

EDITORIAL

FIONA SHAH*

Fifty years ago, Sir Laurence Whistler Street penned a Foreword for the inaugural Issue of the *University of New South Wales Law Journal* ('*Journal*'), with hopes that the *Journal* would 'justify an established and respected place amongst our Australian legal periodicals'.¹ With the present Issue, the *Journal* reaches the mature age of half a century since its establishment. As Editor, I have the pleasure of marking the milestone in this Editorial.

Anniversaries, particularly when they are golden, are occasions of great celebration. Yet, they also present a formidable opportunity for reflection and reminiscence. The words of Justice Michael Kirby aptly capture the sentiment, '[i]n the law, we participate in such jubilees partly for reasons of nostalgia; partly to get our bearings for the present; and partly to grasp the gossamer-thin portents that suggest where we may be going.'²

In 1975, an emerging Faculty of Law & Justice at the University of New South Wales established the *Journal* as its flagship publication, with the intention for it to be an avenue for the dissemination of information and interchange of ideas amongst those who practise law. In particular, its articles have pursued themes of contemporary debate in Australia and, occasionally, overseas.³ Led by a succession of highly skilled editors, the *Journal* has endeavoured to publish work that is novel, perceptive and instructive. In the furtherance of this initiative to produce first-rate legal scholarship, it was in August 1995 that the first print issue of the *University of New South Wales Law Journal Forum* ('*Forum*') was produced. This short, polemic newsletter accompanied the flagship publication until 2012. Later in 2017, the *Forum* was revived and re-imagined as an entirely online companion to the *Journal*. Its short-form pieces were no longer limited to the traditional 'essay' form and benefitted from a faster publication cycle.

Indeed, it is this keen awareness of the need to publish cogent, yet timely and original contributions to legal debate that the *Journal* has, as Sir Laurence Whistler Street once foreshadowed, firmly gained for itself a respected place amongst other legal publications.

* Editor, Issue 48(1), 2025.

1 Sir Laurence Whistler Street, 'Foreword' (1975) 1(1) *University of New South Wales Law Journal* 1, 1.

2 Justice Michael Kirby, 'Australian Law Journal at 80: Past, Present and Future' (2007) 81 *Australian Law Journal* 529, 529. See also Justice KM Hayne, 'Foreword to the 50th Anniversary Edition of the Melbourne University Law Review' (2007) 31(1) *Melbourne University Law Review* 1, 2.

3 Sir Anthony Mason, 'Foreword' (1987) 10(1) *University of New South Wales Law Journal* 1, 1.

Notably, from its inception, the *Journal* has had a generalist focus. Twice in a year, an Issue partly contains articles that reflect a chosen theme. Otherwise, the *Journal* has evolved into a publication that is cross-disciplinary, with articles that are of general legal interest.⁴ That choice is intentional, and one that epitomises the *Journal*'s continued commitment to fostering academic discourse across a variety of legal issues.⁵ In this celebration, Issue 48(1) maintains the generalist tradition.

The Issue opens with a novel analysis of state referendum success, in which Paul Kildea poses, and ventures to answer, a vexed question: why have Australians been comfortable voting 'Yes' to the amendment of their state constitutions, yet so reluctant to change their national constitution? Joe McIntyre follows, in a similar vein, with an empirical analysis that is likewise the first of its kind. His article unveils the reality of the operation of judicial complaints commissions in Australia, and challenges the preconception that such bodies are a 'self-evident good'.⁶ Hrishi Goradia then eschews 'first-best' approaches to statutory interpretation and argues that strong-form independent judicial review of executive action is defensible on the anti-idealist institutional ground. Upon interrogating judicial treatment of the concept of prior restraint in Australian courts, Catherine Zhou demonstrates inconsistencies in its application and argues that the concept can be accommodated in Australian law. Indeed, it is possible to discern a common thread of issues in these four leading articles. In particular, each article invites its readers to confront difficult questions about constitutional and administrative law, and institutions which shape the public law realm more broadly. It was upon this realisation that the theme of the launch event, 'Public Law, Institutions and Integrity', came into being.

The subsequent four articles enclosed in this Issue each reflect on Australian legal history and reform, albeit in the context of differing areas of law. Noting the absence of any meaningful review of section 89A of the *Evidence Act 1995* (NSW), Patrick Ryan provides an analysis of its underlying logic and interpretation by the courts, and, ultimately, casts doubt on the provision's utility. Upon recounting the historical 'Stolen Wages' practices engaged in by the Victorian Government, Laura Griffin and Josephine Marchant posit a forceful case that the State may be liable for breach of equitable duties owed to First Peoples. While David Chaikin traverses through the history of anti-money laundering reform and considers its pertinence to the legal profession, Scott Donald explores the origins of a complex 'bricolage' of rules that govern choice in Australia's superannuation system today.

The Issue concludes with Joachim Dietrich, who elucidates the underlying principles that govern the court's approach to inferring causation in tort cases, and Brendan Walker-Munro, who scrutinises the role played by the Australian Research Council in providing research security. The 10 articles enclosed in this

4 Editorial Board, 'Foreword' (1981) 4(1) *University of New South Wales Law Journal* 1, v.

5 Rose Vassel, 'Editorial' (2018) 41(1) *University of New South Wales Law Journal* 1, 1; Amelia Loughland, 'Editorial' (2018) 41(2) *University of New South Wales Law Journal* 290, 290.

6 Elizabeth Handsley, 'Issues Paper on Judicial Accountability' (2001) 10(4) *Journal of Judicial Administration* 180, 181.

collection ultimately uphold the *Journal's* tradition of making contemporary and thought-provoking contributions to legal scholarship.

It is necessary to offer thanks and acknowledgements to all those who have participated in the work of the *Journal* and thus enabled it to prosper for a remarkable half-century. First, I thank the 11 authors of Issue 48(1) for entrusting their work to the *Journal* for publication, and extend my gratitude to the generations of academics, judges and practitioners who have contributed articles since 1975. I also thank the anonymous peer reviewers, whose expert insights have led to fruitful academic discourse and, crucially, have refined the intellectual rigour of each article.

The longevity of the *Journal* is, no doubt, also attributable to the diligence, calibre and collegiality of our voluntary student Editorial Board. Having begun its early days with a Board of merely seven editors, the *Journal* has since flourished with close to 50 Board Members. As the Foreword to an early edition of the *Australian Guide to Legal Citation* observes, '[i]t is easy to dismiss rules of punctuation and legal citation as the province of pedants'.⁷ Yet, the dedication and inquisitiveness of each Board Member has transformed what is ostensibly a tedious exercise into a vibrant intellectual endeavour. Of course, the importance of 'well-tempered punctuation' and 'judicious footnoting' must not be understated,⁸ proper and accurate citation is critical to a scholar's 'responsibility' to acknowledge the sources of their ideas in a clear, accessible manner.⁹ The Board's commitment to precision and consistency achieves this high editorial standard, upon which the *Journal* has thrived.

In a similar vein, I extend grateful thanks to members of the 2024 and 2025 Executive Committee for your ready advice, ardent support and good humour throughout my tenure as Issue Editor. This publication would not be possible without your companionship, and our shared reverence for (or, sometimes, obsession with) citation methods and editorial style. I must also take this occasion to acknowledge the contributions of previous Executive Committee members, who have led the work of the *Journal* in previous years and underpinned its legacy.

My sincere thanks go to Her Excellency the Honourable Margaret Beazley AC KC, the 39th Governor of New South Wales, and former President of the New South Wales Court of Appeal and Justice of the Federal Court of Australia, for delivering the keynote address at the launch of Issue 48(1) on 15 April 2025. It is an honour for the *Journal* to celebrate this milestone in such distinguished company.

The *Journal's* enduring success further emerges from the longstanding support of our premier sponsors – Allens, Corrs Chambers Westgarth, Herbert Smith Freehills and King & Wood Mallesons. My especial gratitude goes to Corrs Chambers Westgarth for hosting the launch of this Issue.

I wish to thank Professor Andrew Lynch, Dean of the Faculty of Law & Justice, for his steadfast support of the *Journal*. The *Journal* also relies on the wise

7 Melbourne University Law Review Association and Melbourne Journal of International Law, *Australian Guide to Legal Citation* (4th ed, 2018) vi.

8 Ibid.

9 Ibid.

counsel and mentorship of its Faculty Advisors, Professor Rosalind Dixon and Professor Gary Edmond. I thank the Faculty Advisors for their valuable insights and feedback in developing the launch event.

Before this Editorial comes to a close, I wish to convey my gratitude to my family and friends. I especially thank my parents, sister Yashvi, and close friend Hannah for their encouragement and continued support throughout this past year.

I conclude by giving my final thanks to the *Journal*, for the opportunity to be Editor of this special Issue, and expressing my best wishes for the years ahead.