

Welcome to the eighth AAL Newsletter for 2023.

Congratulations to AAL Fellows

Please join me in congratulating **Justice Stephen Gageler AC** on his appointment as the fourteenth Chief Justice of the High Court of Australia, upon the retirement of **Chief Justice Susan Kiefel AC**.

He has been a justice of the High Court since 2012. Before then, Justice Gageler was the Commonwealth Solicitor-General.

Please join me also in congratulating **Justice Robert Beech-Jones** on his appointment to the High Court of Australia. Justice Beech-Jones has been a judge of the Supreme Court of New South Wales since 2012 and in 2021 he was appointed Chief Judge of the Common Law Division of the Supreme Court of New South Wales and a Judge of Appeal.

These appointments to the High Court were announced on 22 August 2023 and commence on 6 November 2023.

A special sitting to farewell Justice Beech-Jones from the Supreme Court of New South Wales will be held on 19 October 2023.

New Secretariat arrangements

With the help of the **Hon Kevin Lingren AM KC**, I have spent a good deal of time in recent weeks on finding a new home for the AAL's Secretariat. This followed the decision of the Federal Court not to renew the Memorandum of Understanding between the Court and the AAL as from early August. The MOU with the Federal Court had been in place since 2016.

Fellows will know that the Secretariat has consisted of a single person working for the AAL for part of each week.

I am pleased to report that the **Hon Andrew Bell**, Chief Justice of the Supreme Court of New South Wales, has offered the AAL accommodation in the Supreme Court's premises. I will be viewing this Hospital Road accommodation on Monday 4 September 2023.

It will be a different arrangement from the one the AAL had with the Federal Court in that it involves premises only, with the AAL providing its own equipment and personnel.

I am also pleased to report that **Ms Kylie Cooke**, a most competent and experienced independent contractor, has agreed to provide her skills to the AAL as its Secretariat from 11 September 2023. This will be per hour spent by her rather than on a set number of days or hours per week. I hope this will enhance flexibility for her and provide good value to the AAL.

Please join me in thanking **Dr Jennifer Farrell** for her work as the Secretariat over the past 16 months.

I thank also **Ms Susan Jenkins** for stepping in at very short notice as the temporary Secretariat for the period from early August to 11 September (the role she had for some four years up to April 2022 whilst at the Federal Court).

Nomination of prospective Fellows

You will have seen on the AAL website and will have received a letter from me encouraging each Fellow to look widely when considering a distinguished lawyer for consideration by the Membership Committee and then by the AAL's Board. The letter said, in part:

"I invite you to give consideration to nominating one or more distinguished lawyers to be considered for election to the AAL as a Fellow.

I ask that you look broadly: at candidates beyond your usual professional or personal networks and that in

selecting distinguished persons from the legal profession, from legal academia and from the judiciary you consider candidates from diverse backgrounds.

The criteria are that the person is of exceptional distinction in the discipline of law and demonstrably committed to the objects of the Academy.

The objects of the Academy are to:

- Advance the discipline of law;
- Establish scholarships and research grants;
- Promote excellence in legal scholarship, research, education, and the administration of justice;
- Promote law reform;
- Promote ethical conduct and professional responsibility;
- Enhance the understanding and observance of the rule of law;
- Provide a forum for collaboration and constructive debate amongst all branches of the legal community.

Donations and the AAL's First Nations Scholarship

Please join me in thanking **Sir Ross Cranston**, an Overseas Fellow based in London, who has, by his further recent donation to the Public Fund of \$5,000, again supported the AAL's First Nations Scholarship. On behalf of the Academy I have expressed to him the AAL's real gratitude.

Below are links to two relevant articles about this year's Scholar:

<https://lsj.com.au/articles/commitment-and-dedication-earn-australian-academy-of-laws-first-nations-scholarship/>

<https://www.lawyersweekly.com.au/careers/37799-prioritising-different-responsibilities-as-a-law-student>

Please consider making a donation to the AAL's charitable purposes via the Public Fund, which has DGR status. Donations may be made via the website:

<https://academyoflaw.org.au/Donations>

AAL 2023 Essay Prize

The deadline for the submission of an essay is 31 August 2023 and this time limit is strictly observed.

The essay topic for this year's Prize is:

Mass torts and class actions: can the growth in this kind of private litigation in Australia and elsewhere be described as an evolutionary form of "privatised regulation", gap-filling where the state and its regulators have not fully or properly controlled or deterred behaviours, or protected and compensated affected persons? To what extent is it successful in that regard? Should it be encouraged? Why or why not? Give examples.

The Prize is open to anyone, wherever resident, who is studying or has studied legal subjects at a tertiary level, or who is working or has worked in a law-based occupation. There is no limit by reference to the age or seniority or experience of, or position held by, a person who may submit an entry. Accordingly, judicial officers, legal practitioners, legal academics and law students are all eligible to submit an essay. The amount of the Prize is \$10,000.

This year the length of an essay to be submitted is a maximum of 8,000 words.

Please refer to the [Academy's website](#) for further information about the actual submission of an entry.

The judging panel will be the **Hon WMC Gummow AC KC** (Chair), the **Hon Catherine Button** of the Federal Court of Australia and **Emeritus Professor Peta Spender**, ANU.

Publication of selected papers of the Hon James Allsop AC SC

Fellows will be interested to hear that the AAL has again joined with **The Federation Press**, this time to publish a selection of the papers of **the Hon James Allsop AC SC**, the former Chief Justice of the Federal Court of Australia and who was such a strong supporter of the AAL during his term of office.

I met recently with **Dr Ruth Higgins SC** and **Kevin Connor SC** who are the editors and who are working on the volume.

We are aiming to publish the volume in April 2024.

Events for 2023

If you wish to propose a topic for an event or would like to present a paper on an issue of interest to you

please contact the [Secretariat](#) or [me](#).

Forthcoming events

ONLY 16 DAYS TO GO

8 – 10 September 2023

[Joint event with the Australasian Institute of Judicial Administration and the Australian Law Journal: *Enduring courts in changing times*](#)

To mark some important national legal bicentenaries, a 2½ day joint event with the Australian Law Journal (ALJ) and the Australasian Institute of Judicial Administration (AIJA) will be held on Friday 8– Sunday 10 September 2023. Those legal bicentenaries are, for New South Wales, the Third Charter of Justice promulgated on 13 October 1823 establishing the Supreme Court and, for Tasmania, the first sitting of the Supreme Court of Van Diemen’s Land on 10 May 1824.

Please register here:

<https://www.eventbrite.com.au/e/enduring-courts-in-changing-times-conference-tickets-658365818887>

Your main choices are:

- come to the free public Address to be given by **Chief Justice Kiefel AC** at 5.15 on Friday 8 September. The details are [here](#);
- come to the entire conference, either in person or remotely. To do this you will need to register;
- come to the gala dinner on the evening of Saturday 9 September at the Sheraton on the Park, at which **Chief Justice Andrew Bell** will be the speaker. To do this you will need to register; or
- come to all of the above.



A large number of most distinguished speakers, judges and former judges, academics and practitioners have agreed to participate in the

conference.

The programme is as follows:

Friday 8 September

1600 - 1700 Registration

1715 - 1730 Welcome by the **Hon Alan Robertson SC**, President, Australian Academy of Law

1730 – 1800 Opening address (public) by the **Hon Susan Kiefel AC**, Chief Justice of the High Court of Australia, Patron of the Australian Academy of Law and of the Australasian Institute of Judicial Administration

Banco Court, Supreme Court of New South Wales

1830 – 2000: Welcome reception

Venue: Government House, Sydney (for invited guests)

Saturday 9 September

0900 Registration

Welcome to country - **Uncle Michael West**, Metropolitan Aboriginal Land Council

0930 – 1100: Plenary session: Courts, legal systems and the indigenous people

Chair: The **Hon Justice Julie Ward**, President, New South Wales Court of Appeal

Professor Val Napoleon, Dean of Law, University of Victoria, British Columbia, Canada

Professor Megan Davis, Pro-Vice-Chancellor at the University of New South Wales, with **Bridget Cama**, Indigenous Law Centre

The **Hon Justice Joe Williams**, Supreme Court of New Zealand

Ms Marcelle Burns, Associate Dean Indigenous Leadership and Engagement, Faculty of Law, UTS

1100 – 1130: Morning tea

1130 – 1230: Response by **Emeritus Professor the Honourable Kate Warner AC** and Professor Tim McCormack followed by Q&A with panellists

1230-1330: Lunch

1330 – 1530: History

Chair: **Justice Geoff Lindsay AM/Professor Mark**

Lunney

Professor Lisa Ford, University of New South Wales

Emeritus Professor Bruce Kercher, Macquarie University

Emeritus Professor Stefan Petrow, University of Tasmania

Emeritus Professor David Barker AM, University of Technology Sydney

The **Hon Alan Blow AO**, Chief Justice of the Supreme Court of Tasmania

Mr Malcolm Schyvens, President Tasmanian Civil & Administrative Tribunal

1530-1545 Afternoon tea

1545-1715: Criminal law

Chair: The **Hon Virginia Bell AC**, formerly a justice of the High Court of Australia

Dr Gregory D Woods KC, author of “A History of Criminal Law in NSW”

Emeritus Professor the Honourable Kate Warner AC, formerly Dean of the Faculty of Law and Head of the School of Law, University of Tasmania

Professor Hamish Maxwell-Stewart, Professor of Heritage and Digital Humanities, University of New England

1900: Conference dinner

Speaker: The **Hon Andrew Bell**, Chief Justice of the Supreme Court of New South Wales

Venue: Sheraton on the Park Hotel, Sydney

Sunday 10 September

0930 – 1115: Judges

Finding judges - Appointment, diversity then and now

Chair: The **Hon Helen Bowskill**, Chief Justice of the Supreme Court of Queensland

Mr Joshua Thomson SC, Solicitor-General of Western Australia

Mr Michael Tidball, Secretary of the New South Wales Department of Communities and Justice

The **Hon Duncan Kerr Chev LH SC**, formerly a

judge of the Federal Court of Australia and President of the Administrative Appeals Tribunal, former Minister for Justice and Attorney-General

Legal education and professional development, through the years and now

The **Hon Robert Benjamin AM SC**, formerly a judge of the Family Court of Australia, he has a long-standing involvement in legal education and professional development

Ms Una Doyle, Chief Executive, Judicial Commission of New South Wales

Tenure and accountability, then and now

Professor Gabrielle Appleby, Law Faculty of University of New South Wales

1115 – 1130: Morning tea

1130 – 1315: Parallel sessions

A. Technology and digital courts

Professor Andrew Mowbray, Professor of Law and Information Technology and AustLII Co-Director, UTS

Associate Professor Philip Chung, Associate Professor, UNSW Law and Executive Director, AustLII

The **Hon Justice Robert Beech-Jones**, Judge of Appeal and Chief Judge at Common Law, Supreme Court of New South Wales

The **Hon Justice Sarah McNaughton**, judge of the Supreme Court of New South Wales

B. Specialist courts

The **Hon Brian Preston**, Chief Judge of the Land and Environment Court of New South Wales

Professor Liz Fisher, Professor of Environmental Law, Faculty of Law and Corpus Christi College, University of Oxford

Professor Brian Opeskin, Associate Dean (Research), UTS Faculty of Law, University of Technology Sydney

1315 – 1400: Lunch

1400 – 1545: Parallel sessions

A. Impartial administration of justice

The **Hon Justice Sarah Derrington AM**, Judge,

Federal Court of Australia and formerly President of the Australian Law Reform Commission

The **Hon Keith Mason AC KC**, former President of the Court of Appeal of the Supreme Court of New South Wales

B. Contempt of court and the relationship between the courts and the media

Professor David Rolph, University of Sydney Law School

Commentator: The **Hon Lucy McCallum**, Chief Justice of the Supreme Court of the ACT

1545 – 1615: Closing plenary session: **Her Excellency Margaret Beazley AC KC**, Governor of New South Wales

Vote of thanks: The **Hon Francois Kunc**, judge of the Supreme Court of New South Wales and General Editor of the Australian Law Journal

As you can see, this will be a major event, similar to the “*Future of Australian Legal Education*” conference held by the AAL and the ALJ in 2017.

I am very grateful to **Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales** who has graciously agreed to host the welcome reception for the conference on Friday 8 September. In addition, Her Excellency has accepted our invitation to close the conference on the afternoon of Sunday 10 September.

Thursday 14 September 2023 at 5.30pm

Venue: Banco Court, Supreme Court of Queensland, Queen Elizabeth II Courts of Law, 415 George Street in Brisbane

Necessary and Insufficient Factual Causes in the Law

A lecture by **Professor Jane Stapleton KC (Hon), FBA**

The event is in person only and is co-hosted by the AAL, the Supreme Court Library of Queensland, the Bar Association of Queensland and the Australian Centre for Private Law of the University of Queensland.

Commentary on the lecture will be given by **the Hon Patrick Keane AC KC**.

Professor Kit Barker, Professor of Private Law, TC

Beirne School of Law, The University of Queensland, will be the chair.

In response to the COVID-19 pandemic, the UK Government decided to take swingeing lock-down measures in March 2020 that resulted in billions of dollars of business interruption loss to hundreds of thousands of enterprises in that country. In a landmark 2021 decision concerning insurance cover for such losses, *The Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] AC 649; [2021] UKSC 1, a unanimous UK Supreme Court rejected ‘but-for’ as the exclusive test of factual cause and confirmed that the law recognises that an unnecessary and insufficient factor may be a factual cause of an indivisible loss. The talk will describe the revolutionary procedure deployed in the case, how the judges’ insightful introduction of non-insurance cases and commentary was crucial to the crafting of their decision and how profound an impact it may have across the entire landscape of the law.

Please put this date in your diary. Registration details will be available soon.

AGM 2023 12 October 2023 at 4.00 PM (AWST) Perth

7.00 PM (SYDNEY, MELBOURNE, CANBERRA, HOBART - AEDT)

6.00 PM (BRISBANE - AEST)

6.30 PM (ADELAIDE - ACDT)

5.30 PM (DARWIN -ACST)

9.00 AM (LONDON – BST)

Venue: Judge’s Conference Room, Level 14, David Malcolm Justice Centre, 28 Barrack St, Perth and livestreamed

Please put this date and time in your diary.

For those participating remotely, a link will be distributed nearer the date.

I note that **Emeritus Professor Les McCrimmon** has said he will not stand for re-election as a Director. I thank him for his significant work for the Academy over the years and as a Director since 2011. We shall miss him.

I would be pleased to hear from any Northern Territory Fellow who wishes to nominate as a Director in Les McCrimmon’s place.

Patron's Address

12 October 2023, 5.00 PM (WA – AWST) Perth

8.00 PM (SYDNEY, MELBOURNE, CANBERRA, HOBART - AEDT)

7.00 PM (BRISBANE - AEST)

7.30 PM (ADELAIDE - ACDT)

6.30 PM (DARWIN -ACST)

10.00 AM (LONDON – BST)

Venue: Court 1, Supreme Court Building, Stirling Gardens, Perth and livestreamed

I am very pleased to report that the **Hon Peter Quinlan**, Chief Justice of the Supreme Court of Western Australia, has kindly agreed to give this year's Patron's Address.

The date is 12 October 2023 at 5.00PM AWST so please put that date and time in your diary.

It is proposed that the Address also be live streamed.

The working title of the Address is: ***There is no single correct sentence: Thoughts on choice, subjectivity and the ethics of sentencing.***

The flyer, with registration details, is [here](#).

Perth AAL dinner - 12 October 2023, 6.30 PM

I have arranged an AAL dinner in Perth for Fellows and partners at 6.30 PM, after the Address, for the 20 people who have emailed me to say they will be there.

The venue will be Private Dining Booth at Lalla Rookh, which is within walking distance of the Supreme Court.

If you wish to be put on a reserve list please contact me or the Secretariat.

I thank **Kanaga Dharmananda SC** and his Personal Assistant **Frida Barbas** for their great help with these arrangements.

Monday 4 December 2023 – Annual joint event with the Australian Academy of Science (AAS)

Venue: The Shine Dome, Canberra



I am pleased to report that, in response to a joint invitation by the Presidents of the Australian Academy of Science and the AAL, **Dame Julie Maxton DBE**, Executive Director of The Royal Society, will be the guest speaker at our annual joint Academies' event, in December. She will share her expertise at the interface of science and law.

Please keep this date free if you will be in Canberra on 4 December. Registration details will be available soon.

The details of any further events at which Dame Julie will speak will be sorted out with her and the AAS and the AAL over the coming weeks but it may be that Dame Julie would give more than one lecture while she is in Australia.

Recent events

I thank **Emeritus Professor Stephen Bottomley** for the following report:

Michael Coper Roundtable Event, Canberra, 15 August 2023

Topic: *What do non-academic lawyers think of legal scholarship - how do they use and evaluate it?*

Professor Benedict Sheehy FAAL, from the University of Canberra, addressed this topic with a stimulating presentation that examined questions of content (what topics do academics research?) and presentation (where is their research published, and how accessible is it?).

Professor Sheehy's paper was followed by two sets of comments presented by **Emeritus Professor John McMillan AO FAAL**, and **Mr Peter Walmsley FAAL**.

The general discussion that followed raised many issues about the connection between academic research, the work of the judiciary and legal practice in general. The level of interest prompted some participants to ask about the possibility of future Roundtable Events on this topic.

I thank **Professor Sheehy** for presenting his paper, **Emeritus Professor John McMillan** and **Mr Peter Walmsley** for their comments on the paper and **Professor Bottomley** for chairing the event.

New Fellow

Please join me in extending a warm welcome to the following distinguished lawyer who has accepted the Board's invitation to become a Fellow of the Academy:

Ms Kathy Leigh, Head of ACT Public Service and Director-General, ACT Chief Minister, Treasury and Economic Development Directorate



Alan Robertson
President

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