

EDITORIAL

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Last November, the announcement came that air conditioning will be installed in each cell of Roebourne Regional Prison, Western Australia, over the summer of 2023–24.¹ The prison’s detainees are reported to be flooding their sinks and cells as relief against temperatures exceeding 50 degrees Celsius,² conditions described as ‘torture’ and ‘inhumane’.³ The installation will mark seven years since the measure was first recommended by the Office of the Inspector of Custodial Services.⁴

Human Rights Watch’s *World Report 2023* (‘*Report*’) spotlights Roebourne Prison and the broader human rights failings its story captures.⁵ Aboriginal and Torres Strait Islander people make up 29% of the nation’s adult prison population.⁶ At least 17 Indigenous people died in custody in 2022.⁷ The *Report* puts side by side the passing of new laws threatening the imprisonment of peaceful climate protesters, and the active support of fossil fuel industries.⁸ On the ground, climate harms and racial violence occur in lockstep – approximately 90% of Roebourne Prison’s detainees identify as Indigenous.⁹ ‘They don’t have the liberty to cool down like other people’, puts human rights lawyer and researcher Hannah McGlade.¹⁰

Issue 46(1) of the *University of New South Wales Law Journal* (‘*Journal*’) is a General Issue, but discrimination echoes throughout. Its opening pages are dominated by racial and climate violence. Its close contains discussions of religious

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1 Alice Angeloni and Tom Robinson, ‘WA Government Confirms Air Conditioning to Be Installed at Roebourne Prison’, *ABC News* (online, 23 November 2022) <<https://www.abc.net.au/news/2022-11-23/air-conditioning-installed-roebourne-prison/101690752>>.

2 Rebecca Dollery and Amelia Searson, ‘No Decision about Air Conditioning at Roebourne Prison, as Another Summer of Heatwaves Looms’, *ABC News* (online, 31 October 2022) <<https://www.abc.net.au/news/2022-10-31/roebourne-prison-air-conditioning-custody-death/101575988>>.

3 Laura Birch, ‘Lack of Air Conditioning in Roebourne Prison Cells Could Breach Human Rights, Says Aboriginal Legal Service’, *ABC News* (online, 17 January 2022) <<https://www.abc.net.au/news/2022-01-17/human-right-challenge-no-air-conditioning-roebourne-prison/100761350>>.

4 Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Roebourne Regional Prison* (Report No 106, October 2016) 8–9.

5 Human Rights Watch, *World Report 2023: Events of 2022* (Report, 2023) 48.

6 Ibid.

7 Ibid.

8 Ibid 51–2.

9 Rebecca Dollery, ‘Fred Chaney Says Racist Attitudes to Blame for Lack of Air Conditioning at Roebourne Prison’, *ABC News* (online, 8 November 2022) <<https://www.abc.net.au/news/2022-11-08/fred-chaney-says-no-air-con-at-roebourne-prison-a-sign-of-racism/101617794>>.

10 Rachael Knowles, ‘International Intervention Considered after Roebourne Inmates Suffer Record Heat’, *NITV News* (online, 19 January 2022) <<https://www.sbs.com.au/nitv/article/international-intervention-considered-after-roebourne-inmates-suffer-record-heat/b79qiffts>>.

freedom, gender discrimination, detention, surveillance, and family violence. The space between explores how social values and community needs can govern corporate behaviour and move wealth to where it is needed.

The communities in this Issue define themselves in different ways. They are towns, islands, peoples, systems of belief, nation-states and survivors. There is also the community ‘at large’ with its foundational ideals and principles, forces as potent as they are elusive. Terms like ‘broader community’ and ‘social values’ can be difficult to reconcile with the distinct histories and experiences of individuals and their own communities. Issue 46(1) cannot solve this, but it does affirm that meaningful change comes from listening to those harmed by injustice and ensuring their capacity to shape the systems that affect them. It is here where our 10 articles find resonance, and where our launch theme, ‘Human Rights, Corporations and Communities’, emerges.

Alan Zheng considers the successful action taken by the Indigenous community on Palm Island, Queensland, which led to the Federal Court ruling that the police response to protests following Cameron Doomadgee’s (Mulrunji’s) death in custody was racially discriminatory.¹¹ Zheng frames the *Racial Discrimination Act 1975* (Cth) as a means of providing continued restitution for lives lost at the hands of the state.

Beth Goldblatt focuses on Moree, New South Wales, whose Indigenous community fights against overexposure to heat, disease and drowning due to their being economically shut out of local aquatic facilities. To restore, here too, the liberty to cool down, Goldblatt proposes using evidence of discrimination as a basis for strategic climate litigation.

Jan McDonald et al press for legislative reform to accelerate the implementation of negative emissions technologies: technologies which provide a net reduction in atmospheric greenhouse gases by sequestering a higher volume of greenhouse gases than they themselves produce. In our climate emergency, solutions have no option but to expand in scale and ambit, demanding more resourcing, and more sophisticated legal mechanisms, in less and less time.

In the ringing of this call to arms, Vivienne Brand, Justine Lacey and Jordan Tutton unpack the perspectives of company directors on corporate social licence to operate, a mechanism by which corporations can be answerable, not just to their shareholders, but to the public interest. Steve Kourabas then urges the catching up of corporate governance laws to crowd-sourced equity funding, a way of empowering social, values-driven community investment. Matthew Harding reflects on the concept of philanthropy as a means for distributing funds in accordance with the ideals of equity and justice. Harding suggests that uncoordinated private fundraising can risk, among other things, the perpetuation of historical inequalities.

Staying with distribution, but returning us to specific communities, Brooke Thompson discusses the freedom of testators to leave wills according to Islamic traditions and laws, the freedom of beneficiaries to challenge those wills, and how different legal apparatuses can dictate the community standards against which

11 *Wotton v Queensland* [No 5] (2016) 352 ALR 146.

such disputes are resolved. Brendan Grigg and Hossein Esmaili evaluate the right to a view in Australia, and how laws can account for the connections between homes, their environments and their aesthetics. Brendan Walker-Munro critiques the conflation of intelligence gathering and law enforcement powers. He exposes how efforts to combat external threats can themselves threaten fundamental rights to privacy and due process. Finally, Samuel Tyrer examines access to justice for victims of family violence, the vast majority of whom are women. In doing so he underscores the concept of ‘home’ as one encapsulating safety, security and wellbeing. ‘Community’ in this sense transcends shared backgrounds or physical space and defines itself by a collective effort to live free from violence.

These articles show that it is only through acknowledgment of unique identities, pasts, needs and causes that loss can begin to be understood, and remedies set in motion. Throughout the last 12 months, the *Journal’s* Executive Committee has implemented policies and procedures designed to amplify voices of marginalised communities and support their contribution at the forefront of research concerning them and their experiences.

The articles also remind us that change can be agonisingly incremental. Widen the interpretation of one phrase in one provision; expand one jurisdiction to capture one kind of matter; reform one Act of one Parliament. We can only trust that muscle built over years and generations will land decisive hits.

To put just one of these ideas to publication requires thousands of hours of meticulous research and carefully crafted writing. I give my sincere thanks to this Issue’s 16 authors for their work, vision and trust in the *Journal*. Thank you also to the anonymous peer reviewers for giving up so much of your time in service of our work.

The *Journal* cannot stand without the generous support of its premier sponsors Allens, Herbert Smith Freehills, King & Wood Mallesons and Corrs Chambers Westgarth. Thank you in particular to Allens for hosting the launch of this Issue.

A huge thanks to Professor Andrew Lynch, Dean of the University of New South Wales Faculty of Law & Justice, for your fierce and steadfast support of our work. That you consistently speak so highly of the *Journal* is a source of great pride for all of us. Thank you to our Faculty Advisers Professors Rosalind Dixon and Gary Edmond; in times of difficulty, innovation, or sheer confusion, your guidance always provides a beacon and is deeply valued. We are ever grateful for the work of our typesetter Kerry Cooke and cover designer John Hewitt.

This Issue exists because of the painstaking edits undertaken by each student member of the *Journal’s* Editorial Board. My heartfelt thanks to every one of the Boardies. Each of you spent time, found time, borrowed time from elsewhere and paid it back with interest, all so that every source could be located and read, every citation reviewed, and every punctuation mark put in its place. I cannot thank you enough for doing this all with never-ending energy, enthusiasm and care. The *Journal* excels because of how well you look after it and each other above all.

I have had the privilege of spending 12 months at the *Journal’s* helm as part of its Executive Committee. I am sometimes asked if, travelling back in time, I would

still apply for Issue Editor knowing the long hours and gruelling work it would entail. With this team, I would do it a hundred more times.

To Executive Editors Darius Dadgostar and Matilda Grimm, thank you for your leadership, your cool heads, and for always knowing the answers. To Digital Editors Calum Brunton and Zhong Guan, thank you for your unshakeable willingness to help, and your deftness in the face of the unexpected. Alfred Nguyen and Brad Marzol, your passion for the *Journal*, its work and its people inspires beyond belief.

The *Forum* has grown to become one of our most dynamic and asked-after publications. Isobelle Wainwright and Jack Zhou, this is a credit to your hard work as *Forum* Editors and deep drive for the *Journal* to achieve bigger and better things.

To the wonderful Issue Editors of 2022: Karie Mayman, Aakriti Shoree, Katherine Cheng and Georgia Fink-Brigg – when there have been newcomers to the Executive, I hope I have been even half as welcoming, caring and knowledgeable as you. Of last year's team, my special thanks to Georgia and Isobelle for continuing to support and edit for this Issue after finishing your tenures. Words cannot capture how much you both gave to this place, and your company in the office turned many rough days into good ones.

Hayden Clift and Anna Ho, my compatriot 2023 Issue Editors, it's been wonderful travelling this road with you. You are skilful editors, spirited leaders, and you do it all with incredible warmth and kindness. You will both blaze terrific trails this year.

All my friends beyond the *Journal*, I count myself unbelievably lucky to have you. Thank you to Kamilla, Kris and Rob Urbaniak, and Misty, for your constant wisdom and love. To my parents, Xiao Lin and Sergio, thank you for everything you have given and continue to give. Olivia, I couldn't do any of this without you as my partner.

The *Journal* needs its community. Its work is too exacting and far too demanding to undertake alone. Contributing to important scholarship gives the work meaning but it is the memories and friendships that light up the days and hours, and there is nothing like the energy that comes from working with people you care deeply for. More than it is a publication, the *Journal* is an opportunity to support the good we see in each other. Its impact carries, not just in its pages, but in the bonds between its people and the knowledge that we move forward together.