

Welcome to the sixth AAL Newsletter for 2023.

Vale

With sadness I note the death earlier this month of Academy Fellow **Graeme Neate AM**.

Graeme was for 17 years a member (1995-1999) of the National Native Title Tribunal, and the President of it (1999-2013).

He was awarded a Centenary Medal for service (2003) for his presidency of the NNTT.

He was appointed a Member (AM) of the Order of Australia in the 2015 Queen's Birthday Honours, for his significant service to the law as a leading contributor to Indigenous land rights, and to legal education.

He had been the Commissioner, Queensland Industrial Relations Commission (2014-2017)

From 2017 he was the President of the ACT Civil and Administrative Tribunal.

Very recently, in May this year, and despite illness, Graeme gave a wonderful paper at an AAL seminar: *Where There's a Will There's a Lawyer: The Dobell Case and Subsequent Litigation about the Archibald Prize*.

Please join me in sending our condolences to Graeme's family.

Congratulations

Please join me in congratulating Academy Fellows the **Hon Paul Brereton AM RFD** and **Dr Ben Gauntlett** on their appointments to the new National Anti-Corruption Commission (NACC). They have been appointed Commissioner and Deputy Commissioner respectively. The NACC will commence operations on 1 July 2023.

Huge thanks

Please join me in giving huge thanks to Academy Fellow **Alan Archibald KC** who has provided the largest single donation to the AAL's Public Fund.

In a recent letter, he wrote "On behalf of the Trustee for Alan and Mary-Louise Archibald Foundation, it is with great pleasure that I confirm a grant in favour of the Australian Academy of Law for \$10,000, specifically for funding publication of the Allsop volume and any balance towards the September conference."

As to the Allsop volume and the September conference see later in this Newsletter.

I also note with gratitude that since becoming an Honorary Life Member, the **Hon Kevin Lindgren AM KC** has been making annual donations of \$400 (equivalent to the amount of the annual subscription).

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>

Welcome

Please join me in welcoming the **Hon Janine Pritchard** as a Director of the Academy. As is well known, **Justice Pritchard** is the President of the WA State Tribunal and a judge of the Court of Appeal of the Supreme Court of Western Australia. I thank her for her willingness to serve as a Director.

A list of Directors is to be found on the AAL's website:

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

AAL 2023 Essay Prize

The Australian Academy of Law is pleased to

announce its Annual Essay Prize for 2023.

The essay topic for this year's Prize is:

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 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 deadline for the submission of an essay is 31 August 2023 and this time limit is strictly observed..

This year the length of an essay to be submitted is a maximum of 8,000 words.

Please refer to the [Academy's website](#) for further information about the actual submission of an entry.

The judging panel will be announced soon.

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 has been such a strong supporter of the AAL during his term of office.

I am very grateful to **Ruth Higgins SC** and **Kevin Connor SC** who have agreed to be the editors and who have begun work on the volume.

On behalf of the AAL, I have signed a publishing contract with the Federation Press.

We are aiming to publish the volume in April 2024.

Fellowship certificates

Would any Fellow who wishes to have issued to them

a formal certificate stating that they are a Fellow please contact the Secretariat:

AALSecretariat@academyoflaw.org.au

Events for 2023

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.

AAL Annual Report for 2022

The AAL's third annual report, for the calendar year 2022, is now available on the AAL's website.

https://academyoflaw.org.au/resources/Publications/AAL-Annual_Report_2022-WEB%20with%20links.pdf

I commend it to you.

I also thank **Ms Kerrie Douglass** and **Ms Trischa Mann** for their invaluable assistance in preparing the annual report.

Forthcoming events

Michael Coper Roundtable - Fellows only ACT event

Tuesday, 27 June 2023 at 5.00 pm

The ethical obligations of government lawyers: lessons from the House of Lords Report

Academy Fellow the **Hon David Mossop**, a judge of the Supreme Court of the ACT, will examine the report of the Constitution Committee, a Select Committee of the House of Lords: *The roles of the Lord Chancellor and the Law Officers* published in January 2023.

That report discloses that the position adopted in the United Kingdom is that government lawyers should only advise that proposed government action is unlawful if there is no respectable legal argument that could be put as to its lawfulness. This report provides a catalyst for the discussion of the appropriate role of government lawyers in the Australian context.

The contention that will be advanced is that the approach adopted in the United Kingdom is fundamentally inconsistent with the rule of law and that government lawyers should advise upon what the law is rather than upon whether there is a "respectable legal argument" that could be deployed

to justify government action. The talk will suggest that, particularly in light of the revelations of the Robodebt Royal Commission, ethical guidelines should be put in place for public servants and government lawyers about the appropriate questions that lawyers should be asked and the manner in which they answer those questions.

The Chair will be: the **Hon Mary Finn FAAL**.

Registrations have now closed.

Northern Territory event: 6 July 2023 from 5-7PM
The 12th Annual Austin Asche Oration in Law and Governance, with Charles Darwin University

Venue: the Hilton Hotel, Darwin.

Academy Fellow **Mr Tony McAvoy SC** will give this year's Oration, the title of which is "Just Say "Yo"; Navigating the Path to a Post Colonial State"

The oration honours the service to the law of Academy Fellow **the Hon Austin Asche AC KC**.

Registration details will be available soon. Please put the date in your diary.

Western Australia in person event

26 July 2023 8:15 AM (WST)

The Ins and Outs of Juries

Level 8 Conference Room, Exchange Tower 2
The Esplanade, Perth

Jury trials hold a particular fascination. How juries perceive evidence, deliberate, and proceed to deliver a verdict has been the subject of considerable attention. In recent times, the Court has been called upon to consider whether the consideration of material from outside the trial process by a jury, or a jury member, means that the jury must be discharged. The legal topic of what happens when a jury considers material that is not presented properly within the confines of a trial are important matters. Scholarship surrounding how the jury deliberates and the psychology of juries is significant. This seminar addresses both the legal question as well as what the research reveals about the psychology of juries.



The **Hon Justice Vandongen** of the Court of Appeal will address the legal question,



and **Professor Margaret Bull Kovera** will address the research around the psychology of juries.

His Honour Judge Gary Massey of the District Court of Western Australia will chair the event.

A flyer with registration details will be available soon.

I am grateful to the speakers, the chair and to the WA Event Organising Committees of the Academy for putting on this event.

8 – 10 September 2023

Joint event with the Australasian Institute of Judicial Administration and the *Australian Law Journal: 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.

Please register here:

<https://www.eventbrite.com.au/e/enduring-courts-in-changing-times-conference-tickets-658365818887>



A large number of most distinguished speakers, judges and former judges, academics and practitioners have agreed to participate in the conference.

The programme is as follows:

Friday 8 September

1600 - 1700 Registration

1715 - 1730 Welcome by the **Hon Alan Robertson SC**, President, Australian Academy of Law

1730 – 1800 Opening address (public) by the **Hon Susan Kiefel AC**, Chief Justice of the High Court of Australia, Patron of the Australian Academy of Law and of the Australasian Institute of Judicial Administration

Banco Court, Supreme Court of New South Wales

1830 – 2000: Welcome reception

Venue: Government House, Sydney (for invited guests)

Saturday 9 September

0900 Registration

Welcome to country - **Uncle Michael West**, Metropolitan Aboriginal Land Council

0930 – 1100: Plenary session: Courts, legal systems and the indigenous people

Chair: The **Hon Justice Julie Ward**, President, New South Wales Court of Appeal

Professor Val Napoleon, Dean of Law, University of Victoria, British Columbia, Canada

Professor Megan Davis, Pro-Vice-Chancellor at the University of New South Wales, with **Bridget Cama**, Indigenous Law Centre

The **Hon Justice Joe Williams**, Supreme Court of

New Zealand

Ms Marcelle Burns, Associate Dean Indigenous Leadership and Engagement, Faculty of Law, UTS

1100 – 1130: Morning tea

1130 – 1230: Response by **Emeritus Professor the Honourable Kate Warner AC** and Professor Tim McCormack followed by Q&A with panellists

1230-1330: Lunch

1330 – 1530: History

Chair: **Justice Geoff Lindsay AM/Professor Mark Lunney**

Professor Lisa Ford, University of New South Wales

Emeritus Professor Bruce Kercher, Macquarie University

Emeritus Professor Stefan Petrow, University of Tasmania

Emeritus Professor David Barker AM, University of Technology Sydney

The **Hon Alan Blow AO**, Chief Justice of the Supreme Court of Tasmania

Mr Malcolm Schyvens, President Tasmanian Civil & Administrative Tribunal

1530-1545 Afternoon tea

1545-1715: Criminal law

Chair: The **Hon Virginia Bell AC**, formerly a justice of the High Court of Australia

Dr Gregory D Woods KC, author of “A History of Criminal Law in NSW”

Emeritus Professor the Honourable Kate Warner AC, formerly Dean of the Faculty of Law and Head of the School of Law, University of Tasmania

Professor Hamish Maxwell-Stewart, Professor of Heritage and Digital Humanities, University of New England

1900: Conference dinner

Speaker: The **Hon Andrew Bell**, Chief Justice of New South Wales

Venue: Sheraton on the Park Hotel, Sydney

Sunday 10 September

0930 – 1115: Judges

Finding judges - Appointment, diversity then and now

Chair: The **Hon Helen Bowskill**, Chief Justice of the Supreme Court of Queensland

The **Hon Duncan Kerr Chev LH SC**, formerly a judge of the Federal Court of Australia and President of the Administrative Appeals Tribunal, former Minister for Justice and Attorney-General

A further speaker to be confirmed

Legal education and professional development, through the years and now

The **Hon Robert Benjamin AM SC**, formerly a judge of the Family Court of Australia, he has a long-standing involvement in legal education and professional development

Ms Una Doyle, Chief Executive, Judicial Commission of New South Wales

Tenure and accountability, then and now

Professor Gabrielle Appleby, Law Faculty of University of New South Wales

1115 – 1130: Morning tea

1130 – 1315: Parallel sessions

A. Technology and digital courts

Professor Andrew Mowbray, Professor of Law and Information Technology and AustLII Co-Director, UTS

Associate Professor Philip Chung, Associate Professor, UNSW Law and Executive Director, AustLII

The **Hon Justice Robert Beech-Jones**, Judge of Appeal and Chief Judge at Common Law, Supreme Court of New South Wales

The **Hon Justice Sarah McNaughton**, judge of the Supreme Court of New South Wales

B. Specialist courts

The **Hon Brian Preston**, Chief Judge of the Land and Environment Court of New South Wales

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

Professor Brian Opeskin, Associate Dean (Research), UTS Faculty of Law, University of Technology Sydney

1315 – 1400: Lunch

1400 – 1545: Parallel sessions

A. Impartial administration of justice

The **Hon Justice Sarah Derrington AM**, Judge, Federal Court of Australia and formerly President of the Australian Law Reform Commission

The **Hon Keith Mason AC KC**, former President of the Court of Appeal of the Supreme Court of New South Wales

B. Contempt of court and the relationship between the courts and the media

Professor David Rolph, University of Sydney Law School

Commentator: The **Hon Lucy McCallum**, Chief Justice of the Supreme Court of the ACT

1545 – 1615: Closing plenary session: **Her Excellency Margaret Beazley AC KC**, Governor of New South Wales

Vote of thanks: The **Hon Francois Kunc**, judge of the Supreme Court of New South Wales and General Editor of the Australian Law Journal

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

I am very grateful to **Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales** who has graciously agreed to host the welcome reception for the conference on Friday 8 September. In addition, Her Excellency has accepted our invitation to close the conference on the afternoon of Sunday 10 September.

Thursday 14 September 2023 at 5.30pm

Venue: Banco Court, Supreme Court of Queensland, Queen Elizabeth II Courts of Law, 415 George Street in Brisbane

Necessary and Insufficient Factual Causes in the Law

A lecture by **Professor Jane Stapleton KC (Hon), FBA**

The event is in person only and is co-hosted by the

AAL, the Supreme Court Library of Queensland, the Bar Association of Queensland and the Australian Centre for Private Law of the University of Queensland.

Commentary on the lecture will be given by **the Hon Patrick Keane AC KC**.

Professor Kit Barker, Professor of Private Law, TC Beirne School of Law, The University of Queensland, will be the chair.

In response to the COVID-19 pandemic, the UK Government decided to take swingeing lock-down measures in March 2020 that resulted in billions of dollars of business interruption loss to hundreds of thousands of enterprises in that country. In a landmark 2021 decision concerning insurance cover for such losses, *The Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] AC 649; [2021] UKSC 1, a unanimous UK Supreme Court rejected 'but-for' as the exclusive test of factual cause and confirmed that the law recognises that an unnecessary and insufficient factor may be a factual cause of an indivisible loss. The talk will describe the revolutionary procedure deployed in the case, how the judges' insightful introduction of non-insurance cases and commentary was crucial to the crafting of their decision and how profound an impact it may have across the entire landscape of the law.

Please put this date in your diary. Registration details will be available soon.

October 2023 – Annual joint event with the Australian Academy of Science

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 October. She will share her expertise at the interface of science and law. The details will be sorted out over the coming weeks but

it may be that Dame Julie would give more than one lecture while she is in Australia.

Patron's Address

12 October 2023, 5PM Perth

I am very pleased to report that the **Hon Peter Quinlan**, Chief Justice of the Supreme Court of Western Australia, has kindly agreed to give this year's Patron's Address. The date is 12 October 2023 so please put that date in your diary. It is proposed that the Address be live streamed.

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

AGM 2023

In light of the date for the Patron's address, it is likely that the AGM will also be held on 12 October 2023. Please note this date.



Alan Robertson

President

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