

Welcome to the seventh Newsletter for 2021.

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

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

The Chief Justices of the Supreme Courts and of the Federal Court of Australia have been consulted by me and support the proposal.

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.*

So far I have had two positive responses, both from judges of the Supreme Court of New South Wales.

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

## **Forthcoming Events**

### **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** under the title: *Class actions in Australia: Controversy and Critique*. Covid-19 restrictions permitting, it will take place in the AGS conference room, 4 National Circuit, Barton from 5 to 6:30 PM. This is an in-person event and will not be webcast. If you will be in Canberra on that date, please put the event in your diary.

**Emeritus Professor Stephen Bottomley**, ANU College of Law will be the Chair.

Further details are available on the [website](#).

### **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](#).

#### **Roundtable event in Perth – 8 September 2021**

The subject for this event will be *Covid*. The speaker will be **Dr Lachlan Ubers**, Lecturer in Philosophy, University of Western Australia. The Chair will be the **Hon RD Nicholson AO KCSJ**.

Further details will be available on the website and via flyer soon.

#### **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. 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 – Thursday, 7 October 2021**

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 topic will be Artificial Intelligence from the perspectives of scientists and lawyers.

**Dr Annabelle Bennett AC SC**, who is a Fellow of both the Australian Academy of Science and of the Australian Academy of Law has kindly agreed to chair the event.

The speakers from the legal perspective will be **Professor Lyria Bennett Moses** and **Mr Ed Santow**.

#### **Roundtable event in Perth – 27 October 2021**

The subject for this event will be *The narrative voice in law*. The speakers will be the **Hon Nicholas Hasluck AM QC** and the **Hon Justice Banks-Smith**, Federal Court of Australia. The Chair will be **Professor Natalie Skead**, Dean and Head of School, UWA Law School.

Further details will be available on the website and via flyer soon.

#### **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.

## Recent Events

### Queensland event – 14 July 2021

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

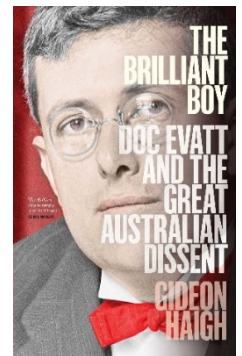
This was a really interesting and worthwhile event, with the two speakers complementing each other.

The viewing audience, in person and via Zoom, was almost 250: about 110 attended in person at the Banco Court and there were 137 other viewers.



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

Mr Haigh’s latest book, *The Brilliant Boy: Doc Evatt and the Great Australian Dissent* was 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 was on how the law approaches psychological trauma.

**Justice Peter Applegarth AM** was the chair. I thank him and his staff.

The Academy also gratefully acknowledges the valuable support of this event by the Supreme Court Library Queensland as part of the 2021 Selden Society lecture series

I also thank the Chief Justice of the Supreme Court of Queensland, **The Honourable Chief Justice**

**Catherine Holmes AC**, who moved the vote of thanks. Her Honour described Mr Haigh's lecture as illuminating and Professor Burns' as providing the legal context, both lectures being sympathetic to the subject-matter.

A link to the event, together with some supplementary material, is here:

<https://legalheritage.sclqld.org.au/2021-lecture-two>

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

*Class Actions: Capital, Regulation, and the Public Interest*

There were almost 250 people who attended this first-class event.



**John Sheahan QC** was the chair.

The speakers were:

**Justin Gleeson SC**, of the New South Wales Bar



**Rebecca Gilsenan**, Principal, Maurice Blackburn Lawyers

**Jason Betts**, Partner, Herbert Smith Freehills; and



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

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 took a deeper look at these issues, the panel being almost uniquely placed to offer the requisite skill and experience. The speakers focused on what kind of actions are now running and what the current issues are; the market for funding, how it is regulated and how capital is raised; Common Fund Orders and Group Costs Orders; efficiency; settlement and the issue of statutory minimum returns to class members; and whether the courts should continue to manage these issues or whether legislative reform was necessary.

A synopsis is available here:

<https://www.lexology.com/library/detail.aspx?g=408cfb20-7949-47d6-ac06-552025f31efb>

The Class Action's forum recording is available here:

<https://www.youtube.com/watch?v=EKNrEgJwy84>

## Roundtable in Perth – 28 July 2021

*Emerging scholars: Contemporary issues in Crime and Criminology*

This event concerned recent research in criminal justice and was presented by two PhD students.

**Nicola Stokes'** PhD research focuses on intimate partner abuse and the victims' experiences with the Western Australian court system. In a state where incidences of intimate partner abuse are increasing, it was necessary to ask if the justice system motivated victims of intimate partner abuse to remove themselves from further abuse or whether the system inhibited victims from moving forward.

**Liam Quinn** is investigating the relationships between legitimate market forces and the theft and disposal of stolen goods. He proposed that variation in prices and consumer demand for legitimate goods were causally related to theft of goods through an overarching supply and demand mechanism in which property crime offenders were driven to steal high-demand, easily disposable goods.

The Chair was **Professor Erika Techera** of UWA's Faculty of Law.

This event was held in person and was also streamed online.

## 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](#).

## 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 have been only three responses 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](https://harvaus.fas.harvard.edu/gough_fraser_chair)

## 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:

**Ms Fiona Crosbie**, Chair at Allens.

**Professor Sarah Murray**, University of Western Australia Law School.

**Mr Jason Harris**, Professor of Corporate Law, University of Sydney.

## Thank you

I thank the Federal Court of Australia Website administrators, Lany Fernandez and Aurora Marina-Lee, for their assistance with the AAL's website while Susan Jenkins, the Secretariat, was recently on leave.



Alan Robertson

President

[alan.robertson.sc@gmail.com](mailto:alan.robertson.sc@gmail.com)

0404850364