

Welcome to the eighth Newsletter for 2022.

The Academy's website

There is a wealth of information on the AAL's website:

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

Please look there for past and future events, prizes and scholarships, news and publications and a list of directors, officeholders and committees.

Fellows should log in to get the full benefit of the website. For example, once logged in, a Fellow can communicate with another Fellow via the website.

If your details are not recorded accurately, please let the Secretariat know. Similarly, if you see any other inaccuracies or indeed have suggestions for improving the website, please notify the Secretariat:

AALSecretariat@academyoflaw.org.au

Donations to the AAL's Public Fund

It is very pleasing to note the steady number of donations to the AAL's charitable purposes via the Public Fund, which has DGR status. I note with many thanks a donation as recently as last week where a Fellow most generously gave \$2500. While most donations are by Fellows, a recent substantial gift came from a practitioner who, while not a Fellow, had attended some of the Academy's public events. The AAL is most grateful to him and to all donors.

Donations may be made via the website:

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

2022 AAL Annual Essay Prize

The deadline for submitting an essay is 31 August 2022, tomorrow. The time limit is strictly observed, as the Rules Governing the Annual Essay Prize make clear. The amount of the Prize is \$10,000.

The essay topic for the Prize in 2022 is as follows:

"What are one or more reforms that could be made to remedy deficiencies in the administration by Australian courts of the

criminal law as it applies to minorities or disadvantaged groups?"

Note: The essay should not focus on funding by government."

The distinguished judging panel will be AAL Fellows **Emeritus Professor Kate Warner AC**, **Professor The Hon William Gummow AC QC** and **Mr Tim Game SC**. I thank them for their willing participation. We expect to announce the winner of the Essay Prize in October.

Legal studies prize for secondary students

The AAL has been investigating the feasibility and logistics of a Year 11/12 Legal Studies prize, with the likely focus being on Year 12.

The idea is to award a prize to the top student in Legal Studies, however named, in each State and Territory, so eight prizes in all.

So far, we have been unable to answer a difficult question: how best to identify the top Legal Studies student in each jurisdiction.

If you can assist, please contact [Professor Gino Dal Pont](#) or me.

Forthcoming events

9 September 2022 – Causation Conference, Perth, sponsored by Herbert Smith Freehills, the Australian Academy of Law and the University of Western Australia Law School.

8.00 AM to 6.00 PM: Events will take place on Australian Western Standard Time (UTC/GMT+8)

Venue: Herbert Smith Freehills, QV.1 Building, 250 St Georges Terrace, Perth WA 6000.

I thank **Dr Elise Bant FAAL**, Professor of Private Law and Commercial Regulation, UWA, Professorial Fellow, UoM, and her team for their work on this important conference.

The following themes will be addressed:

Causation, Contract and Loss
Material Contribution and 'But For' Tests of Causation
Decision Causation
Science and Causation
Causation in the Criminal Law
Causation in Torts
Understand NESS (necessary for the sufficiency of a sufficient set)

Full day in-person registration will be \$150; remote registration \$50; and AAL Fellows will enjoy free remote registration.

The conference program is available [here](#).

Registration details are available [here](#).

15 September 2022 5.00 pm (Perth) 7.00 pm (AEST)

The Palmer Act: The Rule of Law under State Constitutions

Dr Murray Wesson and **Dr Paul Burgess** will discuss the broad theoretical basis of what the rule of law is, the status of the rule of law in Australian constitutional law; how the rule of law featured in the submissions in *Palmer v The State of Western Australia* [2021] HCA 31 and *Mineralogy v The State of Western Australia* [2021] HCA 30; and how these issues were ultimately resolved by the High Court.

The platform will be Microsoft Teams – and a link will be provided beforehand.

The flyer is [here](#). Registration is available [here](#). So far, there are 125 registrants.

22 September 2022 – NT Event

Austin Asche Oration in Law and Governance

This public oration will be held in the Grand Ballroom at the Hilton Hotel, Mitchell St, Darwin.

The topic is “Executive discretion in a time of COVID-19 – promoting, protecting and fulfilling human rights in the contemporary public health context.”

The speaker will be **Emeritus Professor Ros Croucher AM**, President of the Australian Human Rights Commission.

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

18 October 2022, joint symposium with the Australian Academy of Science

5 PM for 5:30 PM, at the Shine Dome, 9 Gordon Street, Acton ACT

The working title for the joint symposium is “**The Science and the Law of Prohibited Drugs**”.



The Shine Dome

This annual joint event is being organised with the President of the Australian Academy of Science, **Professor Chennupati Jagadish AC**. The AAL is most grateful to Professor Jagadish and the officers of the AAS for their work in putting this event together.

I am very pleased to report that **the Hon Lucy McCallum**, Chief Justice of the Australian Capital Territory, has agreed to chair the symposium.

The speaker invited by the AAS so far is:

Professor Arthur Christopoulos FAA FAHMS – <https://research.monash.edu/en/persons/arthur-christopoulos>

The speakers invited by the AAL are:

The Honourable Acting Justice Richard Refshauge, who is in charge of the ACT Drug and Alcohol Court, and **Nicholas Cowdery AM QC** who was Director of Public Prosecutions for NSW from 1994 to 2011. He is a member of the Australian Drug Law Reform Initiative (ADLaRI) at UNSW.

Refreshments will be served. There will be no registration charge for Fellows of the Academies. For non-Fellows, excluding students, the charge will be \$25, and for students the charge will be \$10. Registration for remote attendance will be free. The registration details are available [here](#).

Thursday 20 October 2022 at 4.30 PM, online and at the Banco Court, Queen Elizabeth II Courts of Law, Level 3, 415 George Street, Brisbane: the AAL's 2022 Patron's Address

This year's Patron's Address will be given by the **Hon Patrick Keane AC**, who will have retired very

recently as a Justice of the High Court of Australia. The working title of his Address is “Different perspectives of judicial power.”

Justice Tony Besanko, Deputy President of the AAL, will chair the proceedings.

Please put this date in your diary. The flyer and registration details will be available soon.

9 November 2022, Event for Fellows in London

If you will be in London on 9 November, please let me or the Secretariat know if you wish to attend this evening event. Partners are invited too. Numbers are limited, as the accompanying photograph shows.

There will be a dinner, and I am very pleased to say that **Professor Rachael Mulheron QC (Hon)**, Professor of Tort Law and Civil Justice, School of Law, Queen Mary University of London, will speak on a legal topic of current interest and importance.

I give my thanks to **Desmond Browne CBE, QC** for his great help. He has arranged for the dinner to take place at the Small Pension Room in Gray’s Inn, located next to Chancery Lane station. The address of Gray’s Inn is 8 South Square, London.



8 – 10 September 2023

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

To mark some important national legal bicentenaries, a 2½ day joint event with the Australian Law Journal (ALJ) and the Australasian Institute of Judicial

Administration (AIJA) is planned for Friday 8 – Sunday 10 September 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. **Emeritus Professor David Barker AM** and **Justice Geoff Lindsay** are on the subcommittee, as is AAL Fellow **Justice Steven Rares**, as a member of the Council and immediate past 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. **Andrew W Smith** of the New South Wales Bar has also accepted my invitation to assist with the planning.

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.

The Chief Justice of Tasmania, **the Hon Alan Blow AO**, and the Chief Justice of New South Wales, **the Hon AS Bell**, have approved the project. The Chief Justice of Australia, **the Hon Susan Kiefel AC** has also agreed to attend and address this event. A number of other distinguished speakers, judges and former judges, academics and practitioners have been invited and are willing to be involved.

This promises to be a major event, similar to the “*Future of Australian Legal Education*” conference held by the AAL and the ALJ in 2017.

Recent events

Tuesday 2 August 2022, 5.30 PM

**ACT Michael Coper Roundtable (Fellows only)
Offices of the Australian Government Solicitor, 4
National Circuit, Barton, Canberra**

I am indebted to **Professor Stephen Bottomley**, Emeritus Professor of Commercial Law, for the following account:

“On 2 August 2022, there was a Michael Coper Roundtable meeting of Fellows in Canberra who heard a presentation by **Emeritus Professor Peta Spender** (ANU Law School) on the topic “Class Actions: Controversy and Critique”. The session was

chaired by **Emeritus Professor Stephen Bottomley**. We thank the Australian Government Solicitor's office for providing the venue. The meeting was attended by fifteen Fellows, including **Chief Justice Lucy McCallum** of the ACT Supreme Court in her first Roundtable as a Fellow. Professor Spender began by posing the question: are class actions a good or bad thing? Her engaging presentation took an interdisciplinary approach, drawing on theories of regulation and legal mobilisation to assess the role of the courts and parliament in the development of class action litigation, working from the premise that class actions perform an important regulatory function. The quality of her talk was reflected in the vigorous discussion that followed."

Monday 22 August 2022 Judicial Independence Venue: Court No. 1, Federal Court of Australia, Queens Square, Sydney

The first speaker was **Judge Jose Matos**, President of the International Association of Judges. The second speaker was **Justice Jacqueline Gleeson** of the High Court of Australia.

Judge Matos has been a judge since 1990 and was appointed to the Court of Appeal of Porto, Portugal in 2012. Since 2021 he has been President of the Court of Appeal Court of Porto. He is also a Member of the Advisory Board of the UN Judicial Integrity Network. He spoke engagingly on challenges to judicial independence, including the current situations in Poland, Turkey, Hungary and Afghanistan.

Justice Gleeson considered what Australians might learn from challenges to judicial independence in foreign jurisdictions. The title of her Honour's paper was "Judicial independence and liberal democracy".

One member of the audience described the event as excellent, saying: "It raised and discussed issues of serious global significance and was an important reminder of the need to ensure we maintain judicial independence in Australia at the highest levels."

There were 238 registrants, with about 35 attending in person in Courtroom No. 1.



Judge Matos, Justice Gleeson and Alan Robertson SC

Thursday 25 August 2022 Intermediate criminal courts of appeal

**Supreme Court of South Australia, Mary Kitson
Room at 4.30 pm (Adelaide time) (ACST), 5.00
PM(AEST)**

With the support of the Chief Justices of the Supreme Courts of the States and Territories, the AAL held an event on issues arising for intermediate criminal courts of appeal. The Chief Justices, or their nominees, senior judges of the courts of appeal (criminal), spoke about common issues and exchanged views.

The eight speakers, Academy Fellows, were, in the order in which they spoke: **Quinlan CJ**, Chief Justice of Western Australia, **Beech-Jones JA**, Judge of the Court of Appeal and Chief Judge at Common Law, Supreme Court of New South Wales, **McCallum CJ**, Chief Justice of the ACT, **Livesey JA**, President of the Court of Appeal of South Australia, **Walker JA**, Court of Appeal, Supreme Court of Victoria, **Blow CJ**, Chief Justice of Tasmania, **Bowskill CJ**, Chief Justice of Queensland, and **Grant CJ**, Chief Justice of the Northern Territory.



At the table, left to right, Walker JA, Chief Justice Blow AO, Livesey JA and Alan Robertson SC. On the screen, clockwise, McCallum CJ, Quinlan CJ, Bowskill CJ and Beech-Jones CJ at CL. Grant CJ is not seen in this photo

The topics discussed were:

- The purpose and effect of separate courts of appeal
- Questions of leave/permission to appeal and appeals from interlocutory decisions
- Reasons, ex tempore judgments, written submissions
- Consistency between courts
- Litigants in person/legal aid
- New evidence/fresh evidence
- Legal method

I thank each of the speakers for their frank and informative insights. It was a rare privilege to hear these senior judges “in one place” discussing common and differing approaches.

There were 33 in the audience in Adelaide, with up to 43 online, out of a total of 122 registrants.

I am grateful to **Chief Justice Kourakis** for making the Mary Kitson Room available to the AAL for this event.

Projects for the Public Fund

A real success of the new Public Fund for 2021 and for 2022 was the expenditure of part of the charitable donations on the First Nations Scholarship project. In both years, not only was there a substantial scholarship of \$5000 awarded to a First Nations final year law student, but also individual AAL Fellows volunteered to mentor the scholar.

If you have a proposal for a scholarship or other

educational project for the Public Fund, please let me know.

If you wish to donate to the fund, the starting point is [here](#): or please contact the [Secretariat](#) or me.

Grants

The AAL is in a position to consider applications for grants, in accordance with its Constitution.

If you consider that you have a project which would warrant support by the AAL, then please get in touch with the Secretariat as soon as practicable.

For example, a suitable project might be the publication of a book, or a lecture or a seminar or a lecture or seminar series, or a research project.

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:

Professor Elizabeth Fisher, Professor of Environmental Law at Corpus Christi College and the Faculty of Law, University of Oxford (Overseas Fellow)

Professor Ana Vrdoljak, UNESCO Chair in International Law and Cultural Heritage, University of Technology, Sydney

Professor Michelle Foster, Professor and Director of the Peter McMullin Centre on Statelessness at Melbourne Law School.

Alan Robertson
President

alan.robertson.sc@gmail.com

0404850364

