



The Commercial Law Association of Australia Ltd  
ACN 001 290 115

## Annual Report 2020

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Building a bridge between commerce and law



# The Commercial Law Association of Australia Ltd

www.cla.org.au

GPO Box 5186, Sydney, NSW 2001

(02) 9979 1364

## Board of Directors as at 31 December, 2020

Norman Donato, President	Edmund Finnane
James Biady, Vice-President	Sally Moten
Stephen Lamy, Treasurer	Sarah Hill
Stephen McMahon	Professor Gerard Ryan

## Registered Office

Level 2, 44 Miller Street, North Sydney, NSW 2060

## Chief Executive Officer

Max Wilson BA, Grad Cert Management Communication, AFIMA. Email: maxwilson@cla.org.au

## Member Services

Elizabeth Wilson. Email: memberservices@cla.org.au

## Commercial Law Quarterly Editors

Dr Gregory Tolhurst LLM (Syd)

Professor Elisabeth Peden SC, BA Hons, LLB Hons (Syd), PHD (Cantab)

Original Harbour Bridge cover picture by Tony Dreise

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



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# President and Directors' Report

## 2020: YEAR IN REVIEW

Our 55th Anniversary year presented the world with quite an unexpected challenge. We have been fortunate in Australia that the cost of lives lost in this country to the pandemic has been relatively minor compared to the rest of the world. That is not to overlook the sadness felt by those that did lose a loved one during the past year as a result of the pandemic. Our condolences go out to any member sadly touched by such a loss.

Needless to say, many of the events planned for this past year to celebrate the 55th Anniversary were cancelled.

On the other hand, 2020 presented us with the opportunity to support one another. We came to appreciate the importance, strength and meaning of the word 'association'. From the outset, we were determined to do all we could to support our members' ongoing CLE needs. Our members were given free access to our vast resources of CLE material including our online library of videos, podcasts and the *Commercial Law Quarterly*.

Equally kind and generous was the response of our speakers who agreed to our requests to film their seminars. They bravely invited us to their offices and spoke direct to the camera without the benefit of an audience. We also would particularly like to thank the NSW Supreme Court for letting us film the June Judges series in the President's Court.

Our path to a totally on-line world this past year was considerably facilitated by our award-winning filmographer Joshua Marks (pictured) from doco.tv, and Emma Heuston (pictured) from The Remote Expert. Josh brought his considerable expertise to bear on ensuring that our videos and Zoom sessions were of the highest quality. Emma took over our social media sites early in 2020. Her influence has made an obvious difference to our reach into the on-line community.

### CLA Qld now a reality

Despite the difficulties of the year, 2020 saw our Queensland branch develop very strongly, with 117 new members. Their first two webinars — 'All I want for Christmas is your claim summarily dismissed' and 'Trust busting: our new sport?' — were well attended by audiences in Queensland, NSW and Victoria. Our thanks to Ben Whitten (pictured) and Michael Drummond for their determination in getting things on the road.

### Seminars, webinars and Zoom

Sadly, we managed only two face-to-face seminars at the NSW State Library before the lockdown kicked in. Jeffrey Goldberger's master class on contracts was — as usual — well attended and much appreciated by its audience. Our half-day seminar on Managing Workplace Relations was also a very solid performer. Our annual Mandatory CLE half-day seminar was the first cancellation of the lockdown. Everyone who booked was immediately offered free downloads from our CLE Online library to cover their mandatory CLE points. After that all our events went on-line. You'll find the complete list of our three webinars via Zoom and seven filmed seminars on page 4.

### Financial update

This year of the global pandemic was financially challenging for all, as well as the CLA. For the first time for a number of years, the CLA ended the year with a loss of \$22,995. To view the audited 2020 financial reports, please visit our website.

We are confident that as the restrictions ease, with new initiatives and lessons learnt from this year, the CLA will bounce back in its 56th year bigger and stronger than before. No matter what challenges the year has in store, the CLA will continue to ensure that its members have access to the highest quality speakers, articles and presentations and will continue building a bridge for its member between commerce and law.

Finally, a heartfelt thank you to all those associated with the CLA — our members, the speakers, the writers, editors, filmographer and executive management, and last but not least, my fellow board members. All your support is gratefully appreciated, and I hope that we can continue supporting one another. I look forward to seeing you soon at one of our functions.

Norman Donato, President



# 2020 Seminar Program

## **Goldberger on Contract Master Class**

21 February, 2020

Jeffrey Goldberger, Norton Rose Fulbright; Hon Justice Steven Rares, Federal Court of Australia (Chair)

## **Managing Workplace Relations Halfday Seminar**

6 March, 2020

Lucy Saunders, Greenway Chambers; Jamie Darams, Greenway Chambers; James Mattson, Partner, Bartier Perry; Sally Moten, Partner, Lander & Rogers; Scott Spicer, Principal, Scott Spicer Communications; Ingmar Taylor SC, Green Chambers (Chair)

## **55th Anniversary Lunch**

6 March, 2020

Hon Justice Jacqueline Gleeson, Federal Court of Australia (Chair); Michael Izzo SC, 11 Wentworth Chambers; Sonia Tame, New Chambers

## **Gambling and the law in the 21st century**

June 2020

Hon Justice Andrew Bell, President, Court of Appeal, Supreme Court of NSW

## **Relief against forfeiture in a commercial context**

June 2020

Hon Justice Paul Brereton, Supreme Court of NSW

## **Whether directors' duties are fiduciary in nature**

June 2020

Hon Justice James Stevenson, Supreme Court of NSW

## **Force majeure and frustration: an overview of the case law**

July 2020

Jeffrey Goldberger, Norton Rose Fulbright

## **The new law of penalties: mapping the terrain**

August 2020

John Eldridge, University of Sydney

## **Trust busting — our new sport?**

August 2020

David Marks QC, Hemmants List

## **Frustration, termination and force majeure**

August 2020

Dr Elisabeth Peden SC, 3 Wentworth Chambers

## **All I want for Christmas is your claim summarily dismissed**

October 2020

Alex Tuhtan, Principal, CDI Lawyers; Ben Whitten, 35 West Chambers; Richard Schulte, Hemmant's List (Moderator)

## **Executive contract claims and the Fair Work Act**

October 2020

Professor Joellen Riley Munton, UTS

## **Plan your 2021: remote work and online business tips**

December 2020

Emma Heuston, Director, The Remote Expert

# Seen at the seminars



## Current Board of Directors



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

Norman is a partner 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 was appointed to the board in 2008 and has been the President of the CLA since 2015.



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

Jim Biady is an experienced commercial lawyer who commenced practice in 1983. 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. Jim was appointed to the board in 2011 and is currently the Vice-President of the Commercial Law Association.



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

Stephen has practised in superannuation and funds management for more than 30 years. He is currently employed at IOOF Legal. He has held roles with a number of providers, notably AMP, CBA, ANZ, Challenger and MLC, variously in permanent and contract capacities. His prior career in private practice involved a broad range of commercial, revenue and insolvency experience. 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 currently serves as Treasurer.



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

Stephen is a specialist Forensic Accountant, a fellow of the Financial Services Institute of Australia (Finsia) and a fellow of the Institute of Chartered Accountants Australia and New Zealand (CAANZ). He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, financial evaluation of insurance claims, fraud and corruption investigations, business valuations, financial due diligence along with investigating and solving complex financial and business issues which require the application of a combination of accounting, auditing and detective skills. Stephen's interests are in analysing and preparing financial information for Court, resolving claims and disputes, Commercial Law and Finance sectors. He was appointed as a Director to the CLA in 1998, has served many years as the Membership and Marketing Chairman and was awarded Life Membership in 2018.



### **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 has delivered seminars to members of the legal profession on areas including commercial damages, equity, insolvency law and de facto relationships law. Edmund is co-author of two books: *Equity Practice and Precedents* (2nd Edition) (Finnane, Newton and Wood, Thomson Reuters, Sydney, 2019), (as well as the first edition of that book published in 2008) and *Pleading Precedents* (Azize, El Khoury and Finnane [6th Ed], Thomson Reuters, Sydney, 2009). Since 2009 he has been author of the annotations in the Thomson Reuters annual and online publication, *Corporations Legislation with Annotations*. In 2018, Edmund was appointed as general editor of the *Company and Securities Law Journal* (Thomson Reuters).



### **Sally Moten LLB (Hons) (USyd), BCom (USyd)**

Sally Moten was admitted as a Solicitor in NSW in 2005. She has a Bachelor of Laws (First Class Hons), and Bachelor of Commerce, both from the University of Sydney. Sally is a partner at Lander & Rogers who specialises in all aspects of employment and safety law. Prior to this, Sally spent several years working in commercial laws firms Blake Dawson (now Ashurst) and Henry Davis York (merged with Norton Rose Fulbright). She also spent time working in-house at a large NSW Government Agency. Sally provides advice on matters ranging from performance management and disciplinary matters to defending unfair dismissal and discrimination claims, managing industrial disputes, advising on restructuring of organisations, defending WHS prosecutions and providing WHS advice on compliance and safety legislation. Sally joined the CLA's Board of Directors in 2016.



### **Sarah Hill BA/LLB (Hons) (USyd)**

Sarah Hill has practised as a barrister in NSW since 2004. She holds a BA/LLB (Hons) from the University of Sydney. She has a broad ranging equity and commercial practice covering such areas of the law as contracts, corporate law, insolvency, equity, property, trusts and wills and estates. Sarah has given presentations in many of these areas at industry conferences and to various legal bodies. She was admitted to the Supreme Court of NSW, the Federal Court of Australia and the High Court of Australia in 2003. Sarah was appointed to the Board of Directors of the CLA in 2018 and is currently serving as the chair of the Publications Committee.



### **Professor Gerard Ryan BEc (Hons) (USyd), LLB (Hons) (USyd), GradDipLP (UTS), LLM (Hons) (USyd), GCUT (UNDA), FHEA**

Gerard is a Professor of Law at the University of Notre Dame Australia (UNDA). He graduated from the University of Sydney with First Class Honours in Economics and Law. His Masters of Law included an Honours thesis in competition law. Gerard was admitted as a solicitor in 1991. He was a partner in a large city commercial law firm, specialising in commercial work in the energy sector (including electricity derivative transactions, large energy infrastructure projects and regulatory advice). From 2008 to 2012 he was Dean of the School of Law, Sydney at UNDA. His main areas of teaching are contracts, commercial practice, commercial drafting, ethics, corporations law and property. He has supervised research students in contracts, competition law and other areas. Gerard and his UNDA colleagues have conducted the CLA's annual CPD presentation on ethics, practice management and professional skills since March 2011. He joined the CLA Board of Directors in 2018.

# Standing Committees as at December 31, 2020

## QUEENSLAND BRANCH COMMITTEE

Ben Whitten  
Alexandra McVay  
Alex Tuhtan  
Kelly McIntyre  
Richard Schulte  
Alex Feros  
Michael Drummond  
Edmund Finnane  
James Biady

## MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon  
James 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.

## PUBLICATIONS COMMITTEE

Sarah Hill  
Professor Elisabeth Peden  
Dr Gregory Tolhurst  
Max Wilson

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 30 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.

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 available on our website.

The Editors welcome the submission of notes to cases and issues of law reform and longer articles.