

AAL

Annual Report 2021

Connecting to advance
the discipline of law.



Highlights

▶ 10th Austin Asche Oration in Law and Governance 2021: The Academy's Patron, the Chief Justice of the High Court of Australia, the Hon Susan Kiefel AC, gave this annual oration in Darwin. Her Honour spoke about Judicial Independence—what it means and how it has operated historically and in different jurisdictions.



▶ Freedom of Expression in the United Kingdom and Australia considered comparatively: The Academy's first international event. It was conducted online with speakers representing the perspectives both of journalists and of lawyers.

▶ 10th Annual Patron's Address: The Chief Justice of the Federal Court of Australia, the Hon James Allsop AO, delivered the address on the topic: 'Thinking about Law: the importance of how we attend to the problem at hand and of context'.



▶ A First Nations focus: Generous donations enabled AAL to introduce its inaugural First Nations Scholarship, presented in 2021 to Mikeyli Hendry. The award is made to to a First Nations student in the final year of their Law degree.

The 2001 essay prize topic was Outstanding fundamental issues for First Nations Peoples in Australia, and in November our First Nations Peoples' Truth & Justice Commissions event focused on the Yoorrook Justice (truth telling) Commission established in Victoria to inquire into historic and ongoing systemic injustice perpetrated against First Peoples since Colonisation.

▶ Issues Arising from the Operation of Intermediate Courts of Appeal (Civil): This online and in-person event brought together all the heads of Australia's intermediate courts of appeal, including appellate full courts. They discussed a range of common issues arising from the operation of these intermediate courts of appeal.



▶ 2021 Essay Competition: Three young Associates to Judges of the Supreme Court of Queensland shared the award for their essay championing movement lawyering as a means to help address serious issues confronting First Nations Peoples. The Chief Justice of Queensland, the Hon Catherine Holmes AC, hosted the Award celebration event and the recipients also spoke about their work.

See pages 11–19 for more details about these events.

Australian Academy of Law

Annual Report 2021

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Acknowledgement of Country

The Australian Academy of Law acknowledges the Gadigal people of the Eora nation on whose land is the office of the Secretariat.

We pay our respects to their Elders past, present and emerging and to all First Nations Peoples.

Patron's Message



The COVID-19 pandemic has affected court hearings, the practice of the law, legal education and research. The AAL has not been immune from its disruptive influence. But the pandemic has not prevented the AAL growing both in its membership and in the nature and scope of the activities in which it engages. Those activities are discussed in the Annual Report. They include conferences and seminars on matters of significance and interest, the award of prizes and scholarships which serve to encourage a knowledge of the law, the sponsorship of scholarly publications and the promotion of research.

The importance of the role that the AAL undertakes can hardly be doubted. It is particularly evident in the valuable interaction between the judiciary, the academy and legal practitioners which it fosters. Its growth is in large part made possible by the considerable efforts of its President, Directors, Officeholders and Committees.

A handwritten signature in black ink, which appears to read "Susan Kiefel". The signature is fluid and cursive.

*The Hon Susan Kiefel AC
Chief Justice of Australia*



Message from the President

Welcome to the Australian Academy of Law's Second Annual Report.

We began 2021 with expectations of a return to our in-person activities and events but, as with the previous year, continuing COVID restrictions limited opportunities for face-to-face lectures and seminars.

Despite these restrictions, 2021 was a year of increased activity for the AAL.

With most of our events available to be seen and heard remotely, we saw a greater number of participants taking part. Generally, it has been possible to broadcast live online so that Fellows, wherever they are, and members of the public, can participate nationally or indeed internationally.

A great success of 2020 was the health of the AAL's [Public Fund](#), established following the Academy's listing as a Deductible Gift Recipient in the *Income Tax Assessment Act 1997*.

There have been significant and generous donations which meant that we were able to inaugurate, for academic year 2021, the [AAL First Nations Scholarship](#). The \$5000 award helps a First Nations student complete the financially difficult final year of legal studies and also offers the opportunity to be mentored for up to a year by an AAL Fellow.


You can read more about the inaugural recipient and her future career plans on page 18 of this Report.

Another first for 2021 was the AAL's publication of the collection of papers given at one of its online events: *Tax Avoidance: Marking 40 years of Part IVA of the Income Tax Assessment Act 1936* (see page 20 of this Report).

A major highlight of the year was the frequency and quality of the events we were able to hold. In particular the *10th Austin Asche Oration in Law and Governance* delivered by Australia's Chief Justice and the Academy's Patron, the Hon Susan Kiefel AC, in Darwin; the 10th Annual *Patron's Address*, delivered by Chief Justice Allsop of the Federal Court of Australia; and *First Nations Peoples' Truth & Justice Commissions*, an event held in Melbourne.



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A pleasing development is the steady increase in the number of Fellows, which now stands at about 400, including Life Fellows and Overseas Fellows. In combination with the greater number and spread of the AAL's activities, this demonstrates that the Academy continues to be an energetic and growing organisation.

In the near future, I look forward to being able to resume face-to-face meetings, which are so important for building bridges between the different legal communities.

I commend the AAL's website to readers who wish to know more. It contains a wealth of information about past and future events as well as copies of the papers that have been given and video recordings of some of our more recent events:

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

I trust that this Annual Report will help to keep Fellows informed about the activities of the Academy as it pursues its objects, and indeed to inform and engage other members of the legal profession, and members of the public, about the work and achievements of the AAL throughout 2021.



Alan Robertson, President



The Australian Academy of Law achieves its Mission by promoting excellence, ethical conduct and professional responsibility and legal education, by providing scholarships and research grants towards those ends, and by promoting the continuous improvement of the law and of the operation of the legal system.

DEBATE

Holds Roundtable events for Fellows for constructive debate

EXCHANGE

Conducts public conferences and other events for the interchange and dissemination of ideas and views

AWARDS

Awards prizes and scholarships to encourage legal learning at the tertiary level

RESEARCH

Promotes legal research

PUBLISHING

Sponsors the publication of scholarly papers

SCHOLARSHIP

Offers an annual essay prize to promote excellence in legal scholarship

About the Academy of Law



The Australian Academy of Law (AAL) is committed to building bridges between each part of the legal profession—academics, practitioners and the judiciary—and to providing a forum for cooperation, collaboration, constructive debate and the effective interchange of views amongst all branches of the legal community.

It was founded, in part, in response to the Australian Law Reform Commission's Report, *Managing Justice—A Review of the Federal Civil Justice System* (ALRC Report 89).

The ALRC expressed the concern that, as the law profession continued to grow in Australia, there was a risk of fragmentation so that, instead of a single 'profession', there would be a range of legal occupations, none of which would see themselves as part of a 'larger whole'.

One of the Report's recommendations stated:

There is a need for an institution which can draw together the various strands of the legal community to facilitate effective intellectual interchange of discussion and research of issues of concern, and nurture coalitions of interest. Such an institution should have a special focus on issues of professionalism (including ethics) and professional identity, and on education and training.

There was broad acceptance of the need for 'bridge building' between the different strands of the legal profession and so the AAL was launched in July 2007 with 36 Foundation Fellows.

The inaugural Patron was the then Chief Justice of the High Court of Australia, the Hon Murray Gleeson AC. The second Patron was Chief Justice Robert French AC and the Hon Chief Justice Susan Kiefel AC is the present Patron.

The first President was the Hon Robert Nicholson AO. The new organisation started slowly and took some time to grow and achieve recognition within the legal community.

The Hon Kevin Lindgren AM QC became President in November 2011. Mr Lindgren's professional experience spanned all three categories of Fellow—legal practice, academia and the judiciary—and the AAL began to become more firmly established. The membership grew, as did the number of Academy events and conferences. He introduced monthly Newsletters sent to all Fellows and some significant research projects were undertaken. Mr Lindgren also instigated the move of the Academy's Secretariat from the Australian National University to the Federal Court of Australia.

A turning point in attracting wider recognition for the Academy was the inaugural Patron's Address in 2012. The then Chief Justice of the High Court, the Hon Robert French AC, spoke about the need for more dialogue and interaction between legal scholars, legal practitioners and the judiciary and the importance of the Academy of Law in 'bridging the gulf'.

Mr Lindgren served as President until July 2020 when he retired from that office. The Board then unanimously invited him to become a Life Fellow in recognition of his indefatigable work for the Academy. The Hon Alan Robertson SC was elected as the new President, with effect from 1 July 2020.

Each of the three Presidents to date has served as a judge of the Federal Court of Australia.

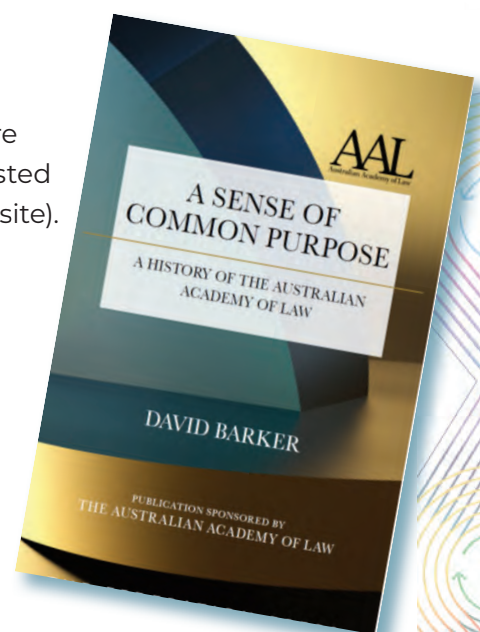
The AAL membership continues to grow steadily as do the range of activities, functions and events in a spirit of collegiality across the legal profession.

The Directors and officeholders for the year 2021–22 are:

- » The Hon Alan Robertson SC (President)
- » The Hon Justice Tony Besanko (Deputy President)
- » Emeritus Professor Bee Chen Goh (Treasurer)
- » Emeritus Professor David Barker AM (Secretary)
- » Professor Gino Dal Pont
- » Dr Nuncio D'Angelo
- » Professor Melissa De Zwart
- » The Hon John Digby QC
- » The Hon Kevin Lindgren AM, QC
- » Professor Les McCrimmon
- » Mr Russell Miller AM
- » Mr Michael Murray
- » The Hon Emeritus Professor Ralph Simmonds
- » Professor Natalie Skead
- » The Hon Pamela Tate SC

Further details about the Academy's structure and purpose are contained in the Constitution and the Founding Fellows are listed on page 25 of the document (available on the Academy's website).

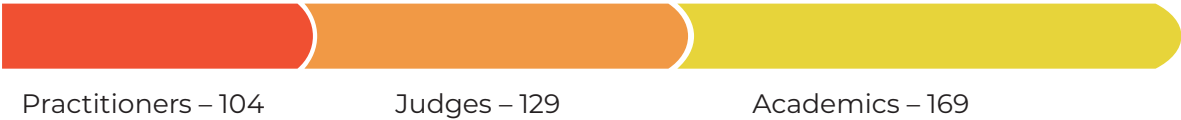
A more detailed consideration of the origins of the Academy and its history up to 2020 is to be found in the forthcoming monograph by Emeritus Professor David Barker AM, *A Sense of Common Purpose: A History of the Australian Academy of Law*, to be published by the Federation Press in the first half of 2022.



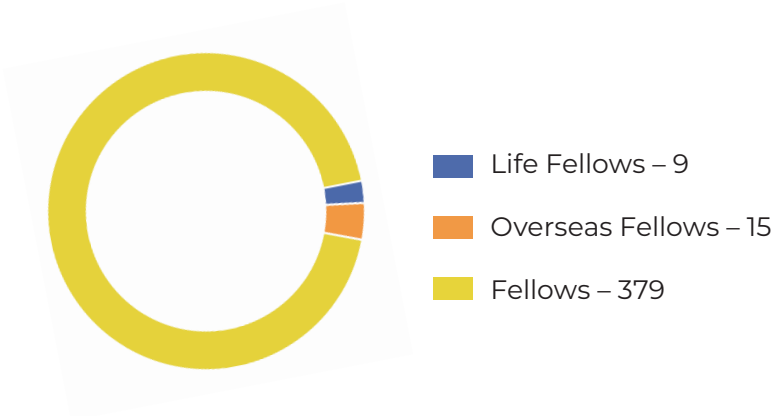
Profile of Membership

Fellows of the Academy are drawn from practising lawyers, legal academics and the judiciary across Australia:

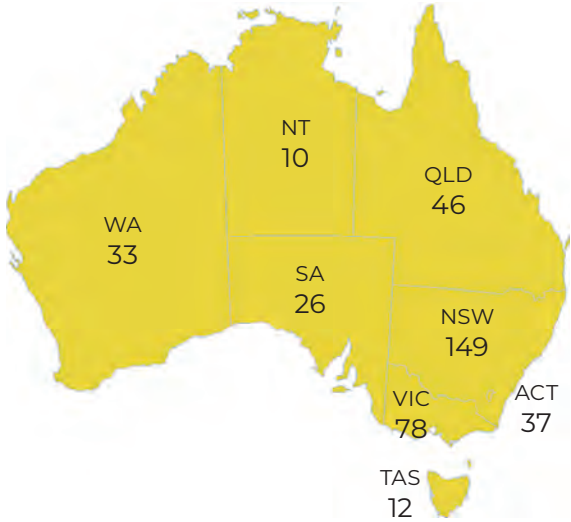
They are nominated and invited on the basis of exceptional distinction in the discipline of law and in their commitment to the advancement of that discipline and to justice according to law. The Academy welcomed 31 new Fellows in 2021.



There are three categories of membership: Fellows (resident in Australia); Overseas Fellows; and Life Fellows:



Membership by State and Territory as at 30 June 2021 (total 391):



Lists of Current Fellows are on the website: www.academyoflaw.org.au/fellows

New Fellows

During 2021, the Academy welcomed the following distinguished lawyers as new Fellows:

- » The Hon Justice Robert Mitchell, Judge of Appeal, Supreme Court of Western Australia
- » Professor Jeannie Paterson, Professor of Law and Co-Director of the Centre for AI and Digital Ethics, The University of Melbourne
- » Professor Margaret Young, Melbourne Law School, University of Melbourne
- » Professor Cameron Stewart, Sydney Law School and Sydney Medical School, University of Sydney
- » Professor Alison Gerard, Head of the Canberra Law School, University of Canberra
- » The Hon Justice Simon Steward, Justice of the High Court of Australia
- » The Hon Justice Jacqueline Gleeson, Justice of the High Court of Australia
- » The Hon Geoff Nettle AC, formerly a Justice of the High Court of Australia
- » Mr Anthony McAvoy SC (Tony), Barrister, Supreme Court of New South Wales
- » Ms Kate Jenkins, Human Rights Commission
- » Professor Pip Nicholson, Dean, Melbourne Law School, University of Melbourne
- » The Hon Justice Karin Emerton, Judge of Appeal, Supreme Court of Victoria
- » Professor Simon Bronitt, Head of School and Dean, Sydney Law School, University of Sydney
- » Distinguished Professor Shaunnagh Dorsett, Faculty of Law, University of Technology, Sydney
- » Ms Fiona Crosbie, Chair at Allens
- » Professor Sarah Murray, University of Western Australia Law School
- » The Hon Graham Hiley RFD QC, former Judge, Supreme Court of the Northern Territory

[... continued overleaf]



- » Dr Andrew Godwin, Special Counsel, Australian Law Reform Commission
- » Dr James Popple, Official Secretary to the Royal Commission into Defence and Veteran Suicide, Honorary Professor, Australian National University
- » Professor Michael Legg, Faculty of Law & Justice, University of New South Wales
- » Professor the Hon Kevin Bell AM QC, Executive Director, Castan Centre for Human Rights Law, Faculty of Law, Monash University, and Commissioner, Yoorrook Justice Commission, Victoria
- » Mr Ben Slade, Managing Partner, Maurice Blackburn Pty Ltd
- » Professor Natalie Stoianoff, Professor and Director of the Intellectual Property Program, Faculty of Law, University of Technology, Sydney
- » Professor Jason Harris, Professor of Corporate Law, Sydney Law School, University of Sydney
- » Professor Robyn Carroll, University of Western Australia
- » Dr Melissa Castan, Associate Professor, Law Faculty, Monash University
- » Ms Rowena Orr QC, Solicitor-General for Victoria
- » Mr Stephen McDonald SC, Barrister, South Australia
- » The Hon Justice Rachel Pepper, Judge, Land and Environment Court of New South Wales
- » Professor Kit Barker, Professor of Law, TC Beirne School of Law, The University of Queensland
- » The Hon Justice Sam Doyle, Court of Appeal, Supreme Court of South Australia

Events and Activities

Despite the ongoing pandemic and social distancing restrictions, the Academy held twenty-two events throughout the year. Some were held entirely online while others were a mix of online and in-person. All were well attended. There was one International event, with nine National events and twelve State or Territory-based events. Many of the papers presented, as well as recordings of proceedings, are available on the AAL website.

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

February 2021

National Event: *Regulatory Enforcement of Directors' Obligations*

This event was held online jointly with the New South Wales Bar Association.

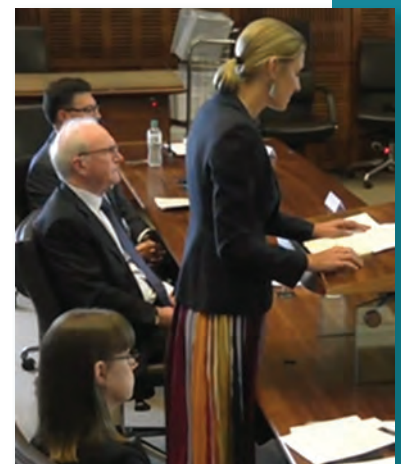
The chair was John Sheahan QC and the speakers were: the Hon Justice Robert Bromwich, Judge of the Federal Court of Australia; the Hon Justice David Jackson, Judge of the Supreme Court of Queensland; Dr Ruth Higgins SC; and Professor Jennifer Hill, the Bob Baxt AO Chair in Corporate & Commercial Law and Director, Centre for Commercial Law & Regulatory Studies (CLARS), Faculty of Law, Monash University.



March 2021

National event: *Public Confidence, Apprehended Bias, and the Modern Judiciary*

This seminar was held with the Australian Law Reform Commission in the context of the ALRC's inquiry into Federal Judicial Impartiality. A panel discussion explored the issues from a variety of perspectives. The Chair was the Hon Justice Sarah Derrington of the Federal Court of Australia, President of the Australian Law Reform Commission. The panellists were: the Hon Justice Michael Lee, Federal Court of Australia; His Honour Judge Matthew Myers AM, Federal Circuit Court of Australia; Professor Gabrielle Appleby, University of New South Wales; Mr Anthony McAvoy SC, Barrister; and Mr Chris Merritt, Journalist and Rule of Law Institute of Australia Vice President.



For the latest information about this inquiry, see:

www.alrc.gov.au/inquiry/review-of-judicial-impartiality/



NT event: *10th Austin Asche Oration in Law and Governance*

This annual event was sponsored by Charles Darwin University and the AAL. The Academy's Patron, Chief Justice Susan Kiefel AC, gave the address in Darwin to an in-person and online audience. The title of her Oration was 'Judicial Independence—From what and to what end?' Her paper covered the independence of the judiciary in China and the Weimar Republic as well as in Australia.



April 2021

WA event: *Recent Legal Developments*

This Roundtable event involved short presentations from the Chief Justice of Western Australia, the Hon Peter Quinlan; the Solicitor-General of Western Australia, Mr Joshua Thomson SC; and Professor Elise Bant, University of Western Australia, followed by discussion. The informal, members-only gathering provided an opportunity for collegiality and intellectual exchange among Fellows.

SA Event: *The new Court of Appeal for South Australia*

To mark the establishment of the Court of Appeal in South Australia and the commencement of its operations on 1 January 2021, Justice Tony Besanko organised this Adelaide event. The Speakers were: Justice Mark Livesey, one of the five judges appointed to the new Court; Dick Whittington QC of the South Australian Bar; and Professor Gabrielle Appleby of the University of New South Wales, who spoke by video link.



May 2021

ACT event: *Michael Coper Roundtable 2021: Integrity Commissions—Role and Powers*

This Roundtable was held at the High Court. The guest speaker was the Hon Murray Kellam AO QC, who is a former judge of the Victorian Court of Appeal and also a former Chief Commissioner of the Tasmanian Integrity Commission from 2010 to 2015.

June 2021

Tas Event: *After-dinner speech*

The new Dean of the University of Tasmania's Faculty of Law, Professor Michael Stuckey, spoke about the histories of the first Chief Justices of Van Diemen's Land and of New South Wales and the founding of the two Supreme Courts.



July 2021

Qld Event: *Mrs Chester's lost child: Inconsolable psychological injury and Evatt J's finest judgement*

This event, chaired by Justice Peter Applegarth AM, was based on journalist and writer Gideon Haigh's book about former judge and politician H V Evatt — *The Brilliant Boy: Doc Evatt and the Great Australian Dissent*. The speakers were Gideon Haigh and Associate Professor Kylie Burns, who is a torts and personal injury researcher, teacher and speaker. The event was held jointly with the Selden Society and supported by the Supreme Court Library, Queensland.



National Event: *Class Actions Forum: Capital, Regulation & the Public Interest*

The joint AAL and Law Council of Australia seminar explored the various issues affecting moves to regulate the funding of class actions and discussed whether the courts should continue to manage these issues or whether legislative reform was necessary. The seminar was chaired by John Sheahan QC and the speakers were: Justin Gleeson SC, of the New South Wales Bar; Rebecca Gilsenan, Principal, Maurice Blackburn Lawyers; Jason Betts, Partner, Herbert Smith Freehills; and Susanna Taylor, Investment Manager of Litigation Capital Management (LCM).

WA Event: *Emerging scholars: Contemporary issues in crime and criminology*

This Roundtable discussed recent research in criminal justice. PhD candidate Nicola Stokes focused on intimate partner violence and the Western Australian Criminal Justice System and PhD candidate Liam Quinn looked at the relationships between legitimate market forces and the theft and disposal of stolen goods. Professor Erika Techera from UWA's Faculty of Law chaired the event.

August 2021



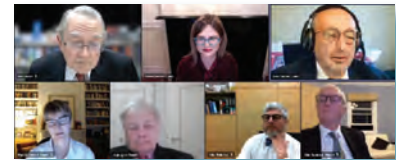
NSW event: *Sydney Insolvency Roundtable*

A Roundtable on insolvency law was jointly hosted by the Australian Academy of Law and the Ross Parsons Centre of the University of Sydney. Michael Murray and Professor Jason Harris presented a paper, 'The roles of the state and the private profession in the insolvency system: do we have the right balance?' calling for a rethinking of the structure in which the insolvency regime operates. The Hon Kevin Lindgren AM QC chaired the session.

September 2021

National Event: *Marking 40 years of Part IVA of the Income Tax Assessment Act 1936*

The Hon Kevin Lindgren AM QC chaired the event, which covered the demise of s 260, the history of Part IVA before and after 1981, the developments in Part IVA since 1981 by amendment and in the courts, international aspects, and whether the provision had achieved its purpose.



The speakers were: the Hon AM Gleeson AC, formerly Chief Justice of Australia; the Hon Tony Pagone QC, formerly a judge of the Federal Court of Australia and of the Supreme Court of Victoria; Professor Miranda Stewart, Professor of Law at the University of Melbourne Law School, where she is Director of the Tax Group and Fellow at the Tax and Transfer Policy Institute at the Crawford School of Public Policy, the Australian National University; and Ms Kristen Deards SC, of the New South Wales bar, who has an extensive taxation practice, including appearing in complex Part IVA cases. Deputy Chief Tax Counsel of the ATO, Peter Walmsley; and the Hon Roger Gyles AO QC, former Special Commonwealth Prosecutor into Bottom of the Harbour Tax Avoidance and member of the General Anti-Avoidance Rules (GAAR) Panel provided commentary and an overview.

WA Event: *Roundtable Perth: COVID*

Held at the CBD campus of Murdoch University, the Roundtable was chaired by former Federal Court judge and first President of the AAL, the Hon Robert Nicholson AO. Dr Lachlan Umbers from the School of Humanities, Discipline of Philosophy, at the University of Western Australia spoke about vaccine apathy and vaccine scarcity, and this was followed by a discussion of the issues.

Above: The AAL published the proceedings and 1981 legislative material in December 2001 (see page 20).



October 2021

National event: *Artificial Intelligence: Future directions in technology and law*

This was the annual symposium jointly held by the Australian Academy of Science and the Australian Academy of Law. The speakers were Professor Lyria Bennett Moses FAAL, Professor Svetha Venkatesh FAA FTSE, Professor Toby Walsh FAA, and Mr Edward Santow FAAL. Moderator for the event was the Hon Dr Annabelle Bennett AC FAA FAAL SC.

National event: *10th Annual Patron's Address:
The Hon James Allsop AO*

Chief Justice of the Federal Court, the Hon James Allsop AO, gave the Patron's Address for 2021. The topic was 'Thinking about Law: the importance of how we attend to the problem at hand and of context' and the event was held remotely from Court One, Federal Court of Australia.



WA Event: *The Narrative Voice in Fiction and in the Law*

This event addressed the idea and presence of the narrative voice in fiction and in legal writing. Former judge of the Supreme Court of Western Australia, the Hon Nicholas Hasluck AM QC, spoke on aspects of the narrative voice in fiction and the Hon Justice Darren Jackson of the Federal Court of Australia, based in Perth, presented a paper on the use of narrative in argument and judgments. Professor Natalie Skead, Dean UWA Law School, chaired the event.

National event: *Class Actions: exposure draft bill concerning third party litigation funders*

The panel discussed the bill and whether it achieved its stated purposes. The four expert speakers were: the Hon Justice Catherine Button, Judge of the Supreme Court of Victoria; Justin Gleeson SC, Barrister, New South Wales; Kate Morgan SC, Barrister, New South Wales; and Nathan Rapoport, Special Counsel, Slater + Gordon, Victoria. The Hon Justice Jayne Jagot of the Federal Court chaired the event.



November 2021

National event: *Issues Arising from the Operation of Intermediate Courts of Appeal (Civil)*

This event was held in-person and online and brought together the heads of Australia's intermediate courts of appeal, including appellate full courts. They discussed common issues arising from the operation of intermediate courts of appeal.

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The speakers were: the Hon James Allsop AO, Chief Justice, Federal Court of Australia; the Hon Alan Blow AO, Chief Justice of Tasmania; the Hon Michael Grant AO, Chief Justice of the Northern Territory; the Hon Helen Murrell, Chief Justice of the Australian Capital Territory; the Hon Andrew Bell, President, Court of Appeal, New South Wales; the Hon Michael Buss, President, Court of Appeal, Western Australia; the Hon Mark Livesey, President, Court of Appeal, South Australia; the Hon Chris Maxwell AC, President, Court of Appeal, Victoria; the Hon Walter Sofronoff, President, Court of Appeal, Queensland; the Hon Justice Jayne Jagot of the Federal Court of Australia; the Hon Justice Karin Emerton of the Supreme Court of Victoria, Court of Appeal; and the Hon Stewart Austin, Judge in charge of appeals, Federal Circuit and Family Court of Australia (Division 1).



ACT event: *Michael Coper Roundtable*

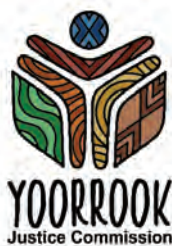
At this event, Tom Howe QC, Chief Counsel Dispute Resolution Australian Government Solicitor, and Gordon Brysland, Assistant Commissioner Tax Counsel Network, spoke on the topic: 'Has the High Court signalled a change in the direction of Statutory Interpretation?'

Vic event: *First Nations Peoples' Truth & Justice Commissions*

The event focused on the Yoorrook Justice (truthtelling) Commission



established in Victoria to inquire into historic and ongoing systemic injustice perpetrated against First Peoples since white settlement. The three speakers were two Commissioners (Professor the Hon Kevin Bell AM QC and Dhamangalnya Senior Elder Dr Wayne Atkinson) and Professor Kate O'Regan, formerly of the South African Constitutional Court and now Professor of Human Rights Law and the inaugural Director of the Bonavero Institute of Human Rights at Oxford University. The Hon Pamela Tate SC chaired the event.



For more information about Yoorrook, which is due to provide an interim report in June 2022 and a final report in June 2024, see: <https://yoorrookjusticecommission.org.au/>

December 2021

International event: *Freedom of Expression in the United Kingdom and Australia considered comparatively*

This was the AAL 's first international event where the speakers were in different jurisdictions. The event was chaired by Mr Desmond Browne CBE QC and the panel speakers were: Laura Tingle, ABC journalist and National Press Club President; Andrew Caldecott QC, specialist in media, libel and defamation law; Matthew Collins AM QC, Vice-President of the Australian Bar Association; and Alan Rusbridger, Chair of the Reuters Institute for the Study of Journalism and Principal of Lady Margaret Hall, Oxford. They addressed the way the law restricts investigative journalism, how the Courts protect public interest stories, and compared the position in the United Kingdom with Australia.



National event: *Ceremony for the winners of the 2021 AAL Essay Prize*

The Chief Justice of the Supreme Court of Queensland, the Hon Catherine Holmes AC, hosted the ceremony to congratulate the winners of the 2021 AAL Essay competition. Lillian Burgess, Suvradip Maitra and Giulia Marrama are all associates to Judges of the Queensland Court of Appeal. The families and friends of the winners attended in person, as did some of the Fellows of the Academy in Queensland and judges of the Supreme Court. The three young lawyers also addressed the gathering about their winning essay (see page 19 of this Report.)



Scholarship, Essay Competition and Prizes

To advance the AAL's goal of promoting high standards of legal scholarship, legal research and legal education, the Academy offers an annual scholarship and a prize to the winner of the annual essay competition. In 2021 our focus was on issues affecting First Nations Peoples.

The AAL also usually offers two other annual awards for specific events, but in 2021 the underlying events were suspended due to COVID restrictions. The two awards are: the Honours Prize, which is awarded at the annual National Honours Conference hosted by the Law Faculty of the University of Technology Sydney; and the Michael Coper Memorial Prize, which is awarded to the winner of the Paper Presentation Competition run by the Australian Law Students' Association. The AAL hopes that these events and the associated prizes will resume as soon as possible.

Inaugural First Nations Scholarship

2021 saw the beginning of the Academy's annual scholarship program for a First Nations Law student in the final year of their degree. The Academy was inspired to introduce the program because of the generosity of two donors to the Academy's Public Fund.

Recognising that the last year of a law degree is financially arduous, the AAL aims to provide some extra assistance to ease the burden for a promising student.

Australia's first Indigenous Senior Counsel, Anthony McAvoy SC was part of the Academy's three-person scholarship selection panel along with Southern Cross University Professor Bee Chen Goh and UTS Law Professor, Larissa Behrendt AO.



University of Adelaide law student 23-year-old Mikeyli Hendry was awarded the \$5000 scholarship as she completed her double degree in Arts and Law. As part of the program, an Academy Fellow agreed to act as her mentor for 12 months.

A proud Arrernte woman, Mikeyli developed a keen interest in the law from a young age and plans to concentrate on Criminal Law, Human Rights Law and Family Law.

The First Nations Scholarship will be awarded annually.

Essay Competition

The 2021 competition asked entrants to address the question:

Outstanding fundamental issues for First Nations Peoples in Australia: what can lawyers contribute to the current debates and their resolution?

There were 14 entries for the \$10 000 award, with the essays canvassing constitutional recognition, treaty, interactions with the criminal justice system, gender, domestic violence, child protection and land rights. A former High Court justice, the Hon William Gummow AC QC, chaired the judging panel and was joined by Professor Gabrielle Appleby and Anthony McAvoy SC.

The judges were impressed with all the anonymised submissions but felt one essay had the edge. It was a combined effort by three young lawyers all working as associates to judges of the Supreme Court of Queensland.

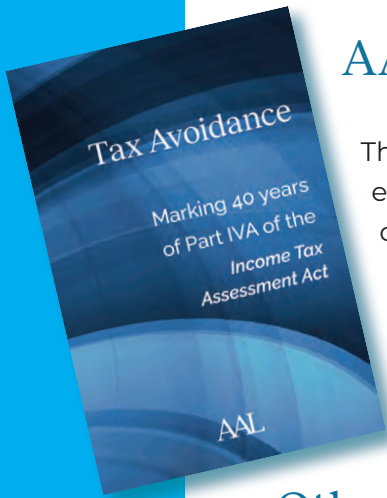
In their essay, Lillian Burgess, Suvradip Maitra and Giulia Marrama, while aware their views might not reflect those of the First Nations Peoples of Australia, argued that the problems they face require a unique legal response which goes beyond the traditional role of the lawyer:

'Movement lawyering is a new theory but an old practice that involves lawyers aligning with a movement and contributing their uniquely legal skills for the cause. It means lawyers must commit to proactive community engagement and expand their work to incorporate the roles of translators, facilitators, educators and journalists.'



The winning essay is published on the Academy of Law's website and is also published in the *Australian Law Journal*.

Publications



AAL proceedings

The Academy of Law published the papers and proceedings from an event held in September, 2021 to mark the 40th anniversary of the commencement of Part IVA of the *Income Tax Assessment Act 1936*. The highly qualified speakers looked at where Part IVA has succeeded, where it has failed and how it has evolved. What they had to say is of interest not only to the legal and accounting profession but also to the general public.

Other publications

Below is a selection of publications by AAL Fellows as author, co-author, editor or co-editor.

► *Criminal Laws Northern Territory*

Stephen Gray, Jenny Blokland, Ben Grimes and Julian R Murphy

The third edition of this Australian criminal law textbook covers criminal law and Indigenous legal issues as well as sentencing.

► *Punishment and Private Law*

Elise Bant, Wayne Courtney, James Goudkamp, Jeannie Paterson (Anthology editors)

The anthology examines potential instances of punishment in private law and explores the surrounding complex debates. Chapters are written by leading scholars drawn from a range of jurisdictions.

► *Misleading Silence*

Elise Bant and Jeannie Paterson (Anthology editors)

This collection brings together a team of outstanding scholars from across the common law world to explore the treatment of misleading silence in private law doctrine and theory.

► *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia*

Gabrielle Appleby and Andrew Lynch (Editors)

This book examines the impact of the individual on the judicial role while exploring the collegiate environment in which judges must operate.

► *Judges, Technology and Artificial Intelligence*

Tania Sourdin

The book explores how new and emerging technologies are reshaping justice systems and transforming the role of judges.

► *Making Law in Papua New Guinea: The Colonial Origins of a Postcolonial Legal System*

Bruce L. Ottley, David Weisbrot and Jean G. Zorn

The authors were all directly involved in law teaching, law reform, and judging during the period immediately before and after independence in PNG. Their book explores the potent and enduring grip of colonialism on law and politics long after the colonial regime was formally disbanded.

► *The Constitution of the Australian Capital Territory*

David Mossop

This book provides a detailed reference work for the understanding of the constitutional arrangements that exist for the government of the Australian Capital Territory.

► *Traversing the Divide: Honouring Deborah Cass's Contributions to Public and International Law*

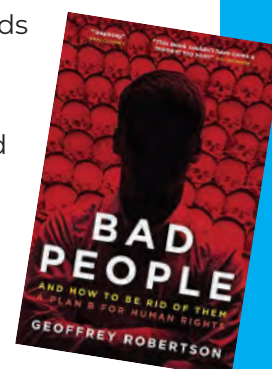
Kim Rubenstein (Editor)

The collection honours the work of Deborah Cass, a brilliant Australian constitutional and international lawyer who died in 2012. The writing selected for the volume covers Deborah's outstanding career and offers insights on current issues in both public and international law.

► *Bad People and How to be Rid of Them: A Plan B for Human Rights*

Geoffrey Robertson

The author argues that current International Criminal Court methods for dealing with 'murderous despots' don't work and advocates instead a targeted sanctions regime which 'names, blames and shames' human rights violators as well as freezing their assets and preventing them and their families from accessing schools and hospitals in the West. Thirty-one countries have these so called 'Magnitsky laws' and the book explains their origin and purpose.



► *Judicial Federalism in Australia – History, Theory and Practice*

Anna Olijnyk, Gabrielle Appleby, John Williams and James Stellios

The Australian High Court has implied from Chapter III of the Constitution significant protections for judicial independence and fair trial processes. In the last 25 years, these protections have been extended to the judiciaries of the Australian States with often-overlooked consequences for the operation of the Australian federation. The volume looks at the history and the theoretical development of Chapter III jurisprudence and explores the heightened tension between governments and the courts over the proper scope of the limitations derived from Chapter III.

► *Pandemics, Public Health Emergencies and Government Powers, Perspectives on Australian Law*

Belinda Bennett and Ian Freckelton (editors)

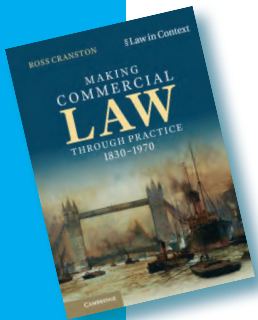
In this book, 21 leading scholars explore the ways in which Australia's laws, regulations and law-makers have engaged with the COVID pandemic. There have been both successes and failures and the writers emphasize that as the virus evolves, the nation needs to continue to learn from both international developments and what has, and has not, worked in Australia.

► *Making Commercial Law Through Practice 1830–1970*

Ross Cranston

The book adds a new dimension to the history of Britain's commerce, trade manufacturing and financial services, by showing how they have operated in law over the last one hundred and forty years. Using legal and historical scholarship, the author draws on archival sources previously unexploited for the study of commercial practice and the law's role in it.

Links to all the above publications can be found on the AAL website.



Committee Reports

Membership

Chair, the Hon Kevin Lindgren AM QC

Academy membership is by Board invitation. A prospective Member must be nominated by a current Member and ideally have a seconder as well. The Membership Committee assesses each nomination according to the eligibility criteria set out in the Constitution: that a person is of exceptional distinction in the discipline of law and demonstrably committed to the objects of the Academy. The Committee recommendations are then made to the Board.

Once they receive an invitation from the Board, prospective Fellows need to accept that invitation and pay their subscription. During 2021, the Membership Committee met six times and, as recorded elsewhere in this Report, 31 distinguished lawyers became Fellows.

[The terms of reference of the Membership Committee may be found on the Academy's website.](#)

Governance

Chair, Professor Gino Dal Pont

The Governance Committee serves primarily to review and ensure the Academy's compliance with applicable legislation; to consider any risk to which the Academy might be exposed; and to give members a forum to raise any governance concerns. It also liaises with other Committees on governance matter. In the 2020-21 financial year the Governance Committee focussed on the Academy's reporting obligations and reviewed the content of the induction pack for Directors. It further probed the Academy's obligations as to fundraising and deliberated on matters relating to broader disclosure of Academy affairs.

The Committee continues to work with both the Website and Finance Committees on matters of governance, including in relation to the Academy's deductible gift recipient status (DGR).

Finance

Chair, the Hon Justice G John Digby

The Finance Committee assists the Treasurer in relation to the management of the Academy's financial affairs and the production and monitoring of the Budget. It also ensures the annual Financial Statements and Reports are delivered in a timely manner and that the AAL is compliant with all the relevant governance and regulatory financial requirements.

The Finance Committee liaises with other committees and provides assistance and guidance as required, to the Treasurer, the President, the Secretary and the Board of Directors.

The Committee generally meets prior to scheduled Board Meetings and provides Minutes of its meetings to the AAL in advance of the Board Meetings.

Website and Communications

Chair, Mr Michael Murray

The Committee is responsible for the public profile and communications of the Academy to assist in the pursuit and promotion of AAL objectives. Throughout 2021, the Committee provided monitoring and advice as online events and activities increased. The Committee is pleased to report that website registration and access arrangements for attendees at these events worked well and these facilities continue to be developed. Significant numbers accessed important presentations including those held jointly with overseas presenters. Where possible, events were held in-person and online.

The website is well utilised to promote the outcomes of Academy prizes and grants; 'spotlight' coverage of Academy Fellows' achievements; and as a resource for Academy papers and publications. We have made greater use of media releases to reach a wider audience, supported by social and professional media and the Academy's regular newsletter. The website remains an important means for the Academy to meet its governance and public accountability obligations to provide public access to the Academy's constitution and statutory records and board and committee members. The Academy is seeking further resources through a planned law student intern program and the Committee continues to review opportunities to extend the Academy's communication and engagement processes. Another promotional development in 2021 was the introduction of Fellowship certificates for members.

Research and Expenditure

Chair, the Hon Alan Robertson SC

This Committee was established in 2020 to oversee the fund created in response to the AAL's new DGR status which allows for tax deductible donations. One of the Committee's early initiatives was the \$5000 First Nations Scholarship awarded for the first time in 2021 to a First Nations final year law student. Details of the scholarship and the recipient are on page 18 of this Report.

The Committee also facilitated the publication of the papers given at the Academy's Part IVA tax event. The title of the book is *Tax Avoidance: Marking 40 years of Part IVA of the Income Tax Assessment Act 1936* (see page 20). The \$20 per copy price defrays the publication expenses.

Another publication sponsored by the AAL is the book by Emeritus Professor David Barker, titled *A Sense of Common Purpose: A History of the Australian Academy of Law* (see page 7 of this Report). The book will be published by the Federation Press in 2022.

The Board accepted the Committee's recommendation of \$5000 to sponsor the UWA Law School's causation conference which was to be held in early 2022 but will now be held later in the year due to COVID restrictions. As in 2020, AAL gave \$5,000 to the Australasian Legal Information Institute (AustLII). The Committee also agreed to give financial support to a Newcastle Law School survey focussing on Judges and Technology. Part of an international research collaboration under the auspices of the Law and Society Association, scholars around the world will take part in the project by surveying judges in their own jurisdictions.

Prizes and Scholarship

Chair, Professor Bee Chen Goh

The Committee oversees the Academy's award of prizes and scholarships.

In 2021, the Annual Essay Prize was in its 7th year. The Committee met early in the year and recommended to the Board the Essay Topic. The chosen theme paid tribute to the 20th Anniversary of Reconciliation Australia. It asked entrants to address how lawyers might contribute to solving serious issues confronting First Nations Peoples.

The generous \$10,000 prize was shared by three young lawyers all working as Associates to Supreme Court Judges in Queensland. Despite ongoing COVID restrictions, a ceremony to celebrate the three joint winners was hosted by the Chief Justice of the Supreme Court of Queensland in Brisbane in December.

It was pleasing in 2021 to see the awarding of the inaugural First Nations Scholarship to a First Nations student in the final year of a Law degree. A rewarding feature of this award is mentorship provided by Fellows for the winner as well as the pool of applicants. The \$5000 award is one of the first initiatives made possible because of the generous donations to the AAL's Public Fund.

Further details about the Annual Essay Prize and the First Nations Scholarship can be found on pages 18 and 19 of this Report.

The Committee oversees two other prizes: the best presentation at the Australia New Zealand Law Honours Student Conference, and the Michael Coper Memorial Prize for the winner of the National Paper Presentation at the Australian Law Students' Association Conference. Unfortunately, due to pandemic disruptions, both these prizes were not awarded.



Secretary's Report

Emeritus Professor David Barker AM

The Academy is an organisation which requires considerable administrative support and the COVID pandemic has again placed greater emphasis on events conducted through the Microsoft Teams Meetings and Zoom services. The interaction of State and Territory activities and events depends on the co-operation between Academy state representatives and the officeholders and board of Directors, while national Academy events require the active participation of everyone at State, Territory and national level.

The Academy looks forward to the re-introduction of face-to-face meetings and the return of large personal attendances at State, Territory and National events. It is also hoped that this anticipated increase in future activities will lead to greater voluntary support for the Academy's charitable Deductible Gift Recipient (DGR) status and that such voluntary donations will enhance the objectives for which the Academy was established, particularly regarding the advancement of legal education and research.

Reporting Periods

In this Annual Report, the Academy's Committee reports and reports of activities and events cover the calendar year 2021, while the financial accounts are presented for the financial year 1 July 2020 to 30 June 2021 (its accounting period).

DGR Status and Donations

The Academy is registered as an endorsed charity with the Australian Charities and Not-for-profits Commission. It is also listed as a Deductible Gift Recipient (DGR) under the *Income Tax Assessment Act 1997*.

The AAL Public Fund is distinct from the other Academy accounts and is used only to receive tax-deductible donations. All these donations must be used in accordance with the objectives for which the Academy was established, particularly the advancement of legal education and research.

Financial Statements

Australian Academy of Law

(A company limited by guarantee)

ABN 19 127 640 466

Statement of Financial Position as at 30 June 2021

	\$
Assets and Liabilities	
Current Assets	
Cash and Cash Equivalents	349,437
Total Current Assets	349,437
Total Assets	349,437
Current Liabilities	
Other Accruals	77,200
Total Current Liabilities	77,200
Total Liabilities	77,200
Net Assets	272,237
Equity	
Retained Earnings	272,237
Total Equity	272,237

Complete statements

Please click on the Registered Charity Tick on the Academy of Law website for a complete record of our financial statements.



Australian Charities and Not-for-profits Commission
acnc.gov.au | Australian Academy of Law

Profit and Loss Statement for the Year Ended 30 June 2021

	\$
Income	
Membership fees	70,516
Donations received	10,400
Event fees	—
Interest received	3665
	84,581
Expenditure	
Accountancy fees	2420
Audit fees	1800
Bank charges	387
Consultants – Editor	13,376
Consultants – Annual Report, Media	6,919
Consultants – IT, Website, Digital	3,236
Donations paid	5,000
Prizes	10,000
Filing fees	—
Insurance	2,681
Publishing costs	490
Scholarship	5,000
Secretariat fees & costs	42,826
Conferences, events & teleconference expenses	3,813
Travelling expenses	3,984
Website expenditure	314
	102,245
Net Profit/(Loss)	(17,664)

Plans for the Future

Activities

The Academy remains committed to both the substantial annual Essay Prize and to the student prizes awarded by the AAL. Importantly, we were proud to confer the inaugural First Nations scholarship in 2021. This \$5000 award is designed to assist a First Nations student with the financially arduous requirements of final year legal studies. It is directly funded by donations to the Public Fund as the Academy is now listed as a Deductible Gift Recipient under the *Income Tax Assessment Act 1997*. With the generous donations already received, it will be possible to sustain the scholarship annually for the foreseeable future.

Work is also under way to establish a number of smaller AAL prizes to encourage school students who excel in a legal studies course. The idea is to have a prize available in each Australian jurisdiction.

One of the positive outcomes of the long-running COVID restrictions on gatherings is the development of the Academy's expertise in hosting and broadcasting live online events. Fellows and members of the public are able to participate no matter where they are, resulting in increased attendance numbers. It is expected these online events will become a permanent feature of Academy functions, including those jointly held with other organisations. We also propose to continue the 'international' events involving speakers in different jurisdictions contributing remotely.

We expect the annual symposium held in association with the Australian Academy of Science to become a permanent event. Combining the differing perspectives of scientists and lawyers to address an important common issue provides a valuable educational experience to both scientists and lawyers.

In 2021, the Academy made a donation of \$5,000 to AustLII (an institution operated jointly by the Faculties of Law of the University of Technology Sydney and the University of New South Wales). The Board considers that AustLII's public policy purpose - to improve access to justice through access to legal information - supports many objects of the AAL. We expect this donation to continue.

Looking further ahead, in 2023 we are proposing to mark some important national legal bicentenaries with a national conference held in partnership with the Australian Law Journal and the Australasian Institute of Judicial Administration. The working title is *Australia's courts—the next 100 years*. It is anticipated the papers from the proceedings will be published in book form in 2024.

Cooperation

We plan to maintain the AAL's cooperation with other legal institutions. Recent examples include events co-sponsored with the Charles Darwin University, the Australian Law Reform Commission and the New South Wales Bar Association. These events resonate with the Academy's purposes and we will pursue further opportunities.

Academics' exposure to court work

For some time, the AAL has been working on a program where younger academics would spend some time with members of the judiciary to gain an understanding of how Judges and the Court system work on a daily basis. Because COVID restrictions limited access to the courts throughout 2021, this initiative had to be postponed. However, we made progress on the development of the concept throughout 2021 with the establishment of a working committee, draft guidelines as to how the placements would work and the compilation of a list of Judges willing to participate. It is hoped the pilot program will get underway during the current calendar year.

Fellows

The number of Fellows has grown substantially in recent years, with the total now approximately 400. The reference to that number in the Constitution was removed by a unanimous vote at the AGM.

As listed earlier in this Report, the Academy was pleased to welcome 31 new Fellows in the course of 2021.

These increasing numbers and subscriptions improve the Academy's financial position and enable it to pursue its objects. We will continue to receive and assess nominations by existing Fellows of individuals 'of exceptional distinction in the law and demonstrably committed to the objects of the Academy'.

Donations

The Academy's activities no longer depend entirely on annual subscriptions due to some very generous and substantial donations to the Academy's Public Fund. We continue to welcome donations to this Fund to support ongoing activities and to embark on new projects consistent with the AAL's objects.

Governance

It is expected that the Memorandum of Understanding with the Federal Court of Australia, whereby secretariat services are provided to the Academy for an agreed fee, will continue, with a new agreement to be signed in 2022.

Publicity

We are pleased that the Academy's website is now established as a timely and valuable resource and that the monthly Newsletters provide information to Fellows and to interested members of the public. During the year, we plan to seek some external assistance with these matters to meet the need for some specific skills and expertise beyond what is available within the Academy.

General

The Australian Academy of Law is committed to its founding goal of bringing together the various parts of the legal community to foster the intellectual exchange of ideas and research and to nurture mutual interests. We will continue to build bridges between the Australian judiciary, the practising profession and the universities.





Thanks

The Academy thanks the Board, the Chairs of each of the committees and the members of these committees. All have given freely of their time.

Thank you also to the Chief Justice and to the Chief Executive Officer of the Federal Court of Australia for the continuation of the Memorandum of Understanding under which the AAL is provided with administrative services.

We thank Susan Jenkins, the Secretariat, for her calm and efficient work for the AAL throughout the year. She provides our only administrative assistance and achieves her work for the AAL in three days a week. The rest is done by Fellows themselves.

The Academy also notes the generosity of the donors to the Public Fund and thanks them for their contributions. Those contributions were, in part, used to establish the First Nations Scholarship in 2021 which will be offered again in 2022.



AAL
Australian Academy of Law



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LinkedIn

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