

## EDITORIAL

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From the earliest tacit denials of Indigenous sovereignty to trailblazing wrestles with questions of property rights in human biological material, the concept of ownership has long taken on contentious roles in Australian law.<sup>1</sup> Further afield, ownership has also long defied homogeneous definition across cultural and historical divides. For example, in the context of land, Roman law recognised only absolute ownership or *dominium*.<sup>2</sup> This contrasts with modern English and Australian land law in which absolute ownership is, in theory, the purview of the Crown only.<sup>3</sup> This, in turn, contrasts with some Indigenous laws of ownership in which rights and interests flow from a possessory relationship rather than the converse,<sup>4</sup> and in which exclusion is not always a necessary constituent of ownership.<sup>5</sup> The importance and complexity of how ownership is understood and how liable these understandings are to change is highlighted well by the disruptive emergence of sharing economy phenomena that force industries, lawmakers and individuals to reassess norms about what ownership does or does not entail in a particular domain.

This thematic Issue aims to promote discussions that enable us to better understand how conceptions of ownership shape and are shaped by the law, and the practical ramifications of this interplay. It is intended to foster circumspection about ostensibly fixed or inherent modes and consequences of ownership. Through this Issue, I hope that the *University of New South Wales Law Journal* ('*Journal*') generates important discussion directed at seeking ownership defaults and incidents that represent the best we can achieve in terms of responsible and fair resource distribution.

How the law brings into existence, regards, interacts with and mobilises ownership, and vice versa, is at the core of the inquiries pursued by each of the seven articles in this thematic edition. The topics discussed include: how the short-

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1 See *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 58 (Brennan J), 109 (Gaudron and Deane JJ); *Re Cresswell* [2019] 1 Qd R 403.

2 Daniel Lee, 'Private Law Models for Public Law Concepts: The Roman Law Theory of *Dominium* in the Monarchomach Doctrine of Popular Sovereignty' (2008) 70(3) *Review of Politics* 370, 378.

3 Peter Williams, 'The Curious Case of Property Rights in the NSW Planning System and Its Reluctance to Adopt Transferable Development Rights' (2012) 17(2) *Local Government Law Journal* 61, 62.

4 Peter Sutton, 'The Robustness of Aboriginal Land Tenure Systems: Underlying and Proximate Customary Titles' (1996) 67(1) *Oceania* 7, 9–10.

5 Helen Verran, 'Re-imagining Land Ownership in Australia' (1998) 1(2) *Postcolonial Studies* 237, 241.

term rental accommodation phenomenon interacts with the Australian concept of ownership; how Torrens-style land ownership interacts with state authority; the mismatch between copyright law remedies and shifting social and cultural intellectual property re-use norms; how best to find property rights in human biological material; the mobilisation of ownership to target environmental law objectives; the implications of distinguishing between native title rights and their exercise; and a renewal of the progressive-relational study of property.

The *Journal* is also privileged to publish four outstanding general articles in this volume, which touch on: the role of jurisdictional error, the challenge to privacy laws posed by drones, workplace investigations, and Australian approaches to restricting cross-examination of alleged victims of family and domestic violence by self-represented parties.

I thank all of the authors for entrusting the *Journal* with their high-calibre, carefully-crafted scholarship, and for their patience and generosity throughout the editing and publication process. I thank the authors of the thematic articles for taking up the call for submissions put out just under a year ago, and for approaching the theme with vigour and innovation. It has been my great pleasure and privilege to propose, curate and publish this edition. I am truly delighted to see the theme I envisioned taken up by distinguished members of the academe and transformed into pieces of fascinating and thought-provoking legal scholarship. I could not have hoped for a more formidable array of submissions.

I thank the peer reviewers for their seemingly tireless generosity with their time and energy for the *Journal*. Perhaps more so than our sister journals of the academic- and industry expert-run ilk, we as an entirely student-run journal rely heavily on the commentary and good will of very busy and very skilled members of the profession and the academe. The *Journal* simply could not publish to the standard that it does without them. I particularly thank those reviewers whose reviews represent dissents. Dissenting reviews provide invaluable suggestions for improvement which serve to make our final publications far more robust. The student executive is very grateful to be able to draw on such a breadth of reviews.

I cannot thank the *Journal*'s Editorial Board enough for their limitless patience, good-humour and diligence in editing for this Issue. It is because of their punctiliousness that more than one of our distinguished authors took the time to advise me that the *Journal*'s editing process is the most thorough that they have ever participated in.

I am deeply grateful to the Hon Justice James Edelman for his incisive foreword to this Issue. The *Journal* is honoured to have someone of his Honour's standing to preface the discussions raised in this thematic.

I would also like to express my warmest thanks to the Hon Justice Kelly Rees SC for delivering the keynote address at the launch of this Issue on 26 September 2019.

Manifold thanks must go to the *Journal*'s premier sponsor Allens for hosting the launch of this Issue. The *Journal* would not be what it is today without the long-standing and generous support of Allens and our two other premier sponsors, Herbert Smith Freehills and King & Wood Mallesons.

I am indebted to the *Journal's* faculty advisors, Professors Rosalind Dixon and Gary Edmond, for their patient and thoughtful advice on a myriad of issues throughout the development of the thematic and the curation and publication of this edition. I benefitted greatly from their kind willingness to answer the same questions twice with just as much care and consideration the second time when I occasionally forgot to properly minute our discussions.

I would like to express my sincerest thanks to my friends and colleagues on current and former Executive Committees of the *Journal*. Their patience with my never-ending consultation, their earnestness and honest counsel have hugely enriched my term and this Issue. I particularly thank current and former Executive Editors Anne Yang and Lachlan Peake, whose quiet attention to the needs of the *Journal*, often entirely behind the scenes, has provided the foundation for a seamless and rewarding term. I am also grateful to former *Journal* Executive Committee members Isabel Chong, Amelia Loughland, Andrew Roberts, Veronica Sebesfi and Rose Vassel for generously giving up their time to answer questions about many aspects of my thematic proposal and Issue at various stages leading up to and during my term.

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