

Welcome to the seventh Newsletter for 2022.

Vale

I record with sadness that **Dr J M Bennett AO** died on Sunday 17 July 2022 after a short illness.

I am grateful to the **Hon Justice Geoff Lindsay** for the following:

“He was a pioneer in the study of Australian legal history. He edited *The History of the NSW Bar* and, amongst other works, he wrote *The History of the Supreme Court of NSW*, *Portraits of the Chief Justices in NSW* and *The History of Solicitors in NSW*. His last big project was a series of volumes entitled the *Lives of the Australian Chief Justices*. That project examined the lives of 19th century Chief Justices throughout the Australian colonies. Dr Bennett’s original research was recognised by Sydney University’s award of an LL.D and, first, an AM and in recent years, an AO.”

Dr Bennett’s citation for his award of Member of the Order of Australia in 2005 was “For service to the law, particularly in recording Australian legal history and as a biographer of eminent members of the legal profession.”

The citation for his award of Officer of the Order of Australia in 2020 was “For distinguished service to the law through prolific authorship of biographies of eminent members of the legal profession.”

Dr Bennett was made an Honorary Life Member of the New South Wales Bar Association in 2006.

The Academy is also saddened to report the death of **Professor Roman Tomasic**, a long-standing Fellow of the Academy and a leading figure in Australian legal education.

I am grateful to **Emeritus Professor David Barker AM** for the following:

“Roman Tomasic originally worked for the Law Foundation of New South Wales and at the University of Wisconsin-Madison in the United

States, having completed a PhD at the University of New South Wales and a SJD at Wisconsin-Madison.

He was a widely published author of both law and legal textbooks particularly those concerned with Corporate Law, Insider Trading and Insolvency.

He was also a former Chairperson, President and Life Member of the Australasian Law Teachers Association/Australasian Law Academics Association.

He first came into prominence as the initial head of the law discipline at the Canberra College of Advanced Education in 1985. He was appointed its Foundation Professor of Law in 1989 and served as inaugural Head of the Law School. He continued his association with the Law School of the University of Canberra for over 15 years, being appointed as an Emeritus Professor of Law at the end of his association with the University.

In 2000 he was appointed the Foundation Professor of Law and Dean in the newly established Victoria University Melbourne, Faculty of Business and Law, and the Head of the Sir Zelman Cowan Centre for Continuing Legal Education. In 2007 Professor Tomasic moved to the University of Durham (UK) as Professor of Corporate Law, returning to the University of South Australia in 2012 to serve for a very a short term as Dean, but then remaining there as a Professor of Law until his recent death.”

Life Fellow

On 26 July 2022, by unanimous resolution, the Board invited **Emeritus Professor David Barker AM** to become a Life Fellow of the Academy.

The Constitution provides:

Life Fellows—persons who have given distinguished service to the Academy or to the law nationally and/or internationally;

In the view of the Board, David Barker has provided exceptional and distinguished service to the

Australian Academy of Law over many years. It was David Barker who first raised the concept of the Academy at a meeting of the Council of Australian Law Deans in 1996.

David has volunteered as Secretary and Public Officer throughout the formal existence of the AAL. He has been a Director since 2011.

And of course David has now written and steered through the Federation Press his book: *A Sense of Common Purpose - A History of the Australian Academy of Law*.

David has accepted the Board's invitation. On behalf of the Academy, I congratulate David Barker and welcome him as a Life Fellow.

Further congratulations

On 25 July 2022 [Dr James Popple](#) took up his new role as the Chief Executive Officer at the Law Council of Australia. The Academy congratulates Dr Popple.

Thank you

The Academy is deeply grateful to a Fellow, who does not wish to be named publicly, for his very generous donation of \$5,000 to the Public Fund for the purpose of the First Nations Scholarship. This donation will go a long way to ensuring the future of this important Scholarship.

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>

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

Tuesday 2 August 2022, 5.30PM

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

If you will be in Canberra on 2 August, hear **Emeritus Professor Peta Spender** speak on "Class actions in Australia: Controversy and Critique".

The chair will be **Professor Stephen Bottomley**, Emeritus Professor of Commercial Law.

Please put this date in your diary. The flyer is [here](#).

If you wish to register please contact the Secretariat:

AALSecretariat@academyoflaw.org.au

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.

The flyer is [here](#).

Please register [here](#).

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 conference program is available [here](#).

Registration details will be available soon.

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.

Online Microsoft Teams – this is a free event and a link will be provided prior.

The flyer is [here](#).

**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 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.



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 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 addressed 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 spoke. Justice Blokland is also national President of the Australasian Institute of Judicial Administration.

To quote the Hon Tom Bathurst: “The key question which needs to be asked in considering the appointment of any judge is whether he or she has the qualities which inspire trust in the judiciary, something vital for the rule of law. It is critical that citizens trust the judiciary and the courts. If they do, they will engage with the legal system to address legal issues and cooperate with its processes.”

This was an excellent and informative seminar, with each of the presenters speaking from many years of thought on the issues.

The presentations should be available on the AAL's website soon.

The AAL is considering the possibility of publishing these papers, and the papers from Part II of the series on the appointment of judges, held on 28 July (see below), in the form of a monograph.



The Hon Walter Sofranoff QC (speaking) the Hon Tom Bathurst AC (to the right) and the Hon Justice Jenny Blokland (on the screen)

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

12 July 2022 at the Federal Court of Australia, Brisbane, 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 were held on 12 July 2022 in Brisbane.

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

Justice Sarah Derrington AM, **Justice Edelman** and **Professor Kit Barker** judged the Grand Final of the Paper Presentation. Justice Derrington awarded

the Michael Coper Memorial Prize at the Closing Gala and Awards Ceremony.

The winner was **Mr Ben Yates**, a student at the ANU. His paper presentation was: *Sequencing the Uluru Statement: The Deliberative Case for Treaty First*.



Justice Sarah Derrington AM and Mr Ben Yates

I thank Niamh Wilkins Vice-President (Administration), Australian Law Students' Association for doing so much to organise this very successful event.

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 addressed 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.”

The speakers were **Mr Ian Govey AM**, formerly Chief Executive Officer, Australian Government Solicitor and, before that, the Deputy Secretary, Civil Justice and Legal Services in the Attorney-General's Department for 10 years, **Mr Michael Tidball**, Secretary of the NSW Department of Communities and Justice, and **Professor Rosalind Dixon**, UNSW Faculty of Law, Director of the Gilbert and Tobin Centre for Public Law.



Mr Michael Tidball (speaking) and Mr Ian Govey AM (on the right)



Professor Rosalind Dixon

The presentations were excellent, informative and stimulating.

I thank each of the speakers for the considerable time and effort they gave to preparing and presenting their papers.

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

A senior lawyer who attended the seminars commented, “I found them riveting. I can’t recall anyone presenting such an interesting series of late.”

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 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.

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, a lecture or seminar or lecture or seminar series, or a research project.

Alan Robertson
President

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