

Welcome to the fifth Newsletter for 2022.

Congratulations

Please join me in warmly congratulating the **Hon Justice Debra Mullins AO** on her appointment as President of the Court of Appeal, Supreme Court of Queensland. She takes the place of the **Hon Walter Sofranoff QC**.

2022 AAL First Nations Scholar

You may recall that through the generosity of donors to the Academy's Public Fund, the AAL offered for the second time its First Nations Scholarship of \$5,000 tenable by a First Nations final year law student.

As I noted in the last Newsletter, the AAL First Nations Scholar for 2022 is **Ms Lilli Ireland**. I had the pleasure of meeting to congratulate her, and hand over her certificate, in Canberra on 12 May:



Ms Lilli Ireland

(This photo has been viewed over 4,200 times on LinkedIn!)

Importantly, as explained in this press release: "AAL First nations Scholar 2022 has a passion for justice" available on [LinkedIn](#), two Fellows have volunteered to mentor Ms Ireland. **Professor Lorana Bartels** and the **Hon Justice Rachel Pepper**.

The award has also been publicised here,

ABC Canberra Breakfast radio:

<https://www.abc.net.au/radio/canberra/programs/breakfast/breakfast/13874126>

(hit play and scroll forward to time code 1.47.45)

and here:

<https://lsj.com.au/articles/six-mins-with-lillian-ireland/>

and here:

<https://law.anu.edu.au/news-and-events/news/how-passion-social-justice-drives-aal-first-nations-scholar-lillian-ireland>

Further details of the Scholarship are on the website:

[Australian Academy of Law - 2022 First Nations Scholarship](#)

The AAL Michael Coper Memorial Prize

I am pleased to report that the 2022 Australian Law Students' Association (ALSA) Conference Paper Presentation Competition and related Closing Gala and Awards Ceremony have been reinstated after COVID and is to be held on 12 July 2022 in Brisbane.

As set out on ALSA's [webpage](#)

"Paper Presentation involves researching and writing a legal essay and then presenting it to a panel of judges. Competitors compete individually, and the papers may be written on any legal topic.

The panel may ask questions as they see fit during and after the presentation to find the depth of knowledge and understanding the competitor has in the chosen field. Competitors are assessed on the essay and the presentation."

The Prize is \$1,500, given by the AAL and named in memory of the late Emeritus Professor Michael Coper.

Justice Sarah Derrington has kindly agreed to judge and award the Michael Coper Memorial Prize at the

Closing Gala and Awards Ceremony. This is a formal black-tie event.

I am grateful to [Justice Edelman](#) and [Professor Kit Barker](#) who have also agreed to judge the Grand Final of the Paper Presentation. Judging is at the Federal Court in Brisbane on 12 July 2022, beginning at 1.30 pm and concluding around 2.45 pm.

2022 AAL Annual Essay Prize

The Australian Academy of Law is offering its Annual Essay Prize for 2022. The amount of the Prize is \$10,000.

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

The essay topic for the Prize in 2022 is as follows:

“What are one or more reforms that could be made to remedy deficiencies in the administration by Australian courts of the criminal law as it applies to minorities or disadvantaged groups?”

Note: The essay should not focus on funding by government.”

The deadline for the submission of an essay is 31 August 2022 and this time limit is strictly observed, as the Rules Governing the Annual Essay Prize make clear. The rules for the essay prize are [here](#).

Legal studies prize for secondary students

The AAL is investigating the feasibility and logistics of a Year 11/12 Legal Studies prize, with the likely focus being on Year 12.

The idea is to award a prize to the top student in Legal Studies, however named, in each State and Territory, so 8 prizes in all.

There is a question about how best to identify the top Legal Studies student in each jurisdiction.

If you can assist, please contact [Professor Gino Dal Pont](#) or me.

Forthcoming events

7 June 2022 5:00 pm - 6:30 pm (AWST):

The Fallibility of Memory and Fact Finding

Location: Central Park Theatre, 152-158 St Georges Terrace, Perth WA

The nature of the trial process proceeds on the assumption that the fact finder is able to assess the reliability and credibility of a witness giving oral evidence. Findings from psychological research and neuroscience studies indicate that memory is a reconstructive process that is susceptible to distortion. Questions arise as to a whole range of aspects of the imperfection of human memory. The legal system as a whole has not adopted all of the research findings on memory even though these findings may have implications not only for eye witness testimony but for how evidence is assessed.

[Professor Ulrich Ecker](#) is a cognitive scientist studying human memory, and in particular the impact of misinformation on memory, reasoning, and behaviour. He works at the University of Western Australia's School of Psychological Science. He will present on the field of memory research, speaking on some of the deficiencies in relation to human memory and some common misunderstandings about human memory

[Justice Craig Colvin](#) of the Federal Court will offer commentary on Professor Ecker's presentation from the perspective of a trial judge.

The flyer is [here](#). Please register [here](#).

Monday 20 June 2022, Hobart at 5 pm Pathway to Truth-Telling and Treaty

In 2021 [the Hon Kate Warner AC](#), former Governor of Tasmania, and [Professor Tim McCormack](#), the Dean of the Law School, were commissioned by the Tasmanian State Government to research and prepare a report, ultimately titled “Pathway to Truth-Telling and Treaty”, released in late November of that year.

It is available here:

[Pathway to Truth-Telling and Treaty 251121.pdf \(dpac.tas.gov.au\)](#)

[Kate Warner](#) and [Tim McCormack](#) have kindly agreed to be the speakers at this event.

This is planned as a blended event, available for attendance in person as well as streamed via Zoom (or equivalent platform).

The Law Society of Tasmania has permitted the use of its facilities to host the event.

The event will run for about 90 minutes (including questions) – followed by refreshments.

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

ACT event: Thursday, 23 June 2022, 5:30pm – 7:00pm

Book launch for Emeritus Professor Stephen Bottomley's book, *The Responsible Shareholder* (Edward Elgar, 2021)

Location: Philippa Weeks Library, ANU College of Law

Professor Sally Wheeler OBE, MRJA, FAcSS, FAAL is a confirmed speaker.

Please put this date in your diary. The flyer and registration details will be available soon.

7 July 2022 at 5pm in the Banco Court, Supreme Court of New South Wales:

The appointment of State, Territory and Federal judges (not including justices of the High Court of Australia)

Part I will address the question: *What is the work of judges, and what do the judges of the court in question do? What are the necessary qualities of a prospective appointee?* The appointment of Chief Justices is probably a separate question.

I am very grateful to the **Hon Tom Bathurst AC QC**, the **Hon Walter Sofranoff QC** and the **Hon Justice Jenny Blokland** who have agreed to speak.

Criteria for the appointment of judges have been put forward in the past, for example by the Australasian Institute of Judicial Administration. See:

<https://aija.org.au/wp-content/uploads/2017/10/Suggested-Criteria-for-Judicial-Appointments-AIJA-2015.pdf>

On a date to be fixed, later in July, Part II will address the question: *What are the systems for finding such people, and how could those systems be improved? What are the best parts of those systems?*

If this event proves successful in stimulating discussion, it may be appropriate later to consider the separate but related topic of appointments to tribunals.

12 July 2022 in Brisbane, at the Federal Court, beginning at 1.30 pm
The AAL Michael Coper Memorial Prize

Please see above, the third item in this Newsletter.

Tuesday 2 August 2022

ACT Michael Coper Roundtable (Fellows only)

Hear **Professor Peta Spender** speak on “Class actions in Australia: Controversy and Critique”.

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

Monday 22 August 2022 at 5 pm in Sydney

Judicial independence

Court 1, Federal Court of Australia, Queens Square, Sydney

Hear **Judge Jose Matos**, the President of the International Association of Judges, and **Justice Jacqueline Gleeson** of the High Court of Australia speak on the topic of judicial independence.

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

Thursday 25 August 2022 Intermediate criminal courts of appeal

Event to be based in the Supreme Court of South Australia, Courtroom 1 at 4.30 pm (Adelaide time) (ACST), 5.00 pm (AEST)

You may recall the very successful public event the AAL held in November last year, where the heads of the courts of appeal (civil) spoke about common issues and exchanged views:

[Issues Arising from the Operation of Intermediate Courts of Appeal \(Civil\) - Banco Court, 3/11/21 - YouTube](#)

With the support of the Chief Justices of the Supreme Courts, the AAL is holding a similar event for intermediate criminal courts of appeal. Please look out for further details.

Possible topics to be discussed include:

- The volume of cases: how may the volume of cases best be managed?

- Case management of large appeals
- Priorities in the hearing of cases.
- The management of bail applications.
- Interlocutory applications, including in appeals. eg new/fresh evidence.
- Leave applications, what are the requirements or criteria and how are such applications best managed? Are hearings always required or necessary?
- The giving of reasons.
- Whether there is a place for ex-tempore judgments?
- Written submissions, including page limits.
- Oral submissions, including time limits.
- Practices for the listing of appeals.
- Consistency within and between courts. What is the effect of s 68 of the *Judiciary Act*.
- Whether criminal appeal courts should sit outside capital cities?
- Issues specific to lower volume jurisdictions.
- Time estimates.
- Litigants in person, including referrals for pro bono assistance.
- Legal aid.

Please let me know if you have further topics you wish to have considered for inclusion.

22 September 2022 – NT Event Austin Asche Oration in Law and Governance

This public event will be held at the Hilton Hotel, Mitchell St, Darwin. The speaker will be **Emeritus Professor Ros Croucher AM**, President of the Australian Human Rights Commission.

Please put this date in your diary.

Thursday 20 October 2022 at 3.30 pm (Brisbane daylight saving time), Annual General Meeting

The AGM will be held in person (location to be notified) and online.

Thursday 20 October 2022 at 4.30 pm, online and at the Banco Court, Queen Elizabeth II Courts of Law, Level 3, 415 George Street, Brisbane: the AAL's 2022 Patron's Address

This year's annual Patron's Address will be given by the **Hon Patrick Keane AC**, a Justice of the High

Court of Australia. The working title of the Address is "Different perspectives of judicial power."

Justice Tony Besanko, Deputy President of the AAL, will chair the proceedings.

Please put this date in your diary.

9 November 2022, event for Fellows in London

If you are a UK based Overseas Fellow, or a Fellow who will be in London on 9 November (pandemic permitting), please let me or the Secretariat know if you will attend this evening event.

There will be a dinner and I am very pleased to say that **Professor Rachael Mulheron QC (Hon)**, Professor of Tort Law and Civil Justice, School of Law Queen Mary University of London will speak on a legal topic of current interest and importance.

I thank **Desmond Browne CBE, QC** for his help.

8 – 10 September 2023

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

To mark some important national legal bicentenaries, a 2½ day joint event with the Australian Law Journal (ALJ) and the Australasian Institute of Judicial Administration (AIJA) is planned for Friday 8 – Sunday 10 September 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** are on the subcommittee, as is AAL Fellow **Justice Steven Rares**, as a member of the Council and immediate past 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 by the AAL and the ALJ in 2017.

The Chief Justices of relevant jurisdictions have responded favourably.

Recent events

11 May 2022, 5:30 pm at the ACT Supreme Court Private and public lawyers: An ethical divide?

The speakers were:

Ms Elizabeth Carroll, President of the ACT Law Society, formerly Chief Legal Counsel, IP Australia, and a partner at Holding Redlich

Dr Jennifer Duxbury, Digital Industry Group, formerly in-house lawyer at bodies such as Ninemsn, Lonely Planet and Airservices Australia

Professor Vivien Holmes, ANU College of Law, who teaches and researches in the fields of legal ethics, legal education and the legal profession and has worked as a litigation solicitor in private and government practice

Mr Michael Kingston, Australian Government Solicitor, formerly Chief Legal Officer of the Australian Securities and Investments Commission and a partner at Mallesons Stephen Jaques

Mr Athol Opas, commercial barrister, the ACT Bar's representative on the Law Society's Legal Practitioner Act and Ethics Committee, and former President of the ACT Law Society.

The issues addressed by the speakers included: the reputation of lawyers, whether there were different pressures on private and public lawyers, in-house counsel, and whether the ethical obligations of private lawyers and public lawyers were essentially the same or different. There was time for questions, and many stayed to continue the debate over refreshments afterwards.



Elizabeth Carroll, speaking with, from right to left, Jennifer Duxbury and Michael Kingston



About 50 attended the in person event. I thank **Chief Justice Lucy McCallum** for permitting the use of the Court and for taking part.

I thank **Robert Orr QC** and the members of the ACT Event Organising Committee for their work in putting on this event.

Tuesday 24 May 2022, online and at the Supreme Court of South Australia, Adelaide Review of Non-Statutory Government Action

This free public event considered the extent to which the exercise of non-statutory government powers is reviewable, and on what basis. The speakers traced the changes in approach over recent times in Australia, federal and State, and with reference to the position in some overseas jurisdictions.



I was one of the speakers. The other was **Mike Wait SC**, Solicitor-General for South Australia.



The Hon Mark Livesey JA chaired the seminar.

About 35 attended the event in person and 52 viewed the proceedings online. The responses to the two presentations, on the night and subsequently, were very positive.

The event was recorded and will be on the website soon.

Wednesday, 25 May 2022, Perth, 1.00 pm – 2.00 pm AWST (3.00 pm – 4.00 pm AEST)

Emerging Scholars Event 2022: Technology, Regulation and Politics

The Australian Academy of Law was pleased to host this free public event, chaired by **Professor Erika Techera**, UWA Law School.

I thank Professor Techera for the following account:

This webinar focused on Emerging Scholars in the State. The speakers were two PhD students (**Helen Stamp** (UWA) and **James Carpenter** (Curtin University)), and one early career academic (**Dr Michael Wilson**, Lecturer, Murdoch University). The fascinating presentations explored technologies associated with end-to-end encryption and autonomous vehicles, and analysed a diversity of challenges including terminology and language in law and policy, fairness and justice, and criminal and other liability. The presenters and participants all acknowledged the importance of engaging with

junior scholars and emerging fields of research. The event provided an excellent introduction to these researchers and their future-focused work, as well as providing an opportunity for specialists in the field to engage in discussion on the complexities of technology, regulation and politics.

There were 17 attendees in total. The event was fully online. Kevin Lindgren rated it as ‘terrific’.



AAL monograph

This collection of the papers, commentaries and questions and answers at the AAL’s very successful event on 8 September 2021 has been published. Its title is “Tax Avoidance: Marking 40 years of Part IVA of the Income Tax Assessment Act 1936”.

The book is 113 pages and includes the papers and the commentary. It also includes statutory materials. The price is \$20.00 (incl GST), plus postage, to cover costs. If you wish to buy a copy or copies, please fill out the order form, which is [here](#), and send payment to the [Secretariat](#).

Second Annual Report

This report has been completed. It covers calendar year 2021. It is here:

[AAL Annual Report WEB \(academyoflaw.org.au\)](https://www.academyoflaw.org.au)

Projects for the Public Fund

A real success of the new Public Fund for 2021 was the expenditure of part of the charitable donations on the First Nations Scholarship project. Not only was there a substantial scholarship of \$5000 awarded to a First Nations final year law student, but also individual AAL Fellows in the various jurisdictions volunteered to mentor each of the applicants for the scholarship.

If you have a proposal for a scholarship or other

educational project for the Public Fund, please let me know.

If you wish to donate to the fund, the starting point is [here](#): or please contact the [Secretariat](#) or me.

Second AAL sponsored monograph

Emeritus Professor David Barker AM's book, the title of which is 'A Sense of Common Purpose - A History of the Australian Academy of Law', is to be published by the Federation Press and is "Coming soon . . ."

"A Sense of Common Purpose recounts the history and development of the Australian Academy of Law from its early beginnings in 1996, through its official launch in July 2007 to the end of 2020.

Sponsored by the Academy, the book is written by David Barker who has been involved with the organisation from the beginning. That involvement gives him a unique insight into the influence of its Fellows, Presidents and Patrons on its development.

This book will be of great interest to those concerned with the role of the Australian Academy of Law and its influence on the legal community."

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:

The Hon Chief Justice Lucy McCallum, chief Justice of the Supreme Court of the ACT

The Hon Justice Geoffrey Kennett, Judge of the Supreme Court of the ACT

The Hon Jennifer Coate AO, former Judge of the Family Court of Australia, Commissioner of the Royal Commission into Institutional Responses to Child Sexual Abuse

Dr Suzanne McNicol AM QC, Barrister, Melbourne

Dr Kristina Stern SC, Barrister, Sydney

Mr Ben Doyle QC, Barrister, Adelaide



Alan Robertson

President

alan.robertson.sc@gmail.com

0404850364