



The Commercial Law Association of Australia Ltd  
ACN 001 290 115

## Annual Report 2015

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Celebrating our 50th Anniversary



# The Commercial Law Association of Australia Ltd

Website: [www.cla.org.au](http://www.cla.org.au)

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## Board of Directors as at 31 December, 2015

Norman Donato, President

Stephen McMahon

Jenny Wily, Vice-president

Edmund Finnane

Stephen Lamy, Treasurer

Jane Ann Gray

James Biady

Verity McWilliam

## Registered Office

7th Floor, 55 York Street, Sydney NSW 2000

## Chief Executive Officer

Max Wilson BA, Grad Cert Management Communication, AFAIM, FCLA. Email: [maxwilson@cla.org.au](mailto:maxwilson@cla.org.au)

## Member Services

Elizabeth Wilson. Email: [memberservices@cla.org.au](mailto:memberservices@cla.org.au)

## 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

## 2015: YEAR IN REVIEW

It is my pleasure to present this record of activities on behalf of the Directors. 2015 was very special with the Association celebrating its 50th anniversary. Much has changed over time, but many of the original objectives of CLA remain the same. From the outset the CLA built a reputation for continuing legal education in commercial law. The Association providing a link between law, commerce and industry.

In our 50th anniversary year we had a year-long program of seminars and events which reinforced our strong commitment to focusing on legal education in commercial law

A major highlight of the year was our conference and dinner — '50 years of Commercial Law' was the theme of the event.

The Association was greatly honoured to have The Hon T F Bathurst AC (1), Chief Justice of New South Wales, provide the opening address at our conference.

We were also delighted to gain the support of many eminent Judges and legal practitioners who spoke at our conference including Dr Robert Austin, The Hon Justice Patricia Bergin, the Hon Justice Fabian Gleeson, Christopher Hodgekiss SC, Peter Brereton SC and Emeritus Professor John Carter, who provided the closing address.

The conference dinner also provided a great opportunity to reflect on some of the background and history of the CLA over the past 50 years. Hosted by ABC radio and television presenter and former lawyer James O'Loughlin (2) the night was most memorable. The Hon Justice Patricia Bergin (3) provided a most stirring toast to the Association's role both past and present. James O'Loughlin's commentary, particularly his insights into being a student of Professor Carter and his time as a lawyer, provided much merriment.

We would like to thank to our organising committee — Emeritus Professor John Carter, Dr Elisabeth Peden, Steve McMahon and Max Wilson — who were largely responsible for putting together the conference program and dinner.

The CLA has utilised the NSW State Library as a base for many of our seminars and conferences over the years. I'd like to acknowledge the management and staff of the library and caterers Laissez Faire for their continued support. The special effort that they made to ensure that our anniversary events ran smoothly exceeded expectations and was greatly appreciated.

As we march further towards a digital future, it is also important to maintain our tradition of quality seminars and conferences. A commitment to providing high-level continuing education through our seminar and events program remains central to the continued success of the Association.

In 2015 as well as our major conference and dinner we hosted a large number of seminars and events. A special thank you to all our seminar guest speakers and contributors to the *Commercial Law Quarterly*. Without your support and commitment we would not be able to maintain our services to members.

Increasing new membership and maintaining the interest of our existing members remains a critical goal for the Association. During the year we launched a new membership promotion. As an incentive to renew membership or join the CLA, we gave away two mid-week getaways at resorts owned by Bannisters. Our June prize of a stay at the Balmain Apartments was won by David Blackburn from Addisons. The December prize of a getaway at Bannisters by the Sea in Mollymook was won by Michael Amerena from the Inns of Court in Brisbane. Thank you to Bannisters for donating the prizes.

We were also delighted to offer the inaugural *Commercial Law Quarterly* Editor's Prize of \$1,000. It was won by Amy Munro (4) from 11 Wentworth Chambers with a paper titled 'Contracts 'subject to finance'' (CLQ Vol28 No1).

Finally, the CLA had a very successful year financially with surplus of funds of \$48,095 in 2015.

We are always interested in hearing feedback from our members on topics or speakers they would like to see in our seminar programs. During 2016 we hope to provide more options via electronic means for members to provide feedback. I look forward to seeing you at future events and I take this opportunity to thank all Board Directors for their contribution during the year.

Norman Donato, President



# 2015 Seminar Program

**MASTER  
CLASS**



**Contract law in the cases: 2014 in review**

13 February, 2015

Justice Steven Rares, Jeffrey Goldberger

**MASTER  
CLASS**



**PPSA: beyond the basics**

13 February, 2015

Paul Rogerson, Bruce Whittaker, Tony Coburn, Nicholas Mirzai



**Property and Planning Law Conference**

6 March, 2015

Justice Nicola Pain, John Atkin, Fenja Berglund, Michael Staunton, Jacinta Reid,  
Andrew Pickles, Anne Hemmings, Dr Steven Berveling, Janet McKelvey, Natasha Hammond



**Mandatory CLE seminar**

27 March 2015

Professor Gerard Ryan, Professor Sandra Lynch, Prasan Ulluwishewa, Robert Pelletier.

Proudly supported by the University of Notre Dame Australia

**LUNCHTIME  
SEMINAR**



**Australian Consumer Law update**

27 March, 2015  
Russell Miller AM

**CARTER ON  
MONDAYS**



**Reasonable endeavours in contract construction**

18 May, 2015  
Emeritus Professor John Carter

**JUNE JUDGES  
SERIES**



**Matters relating to the Commercial List**

12 June, 2015  
Justice David Hammerschlag



**Recent developments in Corporations Law**

19 June, 2015  
Justice Ashley Black



**The construction of contracts: the High Court's approach**

26 June, 2015  
Justice Francois Kunc standing in for Justice Robert MacDougall



**50 years of commercial law**

31 July, 2015

Norman Donato, The Hon T F Bathurst AC, Dr Robert Austin, The Hon Justice P A Bergin,  
Christopher Hodgekiss SC, Peter Brereton SC, The Hon Justice Fabian Gleeson, Emeritus Professor John Carter



**Class actions**

18 September, 2015

Michael Lee SC, Odette McDonald, Belinda Thompson, Clive Bowman, Tim Finney, Ben Phi, Jason Betts

**CARTER ON MONDAYS**



**Implied terms in contracts**

9 November, 2015

Emeritus Professor John Carter

# Seen at the 50th Anniversary conference & dinner







## Current Board of Directors



### **Norman Donato BEc, LLB, LLM, FCLA**

Norman is an executive lawyer at Bartier Perry. He has practised since his admission in 1987 in corporate finance and corporate commercial law. 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 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.



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

Jenny is a solicitor in practice on her own account at Wily Legal and Consulting Pty Limited, having formerly been a Partner with Norton Rose 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. Jenny has been a Director of the CLA since July 2000.



### **Stephen Lamy BA, LLM, FCLA**

Stephen 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 more than 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. He became President of the CLA in 2006 and served in this capacity for five years.



### **Stephen McMahon BComm, FCA, F Fin, FCLA**

Stephen is a Chartered Accountant and a fellow of the Financial Services Institute of Australia (Finsia) and the Institute of Chartered Accountants Australia. He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, business valuations and due diligence along with 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.



### **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*.



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

Jane Ann Gray is Special Counsel within the Corporate 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 first at Baker & McKenzie then at Atankovic Hartnell, KPMG Legal and Middletons before joining Chang Pistilli & Simmons in July 2006. Chang Pistilli & Simmons merged with Clifford Chance in 2011. Jane Ann's principal areas of practice are mergers and acquisitions including under Chapter 6 of the Corporate Act; business structuring and restructuring including schemes of arrangement; capital raisings; corporate regulation including for listed entities and commercial contracts.



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

Jim Biady is an experienced commercial lawyer who has practiced for over 30 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, wills and estates, as well as commercial leasing. He focuses on understanding each client's business and finding appropriate effective commercial solutions. Jim is a Business Law Specialist accredited by the Law Society of New South Wales.



### **Verity McWilliam BA (Hons I), LLB (ANU), Master of International Law (USyd)**

Verity McWilliam has practised as a barrister in NSW since 2006. She has a wide ranging practice covering such areas of the law as commercial, constitutional, contracts, administrative, equity, employment, environment and local government. She was admitted to the Supreme Court of NSW, the Federal Court of Australia and the High Court of Australia in 2002. Verity is also an Adjunct Lecturer in Federal Constitutional Law at the University of NSW. She authored the Administrative Law Chapter of *Court Forms Precedents & Pleadings NSW* (2013, LexisNexis).

# Standing Committees as at December 31, 2015

## MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon  
Jim Biady  
Max Wilson

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 2015 our discussion group on LinkedIn grew to 855 members.

## PUBLICATIONS COMMITTEE

Verity McWilliam  
Professor Elisabeth Peden  
Professor Gregory Tolhurst  
Max Wilson

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 29 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.

Last year we embarked on a major program to ensure that all copies of the *Commercial Law Quarterly* from 1986 to the present day are available online. There is also a number of copies of *The Bulletin* (CLQ's predecessor) in the library, but we are still seeking some issues. The library is now available on our website.

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.

## COMMERCIAL LAW FORUM COMMITTEE

Norman Donato  
Edmund Finanne  
Andrew Macpherson  
Max Wilson

The Commercial Law Forum's aim is to organise events where members can come together in an informal way after business hours to listen to a guest speaker and network with other members. The Forum's are limited to 30 people.

## 50TH ANNIVERSARY COMMITTEE

Emeritus Professor John Carter  
Professor Elisabeth Peden  
Norman Donato  
Stephen McMahon  
Max Wilson  
Cristean Yazbeck (resigned 25 February 2015)

In 2015 the Association celebrated its 50th anniversary. The committee was formed to organise special events for the anniversary. The main focus of the celebrations were a one-day conference — '50 years of Commercial Law' — and an anniversary dinner, both of which were held at the NSW State Library on Friday, 31 July 2015.

# 50 years of commercial law

## An edited version of the President's address at the 50th anniversary dinner, Friday, 31 July 2015

The Commercial Law Association was founded in 1965. This year it will turn 50. It was born on a September evening in the chambers of a 39-year-old rising star of the Sydney Bar. His name was Laurence Street QC. Two months later he would be appointed a judge in the Equity Division of the NSW Supreme Court. Nine years later, he would become the youngest ever Chief Justice of the Supreme Court of NSW. Sir Laurence was not the only brilliant commercial lawyer present at our Association's birth. Also at the meeting was our first president, the late Bernard Riley QC — who would later be appointed to the Federal Bankruptcy Court and then to the first bench of the Federal Court of Australia. When the meeting was finished the Commercial Law Association was given two objectives. First, to provide information to Australian businessmen and lawyers on legal issues, with a focus on trade and commerce. Second, to promote a closer relationship between the legal profession and the commercial community.

To properly understand exactly why these legal minds came together to establish the CLA, we also must understand the context in which the Association was born. The 1960s was a period of substantial commercial change, as well as social change. Australia was at a commercial crossroads. Our traditional trade partner, the United Kingdom, had started looking towards Europe — in the form of the EEC — and Anglo-Australian trade was falling sharply. Our businesses needed to find new markets and new trading partners for their goods and services. And our State and Federal governments were actively developing policies to accelerate this. We would find new, dynamic partners such as the United States and, more importantly, Japan — a country with very different legal and commercial traditions to our own.

The Association's early work and publications reflected this changing world. For instance, the very first issue of the *Commercial Law Bulletin*, published in 1968 with Professor John Peden as Research Director, ran as its main article, 'Frustration of contract in the context of the Suez Canal Closure'. An event that had a major impact on world trade and reinforced the imperative to focus on our own region, as well as long-standing markets. Six months later *The Bulletin* carried a piece on the Hague Convention and its potential ramifications for Australian traders.

In other words, from the time it was founded the Association's focus has always been not on the theoretical, but on placing the law in the context of its impact on commercial activities and on helping business people understand the very real impact that the law has on their day-to-day activities. This should be understandable, even obvious.

After all, in one sense, commercial law cannot be separated from trade and custom. In fact, the two are — or at least should be — interchangeable. The foundations of our current system are in the English law merchant, which as Cockburn CJ observed in the 1837 decision of *Goodwin v Roberts*, 'is neither more nor less than the usages of merchants and traders in different departments of trade, ratified by decisions of courts of law, which, upon such usages being proved before them, have adopted them as settled law with a view to the interests of trade and public convenience ...'.

That said, those same trends that the CLA's founders would have noticed happening back in 1965 are now so much further advanced. And the 'usages of merchants and traders' look very different too. Naturally, that means the commercial law has had to evolve as well. For instance, in our modern economy, almost all commercial transactions have a cross-border element to them.

With this, the very notions of how contracts operate have — to some extent — shifted too. No longer does is the law of contract based on a simple coming together of minds. Instead, many of our trading partners have different ideas on how contracts should function. It is common practice for commercial contracts to look beyond our own law and to take in foreign legal concepts. The EU concepts of anti-corruption and good faith, for instance.

Against this backdrop the original twin purposes that the Commercial Law Association's founders recognised 50 years ago look more important than ever.

Norman Donato