

EDITORIAL

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It is difficult to summarise Issue 45(1) of the *University of New South Wales Law Journal* ('*Journal*'), and what it means to me, into words. The irony of not being able to encapsulate a vessel of academic literature in words is not lost on me. As a writer myself, I have always had a deep appreciation for the power of language, and never understood those who would lament that they just 'cannot put thoughts into words'. To me, words have meaning. '[W]ords can change the world'.¹

This belief informed the creation of the thematic for this Issue, 'Abuse of Power'. Prior to the COVID-19 pandemic, there was a distinct lack of conversation in the mainstream Australian media about those in positions of privilege exploiting their power. But in 2020 and 2021, likely due to a combination of the effects of the pandemic and the tireless work of activists, people began to make noise. Through exposés, interviews, marches and social media, brave words exposed our legal system as having failed our most vulnerable.

In Australia, the Black Lives Matter movement highlighted the unacceptable numbers of Aboriginal and Torres Strait Islander people dying in custody.² Allegations of rioting were levelled at both the federal and state governments.³ The exploitation of migrant workers, particularly in the on-demand road transport industry, was documented.⁴ Sexual assault allegations within Australia's own

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1 Malala Yousafzai, '16th Birthday Speech at the United Nations' (Speech, United Nations, 12 July 2013).

2 Lorena Allam, Calla Wahlquist and Nick Evershed, 'Black Lives Matter Protesters Referred to Our Count of 432 Deaths. It's Now 437', *The Guardian* (online, 9 June 2020) <<https://www.theguardian.com/australia-news/2020/jun/09/black-lives-matter-protesters-referred-to-our-count-of-432-aboriginal-deaths-in-custody-its-now-437>>.

3 See, eg, Anne Davies, 'Berejiklian Concedes \$140m Grant Scheme Was Pork-Barrelling but Says "It's Not Unique to Our Government"', *The Guardian* (online, 26 November 2020) <<https://www.theguardian.com/australia-news/2020/nov/26/berejiklian-admits-140m-grant-scheme-was-pork-barrelling-as-approval-documents-revealed>>; David Crowe, 'Morrison Funded 27 Car Parks Just One Day Before He Called the Election', *The Sydney Morning Herald* (online, 30 June 2021) <<https://www.smh.com.au/politics/federal/morrison-funded-27-car-parks-just-one-day-before-he-called-the-election-20210629-p585c2.html>>.

4 See, eg, Tim Swanston, 'Four Delivery Riders Die on Sydney Roads in Three Months in "Massive Crisis" for Gig Economy', *ABC News* (online, 24 November 2020) <<https://www.abc.net.au/news/2020-11-24/uber-eats-vows-to-improve-safety-cyclist-killed-in-inner-sydney/12913840>>.

Parliament House were levelled by former staffers,⁵ and women around the country demanded an end to sexual and domestic violence.⁶

All these examples, and the many others that were uncovered, involve an abuse of power that worked to harm, silence or erase vulnerable people. However, the abundance of writing on these issues in the mainstream media was not reflected in legal discourse and academia. It is a primary function of the law to hold those in power to account, and ensure their power is not misused. This Issue addresses the dearth of words on this important topic in the academic space, and questions whether the law in Australia is adequately fulfilling this function.

At the beginning of my tenure, my focus as Issue Editor was the articles within these pages; the words that would fill the dearth. I am incredibly proud to say that the authors of the seven thematic articles took the theme beyond anything I could have hoped for. Some articles provide scathing accounts of how the law contributes to and facilitates abuses of power. These include articles arguing that the lack of regulation of on-demand road transport work enables exploitation of workers; that gaps in the regulatory frameworks applicable to Australian charities allow for misuse of charitable assets; and that Australia's temporary visa regime opens refugees and asylum seekers to workplace exploitation. Some focus on how the law can prevent or remedy abuses of power through novel ideas such as introducing laws to recognise animals as sentient victims of domestic violence and proposing a national compensation scheme for victims of modern slavery. Others approached the theme from a more theoretical lens, exploring 'abuse of power' as a justification and threshold for legal unreasonableness in administrative law, and questioning what the proper role of Chapter III of the *Constitution* is in checking misuses of government power.

I am incredibly grateful to the thematic authors for believing in the importance of the theme and interpreting it in such a creative fashion. I hope that these articles spark conversation, debate and, most importantly, change where it is needed. Thank you for putting my idea into such powerful words.

But these pages do more than address abuse of power, also containing six high-quality general articles. These articles canvass a range of topics: how the Religious Discrimination Bill 2019 (Cth) goes too far in seeking to address claims for greater protection for freedom of religious expression; challenging the tax assessment-making process where fraud or evasion is alleged without any evidence; whether nine medical conditions can provide an individual with access to voluntary assisted dying across five jurisdictions; consideration of children's rights in the development of tobacco control measures such as plain packaging; reconsidering the merits of a prohibition of unfair conduct in contract law; and analysing truth-telling royal commissions and their ability to facilitate rehabilitation and justice.

5 Interview with Brittany Higgins (Lisa Wilkinson, The Project, 15 February 2021).

6 See, eg, Alyx Gorman, "'Enough Is Enough!'" Where, When and Why March 4 Justice Protests Are Taking Place Across Australia', *The Guardian* (online, 15 March 2021) <<https://www.theguardian.com/australia-news/2021/mar/15/march-4-justice-where-when-womens-march-protests-australia-march4justice-sydney-melbourne-canberra-brisbane>>.

It has been an immense pleasure seeing the thirteen articles in this Issue to publication, and I extend a warm thank you to the 31 authors who entrusted us with their words. It is no small act to trust another with your ideas, and I am privileged to have played a part in publishing yours. I also must acknowledge and thank the anonymous peer reviewers who offered their time to review these articles, particularly during the 2021 lockdowns. The *Journal* would not be the publication it is without your generosity.

However, the further I got in my tenure, the more I realised that Issue 45(1), and the *Journal* as a whole, is more than the words on these pages. It is not just these articles and the thematic that made my time as Issue Editor one of the most transformative, worthwhile endeavours I have ever undertaken. It is all of those who stand behind it and have stood with me over the past 12 months. For the first time in my life, this lover of words knows that anything I write cannot ever properly convey my gratitude to these people. However, as any good writer does, I will do my best.

When I was elected as Editor 45(1) in March 2021, for the first time in its 45-year history, the Executive Committee of the *Journal* consisted of all female-identifying students. Representing diverse cultures, gender identities, sexualities and backgrounds, the Executive Committee of 2021–22 utilised its intersectionality to go beyond the pages we publish, prioritising diversity, wellbeing and Editorial Board culture. I am incredibly proud of the reforms we implemented to further these objectives, and the warm, supportive culture we created. But more than this, I am honoured and privileged to call each of you a dear friend. I often say that *Journal* has given me more than it gives most people, and I owe this to you.

To our 2022 Executive Editor, Darius Dadgostar: your caring, calm nature and thoughtfulness have kept me steady in the whirlwind of the last few months. Forum Editors Arani Sivakumar and Isobelle Wainwright and Digital Editor Calum Brunton: thank you for your kindness and willingness to help, no matter how busy you are. I am so very grateful to Issue Editors Rebecca Zhong, Lilian Wan, Aakriti Shoree and Katherine Cheng. Having such capable, good-humoured people as my colleagues made my job so very enjoyable.

But there are a few special people that I must particularly thank. To Tina Wu, Executive Editor 2021, Alisha Mathias, Editor 44(4), Georgia Fink-Brigg, Editor 45(4) and Caitlin Goutama, Digital Editor 2021. You have been my rocks throughout the past 12 months. Thank you for always being there to celebrate the big moments, and to work through the tough ones. Knowing you has made it all worth it.

The greatest example of the *Journal* being more than the words we publish is our Editorial Board. My warmest thanks must go to this 50-strong group of the most hardworking, pedantic, intelligent and kind students UNSW has to offer. Thank you for allowing me the opportunity to be an Issue Editor, and for your tireless work. I appreciate every unitalicised comma, every hyphen changed to an en dash, every entry in the Notes Document and every wave from across the law building. Getting to know you all has been the highlight of my time on the Executive Committee, and I am so proud of the culture of our little group of pedants.

The *Journal* is also the faculty that stands behind it. I thank the University of New South Wales Faculty of Law & Justice and Dean Andrew Lynch, whose steadfast support and pride in our work is deeply appreciated. I sincerely thank Associate Professor Janina Boughey for her advice and encouragement when drafting the thematic proposal, whose care for students is an asset to our faculty. Of course, thanks must go to our Faculty Advisers Professors Gary Edmond and Rosalind Dixon. Thank you for your wisdom, for replying to panicked emails at all hours of the day, and for your commitment to our independence. I personally thank Professor Dixon for her support and mentorship both inside and outside of the *Journal*.

The Executive Committee is grateful to our premier sponsors Allens, Herbert Smith Freehills, King & Wood Mallesons and Corrs Chambers Westgarth for their constant support of the *Journal*. I particularly wish to thank Allens for hosting the launch of Issue 45(1), the first in-person firm launch since 2019, and Yasmin Poole for delivering the keynote speech. I also extend my gratitude to our typesetter Kerry Cooke, whose work is greatly appreciated.

However, as any Issue Editor knows, there is a very important group of people who are not officially part of the *Journal* yet deserve recognition for their contribution. To my friends and family; my army of supporters. Thank you for your interest in my work, your encouragement, and for forcing me to take breaks. I particularly thank Kaarina Allen, Evangeline Endacott, Kyra Lee, Phoebe Hill and Cameron Craig for being there for all the highs and lows. You're going to be seeing a lot more of me now!

Finally, to Colin, Tracey and Liam Mayman. I am so proud to be the first person in our family to attend university, so proud to be from regional New South Wales, and so proud of the resilience, drive and kindness you instilled in me. Every one of my achievements is made possible by your love.

As my time as Issue Editor comes to an end, I look to the future of the *Journal* with great optimism. It will continue to publish cutting-edge legal scholarship. But more than this, it will continue to grow, push the envelope in its day-to-day operations, and provide a platform for students to develop both as professionals and as people. To future Issue Editors, I say this: relish every challenge and enjoy every triumph. Get to know your fellow Executive Committee members, because they will be friends for life. Appreciate every interaction with the Boardies. Appreciate it all.

It is always more than the words.

**THEMATIC:
ABUSE OF POWER**



Illustration by Kaarina Allen

