

EDITORIAL

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Prime Minister Scott Morrison remarked a little over a year ago, on 25 March 2020, that COVID-19 posed a ‘twin crisis’ to Australia – ‘a crisis on a health front, which is also causing a crisis in the economy’.¹ Upon reproduction of this remark in the Call for Submissions for this Issue of the *University of New South Wales Law Journal* (*Journal*),² I did not envision that COVID-19 would persist, to the extent that it has, a year later. In comparison to most other countries, Australia has managed COVID-19 case numbers and death rates particularly well.³ While it is easy to say this situation is a product of luck and Australia’s relatively small population, it is likely attributable to a more nuanced combination of factors, including successful governance and communal spirit.

Additionally, Australia’s relative success has not arisen from complacency. New South Wales’ Premier, Gladys Berejiklian, has implored her state many times to ‘avoid complacency’.⁴ Although the Premier has repeated this remark in the context of adhering to COVID-19 guidelines, it is equally applicable to the approach the legal profession should take to ensuring that individual rights are not undermined. Ensuring rights protection is important at all times, but has been particularly imperative during the pandemic. Prompt governmental responses have, undoubtedly, been crucial to Australia’s relative success in managing COVID-19; however, such responses cannot be assumed to uphold Australians’ rights if democratic norms and the rule of law are to be rigorously guarded. Moreover, it cannot be assumed that existing laws and regulations are sufficient to protect individual rights in the novel context of the pandemic. It is in this spirit that

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1 Scott Morrison, ‘Press Conference: Australian Parliament House, ACT’ (Press Release, 25 March 2020) <<https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-250320>>.

2 ‘Call for Submissions to the University of New South Wales Law Journal Issue 44(1): “Rights Protection amidst COVID-19”’ (Call for Submissions, 16 April 2020) 1 <<http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/04/UNSWLJ-Call-for-Submissions-Issue-441-1-1.pdf>>.

3 See, eg, ‘WHO Coronavirus (COVID-19) Dashboard’, *World Health Organization* (Web Page, 1 April 2021) <<https://web.archive.org/web/20210401024924/https://covid19.who.int/>>; Michael Toole, ‘COVID-19 Gap Widens between Australia and the Rest of the World’, *Sydney Morning Herald* (online, 29 October 2020) <<https://www.smh.com.au/world/asia/covid-19-gap-widens-between-australia-and-the-rest-of-the-world-2021029-p569ub.html>>.

4 See, eg, @gladysb (Gladys Berejiklian) (Twitter, 3 April 2020, 1:41pm AEST) <<https://twitter.com/gladysb/status/1245904246697947136?lang=en>>; Ministry of Health (NSW), ‘COVID-19 Update 24 February 2021’ (Press Conference, 24 February 2021) 00:03:39–00:03:46 <<https://vimeo.com/516024068/87b13006b4>>.

the seven thematic articles of Issue 44(1) grapple with discrete issues of rights protection in Australia amidst COVID-19.

The thematic articles discuss a wide range of topics in light of COVID-19, including: potential legal challenges to triage decisions in intensive care units; the parallels between the legal regimes governing immigration detention centres and residential aged care facilities as sites of confinement; the capacity and limits of international law to address the twin crises of refugee protection during COVID-19 and future displacement linked to climate-change; the use of remote hearings and Audio-Visual Links by courts during COVID-19; the scope, application, and implications of criminal offences relating to the containment of COVID-19 in Australia; state and territory COVID-19 emergency measures regarding evictions and rent liabilities; and the expansion of executive power in times of crisis.

Issue 44(1) is also fortunate to feature six general articles, which explore independently chosen topics of legal scholarship. The general articles featured in Issue 44(1) include: a look at the 2018 Australian High Court's constitutional term in its inter-institutional context; exploration of the possibilities and limits of using corporate culture as a regulatory mechanism; investigation of the role of social entrapment evidence in self-defence cases involving intimate partner violence; analysis of the constitutional validity of using the Australian Defence Force in recent crises; discussion of the notion of 'substantial identity' and its analogues in Australian trademark law; and lessons for Australia from the United Kingdom's regulation of financial advisers.

I would like to thank the authors of both components of Issue 44(1) for entrusting the *Journal* with their work. You have each been a pleasure to work with, and I am grateful to have overseen your articles to fruition.

Many thanks to the *Journal's* premier sponsors, Allens, Herbert Smith Freehills and King & Wood Mallesons, whose support has allowed the *Journal* to commence its 44th volume this year. Special thanks go to Allens, who are hosting the launch of Issue 44(1).

Thanks also go to the anonymous peer reviewers who assisted in the selection of articles for Issue 44(1). Your thoughtful comments were of great assistance and helped enhance the quality of the articles in this Issue prior to their publication.

To those who have been members of the *Journal's* Executive Committee over the past year, with your constant support, camaraderie and empathy, being Issue Editor – a one-person role on paper – has felt in many ways like a team effort. Your empathy and willingness to provide different perspectives has coloured my experience as Issue Editor and made for an incredibly strong sense of team spirit I am grateful to have experienced. I am very privileged to have worked closely with you.

To the *Journal's* Editorial Board, this Issue would not be possible without you. Your meticulous work on the articles in this Issue was crucial to its final product, and your efforts have been complimented extensively by the authors – whom I must also thank again for their openness to the Editors' suggestions. The work of the Editorial Board is essential to the quality of the *Journal*, and I am grateful to have been supported by the Board's diligence.

I would also like to thank Professors Rosalind Dixon and Gary Edmond, the *Journal's* Faculty Advisors during my tenure, who provided helpful advice on my proposal and call for submissions, and whose assistance with the administration of the *Journal* more generally is greatly appreciated.

My final thanks go to my friends, family and support network over the past year. Your encouragement, empathy and interest in my work on the *Journal* has been invaluable. I am lucky to have had each of you behind me, motivating me during the most intense times as Issue Editor. Thank you.