

Welcome to the tenth Newsletter for 2021.

Two new directors and two new officeholders

The AAL's Annual General Meeting was held on Thursday, 21 October 2021. The directors and officeholders for the year 2021-2022 are:

The Hon Alan Robertson SC (President)

The Hon Justice Tony Besanko (Deputy President)

Emeritus Professor Bee Chen Goh (Treasurer)

Emeritus Professor David Barker AM (Secretary and Public Officer)

The Hon Kevin Lindgren AM, QC

The Hon John Digby QC

Professor Gino Dal Pont

Dr Nuncio D'Angelo

Professor Melissa De Zwart

Professor Les McCrimmon

Mr Russell Miller AM

The Hon Pamela Tate SC

Mr Michael Murray

The Hon Emeritus Professor Ralph Simmonds

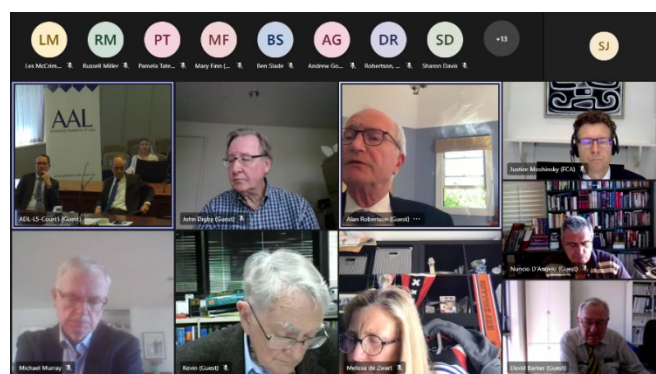
Professor Natalie Skead

In summary, **Justice Mark Moshinsky** and **Professor Erika Techera** did not renominate as directors, but **the Hon Pamela Tate SC** and **Professor Natalie Skead** were nominated as directors for the first time. Similarly, **the Hon Kevin Lindgren AM QC** did not renominate for the office of Deputy President and **the Hon John Digby QC** did not renominate as Treasurer. **Justice Tony Besanko** and **Emeritus Professor Bee Chen Goh** did nominate for those offices. All were elected unopposed.

On behalf of the Academy, I thank **Justice Mark**

Moshinsky and **Professor Erika Techera** for their service as directors. I also thank **the Hon Kevin Lindgren AM QC** for his work as Deputy President over the last year, and **the Hon John Digby QC** for his tireless work as Treasurer over the last 10 years.

31 Fellows attended the AGM.



From left top: The Hon President Mark Livesey, Justice Tony Besanko, The Hon John Digby QC, The Hon Alan Robertson SC, Justice Mark Moshinsky, Bottom left: Michael Murray, The Hon Kevin Lindgren AM QC, Professor Melissa de Zwart, Emeritus Professor David Barker AM

Projects for the Public Fund

A great 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. Details of the scholarship for 2021 are here:

<https://academyoflaw.org.au/Australian-Academy-of-Law-First-Nations-Scholarship>

If you have a proposal for a scholarship or other educational project for the Public Fund, please let me know as soon as possible, so that it may be considered in time for early 2022.

If you wish to make a donation to the fund, the starting point is here:

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

Subscriptions/donations

Clause 8.2 of the Academy's Constitution provides:

“Life Fellows and Overseas Fellows are not subject to and have no obligation to pay annual subscriptions but may, in their discretion, make a donation to the Academy of an equivalent amount.”

The provision has already been availed of over the last year.

The amounts of donations are deposited into the Academy's "Public Fund" and are tax deductible.

Of course, the donation may be of any amount and need not be "an equivalent amount" to the amount of the annual subscription (\$400).

A receipt is issued to the donor but the identity of the donor need not be publicised.

As I have said, the Public Fund has already been used for a very worthwhile purpose, the First Nations Scholarship.

If any Fellow, of any category, would like to make a donation, the starting point is here:

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

or please contact the Secretariat:

AALSecretariat@academyoflaw.org.au

or me.

Two AAL sponsored monographs

The Board has approved the Academy's sponsorship of two monographs.

The first is 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". I understand that this is to be published by the Federation Press in 2022.

The second is a collection of the papers, commentaries and questions and answers at the AAL's very successful event on 8 September 2021 "Marking 40 years of Part IVA of the Income Tax Assessment Act 1936".

The AAL will look at further opportunities to publish collections of papers given at its events.

New Fellow

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

Dr Melissa Castan

Associate Professor, Law Faculty, Monash University

Ceremony

On 21 October 2021, immediately after the Patron's address, as to which see below, there was a formal presentation of the 2021 First Nations scholar certificate to **Ms Mikeyli Hendry**.

In 2021, through the generosity of two donors to the Public Fund., the AAL was able to introduce a scholarship for a First Nations final year law student.

As well as the scholarship of \$5000, the Academy offered a mentor for the 12-month period. The detail is to be found here:

<https://www.academyoflaw.org.au/Australian-Academy-of-Law-First-Nations-Scholarship>

Present in Adelaide for the event at the Federal Court of Australia were **Justice Besanko**, the Deputy President of the AAL, **President Mark Livesey** and **Justice Christopher Bleby**, both of the Court of Appeal, **Michael Wait SC**, Solicitor General of South Australia who was Ms Hendry's mentor, President Livesey's associates and **Venkha Sivashanker**, Ms Hendry's partner.

An audience of 48 was present remotely.

Justice Tony Besanko presented the Certificate to Ms Hendry.



The Hon Justice Tony Besanko and Ms Mikeyli Hendry

2021 AAL Essay Prize

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

Fourteen essays were submitted.

The essay topic for this year was:

“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.”

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

I hope that the winning essay will be able to be announced in November.

Forthcoming Events

**Thursday, 28 October 2021, 5:30 PM (AEDT)
Class Actions Part Two: exposure draft bill
concerning third party litigation funders**

The Treasury says that “[t]he proposed measures would enhance court oversight over the distribution of class action proceeds and establish a rebuttable presumption that a return to the general members of a class action litigation funding scheme of less than 70 percent of their gross proceeds is not fair and reasonable. The proposed measures would also require plaintiffs to consent to become members to a class action litigation funding scheme before funders can impose their fees or commission on them.”

The panel will discuss this bill and whether it achieves the purposes described. The bill may be found here:

https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6802_first-reps/toc_pdf/21149b01.pdf;fileType=application%2Fpdf

The explanatory memorandum is to be found here:

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6802_ems_79dbb4de-7531-403d-bc80-7fb484636ae4/upload_pdf/JC003896.pdf;fileType=application%2Fpdf

The four expert speakers are:

The Hon Justice Catherine Button, Judge, Supreme Court of Victoria

Justin Gleeson SC, Barrister, New South Wales

Kate Morgan SC, Barrister, New South Wales

Nathan Rapoport, Special Counsel, Slater + Gordon, Victoria

I am very grateful to these speakers and also to **the Hon Justice Jayne Jagot** of the Federal Court of Australia, who has agreed to chair the event.

If you wish to attend please email aalsecretariat@academyoflaw.org.au.

It is, I think, the first time the AAL has organised an event to discuss a bill currently before Parliament.

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, including appellate full courts. 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.

The issues likely to be addressed are:

The nature of the work; the purpose and nature of an appeal; the (different) ways of organising the hearing of appeals; the utility/ advantages/ disadvantages of separate courts of appeal; and the relationship between appeal courts and those appealed from e.g. civility

The dispatch of business and judgments

Court organisation

Issues specific to non-fixed intermediate courts of appeal.

What can jurisdictions with larger numbers of appeals learn from jurisdictions with smaller numbers, and vice versa?

Overruling/ departing from other judgments (of one’s own or other intermediate courts of appeal)

This event will be held in person (maximum of 82) and also streamed online.

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

First Nations Peoples - Truth & Justice Commissions: What are they? How do they operate? What are the legal issues?

Wednesday 24 November 2021 from 6 PM - 7:15 PM

The event will focus on the Yoo-rook Justice (truth-

telling) Commission that has been established in Victoria to inquire into historic and ongoing systemic injustice perpetrated against First Peoples since white settlement.

The three speakers will be **Professor the Hon Kevin Bell AM QC**, **Dr Wayne Atkinson**, who are both Commissioners, and **Professor Kate O'Regan**, formerly of the South African Constitutional Court and now Professor of Human Rights Law and the inaugural Director of the Bonavero Institute of Human Rights at Oxford University. Professor O'Regan will offer a comparative perspective.

The Hon Pamela Tate SC will chair the event.

This promises to be a memorable event. The flyer is [here](#). Please register [here](#).

Freedom of Expression in the United Kingdom and Australia considered comparatively

Tuesday 7 December 2021, 6.00PM AEDST and 7.00AM GMT

In what manner does the law restrict investigative journalism and how do the Courts protect public interest stories? This event compares the position in the United Kingdom and Australia. A panel of four experts will discuss these issues and then participate in a Q&A.

Those experts are:

from Australia:

Laura Tingle, President, National Press Club

Matthew Collins AM QC, Vice President, Australian Bar Association

and from the United Kingdom:

Andrew Caldecott QC, Specialist in media, defamation and libel law, as well as a novelist and occasional playwright

Alan Rusbridger, Chair of the Reuters Institute for the Study of Journalism, Principal of Lady Margaret Hall, Oxford, 2016 to 2021

Mr Desmond Browne CBE QC, former Chairman of the Bar of England and Wales, Joint Head of 5 RB Chambers, will be the chair.

More information can be found on the flyer, [here](#).

You can register [here](#).

I am very grateful to all the speakers, and to the chair, particularly to those based in the United Kingdom where the event will commence at 7 AM (GMT).

It is, I think, the first time that the AAL has organised an international event, where the speakers are in different jurisdictions.

The World Heritage Convention and Climate Change -- early December

The Australian Academy of Science is organising, with the support of the AAL, an invitation-only Roundtable on the World Heritage Convention and Climate Change, with a view to meeting in early December.

The background is that recent assessments indicate that climate change threatens the Outstanding Universal Value of many World Heritage Properties, and the number will increase in the coming years. The World Heritage Committee is updating its Policy Document for Climate Change for World Heritage (now known as the "Policy Document for Climate Action for World Heritage"). In November 2021, the UNESCO General Assembly of the States Parties will be asked to adopt the updated policy.

The scientist running the project is **Emeritus Professor Helene Marsh AO, FAA, FTSE**.

The chair of the Roundtable will be **The Hon Dr Annabelle Bennett AC SC**, who is a Fellow of both the Australian Academy of Science and of the Australian Academy of Law. Further AAL contributors to the Roundtable are **The Hon Brian Preston**, Chief Judge, Land and Environment Court of NSW and **The Hon Professor Bill Campbell AO PSM QC**.

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.

25 March 2022 Causation Conference at the UWA Law School

The AAL is co-sponsoring the UWA Law School causation conference to be held on Friday 25 March 2022, at the offices of Herbert Smith Freehills (HSF), Perth. This will be a fully blended event, with the in-person component being held at the offices of HSF, Perth. Full day in-person registration will be \$150; remote registration \$50; and AAL members will enjoy free remote registration.

Please put this date in your diary. Further details will be posted as they become available.

Recent Events

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

The Hon James Allsop AO, Chief Justice of the Federal Court of Australia, gave the Patron’s Address for 2021. The topic was “Thinking about Law: the importance of how we attend and of context.”

The event was held remotely from Court One, Federal Court of Australia, Melbourne at 5 PM for 5:15 PM.

About 100 Fellows and members of the public attended this most interesting and important address. I am very grateful to Chief Justice Allsop for giving this address and for his continuing support of the Academy.



The Hon James Allsop AO, Chief Justice, delivering his address and The Hon Justice Moshinsky, giving the vote of thanks

I also thank the AAL’s Patron, Chief Justice Susan Kiefel AC, for attending this, our tenth, Patron’s address.

A copy of Chief Justice Allsop’s address is available [here](#).

The annual joint event with the Australian Academy of Science – 7 October 2021

The subject was Artificial Intelligence from the differing perspectives of scientists and lawyers.

The speakers who are Fellows of the AAL were:

Professor Lyria Bennett Moses, and

Mr Edward Santow

The scientists were:

Professor Svetha Venkatesh, and

Professor Toby Walsh,

The Hon Annabelle Bennett AC SC, who is a Fellow of both the Australian Academy of Science and the Australian Academy of Law, was the chair.

A video recording of this first class event is available [here](#).

The Narrative Voice in Fiction and in the Law: Wednesday, 27 October 2021, 5 PM, Perth

This event addressed the idea and presence of the narrative voice in fiction and in legal writing.

The **Hon Nicholas Hasluck AM QC**, formerly of the Supreme Court of Western Australia, spoke on aspects of the narrative voice in fiction;

Justice Darren Jackson, of the Federal Court of Australia, based in Perth, presented a paper on the use of narrative in argument and judgments; and

Professor Natalie Skead, Dean UWA Law School, was the chair.

The event was open to Fellows of the Australian

Academy of Law and to members of the public.

There were two most stimulating presentations on the necessity and significance of the narrative voice in fiction and the law, followed by questions and answers.

The total audience, online and in person, was approximately 50. Curtin University Law School provided the use of its 1912 heritage building in the city for a most successful event.

It was interesting to note in the papers references to recent AAL events: to Gideon Haigh's address in Brisbane about his book *The Brilliant Boy*, and to the very recent Patron's address.

I thank everyone involved as speaker, chair, organiser and venue provider.



Professor Natalie Skead, The Hon Nicholas Hasluck AM QC and The Hon Justice Darren Jackson

Alan Robertson

President

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