

Welcome to the fifth Newsletter for 2023.

## Vale

I am certain that all Fellows join me in noting with great sadness the death on 15 May of AAL Fellow **the Hon David Jackson AM KC**.

The Australian Bar Association published a fine tribute:

<https://austbar.asn.au/news-media/vale-the-hon-d-f-jackson-am-kc>

which read, in part:

“David leaves an enduring legacy on the development of the law in Australia and the craft of barrister by his lived example that the finest advocacy is the product of skill, industry, propriety, and courtesy in equal measure.”

The Chief Justice of New South Wales, **the Hon Andrew Bell**, also issued a public statement:

<https://inbrief.nswbar.asn.au/posts/21dc6bda18d1036ec37b45178e161cdb/attachment/Chief%20Justice%20Condolence%20Message.pdf>

His funeral was held on 25 May 2023 at St Mary's Cathedral, Sydney. **The Hon Susan Kiefel AC**, Chief Justice of Australia, gave the eulogy. Hundreds of people attended the Cathedral.

## Congratulations

Please join me in warmly congratulating Academy Fellow **Kristina Stern SC** on her appointment as a Judge of Appeal of the Supreme Court of New South Wales. Before joining the New South Wales bar, Justice Stern was at the London bar for 10 years, before which she lectured in law at Kings College London and completed her PhD at Cambridge University. A formal ceremony to mark Her Honour's appointment will be held in the Banco

Court on 8 June 2023 at 9.15am.

## Welcome

The transcript of the welcome of **Chief Justice Mortimer** on 17 April 2023 is now available here:

[Ceremonial Sitting of the Full Court to welcome the Honourable Justice Mortimer \(Melbourne\) \(fedcourt.gov.au\)](https://www.fedcourt.gov.au/Ceremonial%20Sitting%20of%20the%20Full%20Court%20to%20welcome%20the%20Honourable%20Justice%20Mortimer%20(Melbourne))

## 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.

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

## 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.

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](mailto: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.

## 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, 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](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

**Northern Territory event: 6 July 2023** from 5-7PM

**The 12<sup>th</sup> 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 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.

**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 **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 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 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

**Professor Mark Lunney**

**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**

**Professor Gabrielle Appleby**

**Professor Andrew Mowbray**

**Mr Malcolm Schyvens**, President, Tasmanian Civil & Administrative Tribunal

**Professor Hamish Maxwell-Stewart**

**Ms Una Doyle**, NSW Judicial Commission

**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.

**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 very 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.

## Recent events

### ACT Event - Wednesday 17 May 2023

#### Venue: ACT Supreme Court ceremonial court

This presentation was given by Academy Fellow **Graeme Neate AM**: *Where There's a Will There's a Lawyer: The Dobell Case and Subsequent Litigation about the Archibald Prize*.

Due to his poor health and his expected absence at fairly short notice, **Graeme Neate** pre-recorded the event.

He addressed the issues arising under Archibald’s bequest adjudicated on by the court, commencing with Roper J’s decision in the *Dobell Case, Attorney-General v Trustees of National Art Gallery of NSW & Anor* (1945) 62 WN (NSW) 212, 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.



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

I thank **Chief Justice Lucy McCallum** for making the courtroom available. I also thank her staff for video recording the presentation, editing it, and inserting slides to illustrate it. Without their expert assistance, the event could not have proceeded. I chaired this outstanding event.

About 35 people attended in person, with similar

number online.

The video is available here:

[https://www.youtube.com/watch?v=7CufmQ\\_Wpa4](https://www.youtube.com/watch?v=7CufmQ_Wpa4)

and on the AAL's website.

### Western Australia event – 24 May 2013 at 5 PM

*Russia's Invasion of Ukraine and International Law*

**Venue: Corrs Chambers Westgarth, Level 6, Brookfield Place Tower 2, 123 St Georges Terrace.**

**Professor Jürgen Bröhmer**, School of Law, Murdoch University and **Dr Lara Pratt**, Senior Lecturer at the University of Notre Dame were the speakers.

**Professor Erika Techera**, University of Western Australia, was the chair.



*From left to right: Professor Techera, Dr Lara Pratt and Professor Jürgen Bröhmer*

The aggression raises a number of different questions around the two principal legal topics surrounding the use of force: the “*ius ad bellum*” and the “*ius in bello*”. The former deals with the legality of using (military) force and the latter deals with the rules of war, i.e., the rules that apply in armed conflict regardless of the legality of using force as a means of conflict resolution. In particular, the following issues were discussed:

- The legal basis for the use of force under

international law

- The legality of Russia's aggression in Ukraine – the Russian position
- The conduct of the war: international humanitarian law, human rights, international crimes, international responsibility
- The impact of Russia's aggression on international law and its development
- The taking of Ukrainian children to Russia as “orphans”

I thank the two speakers, the chair, **Professor Erika Techera**, and **Kanaga Dharmananda SC** and **Professor Jürgen Bröhmer** for organising this excellent and informative event.

I thank **Corrs Chambers Westgarth** for providing the accommodation.

Some 20 people attended the seminar in person, with a further 40 participating online.

Alan Robertson

President

[alan.robertson.sc@gmail.com](mailto:alan.robertson.sc@gmail.com)

0404850364