

Welcome to the first Newsletter for 2023.

Congratulations

Please join me in warmly congratulating the following six Fellows on their recognition in the Australia Day Honours:

Companion (AC) in the General Division

The Hon James Allsop, Chief Justice of the Federal Court of Australia

For eminent service to the judiciary and to the law, to organisational and technological reform, to legal education, and to insolvency law.

Officers (AO) in the general division

Dr Francis Gurry

For distinguished service to intellectual property law and research, and to tertiary education.

Emeritus Professor Jill McKeough

For distinguished service to intellectual property law, to tertiary education, to law reform, and to professional organisations.

Emeritus Professor Ian Ramsay

For distinguished service to the law, to regulatory bodies, to tertiary education, and to law reform.

Member (AM) in the general Division

The Hon Pamela Tate KC

For significant service to the judiciary, to the law, and to legal education.

Order of Australia Medal (OAM) in the general division

Emerita Professor Ngaire Naffine

For service to the law, and to the legal profession.

Please also join me in congratulating **Justice Geoffrey Kennett** and **Ian Jackman SC** on their appointment to the Federal Court of Australia. Justice Kennett commenced his appointment on 19 December 2022 and Mr Jackman will commence on 6 February 2023.

Dr Andrew Lu AM has been appointed as President of the Mental Health Tribunal of Western Australia for a five-year term. Congratulations to him.

Planning for 2023

The Fellows who are members of the State and Territory based event organising committees met on 13 December to map out events proposed for 2023.

The tentative program includes:

- The legal aspects of the Voice to Parliament constitutional referendum
- Is it Better to Review or Monitor Terror Laws? The UK and Australian Positions Compared
- A reprise by **Graeme Neate AM** of his paper on the litigation surrounding Archibald Prize
- The treaty framework in Victoria
- Whistle-blower laws
- Public benefit in Australian charity law: some unresolved questions
- Juries and what may invalidate their work
- Legislative drafting
- The 2½ day joint event with the Australian Law Journal (ALJ) and the Australasian Institute of Judicial Administration (AIJA) to be held on Friday 8–Sunday 10 September 2023 (see below)

If you wish to propose a topic for an event or would like to present a paper on an issue of interest to you please contact the Secretariat or me.

Update of Wikipedia page

I have recently updated the AAL's Wikipedia page:

[Australian Academy of Law - Wikipedia](#)

Please let me or the Secretariat know of any errors.

Donations to the AAL's Public Fund

Please consider making a donation to the AAL's charitable purposes via the Public Fund, which has DGR status. The AAL is most grateful to all donors. Donations may be made via the website:

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

AAL Annual Report for 2022

The AAL's third annual report is being prepared.

If you wish to have a particular subject addressed in the Report please contact the Secretariat or me.

Once published the Report will be available on the website.

Forthcoming events

In the week beginning 6 March 2022; dates and venues to be advised: two seminars on legal aspects of The Voice referendum

Planning is advanced to hold one seminar in Sydney and one in Melbourne, with different speakers at each event. Online attendance should also be possible.

For Melbourne, **Peter Hanks KC** and **Chris Horan KC** have agreed to speak, and the **Hon Pamela Tate AM KC** has agreed to chair the event.

For Sydney, **Tom Bathurst AC KC** and **Ruth Higgins SC** have agreed to speak.

I have also invited third speakers in both Sydney and Melbourne.

As many of you will know, the referendum question, as presently proposed, is:

Do you support an alteration to the Constitution that establishes an Aboriginal and Torres Strait Islander Voice?

The words to be inserted in the Constitution are proposed to be:

1. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.

2. The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander Peoples.

3. The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers and procedures of the Aboriginal and Torres Strait Islander Voice.

The following legal issues, or some of them, are likely to be addressed at the seminars. There may be others.

- Why amend the Constitution? What is the general effect of so doing?
- What are the legal requirements for or of a referendum?
- Is the Constitution automatically altered by the proposed law being approved by the people?
- How many times is the Parliament involved in the process?
- Under the proposal, what are the words which would be added to the Constitution?
- Does the Parliament presently have power to pass legislation to establish such a body, without adding the proposed words to the Constitution?
- Does the amendment, if passed, together with legislation, ensure consultation on matters that affect Indigenous Australians?
- How much detail is usually included in an amendment to the Constitution?
- Under the amendment, if passed, would the government be required to establish a body called the Aboriginal and Torres Strait Islander Voice?
- Under the amendment, if passed, together with legislation, would the Parliament or the Executive Government be under a legal obligation to consult the Aboriginal and Torres Strait Islander Voice?
- Under the amendment, if passed, together with legislation, would the Parliament be under a

legal obligation to act on/give effect to a representation to it made by the Aboriginal and Torres Strait Islander Voice?

- Under the amendment, if passed, together with legislation, would the Executive Government be under a legal obligation to act on/give effect to a representation to it made by the Aboriginal and Torres Strait Islander Voice?
- Does “matters relating to Aboriginal and Torres Strait Islander Peoples” mean matters which particularly or specially affect such Peoples.
- What would be the role of the courts? For example, would the courts have a role in deciding whether a matter was one relating to Aboriginal and Torres Strait Islander Peoples?
- Do the words “Aboriginal and Torres Strait Islander Peoples” have a specific meaning or would it be for the courts to decide?
- Are the functions referred to in paragraph 3 to be in addition to the matter referred to in paragraph 2, or are the functions limited by reference to paragraph 2?
- Under the proposed wording, including paragraph 3, could legislation allow the States and Territories to confer powers or functions on the body to be called the Aboriginal and Torres Strait Islander Voice?
- Are both or either of the words “functions” and “powers” in paragraph 3 legally necessary or appropriate?
- Should there be an express incidental power?

If you wish to have discussed at the seminars any further legal issues arising from the proposal please let me or the Secretariat know.

22 March 2023, 5.30PM

Court 1, Federal Court of Australia, Queens Square, Sydney

The UK Independent Reviewer of Terrorism Legislation **Jonathan Hall KC** will be in Australia in March. He and **Dr James Renwick CSC SC**, Australia’s third Independent National Security Legislation Monitor, joined in a friendly debate at the Inner Temple in London in November 2022 “Is it

Better to Review or Monitor Terror Laws? The UK and Australian Positions Compared”, see:

<https://www.innertemple.org.uk/education/education-resources/social-context-of-the-law-recordings/is-it-better-to-review-or-monitor-terror-laws-the-uk-and-australian-positions-compared/>

We are very fortunate to be able to hear a reprise of that debate in Sydney.

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

Light refreshments will be available at the conclusion of the debate.

I thank the **Hon James Allsop AC**, Chief Justice of the Federal Court of Australia, for agreeing to make the courtroom available for this event.

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) will be held on Friday 8– Sunday 10 September 2023. 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**, fully support the project. The Chief Justice of Australia, the **Hon Susan Kiefel AC**, has agreed to give the opening address.

A number of distinguished speakers, judges and former judges, academics and practitioners have been invited and have agreed to participate in the conference. These speakers, commentators and chairs include:

The Hon Susan Kiefel AC, Chief Justice of Australia

The Hon Alan Blow AO, Chief Justice of Tasmania

The Hon Andrew Bell, Chief Justice of New South Wales

Justice Robert Beech-Jones, JA and Chief Justice at Common Law, Supreme Court of New South Wales

Justice Estcourt AM, Supreme Court of Tasmania

The Hon Brian Preston, Chief Judge of the NSW Land and Environment Court

Professor Liz Fisher, Professor of Environmental Law, Faculty of Law and Corpus Christi College, University of Oxford

Justice Sarah Derrington AM, Federal Court of Australia

Justice Sarah McNaughton, Supreme Court of New South Wales

The Hon Virginia Bell AC

The Hon Keith Mason AC KC

The Hon Robert Benjamin AM SC

The Hon Duncan Kerr Chev LH

Emeritus Professor the Hon Kate Warner AC

Prof Val Napoleon, Dean of Law, University of Victoria, British Columbia

Professor Lisa Ford

Emeritus Professor Bruce Kercher

Emeritus Professor Stefan Petrow

Emeritus Professor David Barker AM

Professor David Rolph

The Hon Michael McHugh AC KC

Professor Gabrielle Appleby

Professor Andrew Mowbray

Mr Malcolm Schyvens, President Tasmanian Civil & Administrative Tribunal

Professor Hamish Maxwell-Stewart

Ms Una Doyle, NSW Judicial Commission

Associate Professor Philip Chung

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

The organising committee met on 6 December to map out the shape of the conference and a draft program will be available after a further planning meeting in the New Year.



Alan Robertson

President

alan.robertson.sc@gmail.com

0404850364