

Welcome to the third Newsletter for 2023.

Vale

On behalf of all Fellows I note with sadness the death on 21 March of **Dr John McLaughlin AM**.

John McLaughlin was the Master in Equity and then Associate Justice of the Supreme Court of New South Wales from 1989 to 2010.

In 2009, he was conferred with an Honorary Fellowship of the University of Sydney.

After his retirement from the Court he completed his doctorate *The Immigration of Irish Lawyers to Australia in the Nineteenth Century: Causes and Consequences*.

He was made a Member of the Order of Australia in 2014 “for significant service to the judiciary and to the law, particularly through the documentation and preservation of Australian legal and constitutional history, and to the community.”

He was a Fellow of the AAL.

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, as the Rules Governing the Annual Essay Prize make clear.

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.

In past years the winning essay has been published in the *Australian Law Journal*.

AAL’s First Nations Scholarship 2023

The Australian Academy of Law again offered its First Nations Scholarship, tenable in 2023 for a First Nations final year law student studying for the LLB or JD or combined Law degree at any Australian law school, or the Diploma in Law through the NSW Law Extension Committee.

The amount of the award is \$5,000 for one year only.

Applicants may, additionally, have the opportunity to be mentored for up to a year by an AAL Fellow.

Applications have now closed, having been received through nominations by the respective Law Deans to the AAL Secretariat. Each Law Dean may nominate one Final Year First Nations law student.

The judging panel is **the Hon Alan Robertson SC**, **Judge Matthew Myers AM** and **Ms Raelene Webb KC**.

The winner will be announced soon.

Proposed Federal Judicial Commission

At its meeting on 21 March 2023, the Board decided that a small committee should be formed to make a submission to the Australian Government's Judicial Commission Taskforce. That Taskforce has asked for submissions on, amongst other things, the design of a potential complaints-handling body. If you have an interest in this subject matter and are available to be a member of this AAL committee, please contact me or the AAL Secretariat as soon as possible.

AALSecretariat@academyoflaw.org.au

Planning 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.

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 now with the publisher.

Once published, the Report will be available on the AAL's website.

Forthcoming events

Queensland Event - 27 April 2023 at 5.30 PM

Venue: the Banco Court, Supreme Court of Queensland, Brisbane

Michael McHugh's Casebook: enduring issues in defamation law

Join co-presenters the **Hon Justice Peter Applegarth AM** and **Professor David Rolph** with commentary by the **Hon Michael McHugh AC KC**.

I thank **Chief Justice Helen Bowskill** for agreeing to chair this event and for making the courtroom available.

This is a joint event with the Selden Society. A flyer and registration details will be available soon. Please join us for light refreshments after the event.

ACT Event - Wednesday 17 May 2023, an after work public event in Canberra

Venue: ACT Supreme Court ceremonial court

This event will be a reprise by **Graeme Neate AM** of his address: *Where There's a Will There's a Lawyer: The Dobell Case and Subsequent Litigation about the Archibald Prize*.

Graeme Neate has been President of the ACT Civil and Administrative Tribunal since 2017.

He will address the issues arising under Archibald's bequest adjudicated on by the court, commencing with Roper J's decision in the *Dobell Case*, interspersing slides of the art works that prompted the controversies and anecdotes drawn from his close study of the circumstances in which the controversies arose.

A flyer and registration details will be available soon. Please put the date in your diary.

I thank **Chief Justice Lucy McCallum** for making the courtroom available. I will chair the event.

Northern Territory event: The 12th Annual Austin Asche Oration in Law and Governance, with Charles Darwin University

The date of this Oration will be either 6 or 13 July 2023.

Tony McAvoy SC has agreed to give this years Oration.

Further details will be available soon.

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** of the Supreme Court of New South Wales (and General Editor of the ALJ) 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, as has **Andrew W Smith** of the New South Wales Bar.

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 Andrew Bell**, fully support the project. The Chief Justice of Australia, the **Hon Susan Kiefel AC**, has agreed to give the opening address.

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

The Hon Helen Bowskill, Chief Justice of Queensland

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

The Hon Justice Joe Williams, Supreme Court of New Zealand

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

Justice Geoff Lindsay, Supreme Court of New South Wales

Justice Stephen Estcourt AM, Supreme Court of Tasmania

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

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

Professor Megan Davies

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

Professor Tim McCormack

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

The Hon Mark Speakman

Dr Gregory D Woods KC

Professor Brian Opeskin

Associate Professor Philip Chung

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

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

A draft program will soon be available.

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.

Recent events

1 March 2023 Time: 5.00 pm - 6.30 pm AEDT

The Treaty Negotiation Framework for Victoria

The First Peoples’ Assembly of Victoria is recognised under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) as the Aboriginal Representative Body that works with the State of Victoria to establish by agreement the elements necessary to support future Treaty negotiations. On 20 October 2022, the First Peoples’ Assembly and the State of Victoria established the Treaty Negotiation Framework. The Framework provides for a process for negotiating and formalising a treaty to recognise historic wrongs and address ongoing injustices. It identifies the minimum standards with which a party must comply in order to enter into treaty negotiations.



From left to right: the Hon Justice Marck, Ms Karri Walker, the Hon Kenneth Hayne AC KC, the Hon Pamela Tate AM KC, Mr Rueben Berg.

The Australian Academy of Law was very pleased to host this well-attended event, chaired by the **Hon Pamela Tate AM KC**.

The speakers, to whom I am very grateful for their presentations, were:

The Hon Kenneth Hayne AC KC, a Professorial Fellow at the University of Melbourne and a former Justice of the High Court of Australia. He is currently a member of the Constitutional Expert Group advising the Referendum Working Group on constitutional matters relating to the referendum on The Voice.

Karri Walker, a proud Nyiyaparli woman whose family is from the East Pilbara region of Western Australia and who has grown up living on Wurundjeri Country. She is the Senior Lawyer at the First Peoples’ Assembly of Victoria where she is working on Victoria’s treaty process. Prior to this, Karri worked as a commercial lawyer at Arnold Bloch Leibler. She is the recipient of the 2023 John Monash Scholarship, and intends to pursue a Master of Laws at Columbia University.

Rueben Berg, a proud Gunditjmara man and a member of the First Peoples’ Assembly of Victoria representing the Metropolitan region. He was a founder and director of Indigenous Architecture Victoria. He was a Commissioner for the Victorian Environmental Water Holder and Chair of Westernport Water. In 2012 he was awarded the Fellowship for Indigenous Leadership.

Two seminars in March on legal aspects of The Voice referendum

Issues addressed included:

- Why amend the Constitution? What is the general effect of so doing?
- What are the legal requirements for a referendum?
- What is meant by the Executive?
- Under the proposal, what are the words which would be added to the Constitution?
- Does the Parliament presently have power to enact those words without adding the proposed words to the Constitution?
- Does the amendment, if passed, ensure consultation?
- Does the amendment, if passed, ensure consultation on matters that directly affect Indigenous Australians?

- Under the amendment, if passed, 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, would the Parliament or 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?

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?

Thursday, 9 March 2023 5.30 pm - 7.30 pm

New South Wales free public event: Legal Issues relating to the Aboriginal and Torres Strait Islander Voice

I thank **the Hon Justice Anna Mitchelmore** of the New South Wales Court of Appeal who chaired the event.

The speakers, to whom I am very grateful, were:

The Hon Robert French AC, formerly Chief Justice of the High Court of Australia;

The Hon Tom Bathurst AC KC, formerly Chief Justice of New South Wales;

Ruth Higgins SC, of the New South Wales bar and Senior Vice President of the NSW Bar Association.



From left to right: Ruth Higgins SC, the Hon Tom Bathurst AC KC, the Hon Justice Anna Mitchelmore, Alan Robertson SC and the Hon Robert French AC (on screen).

I am very grateful to **Fiona Crosbie**, Chair of Allens, for her assistance in putting on this event at Allens.

There was huge interest in this event, with over 500 registrants.

15 March 2023 6.00 pm - 7.30 pm AEDT

Victoria free public event

Legal Aspects of The Voice

Chair: **The Hon Pamela Tate AM KC**

The expert speakers, to whom I am most grateful, were:

Jill Gallagher AO, a proud Gunditjmara woman. She is the CEO of the Victorian Aboriginal Community Controlled Health Organisation (VACCHO). She was the Victorian Treaty Advancement Commissioner for two years, from 2018-2019.

Peter Hanks KC, who practises predominantly in public law – administrative law and constitutional law. He has published several books on constitutional law and administrative law.

Chris Horan KC, who specialises in public law, migration, revenue, equity and trusts. He is currently co-editor of the Commonwealth Law Reports.

Frances Gordon SC, who practises in commercial and public law, with a particular expertise in constitutional law. She is co-author of *Constitutional Law in Australia* (4th ed, 2017)



From left to right: Peter Hanks KC, the Hon Pamela Tate AM KC, Frances Gordon SC, Jill Gallagher AO, Chris Horan KC and Justice Mark Moshinsky

I thank **Pamela Tate AM KC** for her expert chairing of the event. I also thank **Justice Moshinsky** for moving the vote of thanks.

I am very grateful to AAL Fellow and Board Member **Nuncio D'Angelo** of Norton Rose Fulbright for his help in putting on this event at Norton Rose Fulbright's offices in Melbourne.

There were over 320 registrants for this event, again indicating a great level of interest in the subject.

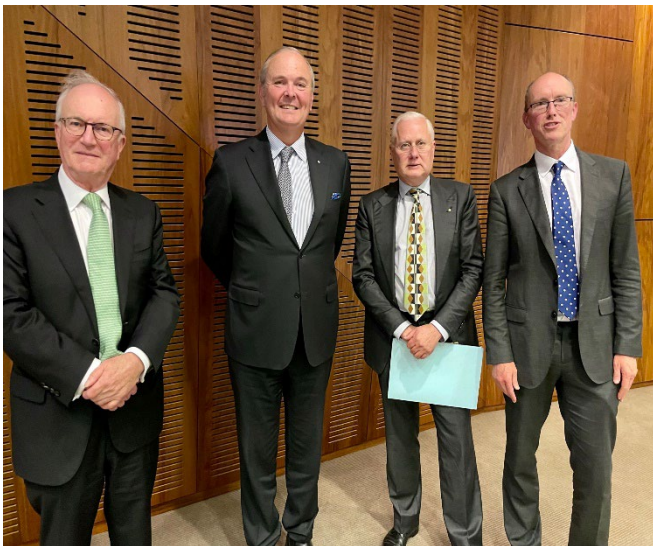
22 March 2023, 5.30PM

Court 1, Federal Court of Australia, Sydney

The UK Independent Reviewer of Terrorism Legislation **Jonathan Hall KC** was in Australia in March. He and **Dr James Renwick CSC SC**, Australia's third Independent National Security Legislation Monitor, joined in a friendly debate "Is it Better to Review or Monitor Terror Laws? The UK and Australian Positions Compared".

We were very fortunate to be able to hear in Sydney a reprise of the debate held at the Inner Temple in London in November 2022. I thank the speakers.

We were doubly fortunate in our chair and commentator, **Bret Walker AO SC** of the New South Wales Bar who was Australia's inaugural Independent National Security Legislation Monitor (2010-2014). I thank him too.



From left to right: the Hon Alan Robertson SC, Dr James Renwick CSC SC, Bret Walker AO SC and Jonathan Hall KC

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.

The event was well attended, with 35 present in person and a further 53 online.

New Fellows

Please join me in extending a warm welcome to the following distinguished lawyers who have accepted the Board's invitation to become Fellows of the Academy:

Professor Martin Davies, Admiralty Law Institute Professor of Maritime Law, Tulane University Law School, New Orleans, USA and Professorial Fellow, Melbourne Law School.

Professor Nicholas Aroney, Professor of Constitutional Law, TC Beirne School of Law, The University of Queensland.

A handwritten signature in blue ink, appearing to read 'A. Robertson'.

Alan Robertson
President

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