

Annual Report 2023

Connecting to advance
the discipline of law



Highlights

- **Enduring Courts in Changing Times:** The Supreme Court of New South Wales and the Supreme Court of Tasmania are marking their bicentenaries. This two-and-a-half-day celebratory conference involved the support and participation of the Chief Justices of Australia, New South Wales and Tasmania.



- **Unnecessary and Insufficient Factual Causes in the Law:** In a unanimous decision in 2021, the UK Supreme Court confirmed that the law recognises that an unnecessary and insufficient factor may be a factual cause of an indivisible loss. A presentation on this topic was given by Emerita Professor Jane Stapleton KC (Hon) FBA together with commentary by the Hon Patrick Keane AC KC. The event was 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.

- **The 12th Annual Austin Asche Oration in Law and Governance, with Charles Darwin**



University: Mr Tony McAvoy SC delivered the Oration, titled 'Just say "Yo": Navigating the path to a post-colonial state'. Mr McAvoy discussed the Voice referendum, the objectives of First Peoples' self-determination, what such a concept entails, and how self-determination may be achieved.

- **The 12th Annual Patron's Address:** The title of the address was 'There is no single correct sentence: Thoughts on choice, subjectivity and the ethics of sentencing.' In a fascinating, wide-ranging and thought provoking presentation, the Hon Peter Quinlan, Chief Justice of the Supreme Court of Western Australia, explored all aspects of sentencing including the ethical starting point.

- **Legal Issues relating to the Aboriginal and Torres Strait Islander Voice:** Two events were held



to explore legal issues arising out of The Voice referendum question. The speakers at the NSW public seminar were the Hon Robert French AC, the Hon Tom Bathurst AC KC, and Ruth Higgins SC. The speakers at the Victorian event were the CEO of the Victorian Community Controlled Health organisation and proud Gunditjmarra woman, Jill Gallagher AO, Peter Hanks KC, Chris Horan KC and Frances Gordon SC.

- **Annual joint event with the Australian Academy of Science:** This ACT event was attended by 80 lawyers and scientists who heard a fascinating lecture on how the Royal Society is acting to keep bad science out of the courtroom and how best to keep lawyers, especially judges, more up to date with developments in science. The guest speaker was Dame Julie Maxton DBE, the Executive Director of the Royal Society.



Australian Academy of Law

Annual Report 2023

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Acknowledgement of Country

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

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

Message from the Patron



In 2023 the AAL succeeded again in providing forums in which to encourage discussion, debate and reflection on topics concerning the Australian legal system. A highlight was a major conference to mark the bicentenaries of the Supreme Court of New South Wales and the Supreme Court of Tasmania. Around 30 papers were given which will be published in early 2024.

As a long-time member of the AAL, I am pleased now to have become its Patron. In that new capacity, I look forward to working with the organisation and to providing such assistance as I can in furthering its valuable objectives. I join the President in thanking the Hon Susan Kiefel AC for performing the role of Patron until her retirement last year. I extend my thanks to the President and office holders for their continuing dedication.

A handwritten signature in purple ink, which appears to be 'S Gageler'.

Stephen Gageler AC

Chief Justice of the High Court of Australia

Message from the President

2023 was another satisfying year for the Australian Academy of Law, pursuing the advancement of the discipline of law; the promotion of excellence in legal scholarship, research, education, and the administration of justice; and providing a forum for collaboration and constructive debate amongst all branches of the legal community.

It was a year when the Commonwealth Constitution was much discussed due to the Voice Referendum and the legal implications of the proposed changes. Academy events reflected this prominent legal issue as well as others dominating public discourse including defamation, contempt, terrorism laws and jury trials.



We marked the bicentenaries of the Supreme Court of New South Wales and the Supreme Court of Tasmania with a major conference in September in Sydney, with participation from Hobart. This was just 200 years after the Parliament at Westminster, on 19 July 1823, enacted the statute pursuant to which the Charter of Justice was promulgated three months later.

As Chief Justice Kiefel said in her opening address, 1824, when the two Courts began to sit, marked the beginning of the establishment of the rule of law, and of courts which were to achieve the independence and competence which the inhabitants of the Colony had long sought.

More than 30 learned papers and commentaries were given. I expect the book of the conference, about 450 pages, to be published by May 2024 .

During 2023 the AAL encouraged Fellows to look widely to consider from time to time other distinguished lawyers who are suitable for nomination as a Fellow. The eligibility criteria are that the person is of exceptional distinction in the discipline of law and demonstrably committed to the objects of the Academy. All Fellows are encouraged to look broadly to nominate candidates and to consider candidates from diverse backgrounds.

The Hon Susan Kiefel retired as Chief Justice of the High Court during 2023. We are very pleased and grateful that the new Chief Justice of the High Court, the Hon Stephen Gageler AC, has agreed to be our Patron.

I take this opportunity to again thank the Hon Susan Kiefel AC for her support and encouragement as Patron.

[... continued overleaf]

The Academy itself changed its physical location during 2023, moving premises from the Federal Court's New South Wales Registry in Queen's Square, Sydney to an office in the Supreme Court of New South Wales Hospital Road premises. I thank the Hon Andrew Bell, Chief Justice of New South Wales, for providing this facility to the AAL.

I commend the AAL's 4th Annual Report to you.

A handwritten signature in blue ink, appearing to read 'A. Robertson', with a stylized flourish at the end.

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) was founded in 2007, in response to an Australian Law Reform Commission Report, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report 89).

The Report included the following recommendation:

- 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 to foster connections between the different strands of the legal profession – practitioners, academics and the judiciary – so the AAL was launched 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 the Hon Chief Justice Robert French AC followed by the Hon Chief Justice Susan Kiefel AC. The High Court's new Chief Justice, Stephen Gageler SC is the Academy's fourth 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 KC became President in November 2011. Mr Lindgren's professional experience spanned all three categories of Fellow – legal practitioner, academic 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.

A turning point in attracting wider recognition for the Academy was the inaugural Patron's Address in 2012. The then High Court Chief Justice, 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.

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

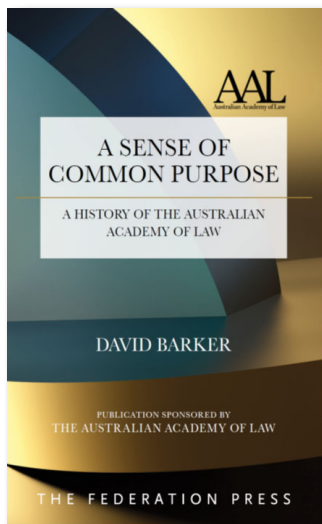
The AAL remains committed to providing a bridge between each part of the legal profession – and to providing a forum for cooperation, collaboration, constructive debate and the effective interchange of views amongst all branches of the legal community.

The 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 2023–24 are:

- » The Hon Alan Robertson SC
- » The Hon Justice Anthony Besanko
- » Emeritus Professor Bee Chen Goh
- » Emeritus Professor David Barker AM
- » Associate Professor Philip Chung
- » Dr Nuncio D'Angelo
- » Professor Gino Dal Pont
- » The Hon John Digby KC
- » The Hon Justice Judith Kelly
- » The Hon Kevin Lindgren AM, KC
- » Mr Russell Miller AM
- » The Hon Justice Janine Pritchard
- » The Hon Emeritus Professor Ralph Simmonds
- » Professor Natalie Skead
- » The Hon Pamela Tate AM KC

Further details about the Academy's structure and purpose are contained in the Constitution 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 Emeritus Professor David Barker's book, *A Sense of Common Purpose: A History of the Australian Academy of Law* (Federation Press, 2022).

Profile of Membership

Academy Fellows are drawn from Australian lawyers, legal academics and the judiciary. Individuals are elected as persons of exceptional distinction in the discipline of law who are demonstrably committed to the objects of the Academy. The Academy welcomed 18 new Fellows in 2023.



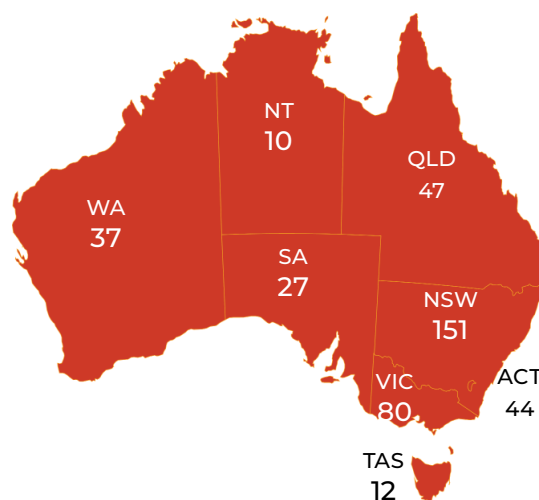
There are three categories of membership: Fellows (resident in Australia); Overseas Fellows; and Life Fellows:



- Life Fellows – 10
- Overseas Fellows – 21
- Fellows – 391

Membership by State and Territory as at 31 December 2023 (excluding Life Fellows and Overseas Fellows):

At the end of 2023 there were 6 non-financial members.



See the AAL website for lists of all Fellows:
www.academyoflaw.org.au/fellows

New Fellows and Overseas Fellows

During 2023, the Academy welcomed the following distinguished lawyers as new Fellows:

- » The Hon Justice Marcus Solomon, Justice of the Supreme Court of Western Australia
- » The Hon Justice Andrew Beech, Judge of the Court of Appeal, Supreme Court of Western Australia
- » Professor Martin Davies, Admiralty Law Institute Professor of Maritime Law, Tulane University Law School, New Orleans, USA and Professorial Fellow, Melbourne Law School
- » Professor Nicholas Aroney, Professor of Constitutional Law, The University of Queensland
- » The Hon Justice Darren Jackson, Judge of the Federal Court of Australia based in Perth
- » Ms Kathy Leigh, Head of ACT Public Service and Director-General, ACT Chief Minister, Treasury and Economic Development Directorate
- » Professor Jason Varuhas, Senior Crown Counsel, New Zealand Crown Law Office; Professor of Law, Melbourne Law School
- » Guy Aitken KC, Former Chief General Counsel, Australian Government Solicitor
- » Dr William Bateman, Professor of Law and Associate Dean Research, Australian National University
- » Dr Ivana Damjanovic, Lecturer, University of Canberra and former diplomat
- » The Hon Justice Steven Dolphin, President, South Australian Employment Tribunal
- » Professor Matthew Harding, Dean, Melbourne University Law School
- » Dominique Hogan Doran SC, Barrister, Sydney
- » Dr Benjamin Kremer SC, Barrister, Sydney
- » The Hon Justice Emiliios Kyrrou AO, Judge of the Federal Court of Australia and President, Administrative Appeals Tribunal
- » Professor Maree Sainsbury, Senior Fellowship of the Higher Education Academy; Head Canberra Law School; Deputy Dean, Faculty of Business, Government and Law, University of Canberra
- » Peter Sutherland, Visiting Fellow, College of Law, Australian National University
- » Dr Carolyn Lian Tan, Special Counsel Yamatji Marlpa Aboriginal Corporation, Western Australia

Events and Activities

The Academy continues to cover a diverse range of subjects and issues through its events. In a year when the country voted on a referendum for Constitutional change, several events focused on The Voice referendum and the related issue of the Treaty process. Other events looked at major global issues of concern. The Academy also partnered with the Australasian Institute of Judicial Administration (AIJA) and the Australian Law Journal (ALJ) to hold a two-and-a-half-day conference marking the 200th anniversary of the Supreme Court of New South Wales and the Supreme Court of Tasmania. For the most part, Academy events continue to be available in a hybrid format of in-person and online allowing Fellows and members of the public (when permitted) to access them regardless of their location.

Recordings of many of the events as well as papers presented are available on the website www.academyoflaw.org.au/events-and-videos

February 2023

ACT Event: *Michael Coper Roundtable: Discussion of Ideas for Future Roundtables*

This event, held at the High Court of Australia in Canberra, served as a beginning of the year catch-up to discuss ideas for future Roundtable topics and speakers. It was chaired by the Hon Mary Finn.

March 2023

Victoria Event: *Treaty Negotiation Framework for Victoria*

This event looked at the Framework set up in October 2022 between the First People's Assembly and the State of Victoria. The Framework's aim is to advance the negotiation and formalisation of a treaty to recognise historic wrongs and ongoing injustices. It identifies the minimum compliance standards which must exist for treaty negotiations to commence. Speakers were the former Justice of the High Court of Australia, the Hon Kenneth Hayne AC KC, senior lawyer with the First Peoples' Assembly of Victoria and proud Nyiyaparli woman, Karri Walker and First People's Assembly of Victoria representative and proud Gunditjamarra man, Reuben Berg. The in-person and on-line event was held in Melbourne and chaired by the Hon Pamela Tate AM KC.

NSW and Victoria Events: *Legal Issues relating to the Aboriginal and Torres Strait Islander Voice*

Two events were held to explore legal implications and questions arising out of The Voice proposal and the referendum question.

The speakers at the NSW public seminar entitled 'Legal Aspects of the Voice' were former Chief Justice of the High Court of Australia, the Hon Robert French AC, former Chief Justice of New South Wales, the Hon Tom Bathurst AC KC, and Senior Vice President of the NSW Bar Association, Ruth Higgins SC. The Chair was NSW Court of Appeal Judge, Justice Anna Mitchelmore.

The speakers at the Victorian event were CEO of the Victorian Community Controlled Health organisation and proud Gunditjmara woman Jill Gallagher AO; administrative and constitutional law expert Peter Hanks KC; co-editor of the Commonwealth Law Reports Chris Horan KC; and constitutional lawyer Frances Gordon SC.

NSW Event: *Is It Better to Review or Monitor Terror Law? The UK and Australian positions compared*

This free public event was a reprise of a friendly debate held in London in November 2022 between the UK Independent Reviewer of Terrorism Legislation Jonathan Hall KC and Australia’s third Independent National Security Legislation Monitor (INSLM) 2017–2020, Dr James Renwick CSC, SC. This event was chaired by Australia’s first INSLM, Bret Walker AO, SC, who held the position from 2010 to 2014.

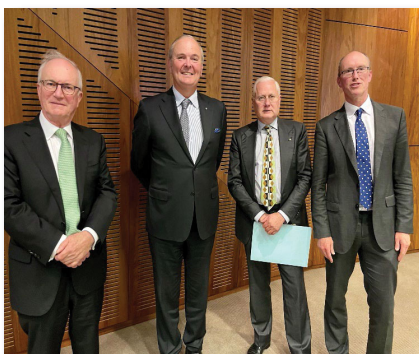


March events

(1) *(upper left)* **At the Treaty Framework event:** L to R, The Hon Justice Mark Moshinsky, Ms Karri Walker, the Hon Kenneth Hayne AC KC, the Hon Pamela Tate AM KC, Mr Reuben Berg

(2) *(upper right)* **At the NSW Legal Issues relating to the Voice event:** L to R, Ruth Higgins SC, the Hon Tom Bathurst AC KC, the Hon Justice Anna Mitchelmore, Alan Robertson SC and on screen, the Hon Robert French AC

(3) *(centre left)* **At the Victorian Legal Issues event:** L to R, Peter Hanks KC, the Hon Pamela Tate AM KC, Frances Gordon SC, Jill Gallagher AO, Chris Horan KC and the Hon Justice Mark Moshinsky



(4) *(lower left)* **At the Monitoring Terror Laws event:** L to R, the Hon Alan Robertson SC, Dr James Renwick CSC SC, Bret Walker AO SC and Jonathan Hall KC

April 2023

Queensland Event: *Michael McHugh's Casebook: Enduring Issues in Defamation Law*

The presenter was the Hon Justice Peter Applegarth AM, with commentary provided by former High Court Justice the Hon Michael McHugh AC KC. Jointly hosted with the Selden Society, Queensland Chapter, this hybrid event promoted cross-city interaction, with Mr McHugh speaking from the Federal Court in Sydney and Justice Applegarth presenting in the Banco Court in Brisbane. Attendees were in person in Sydney and Brisbane and online.

The event was chaired by Chief Justice of the Supreme Court of Queensland, the Hon Helen Bowskill.



(1) (left) The Hon Michael McHugh AC KC

(2) (below left) the Hon Justice Peter Applegarth AM with Chief Justice Helen Bowskill

(3) (below right) Justice Applegarth speaking and Michael McHugh onscreen



The Academy of Law notes with sadness that not long after the ACT event, Graeme Neate passed away.

We extend our condolences to his family, friends and colleagues.

May 2023

ACT Event: *Where There's a Will There's a Lawyer: The Dobell Case and Subsequent Litigation about the Archibald Prize*

This pre-recorded address by the President of the ACT Civil and Administrative Tribunal, *Graeme Neate AM*, covered legal issues arising under Archibald's bequest including the Dobell case and other controversies. The address was illustrated with images of the art works involved in the litigation.

Western Australia Event: *Russia's invasion of Ukraine and International Law*

The speakers were Professor Jurgen Brohmer from the School of Law, Murdoch University, and Senior lecturer at the University of Notre Dame, Dr Lara Pratt. The discussion covered a range of issues including the legal basis for the use of force under international law, the conduct of the war and the impact of Russia's aggression on international law and its development. This in-person and online event was chaired by Professor Erika Techera, University of Western Australia.

June 2023

ACT Event: *The ethical obligations of government lawyers: lessons from the House of Lords Report*

This Michael Coper Roundtable, Fellows only, event discussed the January 2023 Report from the House of Lords Constitution Committee which concluded that government lawyers should only advise that government action is unlawful if there is no respectable argument as to its lawfulness. The Hon Justice David Mossop of the Supreme Court of the ACT argued that this approach is fundamentally inconsistent with the rule of law and that government lawyers should advise on what the law is rather than looking for a legal argument which might justify a government decision. The event was chaired by the Hon Mary Finn.

July 2023

Northern Territory Event: *The 12th Annual Austin Asche Oration in Law and Governance*

Co-hosted with Charles Darwin University, the speaker was Tony McAvoy SC. The title of his 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, what the concept entails and how it might be achieved. The annual oration honours the service to the law of Academy Fellow, the Hon Austin Asche AC KC.



Tony McAvoy SC

Western Australia event: *The Ins and Outs of Juries*

This seminar examined the legal issues around jury deliberations and what happens when a jury considers material not properly presented within the confines of a trial. It also covered what research reveals about the psychology of juries and how they make their decisions. The speakers were Court of Appeal of Western Australia Judge, the Hon Justice Sam Vandongen and eminent American Psychologist Professor Margaret Bull Kovera who presented online from New York. The event was chaired by the Hon Judge Gary Massey of the District Court of Western Australia.

August 2023

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

This in person Michael Coper Roundtable event for Fellows only was held at the High Court. The discussion analysed the contribution of legal scholarship. It looked at how to measure the impact of such scholarship and whether citations are a useful measure of worth or whether there might be preferable ways to measure. The speaker was University of Canberra Professor of Law Benedict Sheehy with discussion led by Professor John McMillan AO and Peter Walmsley.

September 2023

National Event: *Enduring Courts in Changing Times*

This two-and-a-half-day conference marked the bicentenaries of the Supreme Court of New South Wales and the Supreme Court of Tasmania and was held over two-and-a-half days in Sydney, with video links to Hobart. See pages 16 and 17 for more details.

Queensland Event: *Unnecessary and Factual Causes in the Law*

This in-person only event was co-hosted by the AAL, the Supreme Court Library of Queensland, the Bar Association of Queensland and the University of Queensland's Australian Centre for Private Law. It discussed the legal ramifications of the landmark 2021 UK Supreme Court decision concerning insurance cover for losses incurred by businesses during the UK lockdowns – specifically the finding that the 'but for' test is not the exclusive test of factual causation. The event featured a lecture by Emerita Professor Jane Stapleton KC (Hon), FBA with commentary provided by the Hon Patrick Keane AC KC. The event was chaired by Kit Barker, Professor of Private Law, TC Beirne School of Law, University of Queensland.



The Hon Chief Justice Peter Quinlan with the Hon Alan Robertson

October 2023

National Event: *The 12th Annual Patron's Address delivered by the Hon Peter Quinlan, Chief Justice of the Supreme Court of Western Australia*

Held immediately after the AAL's AGM in Perth, the title of the address was 'There is no single correct sentence: Thoughts on choice, subjectivity and the ethics of sentencing.'

In a wide-ranging and thought-provoking address, Chief Justice Quinlan explored all aspects of the sentencing task including the ethical starting point:



Chief Justice Quinlan

- If we are to get to the 'just result', where do we start?
- Because in matters ethical, if we don't start from the right place, we are unlikely to arrive at the correct destination
- ... [A]iming for that ideal correct sentence is the only starting point from which I can possibly arrive at an ethical destination.

November 2023

Queensland Event: *Contempt of Court – A lecture by Professor David Rolph*

This on-line and in-person event featured pre-eminent media law scholar, author and legal history scholar, Professor David Rolph. His new book, 'Contempt' is the first comprehensive treatment of the Australian law of contempt in all its forms. Commentary on Professor Rolph's lecture was provided by Patrick McCafferty KC. The Hon Justice Peter Applegarth of the Supreme Court of Queensland chaired the event.

ACT Event: *Michael Coper Roundtable End of Year Review*

This informal event provided an opportunity for Fellows to discuss the year's events and plans for the year ahead.

December 2023

National Event: *Annual joint symposium with the Australian Academy of Science*

This was a public lecture by the Executive Director of the Royal Society, Dame Julie Maxton DBE. Dame Julie shared her expertise at the interface between science and the law. Dame Julie trained as a barrister at the Middle Temple and combined a career as an academic and a practising lawyer. Dame Julie spoke about how the Royal Society is acting to keep bad science out of the courtroom and the importance of keeping lawyers and judges up to date with developments in science.

Dame Julie also spoke on this topic at AAL joint events with the Australian Academy of Science in Sydney and in Melbourne.



(right, L to R): The Hon Alan Robertson SC, Dame Julie Maxton DBE, Professor Chennupati Jagadish AC, President of the Australian Academy of Science, Anna-Maria Arabia, Chief Executive of the Australian Academy of Science



(above, L to R): Professor Chennupati Jagadish AC, President of the Australian Academy of Science; the Hon Justice Jacqueline Gleeson, High Court of Australia; the Hon Chief Justice Stephen Gageler AC, High Court of Australia; Dame Julie Maxton DBE, Executive Director of the Royal Society; Justice James Edelman, High Court of Australia; the Hon Alan Robertson SC, President of the Australian Academy of Law; AnnaMaria Arabia, Chief Executive of the Australian Academy of Science; and the Hon Robert Beech-Jones, High Court of Australia

(below) Dame Julie Maxton



Conference

Enduring Courts in Changing Times

8-10 September 2023

Few courts in the world can lay claim to two centuries of uninterrupted and independent existence. The Supreme Court of New South Wales and the Supreme Court of Tasmania were created by the Third Charter of Justice promulgated at Westminster in October 1823. The two-and-a-half-day conference celebrating the 200-year milestone of both courts featured a wide range of judicial and academic speakers. It was jointly sponsored by the Academy of Law, the AIJA and the ALJ and was held with the support and participation of the Chief Justices of Australia, New South Wales and Tasmania.

Highlights

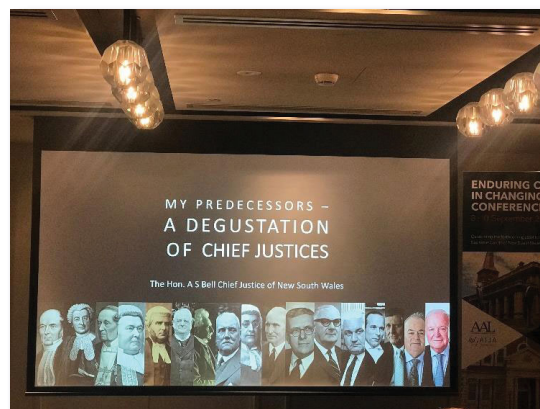
- » The impressively high quality of the papers and the depth of research conducted by the speakers.
- » The willingness of busy people to participate, including the Governor of New South Wales, Chief Justice Susan Kiefel AC, Chief Justice Alan Blow AO, Chief Justice Andrew Bell, Chief Justice Helen Bowskill and Chief Justice Lucy McCallum.
- » Chief Justice Kiefel's Opening Address, 'The Creation of the Supreme Courts of New South Wales and Van Diemen's Land'.
- » The reception given by the Governor of New South Wales at Government House immediately following Kiefel CJ's opening address.
- » The papers given at the first plenary session chaired by Justice Julie Ward, the topic being Courts, Legal Systems and the Indigenous People. This session included papers by our two distinguished speakers attending from overseas, Professor Val Napoleon (Canada) and Justice Joe Williams of the Supreme Court of New Zealand.
- » The papers given at the history session and at the criminal law session.
- » The conference dinner on the evening of Saturday 9 September at Sheraton on the Park, especially the after-dinner speech by Chief Justice Bell of the Supreme Court of New South Wales. The title of his informative and entertaining talk was 'My Predecessors – A Dégustation of Chief Justices'.
- » The session on the appointment of judges chaired by Chief Justice Helen Bowskill of the Supreme Court of Queensland.
- » The education of judges session, chaired by the Hon Kevin Lindgren AM KC.
- » The paper given to close the conference by the Governor of New South Wales, Her Excellency Margaret Beazley AC KC.

Several law students attended the conference on a form of legal scholarship suggested by the Academy's Secretary and Life Fellow, David Barker AM.

The organising committee comprised Chief Justice Alan Blow AO, Justice Julie Ward, Justice François Kunc, Justice Geoff Lindsay, Justice Steven Rares, Justice Murray Aldridge, Emeritus Professor David Barker AM, Mr Andrew W Smith of the New South Wales Bar, Alison MacDonald (AIJA) and the Hon Alan Robertson SC.

The Academy acknowledges the excellent support (including financial support) given to the conference by Chief Justice Andrew Bell. The AAL also thanks its co-hosts, the Australasian Institute of Judicial Administration (AIJA) and the Australian Law Journal.

Thank you again to Ms Kathryn McKenzie of Business Angel for her hard work in dealing calmly and efficiently with all things administrative for the conference.



(1) (*above left*) Conference Opening event, Banco Court, Sydney

(2) (*above right*) 'My Predecessors - A Degustation of Chief Justices' (after-dinner speech, Chief Justice Bell)

(3) (*left*) Her Excellency the Honourable Margaret Beazley AC KC, delivering the Closing Address

Scholarship, Essay Competition and Prizes

Scholarship



Georgia Fryer receives her award from the Hon Alan Robertson

The First Nations Scholarship, worth \$5000, was awarded for the third time and continues annually through the generosity of donors to the Academy's public fund. It includes the offer of an AAL Fellow as a mentor for 12 months.

The 2023 recipient was University of Sydney student, Georgia Fryer. The proud Dharawal woman from Western Sydney was completing her final year of a Bachelor of Laws and Bachelor of Arts (Media and Communications) Degree majoring in Socio-Legal Studies.

Georgia worked in two part-time jobs to fund her studies, so she welcomed the Scholarship's financial support. She plans to work in Family Law as a way of using her legal knowledge to assist individuals and groups to access legal support and justice, no matter what their background.

The selection panel was constituted by the Hon Alan Robertson (Chair), Judge Matthew Myers AM and Ms Raelene Webb KC.

Essay Competition

This competition has been running since 2015. It is part of the AAL's commitment to high standards of legal research, scholarship and education. In a first for the Academy, the award went international, with an Oxford University Law Professor and his former student jointly winning the 2023 Competition.

This year's question addressed the issue of the increase in mass torts and class actions in Australia.

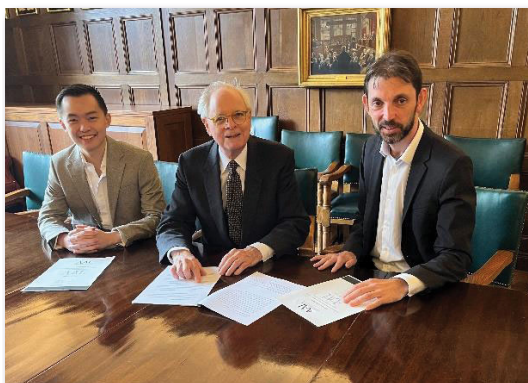
It asked entrants to consider whether the growth of such private litigation in Australia and elsewhere 'could be described as an evolutionary form of "privatised regulation", gap-filling where the state and its regulators have not fully or properly controlled or deterred behaviours or protected and compensated affected person. To what extent is it successful in that regard? Should it be encouraged? Why or why not? Give examples.'

In their winning essay, Professor Andrew Higgins and his former student, John Yap, disagreed with the possible premise of the question. While accepting that the description of class actions as 'privatised regulation' has gained traction in Australia and elsewhere, the authors rejected the idea:

... The description is inaccurate and distorts the true relationship between regulation, tort law and procedural law ... tort law cannot be described as a form of regulation because the two are different modalities of law and the class action procedure does not change this.

The members of the judging panel were former High Court Justice William Gummow AC KC (Chair), Federal Court Judge the Hon Justice Catherine Button and ANU Emeritus Professor Peta Spender.

The winning essay is published in the *Australian Law Journal* and is available on the AAL website <https://academyoflaw.org.au/Essay-Prize>



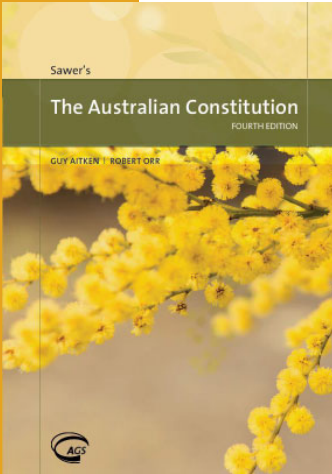
(left) Essay competition winners John Yap (left) and Andrew Higgins (right) with Overseas Fellow Sir Ross Cranston (centre), who hosted a small ceremony for the winners at Gray's Inn on 26 October 2023.

Michael Coper Memorial Prize

This prize was not awarded in 2023.

Publications

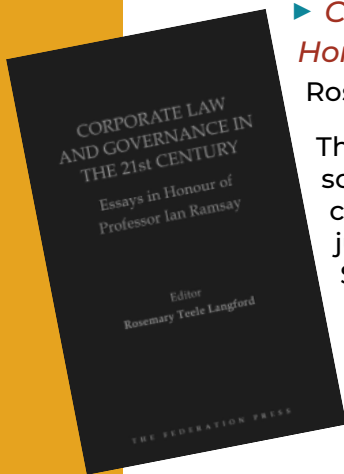
A selection of publications by AAL Fellows as author, co-author or contributor.



► *Sawyer's The Australian Constitution*

Guy Aitken and Robert Orr

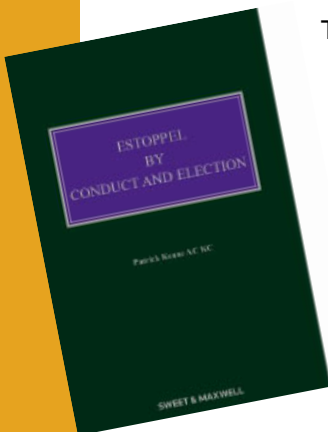
Designed as an accessible guide for students, citizens and other interested groups, this fourth edition by former Australian Government Solicitor counsel (Chief General Counsel Guy Aitken KC and Robert Orr PSM KC) draws together legal and historical themes and explores the Constitution's impact in practice on the Australian people and the Australian political system. It includes commentary on current issues that have been the subject of debate, such as freedom of speech, constitutional rights, co-operation between states and territories and the Commonwealth and proposals for constitutional change. (Publisher: AGS)



► *Corporate Law and Governance in the 21st Century: Essays in Honour of Professor Ian Ramsay*

Rosemary Langford (editor)

This book honours Australia's leading corporate law and governance scholar and Academy Fellow, Emeritus Professor Ian Ramsay AO. It comprises a series of chapters by noted authors, including former judges of the High Court of Australia and the Supreme Court of New South Wales, the chair of the Australian Securities and Investments Commission, and prominent Australian and international academics. Many of the authors are also Fellows of the Academy. (Publisher: Federation Press)



► *Estoppel by Conduct and Election*

Patrick Keane

The Hon Patrick Keane AC KC has written this new, comprehensively revised third edition of the original text by the Hon KR Handley AO KC. With the concerns of practising lawyers in mind, he states the general principles of estoppel and illustrates their application with reference to leading decisions. Where controversy remains, the author identifies it and explores its scope through in-depth examination of the leading cases. (Publisher: Sweet & Maxwell, UK)

▶ *Australian Annotated Class Actions Legislation*

Michael Legg and Ross McInnes

Class Actions are an established and growing aspect of the legal landscape. Increasingly, law firms need access to relevant, current information. With this in mind, the third edition provides up-to-date analysis of the legislative regimes in the Federal Court, Victoria, New South Wales, Queensland, Tasmania and Western Australia, as well as relevant case law in an easily accessible format. (Publisher: Lexis Nexis)



▶ *The Australian Class Action – a 30-year Perspective*

Michael Legg and James Metzger (editors)

This book is an edited collection of essays marking the 30th anniversary of the introduction of class action laws in Australia. It features chapters from leading Australian and International academics and Australian jurists including Emeritus Professor Peta Spender, Professor Rachael Mulheron KC (Hon), Justice Jayne Jagot and Justice Michael Lee. (Publisher: Federation Press)



▶ *Equity and Trusts in Australia*

G E Dal Pont

Professor Gino Dal Pont has written the eighth edition of his comprehensive text, which remains the leading authority for students of equity and trusts. The publisher notes that the detail and breadth of coverage of this essential resource make it authoritative and unique, as evidenced by its multiple citations in superior courts in Australia and elsewhere. (Publisher: Lawbook/Thomson Reuters)

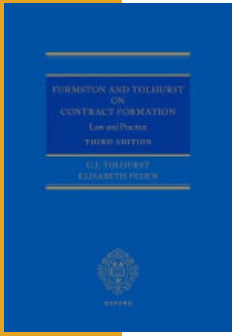


▶ *The Culpable Corporate Mind*

Elise Bant (editor)

Edited by Professor Elise Bant, this collection critically examines conceptions and conditions of corporate blameworthiness in law. It draws on legal, moral, regulatory and psychological theory as well as historical and comparative perspectives to engage strongly with scholarly debates on the subject. With reform in mind, it is designed to speak clearly and cogently to judges, regulators, legislators, law reform commissioners, barristers and practitioners. (Publisher: Bloomsbury)





► *Furmston and Tolhurst on Contract Formation*

Greg Tolhurst and Elisabeth Peden

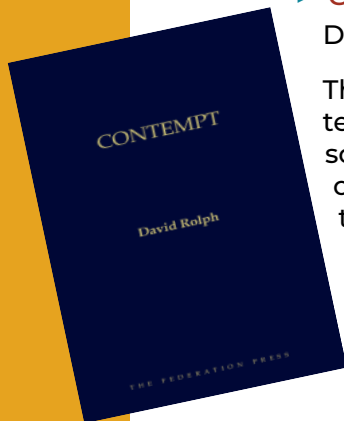
The new third edition of this comprehensive text covers the legal principles governing contract formation and incorporates discussion of cases from England, Australia, Canada, the USA, Singapore and New Zealand. The book includes new analysis of principles of contract formation in England based on recent cases and considers the way contract formation may involve issues of law or fact. (Publisher: Oxford University Press)



► *Company Directors Principles of Law and Corporate Governance*

Ian Ramsay

This book provides a detailed, scholarly and comprehensive analysis of corporate law and governance principles as they relate to Australian company directors. This second edition includes an examination of the duties of company directors and the remedies for breach of these duties and it incorporates the extensive legislative and case law developments that have occurred since the 2005 publication of the first edition. (Publisher: LexisNexis)



► *Contempt*

David Rolph

This book considers all forms of contempt, including civil contempt, *sub judice* contempt, contempt in the face of the court, scandalising the court and interference with the administration of justice as an ongoing process. Quoting from the Foreword by the Hon Chief Justice Stephen Gageler AC:

• The result is a rich repository of legal knowledge,
• which will be readily digestible by lawyers
• and judges whose quotidian role is to apply
• the current law of contempt, and which will
• be usefully studied by scholars and potential
• reformers of the law who might strive for a
• deeper understanding of its origins and possible
• trajectory.

(Publisher: Federation Press)

Committee Reports

Membership

Chair, the Hon John Digby KC

A prospective Fellow must be nominated by a current Fellow and be supported by a seconder. The Membership Committee assesses each nomination according to the eligibility criteria set out in the Academy's Constitution - that a nominated person is of exceptional distinction in the discipline of law and demonstrably committed to the objects of the Academy. Committee recommendations are then made to the Academy's Board, which is also provided with the relevant supporting documents. Nominations are submitted by the end of August each year and the election process is completed by the end of each calendar year. Once approved, a prospective Fellow receives an official invitation from the Board which then needs to be accepted and the subscription paid in order for the election to be complete.

During 2023, the Membership Committee met ten times and, as recorded elsewhere in this Report, 18 distinguished lawyers became Fellows.

Governance

Acting Chair, Emeritus Professor David Barker AM

The principal role of the Governance Committee is to review and ensure the Academy's compliance with relevant legislation. The Committee is conscious of the need for the Academy to focus on its function as a not-for-profit organisation (NFP) and to promote sound NFP governance practices while at the same time encouraging innovation and efficiency. It has continued to maintain its approach to contemporary governance within the Academy, particularly regarding ethical decision-making, charitable fundraising and promotion of best practice. These are key considerations in board and committee activities alike, particularly in relation to reporting requirements, registration of appropriate minutes and maintenance of relevant records.

Finance

Chair, Emeritus Professor Bee Chen Goh

The Treasurer chairs the Finance Committee, which is responsible for the management of the Academy's financial affairs. This Committee collaborates closely with the Office Bearers and other Committees to ensure the smooth functioning of the Academy's financial operations. In accordance with best practice, the Academy has continued with an Annual Budget to guide its income and expenditure. The financial position of the Academy is in a healthy state, as shown by the Financial Statements of Financial Year 2023.

At the end of each financial year, the Finance Committee also ensures the production of the annual audited accounts and Financial Statements for approval

at the Annual General Meeting. Regular Finance meetings are held in advance of Board meetings to facilitate Minutes as well as accompanying monthly financial documents to be provided to the Board for consideration.

Website and Communications

Chair, Associate Professor Philip Chung

The Committee oversees the public profile and communications of the Academy. The AAL website provides the main public interface for the Academy's activities. It highlights the many activities of the Academy including prizes and grant recipients, online and in-person events and presentations. It also showcases publications of the Fellows of the Academy. The website is a valuable repository for Academy papers and publications while also fulfilling the Academy's governance and public accountability obligations by providing access to its official records and documents. In addition to its regular newsletter, the Academy engages with a wider audience through media releases published on social and professional media channels.

In 2023, the Committee considered different ways to improve internal processes and systems, especially for events, as well as resources for AAL website maintenance. In the later part of 2023, the Academy began transitioning to new IT infrastructure and network service arrangements because of changes in the staffing arrangements for, and location of, the Secretariat.

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. Donations to this fund in 2023 amounted to \$19,785.

One of the Committee's early initiatives was the \$5,000 First Nations Scholarship awarded for the third time in 2023 to a First Nations final year law student. Details of the scholarship and of the scholar are on page 18 of this Report.

The Committee also supported funding by the AAL, from its Public Fund, for publication of two forthcoming books:

- » *The Humanity of Law*, a selection of essays by the former Chief Justice of the Federal Court, to be published by the Federation Press in the first half of 2024. The editorial work was done very largely in 2023 by Ruth Higgins SC and Kevin Connor SC.
- » *Enduring Courts in Changing Times*, the proceedings of the September 2023 Conference to mark the bicentenaries of the Supreme Courts of Tasmania and New South Wales. This volume is being independently published by the AAL and will be available by May 2024.

As in previous years, AAL donated \$5,000 to the Australasian Legal Information Institute (AustLII).

Prizes and Scholarships

Chair, the Hon Alan Robertson SC

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

In 2023, the Annual Essay Prize was in its 9th year. The Committee met early in the year and recommended the Essay Topic to the Board. The chosen theme focused on mass torts and class actions and asked entrants to analyse whether such legislation has evolved to become a form of 'privatised regulation'. The winning essay was submitted jointly by an Oxford University Law Professor and one of his former students.

AAL Overseas Fellow Sir Ross Cranston hosted a small ceremony for the winners at Gray's Inn on 26 October 2023.

It was also pleasing in 2023 to see the awarding of the third First Nations Scholarship to a First Nations student in the final year of their Law degree. The 2023 award recipient was Georgia Fryer, a member of the Cubbitch Barta clan of the Dharawal nation.

Georgia was in the final year of a Bachelor of Laws and Bachelor of Arts (Media and Communications) Degree majoring in Socio-Legal Studies, at the University of Sydney.

A small presentation ceremony was held on 26 April 2023 at the Law School, Sydney University. Georgia Fryer was accompanied by her parents and by her partner.

The Law School was also represented and hosted the ceremony.

Further details can be found on page 18 of this Report.

Secretary's Report

Emeritus Professor David Barker AM

The year 2023 saw some changes for the organisation of the Academy. Since 2016 administration had been the responsibility of the Federal Court of Australia — something introduced in a Memorandum of Understanding between the Hon Kevin Lindgren, AM, the Academy President at that time, and the then Chief Justice of the Federal Court, the Hon Chief Justice James Allsop. However, with Chief Justice Allsop's retirement in 2023, this arrangement was not renewed by the Court, and the Academy then initiated a new system of administration and sought a new home for the Secretariat. With the great assistance of the Hon Chief Justice Andrew Bell of the New South Wales Supreme Court, the administration is now located within the premises of that Court. It also has a new Secretariat, Ms Kylie Cooke, who has taken over the Academy's general administration duties. It was pleasing that the changeover was seamless, with little interruption to either the organisation of the major Enduring Courts in Changing Times Conference in September (see pages 16–17) or to the 2023 Annual General Meeting/Patron's Address in October (see page 14).

Because of the wide spread of the Academy's membership throughout Australia there was continuous pressure to ensure that arrangements for the AGM and Patron's Address were efficiently organised at the host State's location at the Supreme Court of Western Australia. This was in addition to all the administrative arrangements relating to the various Reports to the AGM by the President, Secretary and Membership Chairperson, together with the Financial Reports incorporating all the audited accounts of the Academy relating to the previous financial year.

There were other demands as well. The September Courts Conference was a co-hosted event, but the Academy took on much of the organisational responsibility. The success of the conference was the result of much hard work on the part of the President and the Secretariat, together with the efficient outsourcing of administration by Ms Kathryn McKenzie of Business Angel.

Reporting Periods

The Academy's Committee reports and reports of activities and events cover the calendar year 2023. The financial accounts are presented according to the accounting period of the financial year from July 2022 to June 30, 2023.

Charities Commission Compliance

It is appropriate to note that the Academy continues to comply with the requirements of the Australian Charities and Not-for-profits Commission (ACNC).



The Academy's Financial Accounts for the year ended 30 June 2023 are set out in abbreviated form here. For a complete set of statements including Auditor's notes, please either (1) click on the words 'Registered as a Charity' which appear above the Charity Tick at the foot of every page on the Academy's website <https://academyoflaw.org.au/> or (2) search for 'Australian Academy of Law' at the Australian Charities and Not-for-Profit Commission at www.acnc.gov.au

Financial Statements

Australian Academy of Law (A company limited by guarantee)
ABN 19 127 640 466

Statement of Profit or Loss for year ended 30 June 2023

	2023 \$	2022 \$
Sales revenue	203,912	151,145
	203,912	151,145
Interest	2,017	510
Expenses	205,929	151,654
Other expenses	122,054	118,891
	122,054	118,891
Profit for the year	83,875	32,764

Balance Sheet for year ended 30 June 2023

	2023 \$	2022 \$
Current assets		
Cash and cash equivalents	483,721	407,214
Total current assets	483,721	407,214
Total assets	483,721	407,214
Current liabilities		
Trade and other payables	7,452	—
Other current liabilities	87,394	102,213
Total current liabilities	94,845	102,213
Total liabilities	94,845	102,213
Net assets	388,876	305,001
Equity		
Retained earnings	388,876	205,001
Total equity	388,876	305,001

Statement of Changes in Equity for year ended 30 June 2023

	2023 \$	2022 \$
Retained earnings		
Opening retained earnings	305,001	272,237
Net profit	83,875	32,764
	388,876	305,001
Total equity		
Balance as at 1 July 2022	305,001	272,237
Profit	83,875	32,764
	388,876	305,001

Statement of Cash Flows for year ended 30 June 2023

	2023 \$	2022 \$
Cash flows from operating activities		
Receipts from Customers	203,912	151,145
Payments to Suppliers	(122,054)	(118,891)
Interest Received	2,017	510
Net cash provided by/(used in) operating activities	83,875	32,764
Cash flows from financing activities		
Net Increase/(Decrease) in Trade and Other Payables	(7,368)	25,013
Net cash provided by/(used in) financing activities	(7,368)	25,013
Net increase/(decrease) in cash and cash equivalents held	76,507	57,777
Cash and cash equivalents at beginning of year	407,214	349,437
Cash and cash equivalents at end of financial year	483,721	407,214

Income Statement for the Year Ended 30 June 2023

	2023 \$	2022 \$
Revenue		
Membership Fees	175,135	139,334
Donations Received	19,785	10,200
Reimbursements	8,701	—
Event & Project Fees	290	1,611
	203,912	151,145
Expenses		
Accountancy Fees	4,195	2,585
Audit Fees	1,800	1,800
Bank Charges	579	427
Conferences, Events & Teleconference Expenses	19,104	6,110
Consultants - Annual Report, Media	8,826	7,596
Consultants - IT, Website, Digital	842	—
Consultants - Projects	7,125	30,724
Donations Paid	5,000	5,000
Insurance	1,590	1,563
Prizes & Scholarships	25,000	15,000
Secretariat Fees & Costs	45,343	42,037
Sponsorships	—	5,000
Travelling Expenses	2,651	717
Website Expenditure	—	333
	122,054	118,891
Other income		
<i>Interest Received</i>	2,017	510
Net profit	83,875	32,764
Retained earnings, beginning of financial year	305,001	272,237
Retained earnings, end of financial year	388,876	305,001

Plans for the Future

Events

In keeping with the Academy's commitment to host events and activities relevant to current legal issues occupying public discourse, it is envisaged the themes for 2024 events will include the following:

- » The operation of the National Anti-Corruption Commission
- » The reform of the Administrative Appeals Tribunal
- » Genocide and the International Court of Justice
- » The Role and Running of Commissions of Inquiry
- » Arbitration
- » Youth justice
- » Indigenous Treaty and Truth Telling
- » The Future of the legal profession and what it might look like in 2030
- » The daily nature of judicial life
- » Report of the statutory review of the Modern Slavery Act 2018 (Cth)
- » Climate Change, Small Island States, and the Law of the Sea: The International Tribunal for the Law of the Sea Advisory Opinion Request

Activities

2024 will be the fourth year of the First Nations Scholarship, which has proved a successful initiative and very rewarding and helpful for the recipients. The generous donations to the Academy's Public Fund mean the \$5,000 award will continue into the future.

The annual Essay Prize is entering its tenth year and forms an important part of the Academy's commitment to furthering legal education and research. Each year's question seeks to focus on a legal issue in need of resolution or change. This focus continues to prove successful and it is hoped that, with improved promotion, the substantial \$10000 prize will attract a greater number of entrants.

The Academy plans to continue its annual donation of \$5,000 to AustLII, a service operated jointly by the University of New South Wales and the University of Technology. Its purpose is to improve access to justice through access to legal information and this purpose accords with many of the Academy's objectives.

There have been plans for some time for a program where academics may spend a day with a Judge to gain valuable understanding and insights into the role. The hope is that the program will be trialled with a pilot in the ACT during 2024 and, if successful, it might also run in other jurisdictions.

Publications

The Academy is sponsoring the publication by The Federation Press of selected essays of the Hon James Allsop AC SC, the former Chief Justice of the Federal Court of Australia. Dr Ruth Higgins SC and Kevin Connor SC are editing the volume, which is expected to be available in the first half of 2024.

Work is also underway to edit and publish the substantial body of learned papers delivered at the two and a half day 'Enduring Courts in Changing Times Conference' held in early September 2023.

Co-operation

The Academy will continue to work with other legal institutions as well as with the Academy of Science – this annual symposium is a successful combination of legal and scientific perspectives and provides a valuable education experience to lawyers and scientists alike.

Governance

The Academy's agreement with the Federal Court of Australia for the provision of secretarial services and office space in the Court's Queens Square premises came to an end in 2023. The Academy is now housed in the Supreme Court of New South Wales Hospital Road building and we are grateful to the Hon Andrew Bell, Chief Justice of New South Wales, for providing this facility.

Membership

The Academy is keen to expand the range of its membership and is encouraging Fellows to look widely among distinguished lawyers for potential new members and to consider nominating candidates of varied and diverse interests and backgrounds.

General

In all it does, the Australian Academy of Law continues to be guided by its founding objectives and its mission of connection: providing a bridge between the Australian judiciary, the practising profession and academia.

Thanks

The Academy thanks each of the Directors, the officeholders, the Chairs of each of the committees and the members of these committees. I thank everyone who has spoken at the Academy's events in 2023. All have given freely of their time.

Thank you also to the Chief Justice of the Supreme Court of New South Wales for housing the Academy from September 2023.

The Academy thanks Dr Jennifer Farrell, the Secretariat, from April 2022 to early August 2023 and particularly Ms Kylie Cooke, who took over in September 2023 and has run the Academy's affairs with great efficiency since then.

The Academy also thanks Ms Susan Jenkins for stepping in at very short notice as the temporary Secretariat for the period from early August to 14 September.

The part-time Secretariat provides our only administrative assistance: the rest is done by Fellows themselves.

The Academy also notes the generosity of the donors to the AAL and thanks them for their contributions. Those contributions were, in part, used to establish the First Nations Scholarship which was offered again in 2023. Those contributions have also supported the publication of the two books referred to earlier in this Report.



AAL



YouTube
australian academy of law



LinkedIn
australian-academy-of-law

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