

Welcome to the ninth Newsletter for 2021.

## The AAL's website

I understand there are some Fellows who do not know about the Academy's website. Here it is:

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

There is a wealth of information there, and I recommend it to you. For example, it lists forthcoming events and recent events. It also enables you to communicate with other Fellows. Any ideas for improvement should be forwarded either to me or to the Chair of the Website and Communications Committee, Mr Michael Murray. His details are on the website!

I also invite your attention to the Fellow Spotlight page:

<https://academyoflaw.org.au/page-18149>

The most recent entry there, 17 September 2021, is for:

**Pandemics, Public Health Emergencies and Government Powers** Perspectives on Australian Law

Edited by **Professor Belinda Bennett** and **Professor Ian Freckelton AO QC FAAL**

This book explores the multi-layered and multi-faceted ways in which Australia's laws, regulations and law-makers have engaged with the COVID-19 pandemic.

You may well wish to include a recent publication of yours there.

## Thank you

A Fellow, who wishes that his name not be published, has donated \$1000 to the Public Fund. I thank him for his generosity.

If you wish to make a donation, however large or small, (and see the next item in this Newsletter), the relevant page of the website is here:

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

and the relevant form is here:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Facademyoflaw.org.au%2Fresources%2FDocuments%2F%5BDonation%5D%2520Form.xlsx&wdOrigin=BROWSELINK>

## 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. You may recall that 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 an idea 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.

## 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:

**Dr Andrew Godwin**, Special Counsel, Australian Law Reform Commission

**Dr James Popple**, Official Secretary to the Royal Commission into Defence and Veteran Suicide, Honorary Professor, Australian National University

**Professor Michael Legg**, Faculty of Law & Justice, University of New South Wales

**Professor the Hon Kevin Bell AM QC**, Executive Director, Castan Centre for Human Rights Law, Faculty of Law, Monash University, Commissioner,

Yoo-rrook Justice Commission, Victoria

**Mr Ben Slade**, Managing Partner, Maurice Blackburn Pty Ltd

**Professor Natalie Stoianoff**, Professor and Director of the Intellectual Property Program, Faculty of Law, University of Technology, Sydney

## 2021 AAL Essay Prize

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

Fourteen essays were submitted.

You may recall that 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*.

The fourteen essays, anonymised, have been forwarded to the judging panel. I hope that the winning essay will be able to be announced in November.

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

## Scholarship for the Legal Community

I am grateful to the President of the Victorian Court of Appeal, The Hon Chris Maxwell AC, for bringing to my attention the recent initiative of the Judicial College of Victoria. It now has on its website a curated selection of recently published academic writing from local and international journals.

[https://www.judicialcollege.vic.edu.au/resources/scholarship-legal-community?mc\\_cid=ff330cacf2&mc\\_eid=UNIQID](https://www.judicialcollege.vic.edu.au/resources/scholarship-legal-community?mc_cid=ff330cacf2&mc_eid=UNIQID)

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

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.

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*.

Although the scheme is necessarily on hold in light of the current COVID-19 restrictions, please let me know if you are willing to participate. There have been four volunteers so far, but none from a jurisdiction which is not presently in lockdown. A wider geographical spread would be desirable.

## Forthcoming Events

### 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 for 2021. It will



*The Hon Chief Justice Allsop AO*

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

The topic will be “Thinking about Law: the importance of how we attend to the problem at hand and of context.”

You can find the flyer for the event [here](#). Please register [here](#).

### 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 Fellows to join the AGM remotely.

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

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

The speakers who are Fellows of the AAL will be:

**Professor Lyria Bennett Moses**, director of the Allens Hub for Technology, Law and Innovation at the University of NSW and also a professor in the Faculty of Law.

Professor Bennett Moses has written extensively about the dangers of AI bias in the legal system, and why it is crucial for everyone to understand how

smart machines are impacting on our society; and

**Mr Edward Santow**, formerly Australia's Human Rights Commissioner, on 1 September 2021 Mr Santow, took up a new position at the University of Technology Sydney as Industry Professor – Responsible Technology. He will lead a major UTS initiative to build Australia's strategic capability in artificial intelligence (AI) and new technology. This will support Australian business and government to be leaders in responsible innovation by developing and using AI that is powerful, effective and fair.

The scientists will be:

**Professor Svetha Venkatesh**, of Deakin University, Alfred Deakin Professor, ARC Laureate Fellow, Co-Director of Applied Artificial Intelligence Institute and a leading Australian computer scientist who has made fundamental and influential contributions to the field of activity and event recognition in multimedia data; and

**Professor Toby Walsh**, a leading researcher in Artificial Intelligence, a Laureate Fellow and Scientia Professor of Artificial Intelligence in the School of Computer Science and Engineering at UNSW Sydney, and leader of the Algorithmic Decision Theory group at CSIRO Data61.

**The Hon Annabelle Bennett AC SC**, a Fellow of both the Australian Academy of Science and the Australian Academy of Law, will be the Chair.

Please put 7 October 2021 in your diary. A flyer and registration details are available [here](#).

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

This event will address 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, will speak on aspects of the narrative voice in fiction;

**Justice Darren Jackson**, of the Federal Court of Australia, resident in Perth, will present on the use of narrative in argument and judgments; and

**Professor Natalie Skead**, Dean UWA Law School, will be the Chair.

The event will be open to Fellows of the Australian Academy of Law and to members of the public, by

registration, for in-person attendance at Curtin University Law School, 57 Murray Street Perth, and remotely by Microsoft Teams.

A flyer and registration details are available [here](#).

### **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.

Issues may include:

- Leave to appeal, including the question of concurrency i.e. dealing with a leave application and the appeal together on the notional basis that leave has been granted.
- The appropriate length/detail of reasons for refusing leave to appeal.
- Are judgments too long?
- Can there be a greater number of extempore judgments?
- The importance of rules/the importance of practice notes or practice directions.
- Written submissions, including page limits. Available responses where the limits are exceeded.
- Oral submissions, including time limits. Available responses where the limits are exceeded.
- Should appeal courts sit outside capital cities?
- What is the role or importance of civility towards the primary judge or other officer in the judgments of the court?
- (Inaccurate) Time estimates.
- Litigants in person, especially serial litigants in person.
- Costs.
- Legal aid, including referrals for pro bono assistance.

- Departing from/overruling previous decisions of the court.

If there are other issues you would like to hear these eminent judges discuss, please let me know.

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

### **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-rrook 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. A flyer will be available shortly, with details for registration.

### **Roundtable in Canberra – postponed from Wednesday, 18 August 2021**

This Roundtable will be a presentation by **Emeritus Professor Peta Spender** on class actions and litigation funding: “Class Actions in Australia: Controversy and Critique”. The event is postponed due to COVID-19 restrictions. The new date for this event will be available on the website once the present lockdown in the ACT ends.

### **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 with the running of 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.

### Proposed event(s) with the AAL’s Overseas Fellows

**The Hon Robert Nicholson AO KCSJ** has suggested an event with UK-based Overseas Fellows, or other Overseas Fellows if time zones permitted. Ideas for topics from Fellows and Overseas Fellows please. There could be a series of two or three events.

**Desmond Browne CBE QC**, based in London, has suggested something media-related such as looking comparatively at freedom of expression in the two jurisdictions, the United Kingdom and Australia.

**The Hon Ralph Simmonds** has suggested three possible topics of international interest to stimulate ideas:

1. Covid recovery:
2. Immigration law under stress:
3. Guns for all?

I am aiming for a December date for the first one.

### Recent Events

#### 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 **The Hon Kevin Lindgren AM QC**, the AAL held an event to mark the fortieth anniversary of the commencement of this general anti-avoidance provision, Part IVA.

Because of COVID-19 restrictions, the event was held entirely online.



From Top Left: *The Hon Kevin Lindgren AM QC*, *Ms Kristen Deards SC*, *The Hon Tony Pagone QC*, *Professor Miranda Stewart*, *The Hon Roger Gyles AO QC*, *Mr Peter Walmsley* and *The Hon Alan Robertson SC*

The speakers were:

**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**, of the New South Wales bar, who has an extensive taxation practice, including appearing in complex Part IVA cases.

**Mr Walmsley** and **The Hon Roger Gyles AO QC**, former Special Commonwealth Prosecutor into Bottom of the Harbour Tax Avoidance and member of the General Anti-Avoidance Rules (GAAR) Panel, provided commentary and an overview. **The Hon Kevin Lindgren AM QC** chaired the event.

The video recording of the event is [here](#).

About 180 people attended this first-class event which covered the demise of s 260, the history of Part IVA before and after 1981, the developments in Part IVA since 1981 by amendment and in the courts, international aspects, and whether the provision had achieved its purpose.

The AAL is exploring the idea of publishing the excellent papers and commentaries in an edited monograph.

#### Roundtable Perth: COVID-19 Wednesday 8 September, 5 pm (AWST)

This was an AAL Roundtable event held at the CBD campus of Murdoch University. There was a presentation by **Dr Lachlan Umbers**, School of Humanities, Discipline of Philosophy, at the University of Western Australia. The chair was **the Honourable Robert Nicholson AO FAAL**, retired from the Federal Court of Australia and the first President of the AAL.



*The Hon RD Nicholson AO KCSJ and Dr Lachlan Umbers*

There was an audience in-person of nine and an online audience of 11.

Dr Umbers addressed two topics, vaccine apathy and vaccine scarcity. He referred to vaccine apathy as a collective action problem and considered the ethics of combatting hesitancy and apathy. He referred to scarcity as the other side of the slow rollout in Australia and considered the difficulties with utilitarian approaches to vaccine distribution and the issue of fairness in that distribution.

At the end of the presentation there were most lively responses from both the in-person and online members of the audience.

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