

EDITORIAL

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The publication of Issue 46(3) of the *University of New South Wales Law Journal* ('*Journal*') occurs at a tumultuous time in the development of the Australian legal landscape. The *Journal* was edited, typeset and printed in the run-up to the Indigenous Voice to Parliament referendum. This Editorial will be first read after the results of said referendum. No doubt each of its contributors have their hopes set upon a particular outcome. Regardless of the result, a national reckoning with the ongoing systemic marginalisation of First Nations peoples has only affirmed the need for Indigenous 'Rights, Recognition and Reconciliation', this Issue's launch theme.

The severity of disadvantage for Indigenous peoples in this country sustained by White Australia positions First Nations justice at the centre of Issue 46(3). In the lead article by Gabrielle Appleby, Ron Levy and Helen Whalan, the authors explore the ability of a Voice to Parliament to more satisfactorily resolve a crisis of constitutional (il)legitimacy and achieve Indigenous justice in comparison to pre-existing anti-racial discrimination legislation. Another article, by Bethany Butchers, Dani Linder and Amy Maguire, examines how reparations for Indigenous Australians can better address intangible loss.

It is my hope that the discussion of these topics and, more generally, legal avenues for Indigenous justice, will continue to be facilitated by the *Journal* long into the future. Issue 46(3) revives the *Journal*'s practice of inviting author responses to the lead article in its *Forum*, something which I hope will contribute to a continuous dialogue between issues. I look forward to reading soon to be published responses to Gabrielle Appleby, Ron Levy and Helen Whalan's article, and thank those authors who have taken up the task of submitting a response to the *Forum*.

As a generalist issue, Issue 46(3) also addresses pressing issues of socio-legal concern separate to Indigenous justice but nevertheless with a focus on rights, recognition and/or reconciliation.

Rights as a means to justice is a repeating theme. Anita Mackay, Laura Grenfell and Julie Debeljak argue the endemic neglect, abuse and mistreatment of those in Australian residential aged care facilities requires the complete replacement of the current service provider-centred *Aged Care Act 1997* (Cth) with a human rights-centred approach. Similarly, Sonya Willis explores the insecurity of civil litigants' right to be heard and points to direct judicial attention on this aspect of procedural

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fairness as a means of ensuring both natural justice and more effective case management. Lastly, Dominique Allen, Janina Boughey and Dan Meagher imagine a future in which non-discrimination is recognised as a fundamental right at common law and posit that such a future would secure better protection from parliamentary encroachment on civil liberties through general statutory interpretation, and the application of anti-discrimination statutes and administrative law.

For some authors, recognition is a (more) essential precursor to justice. Oscar Roos calls for amendment to the *Australian Constitution* to recognise the *Kable* doctrine for the protection of the institutional independence of state supreme courts. Belinda Reeve seeks recognition of the role that local governments can play in securing healthy, sustainable *and* equitable food systems, in order to harness the potential of new and existing environmental and planning, public health and food regulation laws and policy. With somewhat similar meta-awareness, Eliza Venville, Becky Batagol and Paul Satur raise the profile of victim-survivor experiences of utility abuse as a form of domestic violence so their own strategies to improve water utility support can be adopted. Lastly, in response to inconsistency and unpredictability in sentencing, producing manifest error and often without a clear path to remedy, John Anderson, Mirko Bagaric and Brendon Murphy argue for the introduction of recognised methodologies for calculating appropriate and challenging inappropriate sentences.

Michael Douglas, Catherine Graville and Robyn Carroll are more focused on reconciliatory justice. They decry 2021 amendments to the *Uniform Defamation Acts*,² which introduced a requirement that aggrieved persons issue allegedly defamatory publishers with a concerns notice specifying their grievances and expanded the permissible offers for remedy available to be made by allegedly defamatory publishers, for reducing the incentive for publishers to make reasonable corrections (whilst also increasing likely cost and delay for aggrieved persons).

For a volume that was launched by Issue 46(1) with a concern for ‘Human Rights, Corporations and Communities’ and in recognition that human rights are often a key subject-matter concern for the *Journal*, it is my great pride that Issue 46(3) continues to centre both law *and* justice.

Responsibility for the publication of this Issue rests upon many for whom I am immensely grateful, and who I would also like to briefly acknowledge. Of course, these mere words of thanks cannot truly convey my gratitude to you all.

Thank you, first, to each and every author for choosing the *Journal* to bring their work to the world. The *Journal* is privileged to publish such high quality, thought-provoking legal writing. Thank you for your assistance throughout the editing process; it was a pleasure working with you. I wish you all the best in your future scholarship.

Thank you also to every reviewer and editor, from the peer review process to print, who dedicated their spare time to analysing, researching and tweaking the articles of Issue 46(3). To the General Members of the Editorial Board, the *Journal*’s ongoing

2 *Civil Law (Wrongs) Act 2002* (ACT); *Defamation Act 2005* (NSW); *Defamation Act 2006* (NT); *Defamation Act 2005* (Qld); *Defamation Act 2005* (SA); *Defamation Act 2005* (Tas); *Defamation Act 2005* (Vic); *Defamation Act 2005* (WA).

esteem rests upon your commitment to preserving the accuracy and conformity of its citations. Thank you for your perseverance during long edits and late hours. I hope that in editing Issue 46(3), you felt part of a larger academic community and found interest in the many fascinating topics covered herein.

Thank you also to the Journal's stoic typesetter, Kerry, and its ever-reliable cover designer, John. The physical form that rests in your hands could not be possible without either of them.

To the premier sponsors of the *Journal*, Allens, Corrs Chambers Westgarth, Herbert Smith Freehills and King & Wood Mallesons, thank you for your support which reveals a true commitment to both legal scholarship and sociolegal progression. Thank you especially to Herbert Smith Freehills for hosting the launch of this Issue in your Sydney office, and for the work of your firm and employees in advance of the referendum.

To the UNSW Faculty of Law & Justice, particularly Dean Andrew Lynch and Faculty Advisors Professors Rosalind Dixon and Gary Edmond, thank you for your constant support of the *Journal* and its Executive Committee, as a proudly student-run publication. Gary and Ros, your guidance on the *Journal's* operation was of great assistance during my term and the high standard of your own legal scholarship provided an excellent example throughout the editing process.

To my mother, Tiffany, and sister, Holly, thank you for your patience and generosity of spirit during my times of deep work on Issue 46(3). Your love, not to mention home-cooked meals, sustained me during the most intense periods of my tenure. To my extended family, thank you for encouraging me to pursue a career in law and for your love and guidance, particularly over these last few years of intense study. To my friends and flatmate, Sophie, thank you for your laughter (including at the absurdity of my love for the *Australian Guide to Legal Citation*). You kept me smiling even when we were apart.

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It has been a privilege and an honour to serve as the Editor for Issue 46(3). During my tenure, I have grown as a person and a professional, and my love for legal scholarship and the *Journal* community has grown even more. Happy reading.