

Welcome to the tenth Newsletter for 2023.

## The AAL Board

The Constitution of the Australian Academy of Law provides that there are to be up to 15 Directors, broadly representative of the legal community in the Academy. The Directors are elected at the annual general meetings of the Academy. The AGM for 2023 was held in Perth on 12 October 2023.

The Directors for the year 2023-2024 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

**Associate Professor Philip Chung**

**Dr Nuncio D'Angelo**

**Professor Gino Dal Pont**

**The Hon John Digby KC**

**The Hon Justice Judith Kelly**

**The Hon Kevin Lindgren AM, KC**

**Mr Russell Miller AM**

**The Hon Justice Janine Pritchard**

**The Hon Emeritus Professor Ralph Simmonds**

**Professor Natalie Skead**

**The Hon Pamela Tate AM KC**

**The Hon Justice Judith Kelly** was elected in the place of **Emeritus Professor Les McCrimmon**, who did not stand for re-election. I again thank him for his significant work for the Academy. He had been on the Board since 2011.

There are 15 Directors. There is one based in the Northern Territory (**Justice Kelly**), one in the ACT (**Mr Miller**), one in Tasmania (**Professor Dal Pont**),

one in South Australia (**Justice Besanko**), one in Queensland (**Emeritus Professor Bee Chen Goh**), two based in Victoria (**the Hon Pamela Tate** and **the Hon John Digby**), three in Western Australia (**Justice Janine Pritchard**, **the Hon Professor Ralph Simmonds** and **Professor Skead**), and five in New South Wales (**the Hon Alan Robertson**, **Emeritus Professor David Barker**, **Associate Professor Philip Chung**, **Dr Nuncio D'Angelo** and **the Hon Kevin Lindgren**).

Similarly, from a representative perspective, although there is some overlap in terms of the branches of the legal community, the Board contains eight judges or former judges, 10 practitioners or former practitioners, and eight academics or former academics.

## Minor amendment to the AAL's Constitution

A special resolution was passed at the AGM on 12 October 2023 to add new cl 8.7 to the Constitution. The new clause gives the Directors a discretion to waive the whole or part of an annual subscription where there exist exceptional circumstances and where the waiver would be in the best interests of the Academy. I set out below the full clause 8 as it now reads:

### **8. Subscriptions**

*8.1 Subject to clause 8.2, the Directors may, from time to time, determine the annual subscription payable by each Member or each category of Member. Until otherwise determined by the Directors the annual subscription will be \$400.*

*8.2 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 or other amount.*

*8.3 The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance*

within 30 days of this date.

8.4 The first subscription payable by persons who consented to become Members in the application for the Academy's registration will be payable within 30 days of the date from which subscriptions are determined by the Directors.

8.5 The Directors may determine that from the date of admission to membership to the next 30 June, only a fraction of the annual subscription instead of the full annual subscription shall be payable, having regard to the length of that period.

8.6 With the exception of those Members described in clause 8.2, if a Member does not pay a subscription within 30 days after it becomes due the Directors:

(a) will give the Member notice of that fact; and

(b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

8.7 For the avoidance of doubt, despite the rest of this clause 8, the Directors may waive, wholly or in part, the annual subscription of a Member, or of a person invited to become a Member, if the Directors are satisfied that there exist exceptional circumstances, including exceptional financial circumstances, of the Member or prospective Member, and that the waiver would be in the best interests of the Academy. A waiver may be for a limited period or it may be permanent, but, if for a limited period, the waiver may be extended or renewed by the Directors for a further limited period, or made permanent.

## Vale the Hon Paul Finn

Fellows will have been deeply saddened to hear of the death of former Fellow **Paul Finn** on 27 September 2023, aged 77.

He was one of the great teachers of the Australian National University, and of the ANU College of Law, and then became head of the Law Department in the University's Research School of Social Sciences.

Leaving aside his many scholarly articles, Paul Finn's publications include:

### Books

*Fiduciary Obligations*, 1978, republished in 2016 as a 40th anniversary edition with additional essays

*Law and Government in Colonial Australia*, 1987

### Edited Volumes

*Essays in Equity*, 1985

*Equity and Commercial Relationships*, 1987

*Essays on Contract*, 1987

*Essays on Torts*, 1989

*Essays on Restitution*, 1990

*Essays on Damages*, 1992

*Essays on Law and Government, Vol 1*, 1995

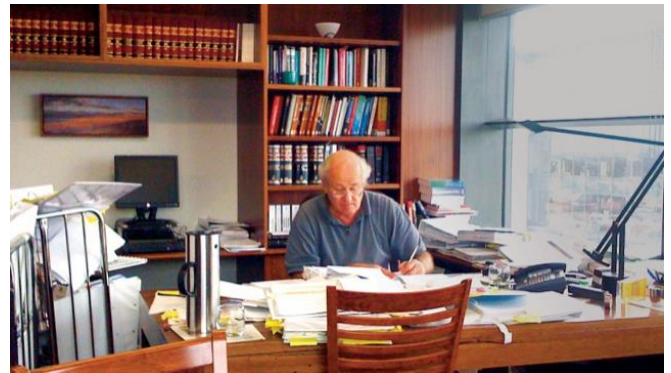
*Essays on Law and Government, Vol 2*, 1996

### Monographs

Integrity in government project:

*Official Information*, 1991

*Official Misconduct*, 1993



Paul Finn at work, pen in hand

It will be recalled that, unusually for a senior academic, Paul Finn was appointed to the Federal Court of Australia in 1995.

The Hon Keith Mason AC KC has described Justice Finn's judgment in *Grimaldi v Chameleon Mining NL* [2012] FCAFC 6; (2012) 200 FCR 296 as his judicial magnum opus.

Paul was also proud of his judgment in *Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland (No 2)* [2010] FCA 643; (2010) 204 FCR 1.

Others will recall *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1. It has been cited by the courts of England, Canada (Supreme Court) and New Zealand (Privy Council and Court of Appeal).

He retired from the Court in 2012.

In 2016, his work as an exceptional scholar and judge was celebrated at a conference in Canberra organised by Emeritus Professor Tim Bonyhady AM. The consequent book, *Finn's Law: An Australian Justice* (Federation Press, 2016), was edited by Professor Bonyhady.

Sir Ross Cranston wrote in Chapter 1 of that book:

“Over his 17 years on the court Paul sat on many cases and appeals in all of the various facets of the Federal Court's jurisdiction - commercial law, tax,

administrative law, intellectual property, maritime law, industrial law, corporations, insolvency, contract, native title, and constitutional law. In many of these he had no significant prior experience before appointment. What shines through Paul's leading judgments are his care, scholarship and, of course, very fine use of language. There is often reference to the law of other jurisdictions, particularly the United States, as a result of Paul's own knowledge and researches rather than counsels' submissions."

A Memorial service for Paul Finn will be held at Drill Hall Gallery, Australian National University, Kingsley Street, Acton, ACT, on Friday, 10 November 2023 from 4:30pm.

Addresses will commence at 5:00pm, to be given by the [Honourable Justice Stephen Gageler AC](#), [Professor Tim Bonyhady](#) and [Wilfred Finn](#).

Those wishing to attend should RSVP to [wilfredfinnd@hotmail.com](mailto:wilfredfinnd@hotmail.com) or phone 0421 359 356.

On behalf of the AAL, I extend my sincere sympathies to Paul's family.

## The winners of the AAL 2023 Essay Prize

The essay topic for this year's Prize was:

*Mass torts and class actions: can the growth in this kind of private litigation in Australia and elsewhere be described as an evolutionary form of "privatised regulation", gap-filling where the state and its regulators have not fully or properly controlled or deterred behaviours, or protected and compensated affected persons? To what extent is it successful in that regard? Should it be encouraged? Why or why not? Give examples.*

The amount of the Prize is \$10,000.

I congratulate the 2023 winners who are Oxford University Law [Professor Andrew Higgins](#), and his former student and current bar course student in London, [John Yap](#), – by arguing against what might be thought to be the premise of the question.

The title of their essay is "Class Actions in Context: Distinguishing Regulation, Tort, and Procedure."

While accepting that the description of class actions as 'privatised regulation' has gained traction in Australia and elsewhere, the authors rejected the idea: "The description is inaccurate and distorts the true relationship between regulation, tort law and procedural law .... tort law cannot be described as a

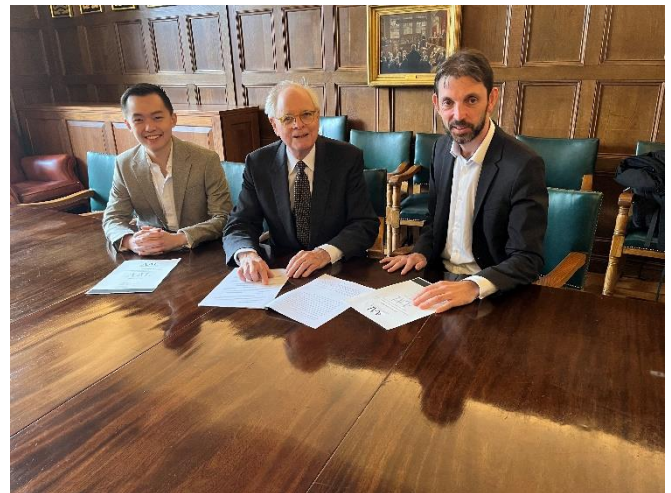
form of regulation because the two are different modalities of law and the class action procedure does not change this.'

The winning essay is available to be read [here](#).

The judging panel, the [Hon WMC Gummow AC KC](#) (Chair), the [Hon Catherine Button](#) of the Federal Court of Australia and [Emeritus Professor Peta Spender](#), ANU, said:

'All the essays demonstrated interesting perspectives on the question and a good command of the literature and debates about class actions. However, the winning entry was sophisticated, original, and provocative and is sure to generate further debate about this controversial area.'

I thank [Sir Ross Cranston](#) for hosting a small ceremony for the winners at Gray's Inn on 26 October 2023. The photograph below was taken in the Small Pension Room at Gray's Inn. Both Andrew Higgins and John Yap are also members of Gray's.



Going through some points in the essay, from left to right John Yap, Sir Ross Cranston and Andrew Higgins. You will also see the winners' certificates.

Please see the AAL's full media release [here](#).

## New Secretariat arrangements

The move of the AAL to the Hospital Road accommodation has been completed.

[Ms Kylie Cooke](#) has also, in September, taken up the role of the AAL's Secretariat.

I intend to hold the next AAL Board meeting, on 28 November 2023 in, and from, the new premises, kindly made available to the AAL by the [Hon Andrew Bell](#), Chief Justice of New South Wales.

## Donations

Please consider making a donation to the AAL's charitable purposes via the Public Fund, which has DGR status.

Donations may be made via the website:

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

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

Fellows may recall a proposal from pre-COVID days whereby the AAL would facilitate academics spending a day with a judge. We have now revived that proposal and intend to conduct a pilot program, in the first instance in the ACT.

Would any Fellow at any of the Canberra universities who wishes to spend a day with a judge of the Supreme Court of the ACT or a Justice of the High Court of Australia please let me or the Secretariat know as soon as possible.

If there is enough interest and the pilot program is successful we will extend the scheme to other courts and jurisdictions in 2024.

## Planning for 2024

A States and Territories Event Organising Committees Planning Session for 2024 will be held on **Monday, 13 November 2023 at 5.00 pm**.

If there is a topic on which you wish to present a paper or wish to have as the topic for a seminar or other event please contact the Secretariat or a member of the Event Organising Committees in your State or Territory

<https://academyoflaw.org.au/Board-Committees>

as soon as possible.

## Publication of selected papers of the Hon James Allsop AC SC

Fellows will be interested to hear that the AAL has again joined with **The Federation Press**, this time to publish a selection of the papers of **the Hon James Allsop AC SC**, the former Chief Justice of the Federal Court of Australia and who was such a strong supporter of the AAL during his term of office.

I have met recently again with **Dr Ruth Higgins SC**

and **Kevin Connor SC** who are the editors and who are working on the volume. The material will be delivered to the Federation Press next month.

We are aiming to publish the volume in April 2024.

## Forthcoming events

**Wednesday 22 November 2023, 5.15 for 5.30pm (AEST)**

**Contempt of Court – A lecture by Professor David Rolph**

**Venue: Chief Justice's Courtroom, Courtroom 5, Level 3, Supreme Court of Queensland 415 George Street, Brisbane and online**

## About the speakers

**Professor David Rolph** is a pre-eminent scholar in media law. He is the author of the authoritative work, *Defamation Law*, a consulting editor on *Gatley on Libel Slander*, and a legal history scholar. His many publications address fundamental issues about freedom of expression and laws that protect competing interests: defamation, privacy and the administration of justice.

**Patrick McCafferty KC**, a media law specialist, will provide a brief commentary.

**The Hon Justice Peter Applegarth AM**, Supreme Court of Queensland, will chair the session.

This will be a hybrid event. Registration is essential for those wishing to attend.

For those registering to attend remotely a link will be sent to your registration email address shortly before 22 November.

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

**Monday 4 December 2023 – Annual joint event with the Australian Academy of Science (AAS)**

**Venue: The Shine Dome, Canberra**



I am pleased to report that, in response to a joint invitation by the Presidents of the Australian Academy of Science and the AAL, **Dame Julie**

**Maxton DBE**, Executive Director of The Royal Society, will be the guest speaker at our annual joint Academies event, in December. She will share her expertise at the interface of science and law.

Please keep this date free if you will be in Canberra on 4 December. To register please click [here](#).

Further events at which Dame Julie will speak are likely to be on 5 December in Sydney and 6 December in Melbourne. Please note these dates. Further details will be available soon.

Further events at which Dame Julie will speak are as follows:

**Tuesday 5 December 2023 – SYDNEY - 5.15PM for 5.30pm**

**Venue: Court 12D, Supreme Court of New South Wales, Queens Square, Sydney 2000**

To register please click [here](#).

**Wednesday 6 December 2023 – MELBOURNE 5 PM to 6:15 PM followed by refreshments**

**Venue: Court No 1, Level 8, Federal Court of Australia, 305 William Street, Melbourne.**

To register please click [here](#).

**18 March 2024 – Melbourne**

We are fortunate that the **Hon Justice Emilios Kyrou AO** has agreed to be our speaker at an AAL event in Melbourne. Justice Kyrou is the President of the AAT and a judge of the Federal Court of Australia.

From 2008 Justice Kyrou was a judge of the Supreme Court of Victoria and from 2014 until his appointment to the Federal Court in 2023 was a Judge of Appeal in that Court.

The topic will be the Commonwealth AAT and the Tribunal which is intended to replace it.

The commentator will be **Mr Albert Dinelli KC** of the Victorian Bar.

The venue will be in the CBD. It will be an evening event, at about 5.00PM. Those and other details will be notified soon but please put the date in your diary.

**21 March 2024 – Hobart**

Planning is underway to hold an AAL event in Hobart on 21 March. The speaker and format have yet to be decided, but if you will be in Hobart on that evening, please hold the date.

**Recent events**

**8 – 10 September 2023**

**Joint event with the Australasian Institute of Judicial Administration and the *Australian Law Journal: Enduring courts in changing times***

This 2½ day joint event with the Australian Law Journal (**ALJ**) and the Australasian Institute of Judicial Administration (**AIJA**) was held on Friday 8– Sunday 10 September 2023 to mark some important national legal bicentenaries: 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.



A large number of most distinguished speakers, judges and former judges, academics and practitioners participated in the conference.

The program is to be found [here](#)

A highlight of the conference was the high quality of the papers and the amount of research put into them by the speakers.

**Chief Justice Kiefel’s** Opening Address, entitled “The Creation of the Supreme Courts of New South Wales and Van Diemen’s Land”, which may be viewed here:

<https://www.youtube.com/watch?v=jNEynv146Hs&t=55s>

Some of the papers will be published in the *Australian Law Journal*.

We are examining the feasibility of publishing the entire proceedings.

**AGM 2023 12 October 2023 at 4.00 PM (AWST)  
Perth**

**Judge's Conference Room, Level 14, David  
Malcolm Justice Centre, 28 Barrack St, Perth and  
livestreamed**

As noted at the beginning of this Newsletter, the AGM was held in Perth. One new Director was elected unopposed. Also a special resolution was passed to amend the Constitution, as described above in the second item of this Newsletter.

**12<sup>th</sup> Annual Patron's Address**

**Court 1, Supreme Court Building, Stirling  
Gardens, Perth and livestreamed**

I thank the **Hon Peter Quinlan**, Chief Justice of the Supreme Court of Western Australia, who gave this year's Patron's Address. It was a rich and most stimulating Address.



*The Hon Chief Justice Peter Quinlan delivering the 2023 Patron's Address*

I also thank him for making the Court's premises available for the AGM, for the Patron's Address and for the refreshments after the Address.

The title of the Address was: ***There is no single correct sentence: Thoughts on choice, subjectivity and the ethics of sentencing.***

It included an illustration of Plato's Allegory of the Cave.

The address may be found [here](#).

The numbers who attended in person (about 85) and online (about 40) were impressively high.



*Refreshments after the Patron's Address.*



*The Hon Chief Justice Peter Quinlan and the Hon Alan Robertson SC after the Patron's Address in the Supreme Court Building, Stirling Gardens, Perth*

### **Perth AAL dinner - 12 October 2023, 6.30 PM**

I arranged an AAL dinner in Perth for Fellows and partners at 6.30 PM, after the Address. 17 attended a very enjoyable occasion.

The venue was the Private Dining Booth at Lalla Rookh, within walking distance of the Supreme Court.

I thank **Kanaga Dharmananda SC** and his Personal Assistant **Frida Barbas** for their great help with these arrangements.

I also thank **Ms Anne Hatten**, Executive Assistant

to **the Hon Chief Justice Peter Quinlan** for her great assistance with the AGM and the refreshments after the Address.



Alan Robertson

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