

EDITORIAL

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The publication of Issue 45(4) firmly places the *University of New South Wales Law Journal* ('*Journal*') in its mid-40s. With age comes the benefit of experience. Our processes are well established and our community strong. 2022 has had its challenges. The year is not yet over and Sydney has experienced its highest annual rainfall on record¹ as floods wreaked havoc across the east coast of Australia.² The theme selected for this launch, 'Climate Justice and Displacement', responds in part to the troubling images of displacement resulting from this year's extreme weather events. The 12 articles in this General Issue cover this ground and more. They form timely and original snapshots of the contemporary Australian legal landscape.

The launch theme, 'Climate Justice and Displacement', emerges from McAdam's article, 'Exploring the Legal Basis in Australia for Evacuations from Disasters: Avoiding Arbitrary Displacement'. McAdam reflects on the recent flooding and 2019–20 Black Summer bushfires, which resulted in Australia's largest peacetime evacuation. Climate induced evacuations are a part of our future, although we may wish it were not so. McAdam's meticulous analysis of Australia's evacuation laws through a human rights lens fills a critical gap in forced migration research. McAdam finds that though our evacuation policies are relatively sophisticated, their failure to frame evacuations as a form of internal displacement may prevent proper human rights protections from being realised.

The theme 'Climate Justice and Displacement' captures two other threads that travel through Issue 45(4) – justice and displacement. Kha and Ratnam outline the failure of the *Family Law Act 1975* (Cth) to protect Indigenous children's cultural safety through a comparative analysis of New Zealand's family laws. Stanford re-examines the Australian Marriage Equality debates, arguing that their emphasis on the lifelong and exclusive nature of marriage coincided with the erasure of bisexual identities. Wangmann, Kaye and Booth assess the recently introduced Family Violence and Cross-Examination Scheme ('Scheme') which prevents domestic violence perpetrators from cross-examining their victims in family court. They highlight the Scheme's teething issues, including its potential use as

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1 Paige Cockburn and Heath Parkes-Hupton, 'Sydney Marks Wettest Year since Records Began More than 160 Years Ago', *ABC News* (online, 6 October 2022) <<https://www.abc.net.au/news/2022-10-06/sydney-breaks-annual-rainfall-record/101506452>>.

2 See, eg, Donna Lu, 'Flood Warnings in Place in Australia's Eastern States, with Predictions the Wet Weather Could Persist until the Middle of Next Week', *The Guardian* (online, 23 October 2022) <<https://www.theguardian.com/australia-news/2022/oct/23/bureau-warns-of-renewed-flooding-across-victoria-nsw-queensland-and-tasmania>>.

a backdoor mechanism for perpetrators to obtain free legal representation. Popa, Karpen, Wright and Dean enrich our understanding of procedural justice in their qualitative study of Victorian Guardianship Tribunal users. They draw on the burgeoning field of legal design, adopting a human-centred lens to consider users' wellbeing and experiences throughout the tribunal process. Swannie advocates for the implementation of a statutory scheme to protect academic speech from disciplinary action. On the theme of displacement, Wolf outlines the systemic bars to registration faced by refugee doctors in Australia during World War II.

Climate justice recognises that climate change and displacement are fundamentally issues of social justice.³ As McAdam's article demonstrates, climate change will not impact everyone evenly. People with disability, culturally and linguistically diverse communities, and children are disproportionately impacted during times of evacuation. Climate change is also integrally tied to the forces of injustice discussed in the other articles in this Issue, such as colonial expansion⁴ and domestic violence. Climate justice calls for First Nations leadership and knowledge to be centred in responses to climate change. It calls for the unequal effects of the climate crisis on First Nations peoples to be mitigated.⁵ It recognises that women and girls are often the worst impacted in times of climate induced disaster, making climate action essential to preventing gendered violence.⁶ Climate justice calls on Australia to develop just responses to displacement, both internally and globally.⁷ It reminds us that we have a long and sorry history of displacement, from ongoing colonisation,⁸ to the indefinite offshore detention of refugees,⁹ to our disproportionate contribution to climate change.¹⁰ We are honoured to have Fleur Ramsay, the Head of Litigation and Climate Lead for the Pasifika Program at the Environmental Defenders Office, delivering the keynote for this Issue.

This Issue also contains insightful analysis of new legal developments. Jevglevskaja and Buckley examine the recently introduced consumer data right ('CDR'), emphasising the importance of regular reviews and proper processes to the CDR's successful development. Aniulis focuses on facial recognition technology

3 'Climate Justice', *Seed* (Web Page) <https://www.seedmob.org.au/we_are_seed#:~:text=Climate%20change%20is%20an%20issue,facing%20the%20most%20severe%20impacts.>.

4 Tony Birch, 'Climate Change, Mining and Traditional Indigenous Knowledge in Australia' (2016) 4(1) *Social Inclusion* 92, 92 <<https://doi.org/10.17645/si.v4i1.442>>.

5 Ibid.

6 'Climate Change Increases the Risk of Violence against Women', *United Nations Climate Change* (online, 25 November 2019) <<https://unfccc.int/news/climate-change-increases-the-risk-of-violence-against-women>>.

7 See Jane McAdam and Jonathan Pryke, 'Climate Change, Disasters and Mobility: A Roadmap for Australian Action' (Policy Brief, Kaldor Centre for International Refugee Law, October 2020) <<https://doi.org/10.2139/ssrn.3787179>>.

8 See Vanessa Turnbull Roberts, Michael Salter and BJ Newton, 'Trauma Then and Now: Implications of Adoption Reform for First Nations Children' (2021) 27(2) *Child and Family Social Work* 162 <<https://doi.org/10.1111/cfs.12865>>.

9 Kaldor Centre, 'Offshore Processing: An Overview' (Factsheet, 10 August 2021); Behrouz Boochani, *No Friend but the Mountain*, tr Omid Tofghian (2018, Pan Macmillan).

10 Matt McDonald, 'How to Answer the Argument That Australia's Emissions Are Too Small to Make a Difference', *The Conversation* (online, 18 June 2019) <<https://theconversation.com/how-to-answer-the-argument-that-australias-emissions-are-too-small-to-make-a-difference-118825>>.

(‘FRT’), making the important case for administrative law responses targeted specifically to FRT. This suggestion may come as a relief those of us who have grown used to posting our visages on social media and opening our phones with face identification. The proliferation of cryptocurrency also calls for appropriate regulatory responses. Parasol advocates for a cryptocurrency exchange-specific anti-money laundering compliance framework to prevent the denial of banking services to cryptocurrency providers.

Other articles in this Issue take a second look at longstanding laws. Sebesfi responds to the limited circumstances in which foreign judgments can be enforced in Australian courts. Sebesfi argues that Australia should allow for non-monetary remedies to be enforced and foreign courts’ judgments on the validity of their own intellectual property rights to be recognised. Hess writes about the vexed interpretation of the terms ‘oppressive’, ‘unfairly prejudicial to’ and ‘unfairly discriminatory against’ which appear throughout the *Corporations Act 2001* (Cth). Hess concludes that the terms appear in vastly different contexts, warranting a departure from the general preference for uniformity of interpretation.

This Issue is the product of vast collective efforts. I must first thank the authors for entrusting us with your work. Your work has left a significant mark on the lives of the *Journal*’s student editors. The articles written by Popa, Karpen, Wright and Dean, and Wangmann, Kaye and Booth have instilled a passion in me for qualitative research. One of our editors commented that editing Parasol’s article made them ‘invested and interested in the cryptocurrency world’ for the first time. Another described the sense of satisfaction that comes from contributing to articles that ‘have real prospects of eliciting change’. Thanks also to our peer reviewers. The *Journal* could not run without your expertise. We are eternally grateful for your time, generosity and thoughtful comments.

Thank you to our Faculty Advisors, Professors Rosalind Dixon and Gary Edmond, for your invaluable guidance. You make the most difficult challenges seem surmountable. Thank you to the University of New South Wales Faculty of Law and Justice and to our Dean, Professor Andrew Lynch for your pride in the *Journal* and support of our independence.

Thank you to the *Journal*’s four premier sponsors Corrs Chambers Westgarth, Allens, Herbert Smith Freehills and King & Wood Mallesons for your continuing support. I am particularly grateful to Corrs Chambers Westgarth for facilitating Issue 45(4)’s launch.

I extend a special thank you to our Editorial Board. There are insufficient superlatives to describe the calibre of your work. You dedicate such care, attention and time to the *Journal*. Your eagle eyes have spotted many a stray space or errant ‘z’ in place of ‘s’. Your camaraderie makes editing the *Journal* the pleasure that it is. In the words of Board Member Jack Zhou, the community and friendship ‘alone make it worth it’.

I started the year in the *Journal* office with Karie Mayman as she finalised Issue 45(1). It is fitting that we share the office again as I write this, along with Forum Editor Isobelle Wainwright and Issue 46(1) Editor Enrico Mainas. To my cherished

office buddies – thank you for your friendship, encouragement and company. I could not have done this without you.

There is a special tie that binds fellow Issue Editors. Thank you to Hayden Clift, Katherine Cheng and Aakriti Shoree for your friendship and support as this Issue came together. A particular thank you to Aakriti for our conversation which inspired Issue 45(4)'s launch theme and for consistently stepping up in times of difficulty, including a COVID cluster. Thank you to our Executive Editor Darius Dadgostar and Digital Editor Calum Brunton for your kindness and all your work keeping the *Journal* engine running. I know the *Journal* is in the capable hands of Enrico, Hayden, Anna Ho and Alfred Nguyen going into 2023.

I must also extend my thanks to the Executive Committee of Volume 44. The hope of any Executive Committee is to leave the institution a little better than we found it. I confirm you have done just that. A particular thank you to Tina Wu, Alisha Mathias and Caitlin Goutama for your friendship and for coming out of retirement to support this Issue.

Thank you to my wider community. To Brigid, for your mentorship. To my friends for your encouragement and for putting up with my *Journal* related absences. A special thank you to Rhian, Charlie, Rachel and Rosie for coming on this ride with me. Thank you to my partner Sam for the same and for your calm, walks and care. Thank you to my parents Jenny and Jerome and my sister Madeleine. I am here because of the love, support and commitment to service you model.