

Queen's Birthday Honours

It is with pleasure that I draw to the attention of Fellows that Academy Fellow the Hon Justice Arthur Emmett AO was recognised in the Order of Australia in the Queen's Birthday list for distinguished service to the judiciary and to the law, to legal scholarship and education in the field of Roman Law, to professional development and to the community.

I am sure that all members of the Academy join me in conveying warm congratulations to Arthur on this important recognition of his work and achievements.

Fellows' Discussion Forum held in Sydney on 18 May 2016

This Discussion Forum for Fellows was foreshadowed in the last Newsletter, Twenty-one members of the Academy attended the event, which was held at the offices of Minter Ellison in Sydney on Wednesday 18 May.

The Forum arose out of the deliberations of the Projects Committee on the subject of a Strategic Plan for the Academy.

Michael Murray and Nuncio D'Angelo took the running in preparing, for the forum, a discussion paper directed to the holding of a series of public events on important law-related issues.

The discussion at the meeting was interesting and lively and fully engaged the members who attended. The result has been the production by of a proposal for the holding of a series of three events, the general nature of which can be understood from the **attached** document.

The format of the events will differ as between them, and may include, a panel, a debate, and/or a "hypothetical" format.

The purpose of supplying the attached document is to encourage Fellows in other States and Territories to consider doing likewise.

I have little doubt that with the right speakers and

good publicity, such a series of public events, connected by a common theme, will prove of great interest and attract strong support in terms of audience attendance and participation.

Events in States and Territories yet to take place this year

As noted in previous Newsletters, event for 2016 have already been held in Tasmania and the ACT.

The Northern Territory

As previously noted, the annual Austin Asche Oration, which is sponsored jointly by the Academy and Charles Darwin University, is to be held on the evening of Tuesday 11 October, when the speaker will be the Hon Marilyn Warren AC, Chief Justice of Victoria.

Attached to this Newsletter is the flyer for the event, which has already had its first distribution.

The Austin Asche Oration is always a memorable event in the Academy's calendar, and all Fellows in Darwin are encouraged to attend and to invite others to do so too.

New South Wales

I am happy to inform members that Mr Justin Gleeson SC, Solicitor-General for the Commonwealth, has accepted the invitation to deliver the Academy's "Patron's Address" on the evening of Tuesday 18 October in the Law Courts Building in Sydney.

Mr Gleeson's topic will be "The Increasing Internationalisation of Australian Law". A flyer giving more details of the event will be forwarded with a future Newsletter.

In the meanwhile, Fellows, particularly those who reside in Sydney, are encouraged to enter the date in their diaries.

Queensland

As noted in the last Newsletter, the AAL event for Queensland this year will be held on Monday 24 October 2016, when the speaker will be the Hon Justice Margaret McMurdo AC, President of the Queensland Court of Appeal.

A flyer for the event will be provided with a future Newsletter.

Western Australia

I repeat the following from Newsletter [2016] No 3:

The speaker for the Western Australian event will be Professor Lawrence Watters, who has held positions of Fulbright Scholar in International Environmental Law at the University of Oslo and Visiting Fellow in Environmental Law at Queen's University in Northern Ireland. He has also previously held positions of Visiting Professor at the Environmental Law Centre at the University of Auckland, the Institute of Comparative and European Law at the University of Lausanne, the Institute of Public and International Law at the University of Oslo, the Institute of Environmental Law at the University of Wuhan, and in the Program on the Environment at the University of Washington.

He has lectured at the University of Western Australia on International Environmental Law.

Professor Watters will be visiting the University of Western Australia in August/September this year.

Professor Watters has indicated that his lecture will address climate change. A precise date for the event has yet to be fixed, but "tentatively August". Watch this space.

Victoria and South Australia

Events have yet to be planned for Victoria and South Australia.

Academy's Annual Essay Prize

As noted in previous newsletters, the topic for this year's essay prize is:

"What effect have the advances in technology (including in artificial intelligence) had upon the discipline of law in academia, the practising profession and the courts, and how may that effect change over the next ten years?"

What steps should be taken now to harness the benefits and limit the detriments of those advances?"

The closing date for expressions of intention to submit an essay is 30 June.

The closing date for actual submission of an essay is 31 August.

I am pleased to inform Fellows that the Hon Professor William Gummow AC QC has again consented to

chair the Judging Panel.

Meeting of Fellows in Cambridge on the evening of Sunday 11 September 2016

Sufficient interest has been expressed by Overseas Fellows and those resident in Australia who will be attending the Public Law Conference to be held in Cambridge in September, to make it worthwhile to hold this first ever meeting sponsored by the Academy outside Australia.

It will be held on the evening of Sunday 11 September. Further details will be provided in the next Newsletter.

Of course any Fellows who are able to be in Cambridge will also be very welcome even if they are not attending the Public Law Conference.

Please let me or Justice Robertson (Justice.Robertson@fedcourt.gov.au) know if you are in this position.

Two new directors

In addition to Justice Ralph Simmonds, whose joining the Board was noted in the last Newsletter, Russell Miller AM has also agreed to become an additional director at the Board's invitation.

The Academy's Constitution allows up to 15 Directors and we have had 13 in office. The Constitution permits the Board to appoint additional Directors to bring the number up to 15, and that is what we have done.

We warmly welcome Russell to the Board.

New member of the Membership Committee

As noted below, Professor Adrian Bradbrook has become a Fellow of the Academy and with the consent of Justice Alan Robertson, the Chair of the Membership Committee, I have invited Adrian to join that Committee, which he has agreed to do.

We also warmly welcome Adrian to that position.

New members

On behalf of the Academy and its members, I am pleased to extend a warm welcome to the following lawyers who have become Fellows at the Board's invitation since the last Newsletter:

Professor Roman Tomasic
Professor Adrian Bradbrook
Professor Richard Garnett
Mr John McLaughlin AM
Mr Robert Orr QC PSM



Kevin Lindgren
President
kevinlindgren@gmail.com

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Attachment

**Proposed Topics and Outlines for
Australian Academy of Law Events in NSW
2016-2017**

These events are suggested following the NSW Fellows' meeting on 18 May 2016, at which it was decided that various issues discussed at that meeting would be proposed for panel debates or presentations at forthcoming Academy events in NSW.

Names or titles of panel participants have been listed for each event. Fellows reading this should note that these are indicative only and none of the persons named has been contacted.

Three topics are proposed.

- 1. Ethics in the practice of law - a profession or a business?**
- 2. Ethics and the community's 'expectation gap' in what the law can achieve**
- 3. Lawyers' academic and professional pursuits - encouraged or tolerated?**

1. Ethics in the practice of law - a profession or a business?

The practice of law is said to be increasingly business-focused, with less emphasis placed upon lawyers practising as professionals based on comity, and regard for the public interest, and as model litigants, and with a lessening of the independence of lawyers from their fee paying clients. This business focus is said to be so in particular given the high levels of competition in the "business of law" and the large overheads necessary to sustain and expand a profitable legal practice.

Questions raised would include:

- what does it mean to be a "professional" today anyway?
- is being a professional always incompatible with running a business? In what ways, if any, are they inconsistent?
- is the practice of law more a commercial end in itself, rather than a means of resolving a client's needs?
- is there an apparent or real conflict in a lawyer settling a dispute that has proceeded to litigation early, between the lawyer's self-abnegation and self-interest?
- is there value in a model litigant standard?
- is the increased emphasis by regulators and the courts on the efficient conduct of litigation and on mediation an acknowledgement of this shift?
- Has a "business of law" orientation created difficulty for recognition of the duty to the court?

Suggested participants: retired/Judge/Chief Justice, Dale Boucher (Commissioner for Uniform Legal Services Regulation); Steve Marks; Gino dal Pont; legal ethicist; Ray Finkelstein; managing partner of large law firm; Nicola Roxon (APESB).

2. Ethics and the gap between what the community expects and what the law and its personnel can deliver

One of the objectives of the law is to impose an acceptable standard of conduct on those in business, enforced by regulators or private parties, and, if necessary, through the courts. Examples are found in the laws of competition, consumer protection, business misrepresentation, tax, and health and safety. Standards are set and maintained by way of regulation and enforcement, with penalties for contravention. At the same time, the law can achieve only so much. Each new economic downturn or other calamity seems to generate a further wave of law reform, seeking to prevent repetition of the relevant misconduct.

Is there a community “expectation gap”, the gap being between what the community expects and what the law and its judges, regulators and practitioners can provide? If so, does the image of, and public confidence in, the system of justice suffer as a result? How much can regulators do, and at what cost? Can people reasonably expect to be protected against their own naiveté and inattention (and, in some cases, greed)? Examples are found in investment scams, tax schemes and product claims.

The cost of access to justice is a major issue. Is the connection acknowledged between the cost of maintaining the judicial system and the cost of a lack of access to justice, including through unrepresented litigants before the courts? What are the consequences of the outsourcing of legal practice, of the pursuit of private justice, including through arbitration, algorithmic dispute resolution, and misuse of social media to achieve an outcome?

Other questions raised would include:

- how is the responsibility for addressing the cost of the justice system allocated and shared?
- how should the regulators be funded, by industry fees, successful claims, or public revenue, and how are the regulators’ costs monitored and accounted for?
- whether those charged with legal compliance are moving away from the law and enlisting other disciplines? – in business, marketing and promoting the value of a culture of compliance and integrity and the public good; emphasising the value of reputation, with the threat of economic damage if it is lost; the use of regulation by social media;
- whether there should be an increased emphasis on ethics in business;
- what can be achieved through the promotion of financial and business literacy among consumers, and the questioning and scepticism of marketing?
- whether behavioural economics offers value to the law and its regulators in “nudging” behaviour.
- should those administering the law – its judges, practitioners and teachers – resist or enlist with these other disciplines?

Suggested participants are a Judge; the Commissioner of Taxation, ACCC, Office of Fair Trading; behavioural economist; criminologist; regulatory policy lawyer; Law Council, Productivity Commissioner.

3. Is there a tension between the practice of law and the support of academic or outside pursuits?

Is there value in lawyers learning more about the law beyond their daily experience in legal practice? Does further study or research leading to higher degrees, or involvement in law reform, or writing and presenting, add to the quality of being a lawyer? Is there a discernible difference between undergraduate LLB graduates, and post-graduate JD graduates? If study beyond law does make a difference in quality, how is this quality demonstrated, and is it valued and supported? Does this value extend to firms supporting non-law interests – languages, the performing arts, sport and athletics, or charity work?

Should exchanges between legal practitioners and academics be actively encouraged, such as by academics serving as consultants to practitioners and by practitioners serving as academics, or lecturing, or undertaking higher university studies?

Questions raised might include:

- whether law firms should support their lawyers pursuing other interests, by way of fee subsidy or study leave, and placement of lawyers in areas of work related to their interests?
- are studies of disciplines related to law – economics, accounting, psychology, sociology - and disciplines unrelated to law – the arts, languages, history, science – supported or valued differently?
- are essay prizes or refereed articles lauded? Do good results and achievements lead to professional promotion and recognition? Is further study or intellectual attainment seen as being of value in any event?
- what support or recognition from firms should be given to lawyers' broader interests or talents – literature, music and drama; volunteering, charity work, sport and athletics?
- do universities offer a balance of legally relevant topics along with ones aimed at higher level legal analysis, including by way of crediting or encouraging subjects from other disciplines?
- do universities promote the need for this balance to the professions?
- what, if anything, distinguishes the more broadly educated practising lawyer or judge?

Suggested participants are a managing partner of a large [and medium] law firm, dean/senior academic, judge, law reform commissioner, lawyer with doctorate.

Note

These topics and their content come from the very useful NSW Fellows meeting on 18 May 2016, but we see them as indicative only, in that they may be varied and improved once the participants for each event are selected. At that stage, we would anticipate discussing the intent of each event and refining its content with the panel participants, and others in the Academy.

We welcome any Fellows' comments or views.

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Sixth Austin Asche Oration in Law and Governance

Young people in detention: impacts, progress and alternatives

Tuesday 11 October 2016 5 – 7 pm

Nitmiluk Lounge Level 4, Parliament House, Darwin

The Honourable Marilyn Warren AC Chief Justice of the Supreme Court of Victoria



Around 20 years ago, the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission were tasked by the then federal Attorney General Michael Lavarch with investigating the experience of children and juvenile offenders in the Australian justice system. Amongst the findings in the Commissions' 1997 report was the comment that due to their 'heightened vulnerability to physical and emotional harm and different perceptions of time' detention could result in harm to children, creating 'serious social and developmental consequences'.

At that time the report noted that a number of Australian jurisdictions, including Queensland, Western Australia and the Northern Territory, had enacted legislation adopting a punitive rather than rehabilitative approach to juvenile sentencing. By way of example, it pointed to the Northern Territory's system of mandatory imprisonment for young offenders who had committed more than one property offence. The report noted the Commissions considered such mandatory detention arrangements violated significant international and common law norms and recommended the systems be repealed. Four years later, the provisions were repealed by the Northern Territory government. Unfortunately, other jurisdictions took longer.

There has been a real development of our national awareness of the issues at stake in the detention of children. Yet despite the improvements, currently on an average day 893 young people will be in juvenile detention across Australia, an increase on the figures at the time of the Commissions' report. To continue our progress, the time is ripe to delve back into the research into the effects of detention on children, Australia's response to those issues, and the wisdom we can seek from other jurisdictions.

Chief Justice Marilyn Warren was appointed as Chief Justice of the Supreme Court of Victoria in November 2003, having been first appointed as a judge of the Court in 1998. She is the longest-serving of all current Australian Chief Justices. The Chief Justice is a graduate of Monash University. She is also the Lieutenant-Governor of Victoria.

RSVP by Friday 7 October 2016:

E CDUEvents@cdu.edu.au

T 08 8946 6554

This event may count as MCLE/CPD points.