



The Commercial
Law Association
of Australia Ltd
ACN 001 290 115

Annual Report 2012

Building a bridge
between
commerce and law

The Commercial Law Association of Australia Ltd

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Commercial Law Quarterly Editors

Professor Elisabeth Peden BA Hons, LLB Hons (Syd), PHD (Cantab) and Professor Gregory Tolhurst LLM (Syd)

Thank you to all those who have supported us throughout the year



President and Directors' Report

2012 YEAR IN REVIEW

This is my first year as President and I would like to thank Stephen Lamy and all the Directors for their support. It has been another hectic year for the CLA. Our list of seminars and presenters is too long to mention here. A comprehensive list of our activities and photos is featured in the following pages.

During 2012 Rick Porter (1) resigned as Director. Rick joined the board in February 2004 and had served as the chair of our publications committee. The CLA would like to thank Rick for all the excellent work he has undertaken on our behalf as a Director. We also welcome Farid Assaf from Banco Chambers, who was appointed as a Director during September.

The Equity & Contract Conference, held in conjunction with the Journal of Equity, was most successful. Speakers included Justice James Edelman, Hon Kevin Lindgren QC, Professor Elisabeth Peden and Professor Michael Bryan. We'd like to especially thank Associate Professor Simone Degeling (4 pictured with Cristean Yazbeck) for her assistance in organising the event and Jonathon Casson (3) from Holman Webb for sponsorship.

Due to the positive response we received from members to our 2011 inaugural CLA Mandatory CLE seminar for Practitioners, we once again offered a program in conjunction with Notre Dame University Australia. Professor Gerard Ryan was the chair with speakers including Associate Professor Sandra Lynch and Karen Rowe-Nurse, all from Notre Dame, along with Peter Punch and Janine Smith from Carroll & O'Dea.

We were also delighted to be able to offer two special annual lunchtime seminars — Jeffrey Goldberger with his contract cases review in February and Russell Miller AM with his March update on Australian Consumer Law.

Professor John Carter (4) had the distinction of attracting our largest audiences ever to his special March Monday seminars on Indemnities and Exclusion, and Termination and Liquidated Damages.

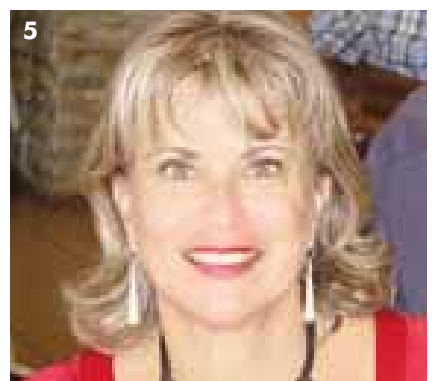
In September our Extended Warranties halfday seminar exceeded all expectations with over 50 attendees and in October our Class Actions seminar in conjunction with Slater & Gordon attracted great interest and achieved the highest attendance for any of our Class Actions seminars to date.

The mentoring program continued to be a popular member service under the stewardship of Sandra Di Bella (5), our Program Co-ordinator. Unfortunately Sandra resigned this position at the end of the year as she has decided to take the opportunity for extended travel overseas. We wish Sandra every success in her future endeavours.

The Association once again was a sponsor of the Sydney Postgraduate Law Conference 2012. The conference is one of Sydney Law School's major annual events, providing postgraduate students from across the region with the opportunity of presenting their research to academic staff from the University of Sydney Law School and other faculties within the University. The conference was held on 1 and 2 November in the New Law Building at the University of Sydney.

The Legislative Review Task Force was active with chair Norman Donato implementing a range of activities. A highly successful evening debate was held in May on the topic of 'Good Faith'. Justice Robert McDougall chaired the debate with Professor/Barrister Elisabeth Peden and Don Robertson, Partner, Herbert Smith Freehills.

The success of the CLA is largely due to the support of many individuals from those who serve on the Board, committees and special interest groups to those who volunteer as guest speakers at seminars, act as mentors, contribute papers to the *Commercial Law Quarterly*, or who support the Association by attending our seminars and events. If you are interested in participating in any of the CLA's activities please contact our CEO Max Wilson.



FINANCE. The CLA achieved a small surplus of funds in 2012 — \$4,642. To view the audited financial reports for 2012 visit the CLA members' section.

2012 Seminar Program



Procedural and evidentiary issues in ASIC civil penalty proceedings after the OneTel, Jame Hardie, Fortescue and Centro cases

17 February, 2012
Alister Abadee



Mandatory CLE seminar

24 February, 2012
Professor Gerard Ryan,
Associate Professor Sandra Lynch, Peter Punch,
Janine Smith, Karen Rowe-Nurse



Key contract cases: 2011 in review

24 February, 2012
Jeffrey Goldberger



Carter on Mondays: Indemnities and Exclusion Clauses

12 March, 2012
Professor John Carter



Protecting IP in the digital age

16 March, 2012
Martin Leeuwangh, Dianne Beer,
Connie Merlino, Gary Lo, Sarah Lux



The ACCC, lawyers and consumers

16 March, 2012
Russell Miller AM

Carter on Mondays: Termination and Liquidated Damages

19 March, 2012

Professor John Carter



Equity & Contract. In association with the *Journal of Equity*

30 March, 2012

Hon Kevin Lindgren AM QC; Justice James Edelman, Professor Michael Bryan, Professor Elisabeth Peden



Why are SMSFs growing so fast? Are they for you?

14 May, 2012

Andrew Lowe, John Walker



Should the principles of good faith be enshrined in Australian legislation?

23 May, 2012

Justice Robert McDougall, Dr John Keogh, Donald Robertson, Professor Elisabeth Peden



A price on carbon: what it means to you, your firm, your clients

20 July, 2012

Bruce Thomas, Robert Wilcher, Peter Hawkes, Iain Smale, Ben Stuart

'Planning is critical. Being aware of current trends, listening to members, reacting to the need for information on new legislation and attracting leading practitioners as guest speakers are key challenges.' Max Wilson, CEO



Insolvency and Reconstruction

14 September, 2012

Richard Fisher AM, Sylvia Wiggins, Doug Whelan, Daren Armstrong,
Robert Newlinds SC, Paul Burges



Class actions in Australia: the latest experience and views

26 October, 2012

David Bennett AC QC, Toby Borgeest, Moira Saville, Wayne Attrill,
Professor Vicki Waye, Vicky Antzoulatos, Van Moulis



Australian Consumer Law and Extended Warranties

9 November, 2012

Christopher Hodgekiss SC, Professor Stephen Corones, Geoff Williams, Carolyn Oddie, Daniel Tirado,



How to draft and litigate liquidated damages clauses following *Andrews v ANZ*

9 November, 2012

Professor Elisabeth Peden, Carmel Lee

'We aim to provide a quality seminar program that covers a diversity of topics and at a level that appeals to our member base.' Cristean Yazbeck, President

Seen at the seminars





Board of Directors as at December 31, 2012



Cristean Yazbeck BComm (Hons), LLB (Hons) (Syd), GradDipLegPrac, MCLA

Cristean Yazbeck joined the Board in 2011. Cristean is a senior lawyer specialising in taxation, superannuation, financial services and commercial law. He was admitted to practice in 2006. Cristean's legal career has seen him work for a Big 4 accounting firm (Ernst & Young), in-house legal (CBA, Perpetual), and private legal practice (HWL Ebsworth). Cristean has written on tax and superannuation-related issues. In addition to the Commercial Law Association, Cristean is closely involved with a number of financial services associations, including ASFA and the Financial Services Council. Cristean is also a Justice of the Peace, having been appointed to the role in 2002.



Jenny Wily LLB (Hons) BCL (Hons), FCLA

Jenny practises on her own account at Wily Legal and Consulting Pty Limited, having formerly been a Partner with Deacons for a number of years. In her current practice, Jenny provides legal and consulting services primarily in the areas of funds management, AFS licensing, compliance and corporate structuring and governance. In addition to being a Director of the Commercial Law Association, Jenny is also on the board of a number of public companies that provide financial services.



Stephen Lamy BA, LLM, FCLA

Stephen became President of the CLA in February, 2006. He was admitted as solicitor in NSW in 1974 and England and Wales 1979. He had a variety of private practice positions involving commercial and revenue work before moving in-house in 1990. Stephen's corporate career has included roles with AMP and St George Bank and from 2002 with CBA. He has had 20 years in funds management with emphasis on superannuation. Stephen has a strong interest in legal education and developments in areas outside of his specialisation. Stephen joined the CLA's board of directors in August 2002.



Norman Donato BEc, LLB, LLM, FCLA

Norman recently joined Bartier Perry as Executive Lawyers. Before that he was a partner at Makinson & d'Apice Lawyers. He has practised since his admission in 1987 and his qualifications include Bachelor degrees in Law and Economics, as well as a Master of Laws. Norman has extensive corporate and finance experience obtained from advising national and international clients including government bodies, major banks, public companies, SMEs and entrepreneurs. He has presented many papers on corporate finance, ecommerce, IT and IP issues at various industry conferences. Norman was the national practice leader for the Ecommerce and Intellectual Property group of a national law firm. He has specialist knowledge of corporate finance and advisory, retailing, and communications and media industries. He is associated with a number of industry bodies. Norman is the Chair of the Legislative Review Task Force and was appointed to the board in May 2008.



Anthony J Dreise Dip Law, FCLA

Tony is a consultant lawyer in private practice with wide experience in government and corporate regulation. He was admitted to practice in 1977. For many years he was General Counsel of the Sydney Futures Exchange (now part of ASX). Prior to joining the futures exchange, Tony held senior legal positions with the NSW Corporate Affairs Commission (now ASIC). He was a long time task force member for Finsia Education/Kaplan (previously the Securities Institute of Australia) in its financial markets courses and has lectured on financial market and regulatory topics. He is a former Chairman of the Legislative Review Task Force of the CLA and is a longstanding member of the CLA.



Stephen McMahon BComm, FCA, F Fin, F ICAA, FCLA

Stephen is a Chartered Accountant and a fellow of the Financial Services Institute of Australia (Finsia) and the Institute of Chartered Accountants Australia (ICAA). He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, business valuations, investigating and solving complex financial, and business issues which require the application of a combination of accounting and detective skills. Stephen's interests are in the Commercial Law and Finance sectors. He was appointed as a Director to the CLA in 1998 and currently serves as the Membership and Marketing Chairman.



Jane Ann Gray BA (Hons), LLB (Hons), LLM (Harvard), FCLA

Jane Ann is Special Counsel within the Corporate Advisory, M & A and Equity Capital Markets group at Clifford Chance. She was admitted as a solicitor in NSW in 1979. She practised for 20 years as a corporate and commercial partner, and joined Clifford Chance through its merger with Chang Pistilli & Simmons in 2011. Jane Ann's principal areas of practice are mergers and acquisitions including under Chapter 6 of the Corporations Act; business structuring and restructuring including schemes of arrangement; capital raisings; corporate regulation including for listed entities; and the legal aspects of the tax consolidations regime, in particular, tax sharing and funding arrangements.



Edmund Finnane BA and LLB (ANU), LLM (Corporate & Commercial Law) (UNSW), FCLA

Edmund Finnane has practised as a barrister in NSW since 1997. He has a wide ranging practice in commercial law and equity. Edmund is particularly interested in corporate insolvency, mortgage law, equity and contract law. He is a director of the CLA and is also the Deputy Chairman of that Association's Legislative Review Task Force. Edmund has delivered seminars to members of the legal profession on areas including commercial damages, equity, insolvency law and de facto relationships law. He is co-author of two books: *Equity Practice and Precedents* (Finnane, Newton and Wood, Thomson Lawbook Co, Sydney, 2008) and *Pleading Precedents* (Azize, El Khoury and Finnane [6th Ed], Thomson Reuters, Sydney, 2009). He is the author of the annotations in the Thomson Reuters annual and online publication, *Corporations Legislation with Annotations*.



James Biady BEc, LLB, Accredited Specialist Business Law, FCLA

Jim Biady is an experienced commercial lawyer who has practiced for over 25 years. He advises clients in a number of specialty areas including structuring of entities, employment law, commercial litigation, dispute resolution, sale & purchases of businesses, sale & purchases of property as well as commercial leasing. He focuses on understanding each client's business and finding appropriate commercial solutions. Jim is a Business Law Specialist accredited by the Law Society of New South Wales.



Farid Assaf BA (Hons) and LLB (UNSW), FCLA

Farid Assaf is a barrister at Banco Chambers. He was called to the bar in July 2000 and specialises in corporations, insolvency, banking and general commercial law. Farid acts for a wide variety of commercial clients and appears mainly in the Supreme Court of NSW and the Federal Court of Australia. He is the author of *Statutory Demands and Winding Up in Insolvency* (2nd edition) published by LexisNexis Butterworths (2012). Farid is also the lead author of a forthcoming new book titled *Voidable Transactions in Australian Company Law* due to be published by LexisNexis Butterworths in late 2013. He is a member of the Insolvency Practitioners Association and a Fellow of the Commercial Law Association of Australia Ltd.

Standing Committees as at December 31, 2012

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon FCLA
Max Wilson FCLA

An important element of the Association's image is to ensure that marketing assists in attracting Legal practitioners and those involved in commerce to our Association's activities. By promoting our seminar programs and other programs we aim to encourage people to join the Association. Listening to our members and reacting to their needs is also very important in maintaining membership. During 2012 our discussion group on LinkedIn grew to 437 members.

PUBLICATIONS COMMITTEE

Tony Dreise FCLA, Chair
Professor Elisabeth Peden
Professor Gregory Tolhurst
Max Wilson FCLA

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 26 years and is a highly respected reference material for those involved with the practice of law. All manuscripts submitted to the *Quarterly* are refereed prior to acceptance for publication. The journal contains articles and news about commercial law issues from around Australia and overseas. One of the main objectives of the Commercial Law Association is to make business people aware of the constant changes to the law and make law-makers aware of the constantly changing business environment. Through the publication of the *Commercial Law Quarterly*, the Association aims to:

- encourage members of the commercial and corporate community and the legal profession to examine and consider jointly commercial law usages and practices;
- disseminate information on concerning new legislation proposed or enacted by the Parliaments of Australia or overseas relating to commercial or corporate law usages and practices.

The Editors welcome the submission of notes to cases and issues of law reform and longer articles. Submissions should be sent to Professor Gregory Tolhurst, Faculty of Law F10, Eastern Avenue, University of Sydney, NSW 2006 or DX 983 Sydney.

NEW GRADUATES PROGRAM

Sandra Di Bella, Co-ordinator
Max Wilson FCLA

Mentoring program was launched in June 2007 and is targeted at young lawyers who desire a mentoring experience outside their firm/practice area. The CLA's mentoring program was designed not to compete with any members' existing programs. The program is limited to pairing 10 mentors and 10 mentees each year. In this way the Association is able to provide the one on one support and coaching that ensures mentees and mentors get the most out of the relationship. Sandra Di Bella joined the program as Co-ordinator in 2010, but resigned her position in December 2012.



Legislative Review Task Force as at December 31, 2012

The three key roles of the LRTF are to

- Review, and make submissions to appropriate bodies, on legislation and legislative proposals and legal issues of interest to the commercial and legal community.
- Encourage an interest in legal and legislative issues of a commercial nature.
- Promote the practical and principled application of the law in the commercial sphere.

Chair

Norman Donato FCLA, Executive Lawyer, Bartier Perry

Deputy Chair

Edmund Finnane FCLA, Barrister-at-Law, Wentworth Selborne Chambers

Secretary

Andrew Macpherson MCLA, Macpherson Greenleaf Lawyers

Members

Gavin Bartier FCLA, Acting Director, Legislation, Legislation and Policy Branch, Department of Lands NSW

Michael Bell FCLA, Procurement Manager, Sinclair Knight Merz, Western Australia

Dr Hung Chu FCLA, Director, Lonergan Edwards and Associates

Brian Gillard FCLA, Director, Gillard Consulting Lawyers

Jason Harris MCLA, Senior Lecturer, Law Faculty, UTS

Bill Henty FCLA, Solicitor, W J Henty & Co

Dr John Keogh FCLA, Barrister-at-Law, Culwulla Chambers

Nicholas Newton FCLA, Barrister-at-Law, 13 Wentworth Selborne Chambers

Stephen Phillips MCLA, General Manager, Customers and Commercial Development, Company Secretary, Hunter Water Corporation

Alison Silink MCLA, Barrister and Lecturer, Communications Law Centre, UTS

Allen CM Wong FCLA, Vice Chairman, Hong Kong Food Science and Technology Association

Simon Ansell MCLA, Gillard Consulting Lawyers