# EDITORIAL

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The concept of 'governance' is a highly general one. It is so general, in fact, that scholars have laboured over firstly proving it 'is a coherent concept that does useful work'[1] before even touching on what good governance may look like.

At its core, governance simply describes how decision-makers within a group or organisation elect to manage their common affairs.[2] This is a rather difficult task in practice. Inherent is the need to serve a collective good, but reasonable minds may differ on which metrics, principles and norms to apply.[3] Further still, governance may be undertaken at all levels of formality by a wide range of social groups, organisations and institutions. There is thus no singular answer to the central dilemma of how those governing may properly meet the needs of the governed.

Fortunately, generality is not something foreign to, or feared by, the *University of New South Wales Law Journal* ('*Journal*'). Across its 50 years of publication, the *Journal* has welcomed articles which grapple with the question of proper governance across all areas of Australian law. Issue 48(3) proudly follows this tradition.

The articles in this Issue suggest that a useful starting point is to place Australia and its institutions in their wider context. First, Australia is a member of the international community and has agreed to fulfil key global policy objectives. A helpful reminder of this was provided very recently. In July, the International Court of Justice largely rejected submissions by Australia and other high greenhouse gas-emitting States,[4] affirming that States have a legally binding obligation to limit climate change-based harms.[5] Australia is also an international community itself – out of its population of 27.2 million people, 8.6 million, or 31.5%, are

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* Editor, Issue 48(3).

1 Mark Bevir, *Governance: A Very Short Introduction* (Oxford University Press, 2012) 2.

2 Arie M Kacowicz, 'Regional Governance and Global Governance: Links and Explanations' (2018) 24(1) *Global Governance* 61, 62.

3 Ibid.

4 Harj Narulla, 'The ICJ's Ruling Means Australia and Other Major Polluters Face a New Era of Climate Reparations', *The Guardian* (online, 24 July 2025) <https://www.theguardian.com/commentisfree/2025/jul/24/the-icjs-ruling-means-australia-and-other-major-polluters-face-a-new-era-of-climate-reparations>.

5 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (International Court of Justice, General List No 187, 23 July 2025). See especially at [427].

born overseas.[6] Embracing these broader dimensions of Australia's identity and ensuring they are genuinely accounted for in governance frameworks is essential.

In positioning ourselves as global citizens, the 10 articles in this Issue provide the foundation for its launch theme: 'International Lessons on Good Governance'. Adopting the experiences of overseas jurisdictions, commitments to international law and multicultural perspectives more generally, they critically rebut the restrictive 'fortress attitude'[7] that currently reigns supreme in some of Australia's foreign counterparts. The authors of this Issue remind us that Australia's institutions, from our government, to our schools, to our banks, owe their progress in part to the lessons they have learnt from these international stories of success (or lack thereof).

This Issue begins with lessons that we can draw from international human rights law and the shared goals it seeks to embody. In their article, Katherine Keane, Hope Johnson and Bridget Lewis investigate whether Australia's food governance frameworks properly reflect its commitment to the right to food.[8] In doing so, they critique the current lack of a comprehensive and enforceable response that targets the root cause of food insecurity in Australia: economic disadvantage and inability to access proper nutrition.

However, international lessons extend beyond those formally provided for in the law. Stephen Young and Harry Hobbs use case studies from various countries such as Canada, New Zealand and the United States, adopting a pluralist lens to acknowledge the various norms that provide stable legal relations outside of state law. The authors differentiate such non-state legal orders in Indigenous communities from spurious sovereign citizen ideologies, warning that a conflation of these two concepts sets back recognition of Indigenous sovereignty and rights.

The connection between plural thinking and good governance also presents itself in Australia's education system. For law schools in an increasingly multicultural Australia, embracing inclusivity challenges the ideal of the 'privileged male, white'[9] lawyer and improves students' sense of belonging. Maria Bhatti and Sandy Noakes expound this view in their qualitative study, exploring the experiences of Muslim law students and the unaddressed barriers they face in transitioning to the legal profession.

Anna Bunn then evaluates governance of educational technology at the primary and high school level, guided by a blend of United Nations commentary and overseas government initiatives. She demonstrates the troubling distance children's data can travel beyond the walls of the classroom, calling for both

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6 As of June 2024: 'Australia's Population by Country of Birth', *Australian Bureau of Statistics* (Web Page, 30 April 2025) <https://www.abs.gov.au/statistics/people/population/australias-population-country-birth/jun-2024>.

7 Michael Kirby, 'Constitutional Law and International Law: National Exceptionalism and the Democratic Deficit?' (2010) 98(2) *Georgetown Law Journal* 433, 453.

8 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.

9 Sylvia van der Raad, 'Othering and Inclusion of Ethnic Minority Professionals: A Study on Ethnic Diversity Discourses, Practices and Narratives in the Dutch Legal Workplace' (PhD Thesis, Vrije Universiteit Amsterdam, 2015) 247.

schools and service providers to play a more active role in protecting children's privacy rights.

The following trio of articles use the experiences of other nations to support stakeholder-centric approaches to improving commercial governance. In the corporate sustainability and accountability sphere, Anita Foerster, Ingrid Landau and Mayleah House present a compelling overview of Europe's mandatory human rights and environmental due diligence framework, demonstrating the weaknesses of Australia's reliance on market-based methods of accountability.

The broader need to integrate social impacts into governance frameworks is also reflected in Ross Buckley and Lucien van Romburg's argument that justifications by central banks for issuing a retail central bank digital currency ('CBDC') have an overly narrow focus on their mandates and monetary policy objectives. The authors call for engagement with the general public when determining the design of a CBDC *and* whether there is a need for one in the first place.

Failures of governing bodies to meet the needs of those most impacted by their policies also exist in the superannuation space. Drawing from analogous overseas contexts as well as overarching principles of trust and loyalty, Rami Hanegbi and Mirko Bagaric advocate for Australia's superannuation legislation to disqualify domestic abusers from receiving their victims' death benefits.

The last three articles of this Issue discuss how institutions elect to govern in spite of Australia's unique position as the only liberal democracy without a national human rights charter or act.[10] Henry Palmerlee's article contends that despite its fundamental importance, procedural fairness has been afforded little attention in the legislative process. Ultimately, he argues that structured proportionality – a methodology of German origin – should be used by the Senate Standing Committee for the Scrutiny of Bills as the most suitable means of protecting procedural fairness.

This consideration of structured proportionality provides a convenient segue to Patrick Graham's article on the implied freedom of political communication – Australia's response to the positive freedom of speech found overseas. Graham analyses the first stage in assessing an impermissible contravention of the implied freedom, which is determining whether the relevant burden exists at all. He posits that courts to date have taken an overly narrow approach that limits the intended effectiveness of this constitutional limitation on legislative power.

As an apt conclusion for a law journal issue, Ben Yates explores the governance of free speech in an academic context. He argues that norm-breaching academic speech is a natural manifestation of the scholar's democratic function and suggests a framework to balance potential harms with academic freedom's systematic importance.

It would be remiss of me to simply summarise the content of these 10 articles without acknowledging the immense contributions by this Issue's 18 authors. In seeing these articles through to publication, I have had the privilege of being an early student of the significant lessons they offer. I am deeply thankful for the

10 Australian Human Rights Commission, 'Commission Launches Model for an Australian Human Rights Act' (Media Release, 9 March 2023) <https://humanrights.gov.au/about/news/media-releases/commission-launches-model-australian-human-rights-act>.

authors' trust, as well as their meaningful and all-too-kind words during the editorial process. I extend my gratitude to the many anonymous peer reviewers involved in this Issue, whose time and constructive feedback has helped to polish the analysis within its pages.

The launch of Issue 48(3) would not be a success without the *Journal*'s premier sponsors, Herbert Smith Freehills Kramer, Corrs Chambers Westgarth, Allens and King & Wood Mallesons, whose generous support is greatly appreciated. My thanks go to Herbert Smith Freehills Kramer especially for hosting the launch of Issue 48(3).

Further, each launch is made special by the keynote speaker. In light of the academic bent this Issue takes, I sincerely thank Professor Jacqueline Mowbray for providing a fascinating keynote address and illuminating the role scholarly debate has to play in the legal reform landscape.

Behind the scenes, the *Journal* is also a product of consistent effort by some very dedicated individuals. I am very grateful to Kerry Cooke, our typesetter, and Peta Lee, our cover designer, for their PDF-ing and designing wizardry. I also thank our Faculty Advisors, Professors Rosalind Dixon and Gary Edmond, who have provided valuable guidance and clarity for every query. Further, I would like to express my appreciation for Professor Andrew Lynch, Dean of the Faculty of Law & Justice – it would be difficult to find more enduring support for the *Journal* and its student editors elsewhere.

On that note, our Editorial Board (or with deserved affection, 'Boardies') are a continuous source of pride for the *Journal*. The editorial process for this Issue has taken them on a winding expedition through the *Australian Guide to Legal Citation* ('*AGLC*'), from chapter 1 all the way to chapter 26. I shudder to think of what this Issue would look like without their keen attention to detail, curiosity and good humour in the face of the *AGLC*'s exacting demands. Few students, faced with a luxurious amount of choice about what to do during their university life, would choose to toil over hundreds of footnotes.

Even fewer students lack enough self-preservation to commit themselves to being an Executive Committee member. Sharing in the organised chaos that is keeping the *Journal* burning brightly for another year has been a uniquely fulfilling experience that I will look back on fondly. I am indebted to the 2024 Executive Committee for welcoming me so warmly last year and for providing their seasoned advice. To the 2025–26 Executive, I am so lucky to have spent my time, weekend meetings and all, with such a brilliant group of people. Thank you for your heartwarming support despite my incompetencies; 13 months was far too short of a time to remedy them. I will dearly miss the haphazard event preparations in our third-floor office/nook, and the hilariously off-topic chats that went deep into the night.

My words thus far have hopefully reflected the sincere, but predictable, enthusiasm I carry as this Issue's Editor. What has been more surprising is seeing that same enthusiasm in my close friends and my partner Francis, none of whom are personally acquainted with the *Journal*. Their willingness to listen to my grievances with incorrect capitalisation (and similar pedantry) has been a great source of comfort – I thank them for their unending kindness and encouragement.

My ultimate thanks go to my family. Firstly, to my parents, Hanna and Hai, for their unconditional love and reminders that stopping to take a breath is a necessity of life, not a privilege to be earned. To my younger brother Nathan, I am so grateful for, if not a little mystified by, the thoughtfulness that goes beyond your years. I can only hope I have done you all proud as a small token of my appreciation.

It is difficult to come up with a pithy concluding comment, but I can at least say this: I would not have traded this long, arduous, wonderful journey for anything else. With my time as Editor winding down, I eagerly await the innovative series of lessons the *Journal* will bring in the future under its next set of editors. To the readers, I hope the articles in Issue 48(3) imbue you with same spirit of interconnectedness and continuous learning they have for me.