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## Teaching Law in a Time of Crises: Learning Opportunities Arising from Crises

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# TEACHING LAW IN A TIME OF CRISES

## LEARNING OPPORTUNITIES ARISING FROM CRISES

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CHINELLE DUVENHAGE AND JOAN SQUELCH \*

### I INTRODUCTION

In 2022, a photograph of a Ukrainian professor delivering teaching online from the Ukrainian-Russian warzone in full military gear captured media attention and epitomised teaching in a crisis situation.<sup>1</sup> This is an extreme example of teaching in times of crises. Crises come in many forms and the word can be used in different ways depending on the situation and discipline. Moreover, as noted by Mitroff and Anagnos 'crises have become an inevitable, natural feature of our everyday lives'.<sup>2</sup> Teaching in a 'time of crisis' in Australia, and more specifically Western Australia, hardly conjures up teaching in a warzone. However, 'everywhere [we] are impacted by crises large and small'.<sup>3</sup> Teaching in a crisis can therefore be framed within the meaning of an 'unstable period', a 'turning point' or in a 'time of great danger'. In organisations, including educational institutions, a crisis may refer to unpredictable events (eg, COVID-19), major disruptions, and threatening situations that pose a risk to institutional reputation and success, such as the lack of resources, erosion of values, ineffectual leadership, dysfunctional management, financial pressures and even lawsuits.<sup>4</sup> Following a brief overview of the meaning and context of a 'crisis' in Part II, Part III of this article identifies essential behaviours, qualities and skills for teaching in a time of crisis based on crisis management and leadership theory. Part IV then considers pedagogical opportunities for teaching law in times of crisis.

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<sup>1</sup> Evan Simko-Bednarski, 'This Ukrainian Professor is Teaching His Class Remotely — From the Front Lines of War', *New York Post* (online, 6 May 2022) <<https://nypost.com/2022/05/06/ukrainian-professor-still-lectures-from-the-front-lines-of-war/>>.

<sup>2</sup> Ian Mitroff and Gus Anagnos, *Managing Crises Before They Happen: What Every Executive and Manager Needs to Know About Crisis Management* (AMACOM, 2000) 3. See also, Otto Lerbinger, *The Crisis Manager: Facing Disasters, Conflicts and Failures* (Taylor & Francis, 2011) 6–8.

<sup>3</sup> Mitroff and Anagnos (n 2) 5.

<sup>4</sup> See, eg, Edward S Devlin, *Crisis Management Planning and Execution* (Auerbach Publishers, 2006) 10. Other examples include product failure and product tampering.

## II WHAT IS A CRISIS?

Definitions of and synonyms for the term 'crisis' abound, and as Johnson notes 'dissecting and defining the word "crisis" is far from straightforward' and the 'semantic range of "crisis" is nothing short of Herculean'.<sup>5</sup> It is a term that is also overused and misused. In particular, the use of the 'word in the media is loose and imprecise'.<sup>6</sup> Moreover, Coombs notes that while there are similarities between definitions, 'there is no one, universally accepted definition of crisis'.<sup>7</sup> Nonetheless, for the sake of brevity, 'crisis' is variously and commonly defined as 'an extremely difficult or dangerous situation';<sup>8</sup> 'a time of great disagreement, confusion and suffering' (think the COVID-19 pandemic);<sup>9</sup> 'the decisive moment'; 'a crucial turning point' and an 'unstable period'.<sup>10</sup> Barton sums up the term crisis as 'an incident that is unexpected, negative, and overwhelming'.<sup>11</sup>

In terms of organisational crises, Milburn et al posit that 'one of the most significant influences on an organisation and its members is an organizational crisis' given the vast impact of crises on organisations and the 'implications for its very life'.<sup>12</sup> This applies equally to educational institutions and more specially, for the purpose of this article, the life of teaching and learning at those tertiary institutions. Ulmer, Sellnow and Seeger describe a crisis in an organisation as a 'specific, unexpected, and non-routine event or series of events that create high levels of uncertainty and threaten or are perceived to threaten an organisation's high-priority goals'.<sup>13</sup>

Similarly, Coombs defines an organisational crisis as 'the perception of an unpredictable event that threatens important expectancies of stakeholders and can seriously impact an organisation's performance and generate negative outcomes'.<sup>14</sup> Jacques likewise distinguishes a crisis as 'an event or development that can focus unwanted visibility on the organisation and is likely to endanger health or the environment, or seriously impact reputation or [the] ability to do business'.<sup>15</sup> Notwithstanding the many definitions and descriptions of a 'crisis', the definitions point to the unpredictability, destructive, overwhelming and serious nature of the event, and hence the need for decisive action. Farazmand for instance notes that a 'central feature of all crises is a sense of urgency'.<sup>16</sup> A crisis is 'an urgent situation that requires immediate and decisive action'.<sup>17</sup>

<sup>5</sup> Tim Johnson, *Crisis Leadership: How to Lead in Times of Crisis, Threat and Uncertainty* (Bloomsbury Publishing, 2017) 5. See also, Lerbinger (n 2).

<sup>6</sup> Johnson (n 5) 5.

<sup>7</sup> W Timothy Coombs, 'Parameters for Crisis Communication' in W Timothy Coombs and Sherry J Holladay (eds) *Handbook of Crisis Communication* (Wiley, 2010) 18.

<sup>8</sup> Cambridge Dictionary (online at 22 October 2023) 'crisis'.

<sup>9</sup> Ibid.

<sup>10</sup> Merriam-Webster Dictionary (online at 22 October 2023) 'crisis'. See also, Ali Farazmand, *Crisis and Emergency Management: Theory and Practice* (Taylor & Francis, 2<sup>nd</sup> ed, 2014) 3–5; Linda Moerschell and Susan Novak, 'Managing Crisis in a University Setting: The Challenge of Alignment' (2020) 28(1) *Journal of Contingencies and Crisis Management* 30, 30.

<sup>11</sup> Laurence Barton, *Crisis in Organizations II* (South-Western College Publishing, 2<sup>nd</sup> ed, 2001), cited in Coombs (n 7) 18.

<sup>12</sup> Thomas W Milburn, Randall S Schuler and Kenneth H Watman, 'Organisational Crisis. Part I: Definition and Conceptualisation' (1983) 36(12) *Human Relations* 1141, 1142.

<sup>13</sup> Robert R Ulmer, Timothy L Sellnow and Matthew W Seeger, *Effective Crisis Communication: Moving From Crisis to Opportunity* (SAGE, 2<sup>nd</sup> ed, 2007), cited in Johnson (n 5) 11.

<sup>14</sup> Coombs (n 7) 19.

<sup>15</sup> Tony Jacques, *Issues and Crisis Management: Exploring Issues, Crises, Risks and Reputation* (OUP, 2014) 6.

<sup>16</sup> Ibid 4.

<sup>17</sup> Larry Smith and Dan Riley, 'School Leadership in Times of Crisis' (2012) 32(1) *Leadership & Management* 57, 58.

A wide range of events and actions that might be described as a 'crisis' impact on educational institutions, including natural disasters (buildings destroyed by floods or fire), financial loss,<sup>18</sup> cyber-attacks,<sup>19</sup> violence on campuses,<sup>20</sup> industrial strikes, large staff turnover and lawsuits.<sup>21</sup> Such crises in educational institutions will inevitably impact on teachers and students, and teaching and learning.

### III TEACHING IN TIMES OF CRISES: ESSENTIAL TEACHER ATTRIBUTES

Whether crises are external or internal, major or minor, teaching during a crisis calls for teaching behaviours and skills that can respond to whatever the crisis presents. This was evident and has been well documented in the context of the COVID-19 pandemic. The question, then, is what kinds of teaching behaviours, qualities, and skills are recognised as essential for times of crisis? This is addressed by drawing on crisis management and leadership theory.

Crisis management essentially refers to strategies, plans and procedures necessary for preparing for, responding to and managing a crisis, no matter the size or nature of the crisis.<sup>22</sup> It is a 'process of many parts, such as preventative measures, crisis management plans, and post-crisis evaluations'.<sup>23</sup> From the literature and research on crisis management and leadership, one can discern common approaches to crisis management as well as, importantly, the leadership attributes needed to deal with crises, including the ability to turn crises into positive learning opportunities. No matter what the crisis, there is consensus in the literature that strong and effective leadership is essential. As noted by Smith and Riley 'a crisis is a major test of leadership' and 'leaders need to take responsibility, and do what needs to be done', even if this means deviating from the 'rules'.<sup>24</sup> Core leadership abilities or attributes that are commonly cited include being decisive, flexible, adaptive, creative, courageous, resilient and sensitive to the situation and people. Three core abilities that stand out in the literature are adaptability, creative thinking and resilience. These may be classified as soft qualities or skills, but they are imperative when dealing with and responding to crises. These core abilities apply equally to teachers teaching in times of crises.

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<sup>18</sup> Universities Australia, 'COVID-19 to Cost Universities \$16 Billion by 2023' (Web Page, 3 June 2020) <<https://universitiesaustralia.edu.au/media-item/covid-19-to-cost-universities-16-billion-by-2023/>>.

<sup>19</sup> Alexandria Utting, 'More than 11,000 Employees, Students and Former Staff Affected by Cyber Attack, QUT says', ABC News (online, 3 February 2023) <<https://www.abc.net.au/news/2023-02-03/qut-cyber-attack-university-staff-students-affected/101929302>>.

<sup>20</sup> Charolette Gore, 'Two Female Students in Hospital after Stabbing at Australian National University in Canberra', ABC News (online, 18 September 2023) <<https://www.abc.net.au/news/2023-09-18/act-two-taken-to-hospital-after-alleged-anu-stabbing/102870900>>.

<sup>21</sup> See, eg, Fair Work Ombudsman, 'University of Melbourne Faces Court for Alleged Underpayments, Serious Contraventions' (Web Page, 10 February 2023) <<https://www.fairwork.gov.au/newsroom/media-releases/2023-media-releases/february-2023/20230210-university-of-melbourne-second-litigation-media-release>>.

<sup>22</sup> See, eg, Edward S Devlin, *Crisis Management Planning and Execution* (Auerbach Publishers, 2006); Jacques (n 15) 2, 9 and 12; Christer Pursiainen, *The Crisis Management Cycle: Theory and Practice* (Taylor & Francis Group, 2017) 2–3.

<sup>23</sup> Coombs (n 7) 20.

<sup>24</sup> Smith and Riley (n 17) 64.

## Adaptability

Calarco and Gurvis describe *adaptability* simply as 'responding effectively to changing events', which they regard as an imperative for leadership.<sup>25</sup> Responding to a crisis requires being able to 'quickly adapt [plans] to meet the current situation'.<sup>26</sup> And according to Yukl and Lepsinger, adaptability 'becomes even more important when the external environment is turbulent and uncertain'.<sup>27</sup> Referencing the school education context, Smith and Riley note that 'each crisis is unique and requires significant flexibility in response by the school leader'.<sup>28</sup> Thus, in times of crisis, adaptability enables one to act decisively and confidently to changing circumstances, uncertainty, and unprecedented demands. Calarco and Gurvis further identify three elements of adaptability in leaders that resonate and apply equally to teachers/academics dealing with and operating in different crisis situations, namely cognitive flexibility (ability to use different mental frameworks and strategies), emotional flexibility (using different approaches to deal with the emotions of one's own and others) and dispositional flexibility (remaining optimistic at the same time being realistic).<sup>29</sup> In times of external and internal crises impacting on teaching and learning, teachers have had to draw on cognitive and emotional abilities in order to adapt positively, resourcefully and efficiently to unexpected or rapid change, unprecedented administrative demands, increased workloads, the use of new technologies (often without the requisite training), and staff shortages.

## Creative Thinking

*Creative thinking* is key to solving problems and arriving at innovative solutions in times of crisis. Farazmand states that 'thinking creatively and strategically' and 'taking bold decisions and acting courageously'<sup>30</sup> are essential for successfully managing crises. Similarly, Mitroff and Anagnos view crisis management as an 'exercise in creative thinking'<sup>31</sup> or thinking 'far outside of the boxes'.<sup>32</sup> They further argue that managing major crises requires being able 'to do the unthinkable' in times of 'unthinkable demands'.<sup>33</sup> Mitroff and Anagnos emphasise that critical thinking allows one to 'respond to crises after they have occurred' but more importantly to 'anticipate problems before they are upon us'.<sup>34</sup> Responding to crises creatively and productively takes courage, foresight, integrity, tenacity and resilience. This is evident when one considers teaching from a war zone, or the unprecedented demands made on teachers during the COVID-19 pandemic. But these teaching characteristics are just as applicable to dealing with short-term or less major crises.

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<sup>25</sup> Alan Calaroc and Joan Gurvis, *Adaptability: Responding Effectively to Change* (Centre for Creative Leadership, 2006) 8.

<sup>26</sup> Smith and Riley (n 17) 63.

<sup>27</sup> Gary Yukl and Richard Lepsinger, 'Leading Change: Adapting and Innovating in an Uncertain World' in Stephen Rush and Kerry Bunker (eds), *On Leading in Times of Change* (Centre for Creative Leadership, 2012) 1.

<sup>28</sup> Smith and Riley (n 17) 65.

<sup>29</sup> Calaroc and Gurvis (n 25) 12.

<sup>30</sup> Farazmand (n 10) 5.

<sup>31</sup> Mitroff and Anagnos (n 2) 115.

<sup>32</sup> Ibid 113.

<sup>33</sup> Ibid 121.

<sup>34</sup> Ibid 127.

## Resilience

The Oxford dictionary defines '*resilient*' as 'springing back' or 'readily recovering from shock'.<sup>35</sup> Thus resilience can be described as the ability 'to bounce back' or readily recover from a crisis. Resilience is necessary to 'return things to "normal" as quickly as possible'.<sup>36</sup> This requires a state of adaptability, perseverance and self-reliance. As stated by Smith and Riley, crisis leadership requires the 'ability to cope' and the 'tenacity to persevere when all seems lost'.<sup>37</sup> The importance of resilience for teachers is clear from research on teacher well-being and resilience and building resilience in teacher education programs. Although there is no one definition or construct of resilience in terms of teachers, education research builds on Ungar's definition of resilience, being 'a process whereby individuals harness personal and contextual resources in order to successfully navigate challenging circumstances'.<sup>38</sup> Ungar further notes that 'resilience is the process of harnessing resources in order to adapt successfully'.<sup>39</sup> Resilience is viewed as essential for teacher wellbeing, effectiveness and success.<sup>40</sup> Teaching in times of crises requires resilience, perseverance and flexibility in order to cope cognitively and emotionally with unexpected, unpredictable situations, potentially overwhelming expectations, and increasingly limited time and resources.

A cursory foray into crisis management and leadership theory demonstrates that adaptability, creativity and resilience are core qualities that facilitate and enhance quick and efficient decision-making, creative problem-solving and decisive action in times of crisis and when responding to unpredictable, disruptive situations. These core attributes of adaptability, creative thinking and resilience apply equally to teachers teaching in a time of crisis. In times of crisis, teachers also have to manage and adapt to their own work situation, teaching responsibilities and often unprecedented demands on their work and time. How to become more adaptable, resilient, and creative in the workplace is another separate discussion. For the purpose of this article, the discussion that follows considers how teachers can turn a crisis into a learning opportunity, which requires creativity and adaptability.

## IV FROM CRISIS TO PEDAGOGICAL OPPORTUNITIES

Farazmand posits that while crises are destructive 'they may also develop opportunities for a new order, changes that may produce positive results'.<sup>41</sup> Likewise, Friedman argues that a crisis 'is not

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<sup>35</sup> Australian Concise Oxford Dictionary (6<sup>th</sup> ed, 2017) 'resilient' (def 1 and 2).

<sup>36</sup> Smith and Riley (n 17) 64.

<sup>37</sup> Ibid 65.

<sup>38</sup> Michael Ungar, 'Social Ecologies and Their Contribution to Resilience' in Michael Ungar (ed), *The Social Ecology of Resilience: A Handbook of Theory and Practice* (Springer, 2012) 13, cited in Ina Hascher, Susan Beltman and Caroline Mansfield, 'Teacher Wellbeing and Resilience: Towards and Integrative Model' (2012) 63(4) *Educational Research* 416, 418.

<sup>39</sup> Ungar (n 38), cited in Hascher, Beltman and Mansfield (n 38) 419. See also, Kerstin Helker et al, 'An Exploratory Interview Study of University Teacher Resilience' in Marold Wosnitza et al (eds), *Resilience in Education: Concepts, Contexts and Connections* (Springer, 2018).

<sup>40</sup> See, eg, Hascher, Beltman and Mansfield (n 38); Caroline Mansfield et al, 'Building Resilience in Teacher Education: An Evidenced Informed Framework' (2016) 54 *Teaching and Teacher Education* 77; Qing Gu and Christopher Day, 'Teachers Resilience: A Necessary Condition for Effectiveness' (2007) 23(8) *Teaching and Teacher Education* 1302; Marold Wosnitza et al (n 39) 185–202.

<sup>41</sup> Farazmand (n 10) 5.

necessarily a bad thing. It may be a radical change for good as well as bad'.<sup>42</sup> In this regard, Lerbinger notes that 'managers who recognise opportunities [in a crisis] are more likely to change their mindsets to accommodate a situation'.<sup>43</sup> Creativity and adaptability enable a teacher to 'create opportunities out of crises'.<sup>44</sup> One lesson to be learned from the COVID-19 pandemic and other crises is that they present opportunities for learning and, for the purpose of this article, teaching law.<sup>45</sup> Crises — whether it is the war in Ukraine or the conflict in Israel and Gaza, a global financial crisis, a natural disaster, a technological crisis, an institutional crisis or social crises in aged care and housing — open up opportunities for interesting and informative discussion and debates in the classroom on crisis management generally but also on specific discipline topics that incorporate the advancement of discipline knowledge and skills such as creative thinking. For example, in the context of this article, crises provide opportunities for studying specific topics in law, of which a few examples are provided below.

### Contract Law

In March 2020, COVID-19 brought with it a global crisis that had a significant impact on building and construction contracts, as well as other business contracts, across Australia and internationally.<sup>46</sup> Domestically, the construction industry was greatly impacted by the long lockdowns and significant disruption to supply chains. The crisis saw the collapse of small to medium construction/building companies experiencing issues such as the costs of materials, disrupted supply, and labour shortages. Other businesses and industries were likewise affected by prolonged closure of business or restricted business activities, and shortages of supplies.<sup>47</sup>

The crisis significantly affected the performance of contracts, with contracts being terminated, suspended or altered, giving rise to legal issues concerning breaches of contract, liability and compensation or refunds. The crisis situation also gave rise to the question of whether a contract is 'crisis ready'.<sup>48</sup> The COVID-19 crisis provided a golden opportunity to study contracts and principles of contract law from a 'crisis ready' perspective, including the effect of events such as acts of God, war, strikes, flooding, epidemics, pandemics and government interference on contracts, as well as issues relating to the termination of contracts, remedies and, importantly, the role and scope of force majeure clauses,<sup>49</sup> and the common law doctrine of frustration.<sup>50</sup> Students can also develop practical skills by learning to draft a 'crisis ready' building and construction contract.

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<sup>42</sup> Mark L Friedman, 'Everyday Crisis Management: How to Think Like an Emergency Physician' (First Decision Press, 2002), cited in Coombs (n 7) 18.

<sup>43</sup> Lerbinger (n 2) 14. See also, Moerschell and Novak (n 10) 31.

<sup>44</sup> Smith and Riley (n 17) 67.

<sup>45</sup> As the authors work within a School of Law and Business, it is acknowledged that the business discipline offers the greatest possible opportunities for studying crisis management and teaching in crisis situations. There are thus opportunities for collaborative research between law and business in this area.

<sup>46</sup> See, eg, Phil Evans, Chinelle van der Westhuizen and Jacques Duvenhage, 'Avoiding Construction Contract Risk in a COVID-19 Environment' (2022) 38 *Building and Construction Law Journal* 88, 88–9; Chinelle van der Westhuizen and Phil Evans, 'ACL Unfair Contract Terms in Construction Contracts' (2019) 21 *The University of Notre Dame Australia Law Review* 1.

<sup>47</sup> Michele O'Neil, 'The Australian Industrial System in the Era of COVID-19' (2021) 63(3) *Journal of Industrial Relations* 422.

<sup>48</sup> Holding Redlich, 'Are Your Contracts Crisis Ready?' (Website, 18 March 2020) <<https://www.holdingredlich.com/are-your-contracts-crisis-ready>>.

<sup>49</sup> The force majeure clauses are subject to interpretation of the construction contract, see, eg, *Acciona Industrial Australia Pty Ltd v Kwinana WTC Project Co Pty Ltd* [2022] WASC 380.

<sup>50</sup> An example can be drawn from the article on crisis management and tourism: Gui Santana, 'Crisis Management and Tourism: Beyond Rhetoric' (2004) 15(4) *Journal of Travel and Tourism* 299. Crises in the

## Constitutional Law

At various times, federal and state laws have been passed to respond to a crisis, which has in some instances given rise to legal challenges to their constitutional validity. For example *Pape v Commissioner of Taxation* (2009) 238 CLR 1 dealt with the validity of the *Tax Bonus for Working Australians Act (No 2) 2009* (Cth) that was passed in response to the impact of the global financial crisis, *Thomas v Mowbray* (2007) 223 CLR 307 challenging provisions of the *Criminal Code* (Cth) on terrorism in the wake of 9/11 and the 'war on terror', and *Palmer v Western Australia* (2021) 272 CLR 505 challenging the constitutional validity of the Quarantine (Closing the Border) Directions (WA) issued under the *Emergency Management Act 2005* (WA) that restricted the movement of persons into and out of WA during COVID-19 lockdowns. Judicial decisions can also generate and/or contribute to a crisis situation as is evident from the recent High Court case of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 in which 'indefinite detention' was ruled unconstitutional resulting in the immediate release of a number of 'unlawful non-citizens', many of whom had committed very serious crimes. Constitutional law is therefore another area of law that offers the opportunity to discuss crises within the context of constitutional law, federal-state relations and the validity of laws.

## Administrative Law

Crises whether arising out of war, natural disasters, economic events, government action or institutional leadership, are often met with public response in the form of protest action. This is seen almost on a daily basis worldwide. Most recently this has once again drawn media attention in relation to pro-Palestinian marches in Sydney.<sup>51</sup> In administrative law (and constitutional law), this invites the opportunity to teach about the law and crises in terms of executive power, the scope and use of emergency legal powers, state abuse of emergency powers, human rights issues and international perspectives on the use of emergency powers.

The controversial use of emergency powers was also evident at the height of the COVID-19 pandemic lockdowns. During the pandemic, expansive emergency powers were exercised by the National Cabinet and state and territory governments to significantly restrict the movement of people and enforce mandatory vaccination. This gave rise to several legal challenges. To this end, legislation dealing with emergency powers<sup>52</sup> and cases such as *Palmer v Western Australia* (2021) 272 CLR 505 (WA border closures), *Newman v Minister for Health and Aged Care* [2021] FCA 517 (prohibition on people returning to Australia from India), *Kassam v Hazzard* [2021] NSWSC 1320 (mandatory vaccination) and the recent Queensland case of *Johnston v Carroll (Commissioner of the Queensland Police Service)* [2024] QSC 2 (mandatory vaccination) provide a rich source of legal materials for students in administrative law to critically examine and debate the scope and use of emergency powers in times of crises.

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tourism and travel industry from which Australia has not been immune in recent times can be examined from a legal perspective that covers contract law, consumer law and insurance law, as well as crisis management generally.

<sup>51</sup> 'Sydney Police Plan to Use 'Extraordinary' Powers to Search pro-Palestinian Protesters and Demand ID', *The Guardian* (online, 13 October 2023) <<https://www.theguardian.com/australia-news/2023/oct/13/sydney-police-search-powers-pro-palestine-protest-id-hyde-park-israel-hamas-war>>.

<sup>52</sup> See, eg, *Biosecurity Act 2015* (Cth); *Emergency Management Act 2005* (WA); *Public Health and Wellbeing Act 2008* (Vic); *Public and Environmental Act 2011* (NT).

## **Corporations Law**

A key aspect of corporate governance is risk and crisis management. As indicated above, businesses face a myriad of potential crises, including regulatory and legal crises,<sup>53</sup> some of which have a momentous human, reputational, financial and legal impact.<sup>54</sup> Examples include the 2023 Optus outage,<sup>55</sup> Qantas' class actions,<sup>56</sup> the PwC tax scandal,<sup>57</sup> Medibank's cyber-attack<sup>58</sup> and the Royal Commission into the banking and finance industry.<sup>59</sup> In corporations law, these events provide useful case studies for examining the corporate legal and regulatory environment, especially in terms of compliance, legal duties, liability (including corporate criminal liability) and regulatory reform.<sup>60</sup> Corporate insolvency law 'in a time of crisis' has also received business and media attention with a view to reforming insolvency laws.<sup>61</sup> This provides a further area of law to be included when teaching about the development and reform of law in times of crises.

## **Employment Law**

Employment law is an ideal area of law to study the impact of crises on the workplace such as physical disasters, technological crises, financial crises, industrial action, workplace bullying and harassment, and so on.

Take workplace bullying as an example. Bullying in the workplace is a serious issue and is itself considered a crisis in various sectors (eg, nursing). Workplace bullying is also 'thriving in the remote-work era',<sup>62</sup> which was evident during the COVID-19 pandemic. The crisis of workplace bullying provides an opportunity for law students to learn about workplace bullying and the relevant laws. This is useful for students as future employees and legal practitioners.

Another example of a workplace crisis has arisen in the aged care sector, which has had a significant impact on aged-care workers as well as the elderly people in care. Aged care facilities

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<sup>53</sup> See, eg, Australian Institute of Company Directors, 'Crisis Management' (Web Page) <<https://www.aicd.com.au/company-policies/crisis-management.html>>.

<sup>54</sup> See, eg, ACCC, 'Court Orders Volkswagen to Pay Record \$125 million in Penalties' (Web Page) <<https://www.accc.gov.au/media-release/court-orders-volkswagen-to-pay-record-125-million-in-penalties>>.

<sup>55</sup> Mikaela Orlan, 'More than 10 Million Customers were Affected by the Optus Outage. Here's How it Played Out', ABC News (online, 10 November 2023) <<https://www.abc.net.au/news/2023-11-09/how-the-optus-outage-played-out/103079768>>.

<sup>56</sup> Ayesha de Kretser, 'Qantas Sued over "Misleading" Flight Credits, Refunds', *Australian Financial Review* (online, 21 August 2023) <<https://www.afr.com/companies/transport/qantas-sued-over-misleading-flight-credits-refunds-20230821-p5dy5o>>.

<sup>57</sup> Edmund Tadros, 'Hunt for the "Dirty Six": PWC Accused of Hiding Tax Leaks Report', *Australian Financial Review* (online, 9 February 2024) <<https://www.afr.com/companies/professional-services/hunt-for-the-dirty-six-pwc-accused-of-hiding-tax-leaks-report-20240209-p5f3sj>>.

<sup>58</sup> See, eg, Australian Government Defence, 'Cyber Sanction in Response to Medibank Private Cyber Attack' (Web Page) <<https://www.minister.defence.gov.au/media-releases/2024-01-23/cyber-sanction-response-medibank-private-cyber-attack>>.

<sup>59</sup> See, eg, Royal Commissions, 'Misconduct in the Banking, Superannuation and Financial Services Industry' (Web Page) <<https://www.royalcommission.gov.au/banking>>.

<sup>60</sup> An example of a crisis management case study in large corporations, which would extend to dealing with potential legal issues and avoiding legal action, is found in: Achyut Telang, 'Keep Calm and Carry On: A Crisis Communication Study of Cadbury and McDonalds' (2016) 11(1) *Managing and Marketing. Challenges for the Knowledge Society* 371.

<sup>61</sup> John Purcell, 'Corporate Insolvency Law in Crisis in a time of Crisis', *Accountsdaily* (online, 19 August 2020) <<https://www.accountsdaily.com.au/regulation/14732-corporate-insolvency-law-in-crisis-in-a-time-of-crisis>>.

<sup>62</sup> Johanna York, 'Workplace Bullying is Thriving in the Remote-work Era, as Technology Opens New Avenues for Unkind Behaviour', How Workplace Bullying Went Remote, *BBC* (online, 22 August 2022) <<https://www.bbc.com/worklife/article/20220819-how-workplace-bullying-went-remote>>.

have also experienced reputational damage as a result of the crisis.<sup>63</sup> The crisis in aged care can be examined from different aspects of law including employment law and health law. It is also an important area for legal research and law reform.

Specific crises impacting on the workplace can be used to develop case studies and scenarios for students to work on and provide advice, which not only includes legal advice but advice on managing a crisis.

### Public International Law

Public international law ('law of nations') covers a wide area of international law. Ongoing armed conflicts around the world are a core feature of teaching public international law which covers a range of topics relating to the use of force, statehood, war crimes, foreign fighters, international humanitarian law, the protection of cultural property during armed conflict, and the role of institutions such as the United Nations and the International Criminal Court. The current Ukrainian-Russian war<sup>64</sup> and the Israeli-Hamas<sup>65</sup> conflict provide opportunities for teaching a range of international legal issues.<sup>66</sup>

## V CONCLUSION

The theme 'teaching in times of crises' invited the opportunity to reflect on what constitutes a 'crisis' and what this means for teaching and learning. The word 'crisis' immediately evokes a whole range of different crises from the extreme to the more mundane. As highlighted in this article, there is no generally accepted definition of a 'crisis' or the categorisation of 'crises'. Crises come in many forms. There is, however, wide agreement on the significant impact crises may have on the 'life of organisations', including educational institutions. Such crises require educational institutions to respond quickly and effectively to mitigate negative consequences, but also provide opportunities to learn. In reflecting on teaching law in times of crises, this article has highlighted some essential attributes teachers need to teach in times of crises and has demonstrated how different kinds of crises can be used as a springboard to incorporate learning opportunities in selected law courses.

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<sup>63</sup> See, eg, Committee for Economic Development in Australia (CEDA), *Duty of Care: Aged Care Sector in Crisis* (CEDA 2022) <<https://www.ceda.com.au/getmedia/a7bc2f9e-4999-4c6b-9795-0eff89f0b94b/Duty-of-Care-Aged-Care-Sector-in-Crisis.pdf>>; 'Absolutely a Crisis: Almost a Quarter of Australia's Aged Care Shifts Unfilled Each Week', *The Guardian* (online, 3 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/03/absolutely-a-crisis-almost-a-quarter-of-australias-aged-care-shifts-unfilled-each-week>>; Ellen Coulter and Laura Kewley, 'Aged Care Workers are Facing a "Crisis Level of Exhaustion" as the COVID-19 Pandemic Continues', *ABC News* (online, 3 February 2022) <<https://www.abc.net.au/news/2022-02-03/aged-care-workers-crisis-level-exhaustion-covid19-pandemic/100801108>>.

<sup>64</sup> International Criminal Court, 'Ukraine ACC-oi/22' <<https://www.icc-cpi.int/situations/ukraine>>.

<sup>65</sup> See, eg, Catherine Gegout, 'Where the ICC Stands if War Crimes are Committed on Either Side of the Israel-Hamas War' *The Conversation* (online, 24 October 2023) <<https://theconversation.com/where-the-icc-stands-if-war-crimes-are-committed-on-either-side-of-the-israel-hamas-war-216093>>.

<sup>66</sup> For example, Lara Pratt, School of Law and Business, The University of Notre Dame Australia, teaches an elective course on 'Law and War' that looks specifically at the 'rules of war'.