

Welcome to the eleventh Newsletter for 2021.

## 2021 AAL Essay Prize

**Ms Lillian Burgess, Mr Suvradip Maitra** and **Ms Giulia Marrama** are the joint winners of this year's essay prize.

This year's competition asked entrants to address the question "Outstanding fundamental issues for First Nations Peoples in Australia: what can lawyers contribute to the current debates and their resolution?"

Their essay championed movement lawyering as one of the keys to resolving issues confronting First Nations Peoples.

The 14 essays submitted for the \$10,000 award canvassed constitutional recognition, treaty, interactions with the criminal justice system, gender, domestic violence, child protection and land rights.

Former High Court Judge, the **Hon William Gummow AC QC** again generously chaired the judging panel, and was joined by **Professor Gabrielle Appleby** of the University of New South Wales and **Mr Tony McAvoy SC** of the New South Wales Bar.

The judges were impressed by all the (anonymised) submissions but considered that one essay in particular had the edge:

"The authors undertook a rich analysis of the role that movement lawyering has played and can play in the furthering of First Nations interests. Incorporating new research on movement lawyering, as well as deeply engaging with the scholarship, it was in equal parts academically rigorous and practically focussed."

The winners are all currently working as Associates to Judges of the Supreme Court of Queensland.

In their essay, while aware their views may not reflect those of the indigenous peoples of Australia, the authors argue that the problems facing First Nations

Peoples require a unique legal response which goes beyond the traditional role of the lawyer:

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

The winning essay is published on the Academy of Law's website [here](#) and will also appear in a 2022 edition of the *Australian Law Journal*.

The press release by the AAL is to be found [here](#). There has been some publicity as a result, for example: [QLDProctor](#)

## Congratulations

**Professor Hilary Charlesworth** has been elected by the General Assembly and the Security Council of the United Nations to the International Court of Justice (ICJ). Professor Charlesworth is the first Australian woman to be so elected and, I understand, is only the fifth woman elected to the ICJ. She succeeds the **Hon James Crawford AC**, who died in May 2021.

Professor Charlesworth took up her role in The Hague earlier this month, with her term ending in February 2024.

Please join me in congratulating Professor Charlesworth on her remarkable achievement.

## 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](#).

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](#).

## 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](#).

or please contact the [Secretariat](#)

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". This is to be published by the Federation Press in 2022. I am very pleased to say that **the Hon Murray Gleeson AC** has agreed to write a foreword.

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 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:

**Mr Stephen McDonald SC**

Barrister, South Australia

**The Hon Justice Rachel Pepper**

Judge, Land and Environment Court of NSW

## Ceremony for the winners of the 2021 AAL Essay Prize

As I have set out above, the winners of the prize have been announced. They are each based in Brisbane.

**Chief Justice Holmes AC** has kindly made arrangements for a ceremony to take place at the Supreme Court of Queensland on Monday 13 December 2021 at 4:45 PM Australian Eastern Standard Time, Brisbane (5:45 PM Australian Eastern Daylight Time, Sydney).

I propose to invite not only the Fellows of the Academy then present in Queensland, but also the families and colleagues of the winners, the judges to whom the three winners are associates, together with the general public if Covid restrictions permit.

Please put the date in your diary.

## Forthcoming Events

**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, to meet 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 Hon Dr Annabelle Bennett AC SC**, who is a Fellow of both the Australian Academy of Science and of the Australian Academy of Law, will be the chair. Further AAL contributors to the Roundtable are **The Hon Brian Preston**, Chief Judge, Land and

Environment Court of NSW and **Professor Bill Campbell AO PSM QC**.

### **23 February 2022 ACT Public Event**

The topic is professional ethics for lawyers advising government. I have agreed to act as the chair. Please put this date in your diary. Further details will be posted as they become available.

### **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.

### **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

### 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 discussed this bill and whether it achieves the purposes described.

The four expert speakers were:

**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



*The Hon Alan Robertson SC, The Hon Justice Jayne Jagot, Justin Gleeson SC, The Hon Justice Catherine Button, Kate Morgan SC, Nathan Rapoport*

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

There was an online audience of 138, a good turnout.

The talks were excellent, and the approach of having papers and comments on a bill before the Parliament worked well. Certainly the bill is a very important one.

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

You can view the video of the event [here](#).

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

Fellows and members of the public heard from the heads of Australia’s intermediate courts of appeal, including appellate full courts. The Presidents or other heads of jurisdiction discussed with each other common issues arising from the operation of intermediate courts of appeal.

The issues addressed included:

*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 was held in person and also streamed online. There was an online audience of about 75, and 30 in the Banco Court in Brisbane, a reasonable turnout.

I thank all our speakers:

**The Hon James Allsop AO**, Chief Justice, Federal Court of Australia

**The Hon Alan Blow AO**, Chief Justice of Tasmania

**The Hon Michael Grant AO**, Chief Justice of the Northern Territory

**The Hon Helen Murrell**, Chief Justice of the Australian Capital Territory

**The Hon Andrew Bell**, President, Court of Appeal, New South Wales

**The Hon Michael Buss**, President, Court of Appeal, Western Australia

**The Hon Mark Livesey**, President, Court of Appeal, South Australia

**The Hon Chris Maxwell AC**, President, Court of

Appeal, Victoria

**The Hon Walter Sofronoff**, President, Court of Appeal, Queensland (who hosted the event)

**The Hon Justice Jayne Jagot** of the Federal Court of Australia

**The Hon Justice Karin Emerton** of the Supreme Court of Victoria, Court of Appeal

**The Hon Stewart Austin**, judge in charge of appeals, Federal Circuit and Family Court of Australia (Division 1)

I also thank the staff of the Supreme Court of Queensland, **Justice John Bond**, **Ms Karen Antcliff**, acting Executive Assistant to **Justice Sofronoff**, **Mr Ian McDonald**, the acting videoconferencing services coordinator, Queensland Courts and **Ms Susan Jenkins**, the AAL secretariat.

Although the judges who spoke were dealing with what to them is the day-to-day, for the audience it was a unique and interesting occasion. A senior academic described the event as ‘a triumph’.



*The Hon Chief Justice Alan Blow AO*

### **Statutory interpretation - Michael Coper Roundtable ACT, 17 November 2021**

ACT Fellows organised a Roundtable at which **Tom Howe QC**, Chief Counsel Dispute Resolution Australian Government Solicitor, and **Gordon Brysland**, Assistant Commissioner Tax Counsel Network, spoke on the topic:

“Has the High Court signalled a change in the direction of Statutory Interpretation?”

I understand the Roundtable went very well, the only problem being that time was too short to continue the discussion.



*From left: Professor Dennis Pearce, The Hon Richard Refshauge, Peter Walmsley, Professor William Campbell AO PSM QC, The Hon Mary Finn, Gordon Brysland, Ian Govey AM, Robert Orr QC, Thomas Howe PSM QC & Professor Stephen Bottomley behind the camera*

### **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**

The event focused on the Yoo-rrook Justice (truth-telling) Commission established in Victoria to inquire into historic and ongoing systemic injustice perpetrated against First Peoples since white settlement.

The three speakers were **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 who offered a comparative perspective.

There was an in-person audience of about 12, and a remote audience of about 40. I understand that a far greater number registered to ensure they would receive a link to the recording of the event.

The video of the event will be on the AAL’s website as soon as possible. Professor Bell’s paper may be accessed [here](#).

The contribution by each speaker was excellent and I thank each of them. I also thank **The Hon Pamela Tate SC** for chairing the event. The Commission has some serious and difficult issues ahead of it, and the speakers introduced these issues very effectively.



*The Hon Justice Mark Moshinsky, Professor the Hon Kevin Bell AM QC, The Hon Pamela Tate SC, Dr Wayne Atkinson*

Alan Robertson  
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