and children. More broadly, she has also published in the areas of euthanasia and organ donation.

Warren Brookbanks (Chapter 3) is a Professor of Criminal Law and Justice Studies and Director of the Centre for Non-Adversarial Justice at the Auckland University of Technology Law School. He was previously at Auckland Law School where he taught from 1983-2016. He is co-author of Sylvia Bell and Warren Brookbanks, *Mental Health Law in New Zealand* (Thomson Reuters, 3rd ed, 2017) and AP Simester and Warren Brookbanks, *Principles of Criminal Law* (Thomson Reuters, 4th ed, 2012). He has co-authored or edited books on forensic psychiatry and law, unfitness to stand trial, criminal justice and therapeutic jurisprudence. In addition to his teaching and other academic responsibilities, he is involved in professional consultation and in recent years has undertaken research for various government departments in New Zealand and abroad, including the New Zealand, English and Scottish Law Commissions, the New Zealand Ministry of Health and the former Mental Health Commission. He was a founding Trustee of the Odyssey House Trust (NZ), a former President of the Australian and New Zealand Association of Psychiatry, Psychology and Law (ANZAPPL) and was, until recently, chair of the Oakley Mental Health Foundation Trust Board.

Don Chalmers (Chapter 21) is a Professor of Law at the University of Tasmania and a fellow of the Australian Academy of Law and of the Australian Academy of Health and Medical Sciences. He was Chair of the NHMRC Australian Health Ethics Committee from 1993-2000; the Commonwealth Gene Technology Ethics and Community Consultative Committee from 2002-12. He has also served on many other NHMRC and national committees. Internationally, he co-chairs the Ethics and Governance Committee of the International Cancer Genome Consortium. His major research interests focus on the regulatory and governance aspects of health research ethics, human genetics and biobanks.

Eliana Close (Chapter 25) is a PhD candidate with the Australian Centre for Health Law Research in the Faculty of Law at the Queensland University of Technology (QUT). Her doctorate is focused on analysing how law and policy address the role of resources in decision-making for critically ill adult patients, and is funded by the NHMRC Centre of Research Excellence in End-of-Life Care. Eliana was awarded a Bachelor of Science with first class honours in Psychology from the University of Calgary and subsequently completed an MA in Law at Oxford University, as a Rhodes Scholar. After her law degree, Eliana worked as a Business Operations & Strategy

Associate at Google in Silicon Valley and then returned to Canada to clerk for the Alberta Court of Appeal. She practised as a Crown Prosecutor specialising in human rights litigation before moving to Australia. Prior to starting her PhD at QUT she was a Research Fellow on the Australian Research Council Linkage Grant, *Futile Treatment at the End of Life: Legal, Policy, Sociological and Economic Perspectives*.

Christine Critchley (Chapter 19) is a Social Psychologist in the Departments of Psychological Sciences and Statistics, Data Science and Epidemiology at Swinburne University. She is also a member of the Centre for Law and Genetics at the University of Tasmania. Her research interests include public opinion, and attitudes associated with controversial scientific research and trust in scientific actors. A particular interest is the impact of commercialisation on public trust in science within the context of genomics research and biobanking. She has co-directed the Swinburne National Science and Technology Monitor since its inception (in 2003), which is an annual national telephone survey designed to gauge public reaction to science and emerging technologies.

Rosalind Croucher (Chapter 29) is President of the Australian Human Rights Commission (AHRC) and an Emeritus Professor of Macquarie University. In February 2007 she was appointed to the Australian Law Reform Commission and in December 2009 as President. Before this she was Dean of Law at Macquarie University (Nov 1999–Feb 2007). On 31 July 2017 she became President of the AHRC. She has lectured and published extensively, principally in the fields of equity, trusts, property, inheritance, legal history and increasingly in public policy. She is a Foundation Fellow of the Australian Academy of Law, a Life Fellow of the Royal Society of Arts, an Honorary Fellow of the Australasian College of Legal Medicine, an invited member of the Australian Academy of Forensic Sciences, and an elected Fellow of the Society of Trusts and Estates Practitioners and of the International Academy of Estate and Trust Law. In the Australia Day Honours list for 2015, she was made a Member of the Order of Australia (AM) for ‘significant service to the law as an academic, to legal reform and education, to professional development, and to the arts’.

John Devereux (Chapter 31) is a Professor of Law at the University of Queensland. John has served as Assistant Commissioner (Legal) of the Health Quality and Complaints Commission and as a Law Reform Commissioner for Queensland. He is a member of the Queensland Law Society’s Personal Injuries Specialist Accreditation Committee. John has a longstanding interest in competency to consent to medical treatment, and epilepsy and the law. Professor Devereux is an Honorary Fellow of the Australasian College of Legal Medicine and has been a legal member of the Social Security Appeals Tribunal. He currently serves as a Member of the Administrative Appeals Tribunal and is a former Defence Force Magistrate. He has served with the Australian Defence Force in the Australian Army (infantry) and in the Air Force (legal category). He has seen active service in Iraq and Afghanistan. Professor Devereux was awarded a Bronze Star by the United States of America.

Kate Diesfeld (Chapter 2) is a Professor of Law and Chair of Auckland University of Technology’s Ethics Committee. She is Adjunct Professor at Te Piringa Faculty of Law at the University of Waikato. Historically, she represented people with intellectual

disability at Protection and Advocacy, Inc in Los Angeles. In England, she was a legal academic and legal supervisor of the Kent Law Clinic (Mental Health and Learning Disability) at Kent Law School. She also represented people before the Mental Health Review Tribunal. In New Zealand, she was Co-Chair of Auckland Disability Law community law centre. With Professor Freckelton, she edited *Involuntary Detention and Therapeutic Jurisprudence* (Ashgate, 2003). With Ian McIntosh, she co-edited *Elder Law in New Zealand* (Thomson Reuters, 2014). She is on the Editorial Board of the *Journal of Legal Medicine* and her research is focused on disability, elder and health law.

Jocelyn Downie (Chapter 25) is a Fellow of the Royal Society of Canada and the Canadian Academy of Health Sciences. She is also a Fellow of the Pierre Elliott Trudeau Foundation. She began her academic career in Philosophy (BA and MA at Queen's University and a MLitt at the University of Cambridge) and then switched to Law (LLB at the University of Toronto and an LLM and SJD at the University of Michigan at Ann Arbor). After law school, she clerked for Chief Justice Lamer at the Supreme Court of Canada. After graduate school, she was the Director of the Health Law Institute at Dalhousie for 10 years. She is now a University Research Professor in the Faculties of Law and Medicine at Dalhousie University and a Faculty Associate of the Dalhousie Health Law Institute. Her work on end-of-life law and policy goes back many years and includes being Special Advisor to the Canadian Senate Committee on Euthanasia and Assisted Suicide; author of *Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada* (winner of the AbbyAnn D Lynch Medal in Bioethics from the Royal Society of Canada); and member of the Royal Society of Canada Expert Panel on End-of-Life Decision-Making, the pro bono legal team in the case of *Carter v Canada (Attorney General)*, the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, and the Canadian Council of Academies Expert Panel on Medical Assistance in Dying. She has also written extensively on non-medical assistance in dying end-of-life issues, including unilateral withholding and withdrawal of potentially life-sustaining treatment and palliative sedation.

Lisa Eckstein (Chapter 15) is a Lecturer in Law and Medicine in the Faculty of Law at the University of Tasmania. She completed a post-doctoral fellowship at the NIH Department of Bioethics before joining the Faculty. Her current research focuses on the governance of medical research, especially in relation to genomics and other emerging technologies. Particular research interests include strategies for gaining and assessing participant consent, the disclosure of genetic research findings, clinical trial monitoring, and racially targeted biomedical research. She holds an SJD from the Georgetown University Law Center and has previously held positions at the Australian Law Reform Commission and State and federal Departments of Health.

Robyn Fairhall (Chapter 34) is a Senior Lecturer in Nursing and Midwifery at Monash University. She has been involved in nursing education for more than 25 years. Robyn is a generalist nurse, with a background in medical surgical nursing care. Robyn engages in both undergraduate and graduate nursing education, and is currently involved in the teaching of nurses seeking endorsement as nurse practitioners. Her PhD thesis examined how nurse practitioners operationalised their role, including identification of the strategies used by this group of professionals to create a place for

themselves in the health care system, and the factors which facilitate or impede the nurse practitioner role.

Anne-Maree Farrell (Chapter 28) is Professor and Chair of Health Law and Society, ARC Future Fellow, and Director of the Centre for Health Law and Society, La Trobe University. Her research expertise lies generally in health law, policy and ethics. Specific research interests include the regulation of human tissue, health technologies, managing public health risks, and compensation systems for medical injury. Key publications include *Health Law: Frameworks and Context* (CUP, 2017) co-authored with I Karpin, J Devereux and P Weller; *Pioneering Healthcare Law: Essays in Honour of Margaret Brazier* (Routledge, 2016) co-edited with C Stanton, S Devaney and A Mullock; *European Law and New Health Technologies* (OUP, 2013) co-edited with M Flear, T Hervey and T Murphy; *The Politics of Blood: Ethics Innovation and the Regulation of Risk* (CUP, 2012); and *Organ Shortage: Ethics Law and Pragmatism* (CUP, 2011), co-edited with D Price and M Quigley.

Tom Faunce (Chapter 7) is a professor jointly in the ANU College of Law and ANU Medical School. He has been awarded an ARC Future Fellowship and five Discovery grants in the area of health technology regulation, including the impacts of trade agreements and nanomedicines on Australia's Pharmaceutical Benefits Scheme. He served as a consultant with UNESCO on its Global Health Law database and has been a Brocher Foundation fellow at Geneva. Tom edits the Medical Law Reporter for the *Journal of Law and Medicine*. He has published over 200 refereed articles and over 50 book chapters. His published books include *Who Owns Our Health?* (UNSW Press, 2007) and the edited volume *Nanotechnology Toward the Sustainocene* (Pan Stanford, 2015). His most recent field of research is governance of global artificial photosynthesis to facilitate the transition from Corporatocene to Sustainocene, and he has edited special editions on this theme for the *Australian Journal of Chemistry* and the Royal Society's *Interface Focus* as well as co-written a music album. He has also published a science-fiction novel *Split By Sun. The Tragic History of the Sustainocene* (World Scientific 2018).

Kim Forrester (Chapter 34) is a registered nurse and barrister-at-law currently in practice in Brisbane at the private bar. She holds an academic appointment as Associate Professor in the Faculty of Health Sciences and Medicine at Bond University and is Deputy Chair of the Metro North Hospital and Health Service Board. Kim is a member of the Queensland Law Society's Elder Law Committee and Health and Disability Law Committee. She has a number of publications in the area of health law, is editor of the Nursing Issues column in the *Journal of Law and Medicine* and has written a number of chapters in legal and health texts. Kim is co-author of the text, *Essentials of Law for Health Professionals* (Elsevier, 4th ed, 2014), *Australian Pharmacy Law and Practice* (Elsevier, 2nd ed, 2013) and *Essentials of Law for Medical Practitioners* (Elsevier, 2010).

Ian Freckelton (Introduction, Chapters 3, 10, 12, 23, 27, 30, 33, 37) is a Queen's Counsel in full-time national practice as a barrister throughout Australia. Most of his work is medico-legal. He has been a member of 10 statutory tribunals, including Victoria's Medical Practitioners Board, Psychologists Registration Board and Disciplinary Appeals Board. In 2017 Ian was appointed a Justice of the Supreme Court

of Nauru; he fulfils this role on a part-time basis. He is also a Professorial Fellow of Law and Psychiatry at the University of Melbourne, where he is the Co-Director of the Postgraduate Health Law Program, an Adjunct Professor of Forensic Medicine at Monash University, and an Adjunct Professor at the Australian Centre for Health Law Research, Faculty of Law, Queensland University of Technology. He holds other adjunct professorial positions at La Trobe University and the Auckland University of Technology. Ian holds a PhD conferred by Griffith University and an LLD conferred by the University of Melbourne. He is an elected Fellow of the Australian Academy of Law, the Academy of Social Sciences Australia and the Australasian College of Forensic Medicine. Ian is a member of Australia's Advisory Council on the Medicinal Uses of Cannabis, Victoria's Mental Health Tribunal, Victoria's Coronial Council, and of the Bar Council of Victoria. He is a former Commissioner at the Victorian Law Reform Commission and a former Transnational President and elected Life Member of the Australian and New Zealand Association of Psychiatry, Psychology and Law. He is the Editor of the *Journal of Law and Medicine* and the Editor-in-Chief of *Psychiatry, Psychology and Law*. He is the author of many books, the most recent being *Scholarly Misconduct* (OUP, 2016) and *Expert Evidence in Criminal Jury Trials* (OUP, 2016) and over 600 peer-reviewed articles and chapters.

Grant Gillett (Chapter 5) is the Professor of Biomedical Ethics at Otago University in Dunedin, New Zealand. He is a Fellow of the Royal Society, the Royal Australasian College of Surgeons and of the Hasting Center. His research ranges quite widely in bioethics, philosophy and neuroscience. In bioethics he works on end-of-life care, complementary and alternative medicine, autonomy, and the patient's journey. In neuroethics he has written widely on brain birth, brain death, PVS, and minimally conscious states, and issues of free will identity and responsibility. His work in neuroethics arose from research in the philosophy of psychiatry focusing on the nature of mental disorder, psychopathy, and dissociative disorders. He has examined these topics through post-structuralist philosophy, an exploration of the patient's voice, post-colonialism, and human subjectivity and has authored *Subjectivity and Being Somebody: Neuroethics and Human Identity* (Imprint Academic, 2008), *Bioethics in the Clinic* (Johns Hopkins University Press, 2004), *The Mind and its Discontents* (OUP, 2nd ed, 2009), *Reasonable Care* (Bristol Press, 1989), *Representation, Meaning and Thought* (OUP, 1992), and co-authored *The Discursive Mind* (Sage, 1994) as well as numerous articles in a variety of international journals. *From Aristotle to Neuroscience: The Human Soul* is his most recent work (Palgrave/McMillan, 2017).

Imogen Goold (Chapter 20) is an Associate Professor in Law at the University of Oxford and also a Fellow of St Anne's College. She studied Law and Modern History at the University of Tasmania, Australia, receiving her PhD in Law in 2005. Her doctoral research explored the use of property law to regulate human body parts. She also received a Masters degree in Bioethics from the University of Monash in 2005. From 1999, she was a research member of the Centre for Law and Genetics, where she published on surrogacy laws, legal constraints on access to infertility treatments and proprietary rights in human tissue. In 2002, she took up a position as a Legal Officer at the Australian Law Reform Commission (ALRC), working on the inquiries into Genetic Information Privacy and Gene Patenting. After leaving the ALRC in 2004,

she worked briefly at the World Health Organization, researching the provision of genetic medical services in developing countries. Her current research interests include human enhancement technologies and the regulation of reproduction. Her other focus is the question of whether human biomaterials should be treated as private property, on which she is currently completing a monograph to be published by Bloomsbury.

Debra Griffiths (Chapter 34) is a registered nurse, midwife and lawyer, practising in all three areas throughout her career. Debra is a Professor and Head of Nursing and Midwifery at Monash University. She is passionate about law as it relates to, or influences, everyday clinical practice. Debra teaches legal issues and concepts to a wide range of health care professionals. Her recent research projects include: examination of end-of-life decision-making; documentation gaps of elderly residents transferred to hospital; formulating the national competency standards for enrolled nurses; and violence against staff working in the emergency department. She has published widely and is the co-author of the texts *Essentials of Law for Health Professionals* (Elsevier, 4th ed, 2014) and *Essentials of Law for Medical Practitioners* (Elsevier, 2010).

Jonathan Herring (Chapter 6) is the Vice Dean and Professor of Law at the Law Faculty, Oxford University and DM Wolfe-Clarendon Fellow in Law at Exeter College, Oxford University. He has written on family law, medical law, criminal law and legal issues surrounding care and old age. His books include: *Vulnerable Adults and the Law* (OUP, 2016), *Caring and the Law* (Hart, 2013), *Older People in Law and Society* (OUP, 2009), *European Human Rights and Family Law* (Hart, 2010) (with Shazia Choudhry), *Medical Law and Ethics* (OUP, 2016), *Criminal Law* (OUP, 2016), *Family Law* (Pearson, 2015) and *The Woman Who Tickled Too Much* (Prentice Hall, 2009).

Jane Kaye (Chapter 23) is Professor and the Director of the Centre for Health, Law and Emerging Technologies (HeLEX) at the University of Oxford and also holds a part-time Professorship at the Melbourne Law School in Australia, where she leads a research team. She obtained her degrees from the Australian National University (BA), University of Melbourne (LLB) and University of Oxford (DPhil). She was admitted to practice as a solicitor/barrister in 1997. She is on a number of international expert committees and scientific advisory boards and has been on the Nuffield Council Bioethics Working Group on Biodata and Rapporteur for the EC Expert Report, *Biobanks for Europe – A Challenge for Governance*, June 2012. She is also on the editorial boards of *Law, Innovation and Technology*, of the *Journal of Law, Information and Science*, of *New Genetics & Society* and of *Life Sciences, Society and Policy*. Her research focuses on the relationships between law, governance and best practice in the areas of personalised medicine, biobanks, privacy, data-sharing frameworks, global governance and translational research. Her team is leading on the Dynamic Consent project which uses digital technologies to enable people to exercise their privacy rights.

Joanna Manning (Chapter 36) is a Professor at the Faculty of Law, the University of Auckland. She has written on issues of: health law, policy, and ethics; torts, including negligence; and accident compensation, particularly treatment injury. She is a contributing author of the textbook, Peter Skegg and Ron Paterson (eds), *Health Law in New Zealand* (Thomson Reuters, 2015) and the editor of *The Cartwright Papers: Essays on the*

Cervical Cancer Inquiry 1987-88 (Bridget Williams Books, 2009). She was the consumer representative on the Medical Practitioners Disciplinary Committee for approximately 10 years, the lawyer member of the National Ethics Advisory Committee from 2005 to 2011 and the lawyer member of the Scientific Advisory Committee of the Heart Foundation NZ (2011-14).

Simon McGregor (Chapter 12) is a barrister at the Melbourne Bar with extensive trial experience that combines statutory jurisdictions with knowledge of common law and equitable doctrines. He has been at the forefront of developing human rights law in Victoria. In addition to his litigation experience, he has conducted mediations, human rights training with private law firms and government departments, and advised on commercial and not-for-profit sector transactions. He has held retainers involving policy and law reform matters. He is on the Common Law Bar Association Committee, is Co-convenor of the Victorian Bar Charter of Human Rights Discussion Group, and is also a mentor with the Indigenous Lawyers Committee.

Sheila McLean (Foreword) is Professor Emerita of Law and Ethics in Medicine at the University of Glasgow where she established the Institute of Law and Ethics in Medicine in 1985 and subsequently was appointed the International Bar Association's Professor of Medical Law. She was Adviser to the European branch of the World Health Organization on the revision of its Health for All policy, a member of the UNESCO Biomedical Ethics Committee, and Specialist Adviser to the House of Commons Science and Technology Select Committee. Between 1997 and 1998, she chaired the Department of Health review of consent provisions in the *Human Fertilisation and Embryology Act 1990* (UK) and, between 2000 and 2003, chaired the Independent Review Group on Organ Retention at Post Mortem. From 1999 to 2002, she was the first Chairman of the Scottish Criminal Cases Review Commission. Among the books written by her are *Contemporary Issues in Law, Medicine and Ethics* (Ashgate, 1996); *Death, Dying and the Law* (Dartmouth, 1996); *The Case for Physician-Assisted Suicide* (Pandora, 1997); *Old Law, New Medicine: Modern Medical Ethics and Human Rights* (Pandora, 1998); *Xenotransplantation: Law and Ethics* (Ashgate, 2005); *Modern Dilemmas: Choosing Children* (Capercaillie Books, 2006); *Impairment and Disability* (Routledge, 2007); *Assisted Dying* (Taylor & Francis, 2007); *Autonomy, Consent and the Law* (Routledge, 2009); *Regulating Pre-Implantation Genetic Diagnosis* (Routledge, 2013); and *First Do No Harm: Law, Ethics and Healthcare* (Routledge, 2016). She is a Fellow of the Academy of Medical Sciences. In 2016 *Inspiring a Medico-Legal Revolution: Essays in Honour of Sheila McLean* (edited by Pamela Ferguson and Graeme Laurie) was published by Routledge.

Marilyn McMahon (Chapter 24) is an Associate Professor and Associate Dean in the School of Law at Deakin University. She graduated from the University of Melbourne with BA (Hons) and LLB degrees in 1985, and obtained a M Psychology (Forensic) from Monash University in 2000. She was awarded a PhD (with Distinction) by La Trobe University in 2011 for her thesis *From Mitigation to Justification: Expert Psychiatric and Psychological Evidence in Assessments of Criminal Responsibility in the Defences of Provocation and Self-Defence*. Her research is primarily in the areas of criminal law, criminal procedure and evidence. Dr McMahon is a former member of the Intellectual Disability Review Panel and is currently a member of the Mental Health Tribunal (Victoria), the Forensic Leave Panel and the Australian Forensic Reference Group (a

committee of scientists established within Victoria Police to assist with ‘cold case’ investigations). She is also a former chairperson of the Ethics Committee of the Australian Psychological Society.

Danuta Mendelson (Chapter 14) holds the Chair in Law (Research) at the Deakin School of Law. She has authored several books, including *Metaphor in IE Babel’s Short Stories* (University of Michigan, 1982); *Interfaces of Medicine and Law: The History of the Liability for Negligently Caused Psychiatric Injury* (Ashgate/Dartmouth, 1998) and *The New Law of Torts* (OUP, 3rd ed, 2014). She is the co-editor (with Ian Freckelton) of *Causation in Law and Medicine* (Ashgate/Dartmouth, 2002). She has also published 20 book chapters; and some 90 of her peer-reviewed articles have appeared in leading Australian and international journals. Her fields of research include torts law; confidentiality and privacy; electronic health records; comparative law; legal causation; abatement of medical treatment; the law of consent; refusal of medical treatment; and technology and law. Her books and articles have been cited with approval by numerous international scholars, and her work has directly and indirectly influenced the development of law in Australia as acknowledged in the reports of various Law Reform Commissions, and through references/citations by the judiciary, including several judgments of the High Court of Australia. Mendelson holds, and has held, competitive grants, including the Australia Research Council Discovery Project; at present she is the Key Researcher in the Law and Policy Program of the Data to Decisions Cooperative Research Centre. In her role as Partner (Key Researcher), she has co-authored ‘Big Data Technology and National Security: Comparative International Perspectives on Strategy, Policy and Law in Australia, the United Kingdom and Canada’ (2016). Professor Mendelson serves on four editorial boards, and has served as the Executive Member and past Treasurer (Clinical Legal Issues in Pain), Special Interest Group of the International Association for the Study of Pain (Washington DC). She is a Board Member of the International Academy of Law and Mental Health and the Titular Member of the International Academy for Comparative Law/Academie Internationale de Droit Comparé.

Megan Munsie (Chapter 23) is an Associate Professor at the University of Melbourne where she is Deputy Director of the Centre for Stem Cell Systems. She is also Head of the Education, Ethics, Law & Community Awareness Unit for Stem Cells Australia, an Australian Research Council Special Research Initiative in Stem Cell Science. Megan is a stem cell biologist who combines her scientific expertise with a deep understanding of the complex ethical, social and regulatory issues pertaining to stem cell research and its clinical translation. As a member of several multidisciplinary collaborations, her research explores community expectation in stem cell science and the challenges of regulating emerging technologies. She has recently co-authored a book – *Stem Cell Tourism and the Political Economy of Hope* (Palgrave, 2017) – and has numerous publications including resources for the public, health and educational professionals. She is a member of advisory committees to the International Society for Stem Cell Research, International Society for Cellular Therapy, Australasian Society for Stem Cell Research, Australian Academy of Science and the Victorian Assisted Reproductive Treatment Authority.

Dianne Nicol (Chapters 19, 21, 22) is a Professor of Law at the University of Tasmania and Director of the Centre for Law and Genetics (CLG), which is housed in the Law

Faculty. The broad theme of the CLG's research is the regulation of biotechnology, human genetics and stem cell technology. Dianne's research particularly focuses on the legal and social issues associated with the commercialisation of genetic knowledge and patenting of genetic inventions. She has held a number of Australian Research Council Discovery grants. Dianne also holds the role of Chair of Academic Senate at the University of Tasmania. In 2012 Dianne was appointed to a three-member expert panel to review pharmaceutical patenting in Australia. She is currently a member of two principal committees of the Australian National Health and Medical Research Council, the Australian Health Ethics Committee and the Embryo Research Licensing Committee, as well as the Gene Technology Ethics and Community Consultative Committee of the Office of the Gene Technology Regulator. She is a fellow of the Australian Academy of Law.

Paula O'Brien (Chapter 4) is a Senior Lecturer at Melbourne Law School. Paula researches in the areas of public health law and public interest law. Her public health research focuses on the regulation of dangerous commodities, in particular alcohol, and on global access to health care, including the international right to health, issues in access to health care for different migrant groups, and the privatisation of health care. Paula co-directs the Health and Medical Law Masters program at Melbourne Law School. She was previously a Fellow at the O'Neill Institute for National and Global Health Law at Georgetown University in Washington DC (2008-09), the Executive Director of the Public Interest Law Clearing House in Melbourne (2003-07), and a lawyer in private practice, specialising in the regulation of health practitioners, in Melbourne (1999-2003).

Margaret Otłowski (Chapter 15) is Professor of Law at the University of Tasmania, Pro Vice-Chancellor (Culture and Wellbeing) and Deputy Director of the Centre for Law and Genetics. She served as Law Faculty Dean from 2010-17. She has longstanding experience in health law and bioethics, publishing extensively in the field, and has been engaged by Commonwealth and State governments and agencies as consultant and member for various committees, working parties and tribunals, including as member of the Tasmanian Anti-Discrimination Tribunal. She was a member of the NHMRC's Australian Health Ethics Committee and the Human Genetics Advisory Committee, serving as member in common, for two triennia between 2009 and 2015. Her research has largely focused on issues of regulation, privacy, discrimination and law reform. In 2015 she was made a Fellow of the Australian Academy of Law and in 2017 she was appointed as member of the Australian Research Integrity Committee.

Ron Paterson (Chapter 36) is Professor of Law at the University of Auckland and Distinguished Visiting Fellow at Melbourne Law School. He was New Zealand Health and Disability Commissioner between 2000 and 2010, and Parliamentary Ombudsman from 2013 to 2016. Ron is an international expert on complaints, health care quality and the regulation of health professions. He is co-editor of *Health Law in New Zealand* (Thomson Reuters, 2015) and author of *The Good Doctor: What Patients Want* (Auckland University Press, 2012). Ron was made an Officer of the New Zealand Order of Merit (ONZM) for services to health in 2011 and an honorary Fellow of the Royal Australasian College of Physicians in 2014.

Kerry Petersen (Introduction, Chapter 35) is an Adjunct Associate Professor in the Law School at La Trobe University. Her main research interest is in medical law, particularly in the area of human reproduction. Kerry has had a number of research grants including two ARC Discovery grants with research teams, a Senior Research Fellowship at the School of Law, University of Glasgow, a Rockefeller Residential Fellowship Residency Program Bellagio, Italy, an Australian Bicentennial Fellowship Grant from the Menzies Centre, Kings College University of London, and a grant from the Fertility Society of Australia (G Baker). She has published the following books: *Abortion Regimes* (Dartmouth, 1993), *Pink Pages: A Directory of Women's Rights in Australia* (Penguin, 1978, with B Bishop) and edited books: *Controversies in Health Law* (Federation Press, 1999, with I Freckelton), *Disputes and Dilemmas in Health Law* (Federation Press, 2006, with I Freckelton) and *Intersections: Women on Law, and Medicine and Technology Medicine* (Ashgate, 1997). Her most recent publications have been in the *Australian and New Zealand Journal of Obstetrics and Gynaecology* as well as in the *Australian and New Zealand Journal of Public Health*.

Megan Prictor (Chapter 23) is a Research Fellow in the School of Law at the University of Melbourne. She undertakes research in the fields of law and emerging health technologies, such as biobanking. She was previously Managing Editor at Cochrane (publisher of the Cochrane Library), focusing on consumer involvement in health care, and also worked in law publishing at the Office of the Chief Parliamentary Counsel in Victoria. She has published in the fields of public interest law as well as patient engagement and informed decision-making. Megan holds a PhD in the humanities (University of Melbourne, 2000) and a first-class honours degree in law (La Trobe, 2014), where she was awarded the Supreme Court Prize.

David Ranson (Chapter 30) is an Adjunct Clinical Associate Professor in the Department of Forensic Medicine at Monash University. He is a specialist forensic pathologist and a Deputy Director of the Victorian Institute of Forensic Medicine in Melbourne. David is managerially responsible for delivering Forensic Medical Services in Victoria, including the State Forensic Pathology Service, the State Clinical Forensic Medicine Service and allied Forensic Science Services including Toxicology and Molecular Biology. He is also Medical Director of the Donor Tissue Bank of Victoria (the largest public multi-tissue bank operating in Australia) that provides human tissues for research and for transplantation to patients in Victoria. His academic work also involves managing and co-ordinating the undergraduate Medical Law program in the Medical Faculty at Monash University. He has developed and teaches subjects in the Monash University Masters of Forensic Medicine degree and organised several short courses/workshops including Forensic Radiology and Medical Expert Evidence. He has been a visiting Professor in Forensic Pathology at the Singapore Health Services Authority (HSA) and the external Professorial Examiner in Forensic Medicine to the Sri Lanka Medical Council. He has been a Member of the Council of the Royal College of Pathologists of Australasia. His publications include over 125 papers in medical and legal journals and over 25 books, monographs and book chapters, including (with Ian Freckelton, *Death Investigation and the Coroner's Inquest* (OUP, 2006; 2nd ed, forthcoming, Thomson Reuters, 2018).

Belinda Reeve (Chapter 8) is a Lecturer in Health Law at Sydney Law School. She worked as a Law Fellow at the O'Neill Institute for National and Global Health Law at Georgetown University before her appointment at the Law School in 2015. She teaches in the areas of Torts, Regulatory Theory, and Health Law. Her research focuses on the role of law and regulation in improving nutrition and diet-related health, and she is the co-founder of the Food Governance Node at the University of Sydney's Charles Perkins Centre. She has also published extensively in this area, as well as on other topics in the field of public health law, including road safety and injury prevention. Her current research focuses on local-level action by communities, civil society and governments to create healthier urban food environments.

Ronli Sifris (Chapter 18) is a Senior Lecturer in Monash University's Faculty of Law and a Deputy Director of the Castan Centre for Human Rights Law. She completed an LLM in International Legal Studies as a Hauser Scholar at NYU School of Law and a PhD at Monash University. Ronli's research focus is on the intersection of reproductive health/rights and the law at both the international and domestic level; for example, she has published extensively on abortion, involuntary sterilisation and surrogacy. Her recent book, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture* (Routledge, 2014), conceptualises restrictions on reproductive freedom within the framework of torture discourse. Other recent publications include co-editing a Special Issue of the *Griffith Law Review* focusing on 'Gender, Health and the Law'.

Cameron Stewart (Chapter 11) is a Professor of Health Law and Ethics at Sydney Law School and an Adjunct Professor at the Centre for Values, Ethics and the Law in Medicine, Sydney Medical School, University of Sydney. He has degrees in economics, law and jurisprudence. He has worked in the Supreme Court of New South Wales and has practised commercial law at Phillips Fox Lawyers (now DLA Piper). His research spans health, law, guardianship, and tissue regulation. Cameron is a co-author of *Ethics and Law for the Health Professions* (Federation Press, 4th ed, 2013).

Michelle Taylor-Sands (Chapter 17) is a Senior Lecturer in the Law School at the University of Melbourne. She is also a legal member of the Victorian Mental Health Tribunal and a member of the Advisory Panel to the Victorian Assisted Reproductive Treatment Authority. Michelle has advised the Victorian Government on law and policy in relation to assisted reproductive treatment. Before becoming an academic, Michelle was a senior lawyer with the Australian Government Solicitor, where she worked for nine years as a litigation specialist in government law and regulation. She is author of the book, *Saviour Siblings: A Relational Approach to the Welfare of the Child in Selective Reproduction* (Routledge, 2013) and has published articles in Australian and international legal, medical and ethical journals on health law and civil justice. Her current research interests include bioethics, donor conception, selective reproduction and the welfare of the child to be born.

Jon Wardle (Chapter 32) is a Senior Lecturer in Public Health at the Faculty of Health, University of Technology Sydney, and currently holds a National Health and Medical Research Council Translating Research into Practice (TRIP) Fellowship. Jon is also Head of the Regulatory, Policy and Legislative Stream at the Australian Research Centre in

Complementary Medicine within the Faculty of Health and holds visiting positions at the Schools of Medicine at Boston University and the University of Washington. Jon has clinical training in nursing and naturopathy, and postgraduate qualifications in public health, and health and medical law. Jon's research interests focus on the impact of unconventional, unorthodox and unproven health care approaches on global health care systems, and the regulatory, legislative and policy protections that protect the public in this area.

Penelope Weller (Chapter 1) is an Associate Professor and Director of the Juris Doctor Program in the Graduate School of Business and Law at RMIT University in Melbourne. She is an expert on the Convention on the Rights of Persons with Disabilities and mental health law reform, with research interests in a range of disability related areas. She serves as a community member of the Mental Health Tribunal in Victoria. Recent publications include 'Legal capacity and access to justice: The right to participation in the CRPD' in *Laws* (2016); 'The contradictions of gender: women, men and violence in mental health research-policy, law and human rights' in *Griffith Law Review* (2016); 'Reconsidering legal capacity: radical critiques, governmentality and dividing practice' in *Griffith Law Review* (2015); and the monograph *New Law and Ethics in Mental Health Advance Directives: The Convention on the Rights of Person with Disabilities and the Right to Choose* (Routledge, 2013).

Ben White (Chapters 25, 26) is a Professor and Director of the Australian Centre for Health Law Research in the Faculty of Law at the Queensland University of Technology (QUT). Ben graduated with first class Honours and a University Medal in Law from QUT and then completed a DPhil at Oxford University on a Rhodes Scholarship. Before joining the Law Faculty, he worked as an associate at the Supreme Court and at Legal Aid Queensland. Between 2005 and 2007, Ben was appointed as the full-time Commissioner of the Queensland Law Reform Commission where he had carriage of the Guardianship Review on behalf of the Commission. He also served as a part-time Commissioner between 2007 and 2010. Ben's area of research focus is end-of-life decision-making and he has had a series of Australian Research Council grants examining law, policy and practice at the end of life. He is currently a committee member of the Australasian Association of Bioethics and Health Law and an editor of *Health Law in Australia* (Thomson Reuters, 3rd ed, 2018).

Tess Whitton (Chapter 21) is the Projects Officer at the Centre for Law and Genetics at the Faculty of Law and the TasGRID Executive Officer (an initiative to set up a Tasmanian Biobank) at the Menzies Institute for Medical Research, both at the University of Tasmania. She is involved in a broad range of legal research across the health and genetics space. She has conducted research in the areas of biobanking, material transfer agreements, ownership in human tissue, genome editing and embryo research, as well as commercialisation and patenting of biotechnology and genetic inventions.

Lindy Willmott (Chapters 25, 26) is a Professor with the Faculty of Law at the Queensland University of Technology (QUT) and a Director of the Australian Centre for Health Law Research at QUT. She researches and publishes extensively in the area of health law, particularly end-of-life issues. She has expertise in socio-legal research

and has received funding from the Australian Research Council and the National Health and Medical Research Council to undertake empirical research into various aspects of decision-making at the end of life. Lindy is the author of many textbooks and is one of the editors of the text *Health Law in Australia*, now entering its third edition (Thomson Reuters, 2018). Lindy was a member of the Queensland Civil and Administrative Tribunal (previously the Guardianship and Administrative Tribunal) for seven years and is currently on the editorial board of the *Journal of Medical Ethics*.

Gabrielle Wolf (Chapter 14) is a Senior Lecturer in the School of Law at Deakin University. Her fields of research include the current and past regulation of Australian health practitioners, health records and sentencing law. She has recently had accepted for publication book chapters and articles on these subjects, the latter in journals including *Sydney Law Review*, *University of New South Wales Law Journal*, *Journal of Law and Medicine*, *Hofstra Law Review* and *Monash University Law Review*. Gabrielle previously worked as a researcher in the Law and Policy Program of the Data to Decisions Cooperative Research Centre, and as a lawyer in private practice and in-house, practising in a range of areas and particularly the regulation of health practitioners. She holds a PhD in History, LLB and BA (Hons) from the University of Melbourne.