

Welcome to the seventh AAL Newsletter for 2023.

## 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

I note with gratitude the recent donations by **Emeritus Professor David Barker AM** and the **Hon Debra Mullins AO**. Those donations will certainly help to advance the AAL's projects. The AAL is most grateful to all donors.

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>

## Vale

I note with sadness the recent death of Mr Tim Bugg AM. He was, as you may know, a former President of the Law Council of Australia. The media release of the Law Council is [here](#).

## Perth AAL dinner 12 October 2023?

You will have read that the 2023 Patron's Address will be given by Chief Justice Peter Quinlan in Perth on 12 October 2023 at 5PM. It will be preceded by the AGM.

If there is enough interest I would like to arrange an AAL dinner in Perth after the address so we can get together. In the past both Fellows and their partners have attended.

The venue will be within walking distance of the Supreme Court. We should try to keep the cost to around \$125 per head, if that is possible.

Please let me or the Secretariat know as soon as you can whether you would like to attend such a dinner and whether you will be accompanied.

## 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 am very grateful to **Ruth Higgins SC** and **Kevin Connor SC** who have agreed to be the editors and who have begun work on the volume.

We are aiming to publish the volume in April 2024.

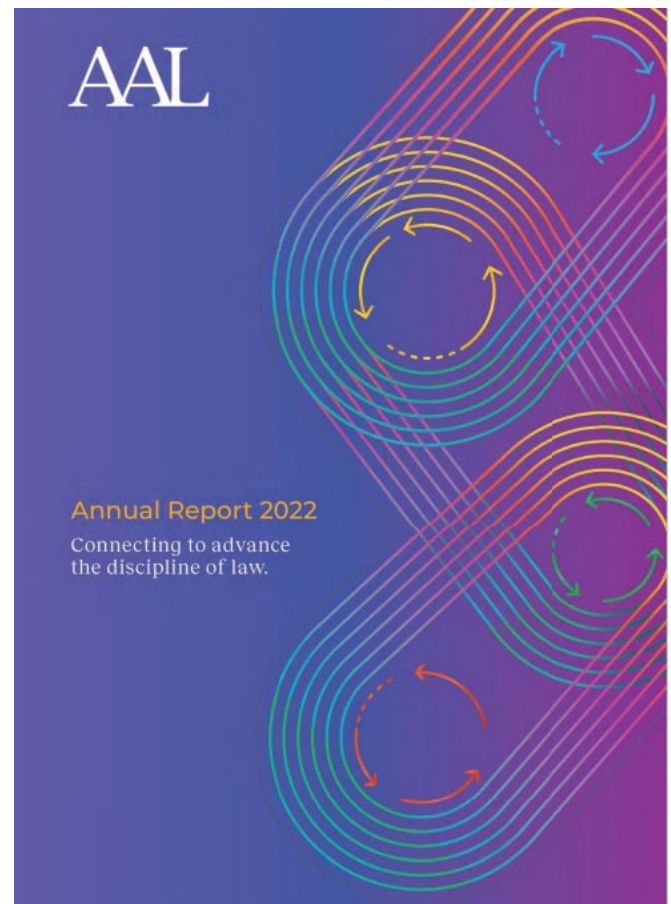
## AAL Annual Report for 2022

The AAL's third annual report, for the calendar year 2022, is now available on the AAL's website.

[https://academyoflaw.org.au/resources/Publications/AAL-Annual\\_Report\\_2022-WEB%20with%20links.pdf](https://academyoflaw.org.au/resources/Publications/AAL-Annual_Report_2022-WEB%20with%20links.pdf)

I commend it to you.

I also thank **Ms Kerrie Douglass** and **Ms Trischa Mann** for their invaluable assistance in preparing the annual report.



## 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

**Tuesday 15 August 2023 at 5.00PM AEST**

**This is a Michael Coper Roundtable, in person only for Fellows of the Academy at the High Court of Australia.**

The topic is "What do non-academic lawyers think of legal scholarship – how do they use and evaluate it?"

This roundtable will discuss the following questions:

1. What impact does legal scholarship have, and how do we know?
2. Is the number of citations a useful measure of the worth of legal scholarship or are there other ways to measure it?

The speaker will be **Professor Benedict Sheehy**, Professor of Law, University of Canberra.

The Discussants will be **Professor John McMillan AO** and **Mr Peter Walmsley**.

**Emeritus Professor Stephen Bottomley** will be the Chair.

Registration for the event is essential and will close at 5 pm on Friday, 11 August 2023.

The flyer is available [here](#).

### 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>



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 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.

**October 2023 – Annual joint event with the Australian Academy of Science**

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 October. She will share her expertise at the interface of science and law. The details will be sorted out over the coming weeks but it may be that Dame Julie would give more than one lecture while she is in Australia.

**Patron’s Address**

**12 October 2023, 5PM Perth**

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 so please put that date in your diary. It is proposed that the Address 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.***

Registration details will be available soon.

**AGM 2023**

In light of the date for the Patron’s address, the AGM will also be held on 12 October 2023. Please note this 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.

## Recent events

### *ACT*

I thank the **Hon Mary Finn** for the following report:

On the evening of Tuesday 27 June 2023 a further Michael Coper Roundtable was held at the High Court in Canberra for Fellows or the Academy who happened to be in Canberra that evening.

The Roundtable was presented by the **Hon Justice David Mossop** of the Supreme Court of the ACT and was chaired by the **Hon Mary Finn**.

Justice Mossop's presentation was entitled "The ethical obligations of government lawyers: lessons from the House of Lords Report". It addressed a report published in January 2023 by the Select Committee on the Constitution of the House of Lords, under the title "The roles of the Lord Chancellor and the Law Officers".

From that report it emerges that the United Kingdom has adopted the standard of a "respectable legal argument" as a sufficient foundation for government action and encourages legal advice by government lawyers to be formulated on the basis of legal risk rather than a conclusion as to what the law is.

It was Justice Mossop's contention that such an approach to the role of government lawyers tends to undermine the rule of law and must be avoided in Australia.

As many of the fourteen Fellows who attended the Roundtable had experience as government lawyers an interesting discussion followed Justice Mossop's presentation.

Those who were unable to attend the Roundtable may be interested to know that much of the material in Justice Mossop's presentation can be found in an article he has written for "Ethos", the journal of the ACT Law Society in its Winter 2023 edition (issue

268).

I thank Justice Mossop for presenting his paper and the Hon Mary Finn for chairing the event.

### *Northern Territory*

The 12th Annual Austin Asche Oration in Law and Governance was given on 6 July 2023. I thank **Emeritus Professor Les McCrimmon** for the following report:

**Mr Tony McAvoy SC** delivered the 12th Austin Asche Oration in Law and Governance in Darwin. The oration is an event co-sponsored by the Academy and Charles Darwin University.

The topic of Mr McAvoy's oration was, "Just say 'Yo': Navigating the path to a post-colonial state". Mr McAvoy discussed the Voice referendum, the objectives of First Peoples' self-determination and what such concept entails, and how self-determination may be achieved.



*Mr Tony McAvoy SC*

Approximately 140 people attended the event in Darwin and 18 attended online. **Acting Chief Justice Judith Kelly** spoke on behalf of the Academy and gave the thank you to the speaker.

The oration honours the service to the law of Academy Fellow the Hon Austin Asche AC KC.

### *Western Australia*

26 July 2023 8:15 AM (WST)

I thank **Kanaga Dharmananda SC** for the following report:

Despite the early start, and less than ideal weather, around 70 people gathered at the Academy event "The Ins and Outs of Juries" on Wednesday morning 26 July.

The event, concerned with the materials that juries may and may not consider, and how juries make decisions and respond to directions, was chaired by

**Judge Gary Massey** of the District Court of Western Australia who brought a lifetime's engagement with the criminal law to the role.

**Justice Vandongen** of the WA Court of Appeal began with an erudite exposition of the law as to what a jury member may consider and when a jury member must be discharged. This was followed by **Professor Margaret Bull Kovera's** presentation, beamed in from New York, addressing what has been discovered about how juries react to directions and how, on the whole, they make decisions based on the evidence, at times subject to the cognitive biases to which virtually all humans are susceptible.

There were numerous questions reflecting the level of interest in the topic.

I thank the speakers, the chair and the WA Event Organising Committees of the Academy for putting on this excellent event.



Alan Robertson

President

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