



Call for Submissions to the *University of New South Wales Law Journal* Issue 48(2)

‘Dynamics of Power within Criminal Law’

The *UNSW Law Journal* (‘*Journal*’) is currently welcoming submissions for the thematic component of Issue 48(2). The topic for this thematic is ‘Dynamics of Power within Criminal Law’.

Dynamics of power is an inherently broad concept to define, but generally refers to the underlying influence that individuals, groups or ideas hold within a particular context. They have a dominant role in many aspects of criminal law, whether it be in the relationships and interactions between different criminal justice stakeholders, or between the conflicting public opinion and justice considerations that affect suggested reforms. In recent years there has been an increasing discussion around dynamics of power, particularly surrounding the barriers they can present to complainants. For example, the increase in reported domestic and gender-based violence in 2023 and 2024 raises questions as to the power dynamics that have led to these increases, and how they may prevent victims from seeking support. Further, the inherent power dynamics present between children and the legal system presents various barriers to children’s access to this system as defendants or complainants.

Recent developments within other areas of criminal law highlight existing and emerging dynamics of power between various stakeholders. For example, developments in the common law and statute affecting the sentencing of Aboriginal and Torres Strait Islander defendants highlights an interesting power dynamic between Aboriginal and Torres Strait Islander peoples and judicial officers. Furthermore, the recent enactment of affirmative consent laws for sexual assault offences in New South Wales (‘NSW’) highlights key issues about the balance between social and political pressure for reform, and legal considerations of what is considered fair and just. Additionally, the speed and frequency of media coverage surrounding criminal proceedings, as facilitated by social media, raises interesting debates around the dynamics between open justice and the right to a fair trial. Finally, the relationship between minority groups and police and the impact that the inherent power dynamics within this relationship can have on the broader criminal justice system.

In a world in which power dynamics are increasingly at play in political and social realms, their effect in our criminal justice system should be analysed. Additionally, current and emerging measures that could have positive or negative effects in limiting such dynamics should be considered.

In writing submissions, authors may wish to explore the following issues.

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Domestic Violence

- The significant increase in gender-based violence and related deaths in Australia throughout the first half of 2024.
- The measures announced by the Albanese Government, including the National Plan to End Violence against Women and Children 2022–2032, and the statistical dashboard that is in development.
- The recent entry into force of the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW), criminalising coercive control.
- The recent announcement to permanently establish the Leaving Violence Program.
- The legal barriers presented to victims of domestic violence.

Sexual Assault Law Reforms

- The introduction of affirmative consent laws in NSW, considering the NSW Law Reform Commission's ('NSWLRC') *Consent in Relation to Sexual Offences* report.
- Comparative discussion of consent reforms in NSW versus other Australian or international jurisdictions.
- The balance between socially desirable law reform and offering sufficient protections to defendants.
- The barriers presented to victims assaulted by individuals in positions of power.

The Media's Role in Criminal Trials

- The balance between the media's role in facilitating open justice and the defendant's right to a fair trial and procedural integrity.
- The legitimacy of judge alone trials, particularly when adopted because of pre-trial publicity.
- Consideration of the NSWLRC's *Open Justice: Court and Tribunal Information: Access Disclosure and Publication* report and the ways social media and the media more generally should or should not be limited regarding criminal trials.

Children and the Law

- The higher rates of incarceration and re-offending for children from vulnerable backgrounds, and the strengths and weaknesses of the diversionary measures on offer.
- The recent introduction of section 22C into the *Bail Act 2013* (NSW) reforming youth bail laws and its predicted impacts on Aboriginal and Torres Strait Islander youth.
- Barriers to entry to a variety of police and court processes faced by child complainants.
- The impact of the Child Sexual Offence Evidence Program on providing children greater support during a criminal trial.

Indigenous Australians under Criminal Law

- The overrepresentation of Aboriginal and Torres Strait Islander peoples in Australian prisons, and criticisms that state governments have ignored reform proposals suggesting alternatives to incarceration be implemented.

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- The effects of *Bugmy v The Queen* on the sentencing of Aboriginal and Torres Strait Islander peoples, and criticisms that this decision does not go far enough.
- The lack of recognition of Aboriginal traditional law in the criminal justice system.
- Evaluation of the Walama List Pilot introduced in the NSW District Court in 2022.

Police Powers

- Evaluation of the NSW Police Force's bail compliance check practices, considering the Law Enforcement Conduct Commission's ('LECC') recent call for submissions on this issue.
- Consideration of systemic issues in NSW Police Force's interviewing practices, bearing in mind the recommendations of the LECC *Operation Mantus* report tabled in December 2023.
- The relationship between minority groups and the police, and factors that influence police officers' awareness of these power dynamics and their effect.

However, authors are not limited to these topics and are encouraged to draw upon their own interests and expertise. The *Journal* welcomes comparative, inter-disciplinary, historical and novel methodological approaches, as well as doctrinal scholarship.

The submission deadline for the thematic Issue 48(2) is **15 November 2024**, with publication set for late July 2025. Any changes to these deadlines will be updated on the *Journal's* website.

Submissions should be between 7,000 and 13,000 words in length, excluding footnotes. The style guide for the *Journal* is the fourth edition of the *Australian Guide to Legal Citation*, as supplemented by the latest edition of the *Journal's* 'Additions', which is available on our website.

The *Journal* is an independent, peer-reviewed publication. While publication is subject to peer review, publication decisions remain at the Editor's discretion, in consultation with the Executive Committee of the *Journal*. The *Journal* does not publish articles that have been, or will be, published elsewhere, either in identical or substantially similar form. Please contact the *Journal* at law.journal@unsw.edu.au if you are interested or have queries about submitting for Issue 48(2).

If you intend to submit an article, it would be greatly appreciated if you could please provide some early indication of your proposed topic or area of research. We strongly encourage you to pass this call for submissions to any colleagues, research networks or organisations who may be interested in making a submission.

Yours sincerely,

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Editor, Issue 48(2)

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