



# Editorial

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*Injustice anywhere is a threat to justice everywhere.*  
Martin Luther King

Welcome to the 15th Issue of the Court of Conscience. This year's thematic issue 'Race, Law and Equality' explores systematic racism within our society, laws, and legal system. Australia is one of the most culturally diverse countries in the world. The 2016 census revealed that 26% of our population was born overseas and within our population, there are around 300 different cultures.<sup>1</sup> Furthermore, Australia is the land of the Aboriginal and Torres Strait Islander peoples, making it home to the oldest continuous culture in the world. Our multicultural identity is one of our greatest strengths. However, racism continues to exist and pervade our society in many insidious forms.

The conversation about racial injustice begins with acknowledging and making amends for the past and current treatment of Aboriginal and Torres Strait Islander peoples. Australia's colonial history and protectionist policies have led to dispossession, disruption of culture, removal of children, intergenerational trauma, and the economic and social disadvantage of Aboriginal and Torres Strait Islander communities, which unfortunately continues today.<sup>2</sup> Australian governments have failed to achieve meaningful change for Aboriginal and Torres Strait Islander peoples, who have shown great strength and resilience in the face of systems which continue to perpetuate colonial practices.

Furthermore, Aboriginal and Torres Strait Islander peoples and people of colour ('POC') continue to report experiences of racism, with 1 in 5 Australians being victims to racial discrimination.<sup>3</sup> It is all too common for POC to be asked 'where are you really from' or be told to 'go back to where you came from'. Both POC and Indigenous peoples continue to be overlooked for employment, harassed, stereotyped, and racially profiled.<sup>4</sup> These experiences are not only alienating but continue to lead to disadvantage in diverse communities. Instead of supporting and protecting these individuals, leaders continue to propagate inequitable immigration laws which contribute to the 'othering' of migrants in society and have passed laws that provide insufficient protection against discrimination.<sup>5</sup>

There is no place for racism in Australia; however, it exists at an individual, institutional, and systematic level. More recently conversations and awareness about racism have been growing as seen by the Black Lives Matter movement, the Biloela Family Campaign, and the criticisms of the Indian travel ban and policing of diverse communities during the COVID-19 pandemic. These conversations are important; however, change cannot only stop there. It is important that educative measures are implemented, legal reform takes place and governments, and our legal profession work alongside Indigenous peoples and POC to ensure they feel supported, their voices are heard, and they experience equality and justice.<sup>6</sup>

## I Overview of Issue 15

The Court of Conscience was created to raise awareness and contribute to legal scholarship on contemporary social justice issues. The articles in Issue 15 explore a variety of problems within our laws, legal system, and profession which have led to racial injustice and exclusion, and they highlight the need for reform. The Court of Conscience is unique because it displays submissions from a variety of individuals within the legal profession and this year is no different with submissions from academics, solicitors, a barrister, parliamentarians, and law students. Furthermore, this year, we especially aimed to highlight the voices of POC and Indigenous peoples to ensure that dialogue around racial injustice is being led by those who have lived experience and a more personal perspective of its impacts.

The Issue begins with an article by William Wen Zhou, Reid Hou and James Morgan, students from the University of New South Wales and University of Sydney and members of the Asian Australian Lawyers Association. They discuss past racist legislation against Asians and Chinese Australians and comment on how discriminatory legislation is damaging to Australian democracy.

Following this, Tienyi Long, a lawyer with broad experience across the higher education, local government, and not-for-profit sectors, examines institutional racism within the Australian police force. She evaluates current policing initiatives which respond to racism and highlights their ineffectiveness and need for reform.

The next two articles focus on the media representation of Indigenous Australians. Stewart O'Connell, a senior defamation solicitor, analyses systemic racism in the media against Indigenous peoples. He draws on his extensive professional experience to demonstrate cases where Indigenous Australians have been defamed and describes how the law of defamation can provide protection, relief, and accountability. Amal Naser, a student from the University of New South Wales and current Vice President (Public Interest Careers) of the UNSW Law Society, additionally, highlights how the stories of missing and murdered Indigenous women are continually ignored by the media, leading to the normalisation of their violence and lack of law reform.

The subsequent two papers focus on the treatment of temporary migrants during the COVID-19 pandemic. Jenny Leong MP, the Greens member for the electorate of Newtown in the NSW Legislative Assembly, as well as Kathryn Viegas, a specialist in immigration law and Gopika Aryad, a paralegal and Juris Doctor student from the University of New South Wales, shed light on how the Australian government's response to the pandemic exacerbated existing inequities faced by migrant communities and POC. Both articles demonstrate the government's failure to treat migrants with dignity and respect.

The journal then focuses on the Australian court system. Kavita Balendra, a barrister who regularly represents people from diverse backgrounds, questions what community values should be applied in cases that involve diverse vulnerable communities. She analyses the case of *ASIC v Kobelt* (2019),<sup>7</sup> highlighting that the High Court's decision to apply a different standard for the protection of the Anangu people compared to the rest of Australian society, led to the acceptance of a system that entrenched their disadvantage. Kirby Pearson, a proud Dhungutti and Biripi man, paralegal and law student from the University of New South Wales, explores how the Australian legal system fails to recognise Indigenous lore resulting in adverse and unjust judicial outcomes for Indigenous peoples.

The final suite of articles explores whether the legal profession promotes diversity. Peter Khalil MP, Federal Labor Member for Wills, discusses how systematic racism has led to the lack of cultural representation within parliament and in senior positions in the legal profession. Tuanh Nguyen, director at PricewaterhouseCoopers, and Jieh-Yung Lo, founding Director of the Centre for Asian-Australian Leadership, further discuss the lack of cultural representation in senior roles in Australia's public institutions and private sector corporations and discusses how the implementation of legislative and regulatory tools can improve diversity.

## II Concluding Remarks

There are many people who need to be thanked for their contributions to the development of Issue 15.

First, I would like to thank the authors for entrusting the Court of Conscience with their work and for the time and effort they put into their articles, amidst the

pandemic and other important obligations. It has been a pleasure to work with each of you. I would also like to thank the many anonymous peer-reviewers who provided important comments and insights which helped develop each article.

To the 2021 editorial team, this Issue would not have been possible without your hard work, eye for detail and diligence. You had to persevere through a pandemic and were still able to contribute to the journal in many meaningful ways. It has been a privilege to work alongside you.

Thank you to our artist Shanna Massie for creating beautiful and thought-provoking art pieces that reflect and visualise the hardships POC and Indigenous peoples face and help us celebrate their resilience. Thank you to our designer Alexander Tanazefi for flawlessly executing the design of the journal and bringing it to life. Furthermore, thank you to Alexandra Whelan for creating striking social media graphics that were posted on our LinkedIn and Facebook pages, which has allowed us to raise greater awareness of the many issues that fall under this thematic.

I would also like to thank the UNSW Faculty of Law, UNSW Law Society and Social Justice Vice President Joshua Sykes for their ongoing support of the Court of Conscience.

My final thanks go to my family and friends who have provided me with support and encouragement during my time as Chief Editor. I would not have been able to achieve this without you.

Racism in our society will never end unless we speak up, listen to the voices of those affected, educate one another, and implement long-lasting reform. I encourage readers to reflect on these articles and continue the fight to ensure an equal and just society for all.

#### References

- 1 Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia, Stories from the Census, 2016* (Catalogue Number 2071.0, 28 June 2017).
- 2 See *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 15 April 1991); Prime Minister and Cabinet, *Closing the Gap Report* (Report, 12 February 2020).
- 3 Kathleen Blair et al, *Challenging Racism Project: 2015–2016 National Survey Report* (Report, 27 February 2017) 10.
- 4 Graeme Innes, 'I'm Not Racist But ...: Zero Tolerance or Zero Acknowledgement' (Speech, National Press Club, 9 August 2011); Tim Soutphommasane, 'Fighting Racism in Australia' (Speech, UN Committee on the Elimination of Racial Discrimination, 29 November 2017).
- 5 Behrouz Boochani; "'White Australia' Policy Lives on in Immigration Detention' *The New York Times* (online, 20 September 2020) <<https://www.nytimes.com/2020/09/20/opinion/australia-white-supremacy-refugees.html>>; Andrea Booth and Lydia Feng, 'Fears "Ineffective" Anti-Discrimination Laws Still Leave Australians Open to Vilification' *SBS News* (online, 11 August 2016) <<https://www.sbs.com.au/news/fears-ineffective-anti-discrimination-laws-still-leave-australians-open-to-vilification>>.
- 6 Innes (n 4); Soutphommasane (n 4).
- 7 (2019) 267 CLR 1.