

Welcome to the ninth AAL Newsletter for 2023.

## Congratulations

Please join me in warmly congratulating the following four Fellows on their recognition in the King's Birthday 2023 Honours List:

Officer (AO) in the General Division **Ms Kate Jenkins**: For distinguished service to human rights governance, to advancing gender equity, to the promotion of inclusivity, and to the law

Member (AM) in the General Division **Professor AJ Brown**: For significant service to the law, and to public policy, particularly to whistleblower protection.

Member (AM) in the General Division **The Honourable Justice Geoff Lindsay**: For significant service to the judiciary, the law, and to the legal profession.

Member (AM) in the General Division **Dr James Renwick CSC SC RAN**: For significant service to the law, and to national security.

My apologies for not bringing these significant awards to attention sooner.

Please also join me in congratulating **Christopher Horan KC** on his appointment to the Federal Court of Australia. His appointment was announced on 1 September and **Justice Horan** commenced in the Victoria Registry of the Court on 5 September 2023.

## Vale Professor John Stumbles

Fellows will have been saddened to hear of the death of **Professor John Stumbles** on 29 August 2023, aged 73 years.

I am indebted to **Professor Jason Harris** for the following:

“It is with a heavy heart that I send my condolences

to the family of John Stumbles. I was devastated to hear this morning of his passing this week. I feel privileged to have called John a friend and mentor. He was a warm and generous friend and one of the most brilliant legal minds I've ever come across. ... One of the (many) things that made John remarkable was the breadth and depth of his knowledge. Whatever topic I raised would lead to a discussion of the development of the law with various cases and principles discussed with clarity and erudition. I've subsequently heard lawyers (both young and those more experienced) speak about him in similar terms. Despite his brilliance and deep legal knowledge, he lacked pretension and was always available to assist with that complex legal question that had evaded others. Generations of lawyers have benefitted from his friendship and guidance. ... He was a giant of the legal profession and will be long remembered.”

## New Secretariat arrangements

The move of the AAL to the Hospital Road accommodation has been delayed by the flooding of the Queens Square Supreme Court premises on Sunday 17 September 2023. I am however pleased to report that **Ms Kylie Cooke** has this month taken up the role of the AAL's Secretariat.

Please join me in thanking **Ms Susan Jenkins** for stepping in at very short notice as the temporary Secretariat for the period from early August to 14 September.

## Donations

Please join me in thanking another Overseas Fellow for making a donation, of \$500.

Please consider making a donation to the AAL's charitable purposes via the Public Fund, which has DGR status.

Donations may be made [via the website](#):

## AAL 2023 Essay Prize

The deadline for the submission of an essay was 31 August 2023.

The essay topic for this year's Prize was:

*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.

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

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

The number of essays submitted was disappointingly low.

The judging panel, made up of the [Hon WMC Gummow AC KC](#) (Chair), the [Hon Catherine Button](#) of the Federal Court of Australia and [Emeritus Professor Peta Spender](#), ANU, is considering its decision.

## 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 was such a strong supporter of the AAL during his term of office.

I have met recently again with [Dr Ruth Higgins SC](#) and [Kevin Connor SC](#) who are the editors and who are working on the volume.

We are aiming to publish the volume in April 2024.

## Forthcoming events

### AGM 2023

12 October 2023 at 4.00 PM (AWST) Perth

7.00 PM (SYDNEY, MELBOURNE, CANBERRA, HOBART - AEDT)

6.00 PM (BRISBANE - AEST)

6.30 PM (ADELAIDE - ACDT)

5.30 PM (DARWIN -ACST)

9.00 AM (LONDON – BST)

**Venue: Judge's Conference Room, Level 14, David Malcolm Justice Centre, 28 Barrack St, Perth and livestreamed (link to be provided closer to the date).**

Please put this date and time in your diary.

I note that [Emeritus Professor Les McCrimmon](#) has said he will not stand for re-election as a Director. I thank him for his significant work for the Academy over the years and as a Director since 2011. We shall miss him.

I am pleased to report that [Justice Judith Kelly](#) of the Supreme Court of the Northern Territory has kindly agreed to be nominated in his place.

### Patron's Address

12 October 2023, 5.00 PM (WA – AWST) Perth

8.00 PM (SYDNEY, MELBOURNE, CANBERRA, HOBART - AEDT)

7.00 PM (BRISBANE - AEST)

7.30 PM (ADELAIDE - ACDT)

6.30 PM (DARWIN -ACST)

10.00 AM (LONDON – BST)

**Venue: Court 1, Supreme Court Building, Stirling Gardens, Perth and livestreamed**

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 at 5.00PM AWST so please put that date and time in your diary and [register](#).

It is proposed that the Address also 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.***

The flyer, with registration details, is [here](#).

## Perth AAL Dinner - 12 October 2023, 6.30 PM

I have arranged an AAL dinner in Perth for Fellows and partners at 6.30 PM, after the Address, for the 20 people who have emailed me to say they will be there.

The venue will be Private Dining Booth at Lalla Rookh, which is within walking distance of the Supreme Court.

If you wish to be put on a reserve list please contact me or the Secretariat.

I thank **Kanaga Dharmananda SC** and his Personal Assistant **Frida Barbas** for their great help with these arrangements.

## Monday 4 December 2023 – Annual joint event with the Australian Academy of Science (AAS)

Venue: The Shine Dome, Canberra



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 December. She will share her expertise at the interface of science and law.

Please keep this date free if you will be in Canberra on 4 December. Registration details will be available soon.

Further events at which Dame Julie will speak are likely to be on **5 December in Sydney** and **6 December in Melbourne**. Please note these dates. Further details will be available soon.

## 18 March 2024 – Melbourne

We are fortunate that the **Hon Justice Emilios Kyrou AO** has agreed to be our speaker at an AAL event in Melbourne. Justice Kyrou is the President of the AAT and a judge of the Federal Court of Australia.

From 2008 Justice Kyrou was a judge of the Supreme Court of Victoria and from 2014 until his appointment to the Federal Court in 2023 was a Judge of Appeal in that Court.

The topic will be the Commonwealth AAT and the Tribunal which is intended to replace it.

The commentator will be **Mr Albert Dinelli KC** of the Victorian Bar.

The venue will be in the CBD. It will be an evening event, at about 5.00PM. Those and other details will be notified soon but please put the date in your diary.

## 21 March 2024 – Hobart

Planning is underway to hold an AAL event in Hobart on 21 March. The speaker and format have yet to be decided, but if you will be in Hobart on that evening, please hold the date.

## Recent events

### 8 – 10 September 2023

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

This 2½ day joint event with the Australian Law Journal (**ALJ**) and the Australasian Institute of Judicial Administration (**AJJA**) was held on Friday 8–Sunday 10 September 2023 to mark some important national legal bicentenaries: 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.



A large number of most distinguished speakers, judges and former judges, academics and practitioners participated in the conference.

The programme is to be found [here](#)

Highlights of the conference were:

- The high quality of the papers and the amount of research put into them by the speakers.



- **Chief Justice Kiefel's** Opening Address, entitled "The Creation of the Supreme Courts of New South Wales and Van Diemen's Land", which may be viewed here:

<https://www.youtube.com/watch?v=jNEynv146Hs&t=55s>



*Chief Justice Susan Kiefel AC giving the Opening Address in the Banco Court*

- The reception given by the Governor of New South Wales at Government House immediately following Chief Justice Kiefel's opening address.
- The papers given at the first plenary session chaired by **Justice Julie Ward**, the topic being Courts, Legal Systems and the Indigenous People. This included an unexpected haka delivered by **Justice Joe Williams** of the Supreme Court of New Zealand.
- The papers given at the history session.
- The papers given at the criminal law session.



- The conference dinner on the evening of Saturday 9 September at the Sheraton on the Park,

especially the speech given by **Chief Justice Bell** of the Supreme Court of New South Wales, his speech being entitled "My Predecessors – A Degustation of Chief Justices".

- The sessions on the appointment of judges chaired by **Chief Justice Bowskill** of the Supreme Court of Queensland and the education of judges session, chaired by **the Hon Kevin Lindgren AM KC**.
- The paper given for the closing of the conference by the Governor of New South Wales, **Her Excellency Margaret Beazley AC KC**.
- The excellent support, including financial support given to the conference by **Chief Justice Bell**.
- The attendance of students, AAL Conference Scholarship Winners, following **Professor David Barker's** idea for the AAL to provide modest (\$250) attendance scholarships. Those students were:

**Ms Emily Heathcote**, University of Tasmania Law School

**Ms Claire Cottrell-Dormer**, Macquarie Law School

**Ms Sharleigh Crittenden**, UNSW Sydney

**Mr Kyle Fox**, UNSW Sydney

**Ms Charlotte Kuszelyk**, Newcastle School of Law and Justice

**Ms Rabia Rasul**, Macquarie Law School

**Ms Madeleine Sherbon**, UTS

**Mr Mohab Aldeen Sidaoui**, UTS

**Ms Bronwyn Williams**, University of Tasmania Law School (online)

**Mr Stan Huang**, University of Wollongong

**Ms Hannah Fraser**, University of Wollongong

**Ms Alanna Van der Veen**, Associate Lecturer, Newcastle School of Law and Justice also attended.

I mention as well, with thanks, **Professor Simon Bronitt**, Head of School and Dean at the Sydney Law School, University of Sydney, who booked and paid for 5 students to attend the conference and 5 staff to attend the dinner, and also agreed to pay for 3 of the students to attend the dinner. The law students who attended the conference were:

**Mahmoud Al Rifai**  
**Miesha Binta Noor**  
**Eden McSheffrey**  
**Sofia Mendes**  
**Aniket Sinha**

I thank **Kathryn McKenzie** of Business Angel who did excellent work organising and running the conference.

I also thank the seven Supreme Court tipstaves who provided so much administrative help. They were:

**Victoria Adams**  
**Elsher Keir**  
**Kirk Gehri**  
**Codey Swadling**  
**Lachlan White**  
**Isaac Morgan**  
**Harris Kershaw**



*Her Excellency Margaret Beazley AC KC, closing the conference*

In my view, generally attendances were low.

There were about 170 people in the Banco Court for Chief Justice Kiefel's opening address, and a further 30 online, making a total of 200.

For the other sessions, they were about 70 people in the Banco Court and about another 20 to 25 online, making a total of just under 100.

Some of the papers will be published in the *Australian Law Journal*. We are examining the feasibility of publishing the entire proceedings.

**Thursday 14 September 2023 at 5.30pm - Brisbane**

*Unnecessary and Insufficient Factual Causes in the Law*

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

This event was 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.

I thank **Justice Peter Applegarth AM** for the following:

“On 14 September the AAL co-hosted a very successful lecture by **Professor Jane Stapleton** with a commentary by **The Hon Patrick Keane AC KC**.

The event in the Banco Court in Brisbane attracted more than 220 registrants. The lecture was prompted by a recent decision of the UK Supreme Court *The Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1 that Professor Stapleton argues is likely to have a profound impact on the law. Professor Stapleton agrees that the "but for" test is not the exclusive test of factual causation. The views of the UK Supreme Court at [182]-[185] align with her scholarly work in the *Law Quarterly Review* on unnecessary causes.

**The Hon Patrick Keane** was doubtful whether the five member decision will be the last word on the topic. He questioned why such an apparently profound issue, that was not raised in the parties' written submissions, did not warrant the constitution of a larger court than five for the case.

**Professor Stapleton** also argued that the causation sections like s 11 the *Civil Liability Act 20003 (Qld)* are "not fit for purpose" in their treatment of unnecessary causes that do not pass the "but for" test. She argued that the law has long recognized cases in which an unnecessary and insufficient factual cause may be a cause in law, and that such cases should not be treated as exceptional.

The event was chaired by **Professor Kit Barker**, Professor of Private Law, TC Beirne School of Law, The University of Queensland, who facilitated debate between our distinguished speakers and engagement by the audience in a stimulating discussion.”

Alan Robertson  
President

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