

Welcome to the sixth Newsletter for 2021.

Congratulations

The Australian Academy of Law celebrates the recognition of seven Fellows of the Academy in the Queen's Birthday 2021 Honours List and congratulates each of them:

Professor Philip Alston AO: For distinguished service to the law, particularly in the area of international human rights, and to legal education.

The Honourable Patricia Bergin AO SC: For distinguished service to the law, and to the judiciary, to legal administration, and as a mentor and advisor.

The Honourable Michael Grant AO: For distinguished service to the law, and to the judiciary, particularly as Chief Justice of the Northern Territory.

Professor Jane McAdam AO: For distinguished service to international refugee law, particularly to climate change and the displacement of people.

Ms Kate Eastman AM SC: For significant service to the law, to human rights, and to professional organisations.

Dr Andrew Lu AM: For significant service to the visual and performing arts, to the law, and to legal education.

The Honourable David Porter AM: For significant service to the law, and to the judiciary, in Tasmania.

Vale

His Excellency Judge James Crawford AC, SC, FBA, FAAL

His Excellency Judge James Crawford was a Fellow of the Australian Academy of Law. Generously, he gave the 6th Annual Patron's Address in 2017. Justice Melissa Perry of the Federal Court of Australia has provided the following tribute, for which I thank her:

“It is with great sadness that I write of the death of James Crawford on 31 May 2021 in The Hague where he had served on the International Court of Justice (ICJ) since 2015. Described as “the pre-eminent international lawyer of our times”, he was also endowed with a gentle sense of humour, generosity of spirit, and kindness, from which generations of students from Australia and around the world benefited, among many others.

James undertook his undergraduate degrees at the University of Adelaide, where he later taught after completing his doctorate at Oxford on the creation of States in international law.

He subsequently held the professorial chair in international law at the University of Sydney before he was appointed Whewell Professor of International Law at Cambridge University in 1992. During his time in Cambridge, he also served as Chair of the Faculty of Law and Director of the Lauterpacht Centre for International Law.

He was formative in developing the principles of State responsibility and in the establishment of the International Criminal Court as a result of his work on the UN International Law Commission.

Further, among many appearances in the ICJ, he appeared as counsel on behalf of Australia in the East Timor case against Portugal (1995) and the Whaling case against Japan (2014).

His achievements have been recognised by the conferral of honorary titles and prizes from different States and institutions, including his appointment as a Companion of the Order of Australia in 2013.

In the words of his fellow international lawyer and friend, Professor Philippe Sands, “The world is a lesser place today, with the death of James Crawford” who “as a thinker, advocate and judge ... literally changed international law”.”

2021 AAL Essay Prize

As requested in previous Newsletters, please bring this competition to the attention of anyone who may be interested in submitting an essay. Fellows (other than Directors) may wish to participate themselves.

The deadline for the submission of an essay is 31 August 2021.

Each year the winning essay has been published in the *Australian Law Journal*.

The essay topic for this year is:

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

Note: ‘Outstanding fundamental issues’ may include, but are not limited to, constitutional recognition, treaty or bijuralism.”

This year, the AAL has broadened eligibility to submit an essay by reverting to the original entry rules.

The Prize is \$10,000. More detail is on the [website](#).

A scheme whereby academics may spend a day or two with a judge

The Hon Kevin Lindgren AM QC, Justice David Mossop, Justice Robert Beech-Jones, Professor Les McCrimmon, Professor Alison Gerard and Dr John Lowndes OAM are the members of this ad hoc committee.

The idea is to establish a system whereby (generally) junior academics may spend a day or two with a judge to gain, or renew, firsthand experience of how a court runs. Chief Justices are being consulted by me.

The committee’s proposal for a pilot scheme has been approved by the Board.

What is necessary now, to get the pilot scheme underway, is for *those Fellows who are trial judges of superior courts and who are willing to host an academic for a day or two to let me know by email*.

If the scheme is successful it will be extended beyond the Supreme Courts of the States and Territories and the Federal Court.

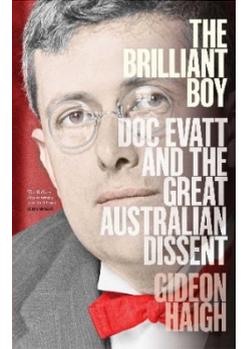
Forthcoming Events

Queensland event – 14 July 2021 at 5:30 PM

The title for this event is “*Mrs Chester’s lost child: inconsolable psychological injury and Evatt J’s finest judgment.*”

Mr Gideon Haigh and **Associate Professor Kylie Burns** will be the speakers.

Mr Haigh’s latest book, *The Brilliant Boy: Doc Evatt and the Great Australian Dissent* is to be published on 7 July 2021 by Simon & Schuster Australia.



Professor Burns is a torts scholar. She is widely recognised as a torts and personal injury researcher, teacher and speaker. She is a co-author of the leading text *Torts: Cases and Commentary*. Her focus will be on how the law approaches psychological trauma.

The venue will be the Banco Court, Supreme Court of Queensland, Queen Elizabeth II Courts of Law building, 415 George St, Brisbane, with a Zoom live-stream.

The event follows the very successful August 2020 Queensland occasion, “Celebrating Samuel Griffith”. **Justice Peter Applegarth AM** will again be the chair. I thank him and the staff of the Supreme Court Library Queensland for their work in organising this event.

Please put it in your diary, 14 July 2021 at 5:30 PM. Refreshments will be served after the event.

The flyer, and how to register, are [here](#).

AAL and Law Council of Australia joint event, 5 PM on Thursday, 15 July 2021

Class Actions: Capital, Regulation, and the Public Interest

COVID-19 restrictions permitting, the venue for this event will be the Ceremonial Court on Level 21, Law Courts Building, Queens Square, Sydney and the Conference room on Level 20 (for refreshments). I thank Chief Justice Allsop for making the venue available.

John Sheahan QC will chair the event. The speakers will be:

Justin Gleeson SC, of the New South Wales Bar

Rebecca Gilsenan, Principal, Maurice Blackburn Lawyers

Susanna Taylor, Investment Manager of Litigation Capital Management (LCM), and

Jason Betts, Partner, Herbert Smith Freehills

Class actions have been the subject of recent attention by Parliaments, the executive, law reform commissions and the courts, including two recent High Court decisions. Much of this attention has focused on how class actions are funded, and the consequences of funding being available. Significant differences of view may be emerging as to how the public interest is best advanced when it comes to regulating class actions themselves, and the means by which the capital necessary to conduct them is made available. This seminar will take a deeper look at these issues.

Please put it in your diary, 15 July 2021 at 5 PM. COVID-19 restrictions permitting, refreshments will be served after the event.

The flyer, and how to register, are [here](#).

Roundtable in Perth – 28 July 2021

This event will concern recent research in criminal justice and will be presented by two PhD students. The venue will be the 8th floor conference room, Exchange Plaza, 2 The Esplanade, Perth. The chair will be Professor Erika Techera of UWA's Faculty of Law. Please put the date in your diary. Further details will be available on the website soon.

Roundtable in Sydney, NSW – 4 August 2021

On Wednesday 4 August 2021, a Roundtable on insolvency will be held in Sydney. This session will be jointly hosted by the Australian Academy of Law and the Ross Parsons Centre of the University of Sydney. All Fellows are invited, and there will be a few specific invitations to non-Fellows to attend.

The title is: "*The roles of the state and the private profession in the insolvency system: do we have the right balance?*"

Mr Michael Murray and **Professor Jason Harris** will present a paper. The presenters are the joint authors of *Keay's Insolvency: Personal and Corporate Law and Practice* (11th ed pending).

The Hon Kevin Lindgren AM QC will chair the Roundtable.

COVID-19 restrictions permitting, the venue will be the Federal Court Level 20 (small) conference room, Queens Square, Sydney. The room will be set up with 25 chairs around the table.

I am grateful to Chief Justice Allsop for making this room available.

Fellows are invited to register for this event [here](#).

Roundtable in Canberra – Wednesday, 18 August 2021

This Roundtable will be a presentation by Professor Peta Spender on class actions and litigation funding. It will take place at the High Court from 5 to 6:30 PM. If you will be in Canberra on that date, please put the event in your diary.

Further details will be available on the website soon.

Tax event – 40 years of Part IVA of the *Income Tax Assessment Act 1936* – 8 September 2021

At the suggestion of AAL Fellow Mr Peter Walmsley, Deputy Chief Tax Counsel of the ATO, and Kevin Lindgren AM QC, the AAL has organised an event to mark the fortieth anniversary of the commencement of this general anti-avoidance provision, Part IVA.

The event will be held on Wednesday 8 September 2021 at 5 PM. COVID-19 restrictions permitting, it will be a "live" event in Sydney but also with online access. The speakers will be:

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, author of *Tax Avoidance in Australia*, The Federation Press, 2010.

Professor Miranda Stewart, Professor of Law at the University of Melbourne Law School where she is Director of the Tax Group; Fellow at the Tax and Transfer Policy Institute at the Crawford School of Public Policy, the Australian National University.

Ms Kristen Deards SC, who has an extensive taxation practice, including appearing in complex Part IVA cases.

The topics so far identified are:

- the circumstances in 1981 and preceding it; and
- developments in Part IVA since 1981 – including the international aspects leading to some important developments in the last decade;
- reforms to some of the key elements.

Mr Walmsley will provide an overview. **The Hon Kevin Lindgren AM QC** will chair the event.

The flyer is [here](#).

An event the Victoria organising committee is planning for September 2021.

The event will focus on the legal issues associated with treaty processes and the recently-announced Yoo-rrook Justice (Truth-telling) Commission in Victoria. Justice Mark Moshinsky is chairing the committee with The Hon Pamela Tate SC, Professor Bee Chen Goh and Professor Duncan Bentley being the other members. Potential speakers have been approached.

Tenth anniversary Patron's address – 21 October 2021 at 5:15 PM

Chief Justice James Allsop AO has very kindly agreed to give the Patron's Address. It will be held in Court One, Federal Court of Australia, Melbourne at 5:15 PM.

Registration details will be available on the website soon.

Refreshments will follow the event.

2021 AAL Annual General Meeting

The AGM will be held at 4 PM on 21 October 2021 in Melbourne this year, immediately before the Patron's address. Please put the date in your diary. Provision will be made for those Fellows who will not be in Melbourne to join the AGM remotely.

The annual joint event with the Australian Academy of Science.

A subcommittee has been formed, chaired by me, with Mr Michael Murray, Professor Melissa de Zwart and the Deputy President Kevin Lindgren as the other members. The AAL subcommittee has identified potential topics. A preliminary meeting has

been held with representatives of the Australian Academy of Science. The likely topic will be Artificial Intelligence from the perspectives of scientists and lawyers.

Intermediate appeal courts – event on 3 November 2021 at 4:30 PM in Brisbane

Fellows and members of the public will hear from the heads of Australia's intermediate courts of appeal. The presidents or other heads of jurisdiction will discuss with each other common issues arising from the operation of intermediate courts of appeal. It should be a unique and interesting occasion.

Please put the date and time in your diary. Registration details will be available on the website soon.

Refreshments will be available afterwards.

Joint event with the *Australian Law Journal* and the Australasian Institute of Judicial Administration – August 2023

In light of some important national legal bicentenaries, a 2 or 3 day joint event with the Australian Law Journal and the Australasian Institute of Judicial Administration (AIJA) is planned for August 2023.

Examples of those legal bicentenaries are, for New South Wales, the Third Charter of Justice promulgated on 13 October 1823 establishing the Supreme Court and, for Tasmania, the first sitting of the Supreme Court of Van Diemen's Land on 10 May 1824. I thank Justice François Kunc for this initiative. Professor David Barker and Justice Geoff Lindsay have also agreed to be on the subcommittee, as has AAL Fellow Justice Steven Rares, as President of the AIJA.

I am pleased to say that Chief Justice Alan Blow AO and Justice Stephen Estcourt AM of the Supreme Court of Tasmania have also joined the small committee.

The working title is "*Enduring courts in changing times*".

The idea is to have one part of the event physically in Tasmania and another part in New South Wales, but with a commingling of speakers and topics.

This promises to be a major event, similar to the "*Future of Australian Legal Education*" conference held

in 2017. I invite comments and suggestions.

Recent Events

Dinner in Hobart, Tasmania, Thursday 10 June 2021 at 7 PM

The format was an after-dinner speech by the new Dean of the Faculty of Law of the University of Tasmania, **Professor Michael Stuckey**.



Professor Michael Stuckey

The meeting of 17 Fellows and partners appreciated Professor Stuckey's histories of the first Chief Justices of Van Diemen's Land and of New South Wales and the founding of the two Supreme Courts.

The evening was also an excellent occasion for Fellows in Tasmania to meet and exchange ideas.

New Fellows

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

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.

Research ideas?

If you have a subject of research which you consider the Academy should undertake or commission, please let me or the Secretariat know. There has been only one response so far, and the Research and Expenditure Committee needs some more suggestions and ideas in order to evaluate them.

The Committee on Australian Studies

The Chair of the Committee on Australian Studies, Mr Tim Rowse, has asked me to notify Fellows that the Harvard University's Committee on Australian Studies is seeking to appoint to The Gough Whitlam and Malcolm Fraser Chair in Australian Studies for the academic year 2023-24. Applications close 30 September 2021. For more information see: https://harvaus.fas.harvard.edu/gough_fraser_chair

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