

Welcome to the sixth Newsletter for 2022.

## Vale Sir Gerard Brennan AC KBE GBS QC, Life Fellow of the Australian Academy of Law



I note with much sadness the death of **Sir Gerard Brennan**, Chief Justice of Australia from 1995 to 1998.

Please see [this personal memory](#) of **Sir Gerard**, kindly written by **David Jackson AM QC**:

A ceremonial sitting of the High Court to honour **Sir Gerard** will be held in the August sittings of the Court.

## Congratulations

Please join me in warmly congratulating the following four Fellows who were appointed Member (AM) in the General Division of the Order of Australia in the Queen's Birthday Honours:

### **The Honourable Justice John Middleton AM**

For significant service to the judiciary and to the law, and to professional associations

### **The Honourable Justice Sarah Derrington AM**

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

### **Professor Peter Gerangelos AM**

For significant service to tertiary legal education, particularly to constitutional law, and to professional

organisations

### **Emeritus Professor Mary Elizabeth Hiscock AM**

For significant service to tertiary education, and to the law

## More congratulations

On 16 July 2022, **Justice Karin Emerton** will succeed **Justice Chris Maxwell AC** as President of the Court of Appeal of the Supreme Court of Victoria. Please join me in congratulating **Justice Emerton** on her appointment. Justice Emerton has served as a judge of the Court of Appeal since 10 July 2018 and a judge of the Supreme Court of Victoria from 2009. Congratulations also to **Justice Chris Maxwell** on his 17 years as President, having been appointed in July 2005.

## More good news - 2022 AAL First Nations Scholar

**The Hon Justice Rachel Pepper**, who had volunteered to act as a mentor to the 2022 AAL First Nations Scholar, **Ms Lillian Ireland**, has now been able to offer the position of tipstaff for 2023 to **Ms Ireland**, who has accepted.

## 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. 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>

## The AAL Michael Coper Memorial Prize

The 2022 Australian Law Students' Association (ALSA) Conference Paper Presentation Competition

and related Closing Gala and Awards Ceremony have been reinstated after COVID and are to be held on 12 July 2022 in Brisbane.

As set out on ALSA's [webpage](#)

“Paper Presentation involves researching and writing a legal essay and then presenting it to a panel of judges. Competitors compete individually, and the papers may be written on any legal topic.

The panel may ask questions as they see fit during and after the presentation to find the depth of knowledge and understanding the competitor has in the chosen field. Competitors are assessed on the essay and the presentation.”

The Prize is \$1,500, given by the AAL and named in memory of the late **Emeritus Professor Michael Coper**.

**Justice Sarah Derrington** has kindly agreed to judge and award the Michael Coper Memorial Prize at the Closing Gala and Awards Ceremony. This is a formal black-tie event.

**Justice Edelman** and **Professor Kit Barker** have also agreed to judge the Grand Final of the Paper Presentation. Judging is at the Federal Court in Brisbane on 12 July 2022, beginning at 1.30 pm and concluding around 2.45 pm.

## 2022 AAL Annual Essay Prize

The deadline for the submission of an essay is 31 August 2022 and getting near. The time limit is strictly observed, as the Rules Governing the Annual Essay Prize make clear. The rules for the essay prize are [here](#).

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

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 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.”*

## 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 8 prizes in all.

There is a difficult question, which we have so far been unable to answer, about 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

**7 July 2022 at 5pm in the Banco Court, Supreme Court of New South Wales:**

**The appointment of State, Territory and Federal judges (not including justices of the High Court of Australia)**

Part I will address the important question: *What is the work of judges, and what do the judges of the court in question do? What are the necessary qualities of a prospective appointee?* The appointment of Chief Justices is probably a separate question.

I am very grateful to the **Hon Tom Bathurst AC QC**, the **Hon Walter Sofranoff QC** and the **Hon Justice Jenny Blokland** who have agreed to speak.

Criteria for the appointment of judges have been put forward in the past, for example by the Australasian Institute of Judicial Administration. See [Criteria](#)

If this event proves successful in stimulating discussion, it may be appropriate later to consider the separate but related topic of appointments to tribunals.

Please register [here](#).

The flyer is [here](#).

I thank **Chief Justice Andrew Bell** for making the Banco Court available for this seminar.

**12 July 2022 in Brisbane, at the Federal Court, beginning at 1.30 pm**

**The AAL Michael Coper Memorial Prize**

Please see above, the sixth item in this Newsletter.

**Thursday 28 July 2022, 5.00 pm in Court No. 1, Federal Court of Australia, Queen's Square, Sydney:**

**The appointment of State, Territory and Federal judges (not including justices of the High Court of Australia) Part II.**

Part II will address the important and topical question: What are the systems for finding people with the necessary qualities for appointment, and how could those systems be improved? What are the best parts of those systems?

On 24 June 2022, the *Australian Financial Review* reported that the Commonwealth Attorney-General **Mr Mark Dreyfus QC** had said that bespoke panels, a different panel for each court, would be set up to consider appointments to federal courts.

“We need to work towards a judiciary that is reflective of our Australian community, and seeking a wide spread of views is more likely to achieve that outcome.”

“... I think we will ensure better appointments if we use a process that is transparent, accountable and based on merit.”

“I am not going to be specific about the identity of the people who would serve on those panels, other than to say we are looking for senior representatives of courts and tribunals and retired former holders of judicial office .... It will also include a senior official of the Attorney-General's Department.”

**Mr Ian Govey AM**, formerly Chief Executive Officer, Australian Government Solicitor, and **Professor Andrew Lynch**, Dean at UNSW Law & Justice, have agreed to speak, as has **Mr Michael Tidball**, Secretary of the NSW Department of Communities and Justice. I am very grateful to each of them.

A flyer will be available soon.

I thank **Chief Justice Allsop AO** for making Court No. 1 available for this seminar.

**Tuesday 2 August 2022**

**ACT Michael Coper Roundtable (Fellows only)**

Hear **Professor Peta Spender** speak on “Class actions in Australia: Controversy and Critique”.

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

**Monday 22 August 2022 at 5 PM in Sydney**  
**Judicial independence**

**Venue: Court No. 1, Federal Court of Australia, Queens Square, Sydney**

Hear **Judge Jose Matos**, the President of the International Association of Judges, and **Justice Jacqueline Gleeson** of the High Court of Australia speak on the topic of judicial independence.

**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 (Tribunal da Relação do Porto). He is also a Member of the Advisory Board of the Judicial Integrity Network of the United Nations. He will be speaking on challenges to judicial independence, including the current situations in Poland, Turkey, and Afghanistan.



**Justice Gleeson** will consider what Australian judges might learn from challenges to judicial independence in foreign jurisdictions.

The flyer is [here](#). Registration is [here](#).

**Thursday 25 August 2022 Intermediate criminal courts of appeal**

**Event to be based in the Supreme Court of South Australia, Courtroom 1 at 4.30 pm (Adelaide time) (ACST), 5.00 pm (AEST)**

You may recall the very successful public event the AAL held in November last year, where the heads of the courts of appeal (civil) spoke about common

issues and exchanged views:

[Issues Arising from the Operation of Intermediate Courts of Appeal \(Civil\) - Banco Court, 3/11/21 - YouTube](#)

With the support of the Chief Justices of the Supreme Courts, the AAL is holding a similar event for intermediate criminal courts of appeal. Please look out for further details.

Possible topics to be discussed include:

- The volume of cases: how may the volume of cases best be managed?
- Case management of large appeals
- Priorities in the hearing of cases.
- The management of bail applications.
- Interlocutory applications, including in appeals. eg new/fresh evidence.
- Leave applications, what are the requirements or criteria and how are such applications best managed? Are hearings always required or necessary?
- The giving of reasons.
- Whether there is a place for ex-tempore judgments?
- Written submissions, including page limits.
- Oral submissions, including time limits.
- Practices for the listing of appeals.
- Consistency within and between courts. What is the effect of s 68 of the *Judiciary Act*.
- Whether criminal appeal courts should sit outside capital cities?
- Issues specific to lower volume jurisdictions.
- Time estimates.
- Litigants in person, including referrals for pro bono assistance.
- Legal aid.

Please let me know if you have further topics you wish to have considered for inclusion.

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

8.00AM to 6.00PM: Events will take place in Australian Western Standard Time (UTC+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)!

Please put this date in your diary. Full day in-person registration will be \$150; remote registration \$50; and AAL Fellows will enjoy free remote registration.

The flyer will be available very soon.

### **22 September 2022 – NT Event**

#### **Austin Asche Oration in Law and Governance**

This public event will be held at the Hilton Hotel, Mitchell St, Darwin. The speaker will be **Emeritus Professor Ros Croucher AM**, President of the **Australian Human Rights Commission**.

Please put this date in your diary.

### **Joint event with the Australian Academy of Science**

On 14 June, **the Hon Kevin Lindgren** and I met informally with the new President of the Australian Academy of Science, **Professor Chennupati Jagadish AC**.

We expect to choose a topic of mutual interest within the next few weeks, with a view to the event taking place in September. Please let the Secretariat know if you have an idea for this annual joint seminar.

**Thursday 20 October 2022 at 4.30pm, 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 annual Patron's Address will be given by the **Hon Patrick Keane AC**, who by then 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.

### 9 November 2022, event for Fellows in London

If you are a UK based Overseas Fellow, or a Fellow who 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 many thanks to **Desmond Browne CBE, QC** for his 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, WC1R 5ET.



*The Small Pension Room, Gray’s Inn*

### 8 – 10 September 2023

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

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. **Professor David Barker** 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.

The working title is “*Enduring courts in changing times*”.

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.

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

7 Jun 2022 5:00 PM - 6:30 PM (AWST):

**The Fallibility of Memory and Fact Finding**

**Location: Central Park Theatre, 152-158 St Georges Terrace, Perth WA**

**Professor Ullrich Ecker** is a cognitive scientist studying human memory, and in particular the impact of misinformation on memory, reasoning, and behaviour. He works at the University of Western Australia's School of Psychological Science. He spoke about memory research, and some of the deficiencies in relation to human memory and some common misunderstandings about human memory.

For example, Professor Ecker explained:

We rely on our memory all the time, so it is easy to see why one would think it is generally accurate. However, memory is:

- selective and fragmentary and affected by:
- omission errors (gaps)
- source errors (e.g., who/when/where)
- transposition errors (temporal order)
- schematic errors (knowledge-based inferences)
- intrusion errors (partial or full-blown false memories)

He further explained that memory is not like a video recording, rather memory encoding is an active process:

- affected by goals and expectations
- Memory retrieval is an active, reconstructive process
- Retrieved memories are often incomplete or distorted
- Memories (or particular details of a memory) are not always retrievable even if they are in principle available

**Justice Craig Colvin** of the Federal Court offered a commentary on Professor Ecker's presentation from the perspective of a trial judge.

About 30 attended in person, and about 55 online.

It was a great event; an inspired interdisciplinary topic, an excellent paper, a very thoughtful commentary and expertly chaired.

Professor Ecker's PowerPoint slides may be accessed [here](#).

### **Monday 20 June 2022, Hobart at 5 pm Pathway to Truth-Telling and Treaty**

In 2021 **the Hon Kate Warner AC**, former Governor of Tasmania, and **Professor Tim McCormack**, the Dean of the Law School, were commissioned by the Tasmanian State Government to research and prepare a report, ultimately titled "Pathway to Truth-Telling and Treaty", released in late November of that year.

It is available here:

[Pathway to Truth-Telling and Treaty 251121.pdf \(dpac.tas.gov.au\)](#)

**Kate Warner** and **Tim McCormack** were the speakers at this event.

This was a blended event, available for attendance in person as well as streamed via Zoom. The Law Society of Tasmania permitted the use of its facilities to host the event. The event ran for about 75 minutes (including questions), followed by refreshments.

There was some good feedback from the event, with some 20-25 attending in person and over 50 on-line (75 were registered on-line). One participant wrote:

"Thanks so much for organising this seminar, it was

so interesting, so important, and so clearly presented."



*Emeritus Professor Kate Warner AC and Professor Tim McCormack*

### **Tuesday 21 June, Sydney Book launch Second AAL sponsored monograph- book launch 21 June 2022**

**Emeritus Professor David Barker AM's** book '*A Sense of Common Purpose - A History of the Australian Academy of Law*', has been published by the Federation Press.

It was launched by **Chief Justice James Allsop AO**, the event being chaired by the **Hon Justice Melissa Perry**.



*Emeritus Professor David Barker AM, the Hon Justice Melissa Perry and Chief Justice James Allsop AO*

"A Sense of Common Purpose recounts the history and development of the Australian Academy of Law from its early beginnings in 1996, through its official launch in July 2007 to the end of 2020.

Sponsored by the Academy, the book is written by David Barker who has been involved with the

organisation from the beginning. That involvement gives him a unique insight into the influence of its Fellows, Presidents and Patrons on its development.

This book will be of great interest to those concerned with the role of the Australian Academy of Law and its influence on the legal community.”

About 25 Fellows and members of the public attended in person, with 15 viewing remotely on MS Teams.

I thank Chief Justice Allsop’s for launching the book, his speech is available [here](#).

David Barker’s remarks at the launch are available [here](#).

You may order your copy of the book [here](#).

**ACT event: Thursday, 23 June 2022, 5:30pm – 7:00pm**

**Book launch for Emeritus Professor Stephen Bottomley’s book, *The Responsible Shareholder* (Edward Elgar, 2021)**

I thank the **Hon Mary Finn** FAAL, the Chair, for the following:

This public event was jointly hosted by the ANU College of Law and the Australian Academy of Law to launch **Professor Bottomley’s** latest book, titled “The Responsible Shareholder”, in which it is argued that shareholders should think of themselves and be thought of by others as having a moral and possibly a legal responsibility for the actions of companies from which they derive financial benefit.



*Chief Justice Lucy McCallum speaking at the book launch*

The event was attended by approximately 35 people, and pleasingly included many of **Professor**

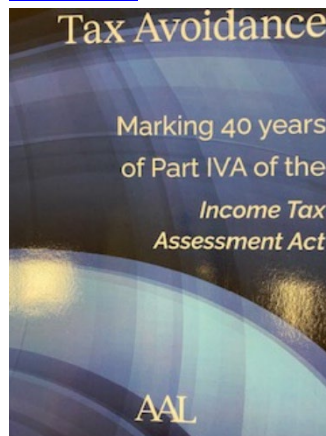
**Bottomley’s** former colleagues at the ANU College of Law (now also Emeritus Professors and Fellows of the Academy) and also members of Professor Bottomley’s family.

The Academy is particularly grateful to **Chief Justice McCallum** and to **Professor Wheeler** for their participation in the event.

## AAL monograph

This collection of the papers, commentaries and questions and answers at the AAL’s very successful event on 8 September 2021 has been published. Its title is “Tax Avoidance: Marking 40 years of Part IVA of the Income Tax Assessment Act 1936”.

If you wish to buy a copy or copies, please fill out the order form, which is [here](#), and send payment to the [Secretariat](#).



The book is 113 pages and includes the papers and the commentary. It also includes statutory materials. The price is \$20.00 (incl GST), plus postage, to cover costs.

## Second Annual Report

This report has been completed. It covers calendar year 2021.



It is here in electronic form:

[AAL Annual Report WEB \(academyoflaw.org.au\)](http://academyoflaw.org.au)

## Projects for the Public Fund

A real success of the new Public Fund for 2021 was

the expenditure of part of the charitable donations on the First Nations Scholarship project. Not only was there a substantial scholarship of \$5000 awarded to a First Nations final year law student, but also individual AAL Fellows in the various jurisdictions volunteered to mentor each of the applicants for the scholarship.

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.

## **New Fellow**

Please join me in extending a warm welcome to distinguished lawyer **the Hon Chief Justice Helen Bowskill**, Chief Justice of the Supreme Court of Queensland, who has accepted the Board's invitation to become a Fellow of the Academy.



Alan Robertson  
President

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