

Building a bridge
between
commerce and law

The Commercial
Law Association
of Australia Ltd

ACN 001 290 115

Annual Report
2010

Serving the interests
of commerce and law

45
years

1965-2010

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)

Associate Professor Gregory Tolhurst LLM (Syd)

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



President and Directors' Report

2010 YEAR IN REVIEW

Our list of seminars and presenters is too numerous to mention here — a list of all of them is featured on the following pages. Other highlights of our 45th anniversary year included:

■ We assisted the *Journal of Contract Law* in presenting a one day conference titled 'Contractual Indemnities' held at the NSW State Library on Friday, 30 July. This conference attracted widespread interest with over 60 attendees. We celebrated the success of the JCL conference and our 45th anniversary at a dinner that night.

■ The first event in our Monday Money Matters series for 2010 was held on Monday 17 May. The free lunchtime seminar was held a week after the Federal Budget with the topic 'The Federal Budget and Superannuation: what the changes mean to you'. This event proved so popular that our sponsor, RetireInvest, had to move the seminar to a larger venue to accommodate numbers.

■ Sandra Di Bella was appointed to the role of Mentoring and Graduates Program Co-ordinator. Sandra organised a highly successful mentoring intake during 2010 matching 12 mentorees with suitable mentors. The key to the success of the program is that it is structured not to compete with firms' mentoring programs, but rather provide an opportunity for practitioners to gain an overview of areas of law outside their own firms.



■ The Association sponsored the postgraduate students conference held at the Law Faculty of Sydney University on Friday, 29 October. This event encourages scholarship and networking for PhD students engaged in research within the universities. The conference was well attended with over 50 delegates representing universities from the eastern states.

■ The Legislative Review Task Force was active with Tony Dreise, the Chair, implementing a range of activities. We had a number of new members join in the activities of the task force during the year. Special interest groups were involved in particular subject areas, such as directors' duties.

■ For those who are unable to attend our seminars we instituted the recording of some of our seminars on DVD. The packs include a recording of the seminar plus copy of the PowerPoint presentations and papers have been made available for purchase by members.

■ 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, 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.

■ A special thanks to our members who supported our programs during what was a very successful 45th anniversary year. If you are interested in participating in any of the CLA's activities please contact our CEO Max Wilson.

2010 was our 45th anniversary year and we celebrated in the best of CLA traditions by providing a quality continuing legal education program and introducing new member services.

In 1965 a group of legal practitioners decided to form an organisation to be a bridge between commerce and law. Education, communication and networking were seen as vitally important for law and business, and have remained mainstays of our activities.

Four and a half decades later the CLA still has a solid reputation for high quality CLE seminars. Our program for 2010 covered a diverse range of topics that involved some 45 presenters including judges, academics, leading practitioners and business people.

This year we have introduced a new format for our Annual Report. In line with the Government's revision of reporting requirements we have introduced a simplified Annual Report which includes highlights from the year's activities. Although it is no longer a requirement for bodies of our size to undertake an annual audit, the Board has resolved to continue to be audited annually by our independent auditor Peter Metcalf of Courtney and Co Chartered Accountants.

For those wishing to obtain a copy of our annual accounts, you can download it from the members section of our website www.cla.org.au

FINANCE. The CLA achieved an increase of surplus funds in 2010 largely through a significant rise in seminar income and strong cost controls. To view the audited financial reports for 2010 visit the CLA members section at www.cla.org.au

2010 Seminar Program



Hot issues in copyright patents and design

20/2/2010

Anthony Franklin SC, Carmen Champion, Jane Rawlings, Andrew Wiseman, Nick Hart



Frequently encountered pitfalls in pleading a case under section 52 of the Trade Practices Act

20/2/2010

Ian Tonking SC



PPS. An introduction to the Personal Property Securities Act 2009

26/2/2010

Diccon Loxton, Patrick Lowden, vJohn Stumbles

Mistake in contract formation and performance. Remedial options under Australian law

26/2/2010

Jeffrey Goldberger



The challenging pace of Australian competition and consumer law

12/3/2010. Proudly supported by Thomson Reuters

Russell Miller



The lottery of proportionate liability

19/3/2010

Professor Barbara McDonald



The Fair Work Act (nearly) one year on. The real workplace impact: a preliminary verdict

14/5/2010. Proudly supported by Hicksons Lawyers

Brad Swebeck, Dick Grozier, Rae Cooper, Therese MacDermott, Janine Webster

'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



Unjust enrichment

14/5/2010

Professor Simone Degeling



Recent developments in Trade Practices Parts IV and V

18/6/2010

Justice Steven Rares, Jacqueline Downes, Robertson Wright SC, Fiona Wallwork, Luke Waterson

Journal of Contract Law Contractual Indemnities conference

30/7/2010. Proudly supported by LexisNexis Butterworths and Freehills

Sir Anthony Mason, Stephen Estcourt QC, Donald Robertson, Wayne Courtney, Andrew Stewart, Nuncio D'Angelo, Justice Stephen Rothman, Professor John Carter, Professor Barbara McDonald, Hon Kevin Lindgren QC, Associate Professor Gregory Tolhurst, Professor Michael Furmston, Professor Woody Hunter

Fiduciary obligations in commercial arrangements

13/8/2010

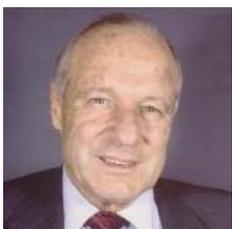
Robert Angyal SC



Mediation

24/9/2010

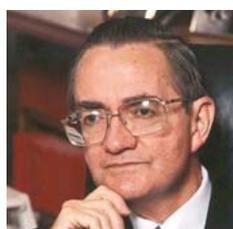
Sir Laurence Street



The Commercial Side of Australian Consumer Protection Law

18/10/2010

Professor John Carter



Class actions: recent developments: future trends

19/11/2010. Proudly supported by Slater & Gordon

Dr Kevin Lindgren QC, Professor Vince Morabito, Van Moulis, Michelle Silvers, Jason Betts, Ben Whitwell, Ben Phi



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

Seen at the seminars



The JCL conference and 45th anniversary dinner



Board of Directors as at December 31, 2010



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.



Kalinda Cobby BA, LLB, FCLA

Kalinda Cobby graduated in Arts/Law from the University of New South Wales. Kalinda is Counsel, Property & Franchising, Australasia & Africa for the Luxottica Group (well known in Australia under its brand names OPSM, Laubman & Pank, Budget Eyewear, Bright Eyes and Sunglass Hut). She was a Partner of Hicksons Lawyers and continues as a consultant to that firm. Kalinda is a former member of the Advisory Council to the Minister for Fair Trading and of the Law Society's Business Law Committee. She is proud of her involvement with a number of charitable organisations. Kalinda currently serves as the CLA's Vice President and New Graduates Program Chair.



David O'Bryen B Ec, LLB MAICD, FCLA

David is a solicitor specialising in financial services and commercial law. Prior to going into private practice, David was Legal Counsel with the Promina insurance and financial services group for over 14 years. He has had over 30 years experience in commercial law including corporations, securities, superannuation and funds management. David also has experience in advising on acquisitions, mergers and other financial services projects. He is the Principal of O'Bryen Legal and Honorary Treasurer of the CLA. He initially became involved with the Association through his Chairmanship of the Legislative Review Committee and he became a Councillor in 1989. As a Director since 1989, David is the Association's longest serving board member.



Anthony J Dreise Dip Law SF Fin, FCLA

Tony is a consultant lawyer in private practice specialising in financial markets regulation and the financial services legislation. 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 the Chairman of the Legislative Review Task Force of the CLA and is a longstanding member of the CLA.



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 McMahon B Comm, CA F Fin, FCLA

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



Richard Porter FCA, FCPA, ACIS, AAIM, FCLA

Richard is a Corporate Recovery and Litigation Partner in the Chartered Accountancy firm of Moore Stephens. He is a Fellow of the Institute of Chartered Accountants in Australia (FCA), Associate of the Chartered Institute of Secretaries and Administrators (ACIS), Fellow of the Australian Society of Accountants (FCPA) and Associate of the Australian Institute of Management. Richard is also a registered official liquidator, tax agent and real estate agent. Richard's main professional areas of interest are corporate recovery and litigation. He was appointed as a Director of the CLA in 2003 and is currently serving on the Publications Committee.



Norman Donato B Ec, 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 Secretary of the Legislative Review Task Force and was appointed to the board in May 2008.



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 Chang, Pistilli & Simmons. 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 Atanaskovic Hartnell, KPMG Legal and Middletons before joining CP&S in July 2006. 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)

Edmund was called to the NSW Bar on 14 February 1997 and has a wide ranging practice in insolvency and corporate law; equity; commercial, contract matters; Property (Relationships) Act and related remedies; mortgage and security law; and trade practices. He currently serves on the CLA's Legislative Review Task Force. Edmund was appointed to the CLA's Board of Directors in July 2009. His published works include Finnane, Newton, Wood, *Equity Practice and Precedents*, 2008, Thomson.

Standing Committees as at December 31, 2010

EDUCATION COMMITTEE

Stephen Lamy FCLA, Chair
Max Wilson FCLA

Maintaining a reputation for providing good value lunchtime, halfday and one-day conferences on a diverse range of commercial law topics has been one of the guiding principles of our 2010 seminar program. Stephen Lamy as President has taken a strong interest in the development of this year's program which delivered a comprehensive program of seminars meeting the continuing education needs of members.

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 2010 we participated in a survey to members and undertook various membership campaigns.

PUBLICATIONS COMMITTEE

Rick Porter FCLA, Chair
Professor Elisabeth Peden
Associate Professor Gregory Tollhurst
Max Wilson FCLA

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 24 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 Elisabeth Peden, Faculty of Law, University of Sydney, 173-175 Philip Street Sydney NSW 2000 or DX 983 Sydney.

NEW GRADUATES PROGRAM

Kalinda Cobby FCLA, Chair
Sandra Di Bella, Co-ordinator
Max Wilson FCLA

Mentoring program was launched in June 2007 and is targeted young lawyers who desire a mentoring experience outside their firm/practice area. The CLA's mentoring program has been specifically designed not to compete with any members' existing program, The Association through its broad range of members provides young lawyers a range of mentoring experiences. The program has been deliberately kept small with the pairing limited to 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 and successfully matched mentors with mentorees.



Legislative Review Task Force as at December 31, 2010

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

Tony Dreise FCLA, Consultant Lawyer

Deputy Chair

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

Secretary

Norman Donato FCLA, Executive Lawyer, Bartier Perry Solicitors

Members

A-Professor Dr Karl Ajami MCLA, Director, Undergraduate Law Program & LLM International Law (Dispute Settlement), Kazakhstan Institute of Management

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

Michael Gray MCLA, Accountant

Brian Gillard FCLA, Director, Gillard Consulting Lawyers

Roger Hamilton SC FCLA, Barrister-at-Law, Wentworth Selborne Chambers

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

Andrew Macpherson MCLA, Macpherson Greenleaf Lawyers

Bruce McBain FCLA, CEO, Corporate Superannuation Association

Sylvia Morris MCLA, Lawyer

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

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

Rashda Rana FCLA, General Counsel, Bovis Lend Lease

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

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

Greg Wrobel MCLA, Partner, Holding Redlich

Tiffany Davy, Argyle Lawyers

Amanda Carrigan MCLA, Carrigan Lawyers

Francois Brun, Macquarie Legal Centre

Phillip Roberts, PCR Law