

Welcome to the eighth Newsletter for 2024.

Congratulations

Please join me in congratulating Academy Fellow **Ben Doyle KC** on his appointment as a judge of the Supreme Court of South Australia, effective from 19 August 2024.

Please also congratulate Academy Fellow **Professor Ian Freckelton AO KC** who, on 25 July at a ceremony in Barcelona, was awarded the Prix Philippe Pinel, the highest honour bestowed by the International Academy of Law and Mental Health.

Nominations – last chance for 2024

31 August 2024 is almost here, the deadline for nominations by Fellows of other distinguished lawyers.

The eligibility criteria are that the person nominated is of exceptional distinction in the discipline of law and demonstrably committed to the objects of the Academy. All Fellows are encouraged to look widely and broadly to nominate candidates.

I ask that you look at candidates beyond your usual professional or personal networks and that in nominating distinguished persons from the legal profession, from legal academia and from the judiciary you consider candidates from diverse backgrounds. I note that practitioners are underrepresented amongst Academy Fellows.

To assist, a form is available [here](#)

Please forward your nominations to the AAL Secretariat aalsecretariat@academyoflaw.org.au by 31 August 2024.

The AAL expects to elect new Fellows by the end of calendar year 2024.

2024 AAL Essay Prize – 31 August 2024

The Australian Academy of Law invites essays for its 2024 Annual Essay Prize. The deadline for the submission of an essay is **31 August 2024** and this time limit is strictly observed, as the Rules governing the Annual Essay Prize make clear.

The Prize is open to anyone, wherever resident, who is studying or has studied legal subjects at a tertiary level, or who is working or has worked in a law-based occupation. There is no limit by reference to the age or seniority or experience of, or position held by, a person who may submit an entry. Accordingly, judicial officers, legal practitioners, legal academics and law students are all eligible to submit an essay.

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

The essay topic for the Prize in 2024 is as follows:

“Taking into account the decision of the High Court in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 and the response by government to it, what is the law of preventative detention in Australia: Commonwealth, State and Territory? Is it fit for purpose? If not, how and by reference to what principles should it be reformed?”

The length of the essay to be submitted is a maximum of 8,000 words (excluding the abstract).

The Rules can be accessed on the Academy’s website [here](#).

You should also refer to the Academy’s website [here](#) for further information about the actual submission of an entry as well as information on previous winners.

I am pleased to say that the following AAL Fellows have offered to be on the judging panel for 2024:

The Hon WMC Gummow AC KC (Chair), **the Hon Pamela Tate AM KC** and **the Hon Justice Stephen McDonald**.

Donations to the AAL

Please consider making a donation to the AAL's charitable purposes via the Public Fund, which has deductible gift recipient (DGR) status. Donations may be made via the website:

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

Publication of the proceedings of the joint event with the AIJA and the ALJ: *Enduring Courts in Changing Times*

This book has now been published by the AAL, following the excellent editorial work of **Dr Trischa Mann**. You can buy your copy [here](#).

The book was launched by **the Hon Tom Bathurst AC KC** on Tuesday 16 July 2024 in the Portrait Gallery, Banco Court on Level 13, Supreme Court of New South Wales, Queens Square, Sydney. **Chief Justice Alan Blow AO** also launched the book, by videolink, from Hobart.

Publication of selected papers of the Hon James Allsop AC SC

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. **Dr Ruth Higgins SC** and **Kevin Connor SC** are the editors of the volume. I am pleased to report that **Chief Justice Stephen Gageler AC** has contributed the Foreword. I thank him. We are now aiming to publish the volume a little later than expected but the proofs are ready.

This publication has been greatly subsidised by Academy Fellow **Alan Archibald KC**.

RECENT EVENTS

Thursday 1 August 2024 - Brisbane event

Banco Court, Level 3, 415 George Street, Brisbane and Online.

The Role and Running of Commissions of Inquiry

The Hon Catherine Holmes AC, **the Hon Margaret White AO** and **Emeritus Professor Peter Coaldrake**, with an introduction by **the Hon Justice Peter Applegarth AM**

The eminent speakers discussed the large topic of the role and value of commissions of inquiry in the Westminster system, and ranged over the question of who should lead an inquiry, the role of counsel assisting, the pitfalls of celebrity and relations with the media, the difficulties in offering procedural fairness within the time constraints of an inquiry, relations with the commissioning government, issues of privilege, variations across jurisdictions, getting and managing the material, and obtaining and nurturing staff.

Justice Applegarth said the event went very well with some very positive responses. There were over 100 people in person at the event and another 120 on-line.

A recording of the event will be available shortly.

Many thanks to the speakers **the Hon Catherine Holmes AC** and **the Hon Margaret White AO** and to the chair **Emeritus Professor Peter Coaldrake**.



Wednesday, 7 August 2024 Perth - In person only

Contemporary Issues for the Venerable Charitable Trust

Exchange Tower, 2 The Esplanade, Perth WA 6000

In this talk **Professor Ian Murray** presented on contemporary developments for the storied institution of the charitable trust and the new *Charitable Trusts Act 2022* (WA) and reforms in England and Wales allowing for reform of charitable trusts (applying from March 2024). Attention was given to whether we can expect the same changes in Australia, and to the Productivity Commission's review of philanthropy and implications for charitable trusts.

The Attorney General of Western Australia and Minister for Electoral Affairs, **the Hon John Quigley MLA** discussed the new Act, its ramifications and the policy considerations that motivated the legislation.

Joshua Thomson SC was the chair.

27 August 2024 - ACT event - Michael Coper Roundtable

Preserving Public Service Independence and Impartiality

Andrew Podger AO FASSA FIPAA and **John McMillan AO FAAL**

This was an in person event for Fellows only. Twenty Fellows attended and heard these two presentations. Lively questions and answers followed.



In the centre, John McMillan AO on the left and Andrew Podger AO on the right.

Preserving the integrity of the Public Service is an enduring and lively topic. This Roundtable examined recent developments, focusing on two important publications:

- A Discussion Paper released by Andrew Podger in July 2024 titled ‘Further Reform of the Australian Public Service’, endorsed by 28 former senior public servants. The Discussion Paper can be found [here](#).
- A Report by the Victorian Ombudsman published in December 2023 titled ‘Alleged Politicisation of the Public Sector’. John McMillan led the investigation as Strategic Advisor. The Report is available [here](#).

Andrew Podger is a former Australian Government Public Service Commissioner and Departmental Secretary, and is Honorary Professor of Public Policy at ANU.

John McMillan is a former Commonwealth Ombudsman and Information Commissioner and is an Emeritus Professor at ANU.

The Roundtable was chaired by **Emeritus Professor Stephen Bottomley**.

Many thanks to the Office of the **Australian Government Solicitor** for hosting the event.

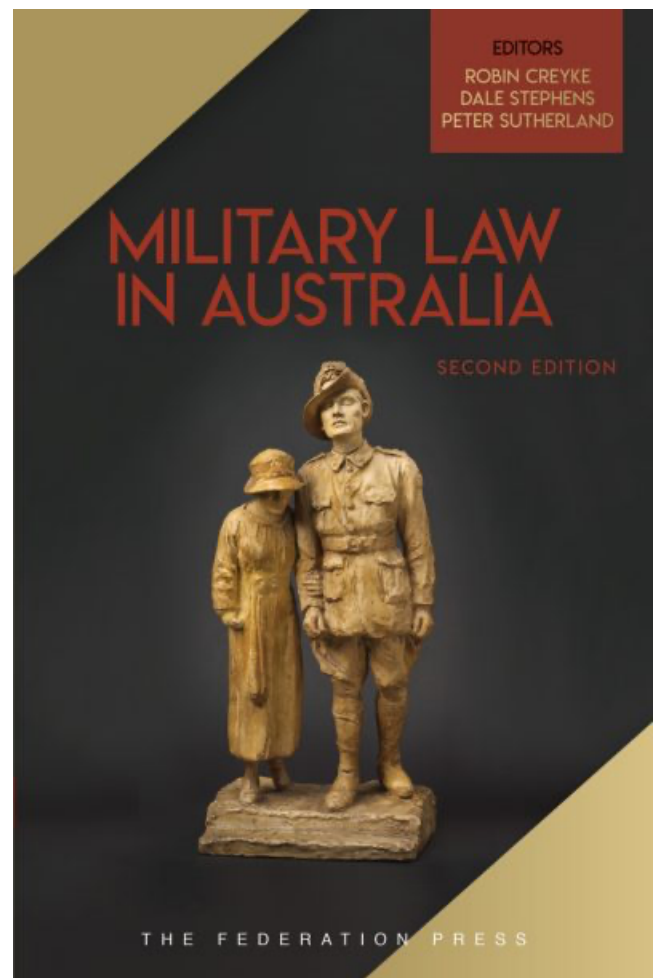
FORTHCOMING EVENTS

12 September 2024 at 5.30pm

Venue: the Moot Court in the ANU College of Law

Although not an AAL event, please note the launch of *Military Law in Australia*, 2nd edition the editors being Academy Fellows **Emeritus Professor Robin Creyke**, **Professor Dale Stephens CSM** and Visiting Fellow **Peter Sutherland**. The launch will be by **Dennis Richardson AC**.

AAL Fellows are invited to attend the Launch.



3 October 2024 - Northern Territory

The **Austin Asche** Oration, Darwin – Academy Fellow **Dr Anna Cody**, Sex Discrimination Commissioner. This annual event is co-hosted with Charles Darwin University.

Registration details will be available soon.

21 October 2024 - The Law of Privacy

Time: 5:00pm – 6:30 pm AEDT

Place: Norton Rose Fulbright Australia

Level 5, 60 Martin Place, Sydney– and online - this is a free public event and a link will be provided to registrants

In this free public event, senior lawyers from both Australia and England and Wales will be examining how English law developed a law of privacy, and the current state of Australian law and how it might be strengthened if it is thought to afford inadequate protection for privacy. The discussion will be topical in the light of the Commonwealth Attorney-General's recent statement that proposals for reform will be forthcoming later this year.

Issues to be discussed will include:

English law

- * The limits of the long-standing equitable right of action to protect confidentiality.
- * The absence of a common law right to privacy until the Naomi *Campbell* case in 2004 even though the UK had ratified the European Convention on Human Rights in March 1951.
- * The change brought about by the coming into force in October 2000 of section 6(1) *Human Rights Act 1998*, which made it unlawful for a court or public authority to act incompatibly with a Convention right.
- * The Supreme Court decision in 2016 in *PJS* revealing that the new law, unlike the old law of confidentiality, affords protection to information in the public domain.
- * The balancing act the English court now performs between the right to privacy and the public interest in freedom of expression. The Supreme Court decision in *ZXC* in 2020 grants protection to the information that a party is under investigation or has been arrested so long as they have not been charged.

Australian law

- * The uncertainty left after the High Court decision in *ABC v. Lenah Game Meats*, in which the claimants conceded that the covertly filmed information was not confidential.
- * The development of the New Zealand law of privacy in *Hosking v Runting* in 2005.
- * The Australian Law Reform Commission's reports in 2008 and 2014 recommending the introduction of a statutory tort of invasion of privacy.

Those who have kindly agreed to speak are:

The Rt. Hon. Lord Justice Warby (London): Sir Mark specialised in media law during his time at the Bar (including 12 years as a QC). A former chair of the High Court Judges' Association, he joined the Court of Appeal in February 2021. He is the joint editor of "The Law of Privacy and the Media" (OUP).

Tom Blackburn SC (London): prior to joining 5RB, the prominent London media-law chambers, Tom acted as a silk for both plaintiffs and media law defendants in Federal and State courts in Australia. He is a member of both the English and Irish Bars. He acted for Gina Rinehart when she sued Channel Nine (inter alia) for breach of privacy in proceedings subsequently settled concerning the history of the Hancock family.

Professor Emerita Barbara McDonald (Sydney): Professor at the University of Sydney Law School teaching torts, equity and contracts and Director of the Sydney Law School in Europe. She headed the Inquiry by the ALRC into Serious Invasions of Privacy in the Digital Era which reported in 2014.

Professor David Rolph (Sydney): Professor at the University of Sydney Law School, specialising in media. Author of the leading Australian text-books on Defamation and Contempt of Court noted for both their academic and practical approaches. Former editor of the Sydney Law Review, and a frequent commentator on media law issues. Author of the chapter on Lenah Game Meats in "Landmark Cases in Privacy Law" (Hart; 2023).

The event will be chaired by **Desmond Browne CBE KC**, former Chair of the Bar Council of England and Wales and formerly Joint Head of 5RB Media Law Chambers in London.

Many thanks to **Norton Rose Fulbright Australia** for hosting the event.

Please [Register here](#).

31 October 2024 – Brisbane event

Patron's address by the Hon Chief Justice Helen Bowskill, Brisbane

Her Honour is planning to speak on the role of academics' work in the development of the law, by focussing on a few key judgments or areas where courts have looked to the analysis of legal scholars to assist in the development of the law.

Registration details will be available soon.

25 November 2024 AAS/AAL Joint symposium

At a recent planning meeting with the Australian Academy of Science we fixed this now annual symposium for 25 November 2024 at the Shine Dome, Canberra. Please put this date in your diary. The topic will be:

SCIENCE IN EVIDENCE

Scientific evidence of any complexity poses a challenge for the courts.

Issues will include:

If scientists give evidence, how can they help?

What happens when scientific evidence is not challenged or is accepted by the court but is defective?

What is the court's role in an adversarial system?

The issue is under detailed consideration in the UK:

<https://www.postofficehorizoninquiry.org.uk/>

Is there scope for a standing body advising courts on the acceptability of particular science?

Is there a difference in approach needed where the science was accepted science at the time of the judgment?

The speakers will be announced soon.



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 Anna Cody, Sex Discrimination Commissioner and former Dean of the School of Law, Western Sydney University.



Alan Robertson

President

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