



The Commercial Law Association of Australia Ltd
ACN 001 290 115

Annual Report 2021

Building a bridge between commerce and law



The Commercial Law Association of Australia Ltd

www.cla.org.au

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Board of Directors as at 31 December, 2021

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

Registered Office

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Chief Executive Officer

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

Member Services

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Commercial Law Quarterly Editors

Dr Gregory Tolhurst LLM (Syd)

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

Cover pic by Marcus Lenk on Unsplash

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



President and Directors' Report

2021: year in review

Once again, COVID 19 has had an obvious impact on the Association during the year. Social distancing regulations meant that numbers were restricted at our seminars during the first half of the year. The Sydney lockdown in the second half of the year caused seminar cancellations and date shifts.

Fortunately, the effort that was put into ensuring that our online sessions and recordings were of the highest quality was entirely worthwhile. The CLA was able to move completely online seamlessly when it was called upon to do so, even if at the last minute. We are very grateful to all our speakers and seminar attendees who stayed with us despite dates often changing during lockdown periods.

The CLA has continued to offer its support to members during 2021. Most of our seminars were recorded and are available for download — free of charge for members — from our website. Members can also download free back issues of the Commercial Law Quarterly from the CLQ Library.

CLA QLD

The CLA Qld branch also faced difficulties with social distancing and sudden lockdowns. They were not deterred however and ran four very well-attended seminars that attracted an online audience from around Australia. They are now planning for half-day seminars in 2022.

We were also very pleased to welcome Ben Whitten (pictured), the inaugural chair of the Queensland branch, to the board of the CLA. He was elected at the AGM in May.

Seminars and webinars

Incredibly, Jeffrey Goldberger (pictured) managed to present two masterclasses for us during 2021 to a live audience, as well as to an online audience. As is always the case, both — his annual contracts master class and a new construction law master class — were well attended and much appreciated by their audience.

We would particularly like to thank Justices Andrew Bell, Lucy McCallum and Michael Lee for their presentations at this year's June Judges series, despite the looming lockdown shadow. Indeed, Justice Lee's seminar on Managing Competing Class Actions took place one day before a lockdown was enforced.

Consequently, Ian Neil SC, David Chin SC, Chris Parkin and Sally Moten were forced to present their seminar online — *WorkPac v Rossato: the potential implications* — from four different locations. A big thank you to Joshua Marks (pictured) from DocoTV for coordinating this effort, a first for the CLA.

All things considered, through the hard work and dedication of our team including presenters, we were able to hold 13 successful seminars during 2021. A lucky number.

Social media

There was a surge of interest in our LinkedIn page during 2021. Our page grew by over 600 followers during the year, with increases in interaction and engagement, including a 660% increase in comments and a 1,390.5% increase in reactions (shares/likes/comments, etc). Most of the growth occurred after we shut down the LinkedIn group.

Congratulations and thanks to Emma Heuston (pictured) who has worked very hard to make this happen for us.

Financial update

An unfortunate outcome of the continuing pandemic is that, once again, the CLA ended the year with a slight loss of \$13,919. This represented a distinct improvement on the 2020 loss of \$22,995. To view the audited 2021 financial reports, please visit our website.

As the restrictions ease, the CLA will continue to ensure that its members reconnect and 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 very appreciative thank you to all those associated with the CLA — our members, speakers, writers, editors, filmographer, executive management, and my fellow board members. The CLA would not exist without your support. I look forward to seeing you soon at one of our functions.

Norman Donato, President



2021 Seminar Program

Goldberger on Contract master class

19 February

Jeffrey Goldberger, Special Counsel, Norton Rose Fulbright, Hon Justice Fabian Gleeson, Supreme Court of NSW (Chair)

Mandatory CLE halfday seminar

5 March

Professor Gerard Ryan, University of Notre Dame Australia; Kyle Kutasi, Director, Solve Legal; Lauren Absalom, Associate Lawyer, Rydge Evans Lawyers and Councillor, Law Society of NSW

Is appointing court leave required to sue a liquidator?

12 March

Dr John Azzi, Senior Lecturer, Western Sydney University; Dr Robert Austin, Level 22 Chambers (Chair)

Ethics considerations and issues for corporate lawyers

25 March, CLA QLD

Kelly McIntyre, Inns of Court; Alexandra Feros, Partner, Corrs Chambers Westgarth; Richard Schulte, Hemmant's List (Chair)

Maintaining legal professional privilege in the context of a government department investigation

29 April, CLA QLD

David Marks QC, Hemmant's List; Ben Whitten, 35 West Chambers (Chair)

Update on PPSA: interesting and difficult case developments

28 May

Nicholas Mirzai, Level 22 Chambers; Professor Jason Harris, University of Sydney (Chair)

Spiliada 32 years on

11 June

Hon Justice Andrew Bell, President, NSW Court of Appeal

Risky business: personal criminal liability of company directors and officers

18 June

Hon Justice Lucy McCallum, Court of Appeal, Supreme Court of NSW

Managing competing class actions

25 June

Hon Justice Michael Lee, Federal Court of Australia

WorkPac v Rossato: the potential implications

26 August

Ian Neil SC, 6 St James Hall Chambers; David Chin SC, 5 Wentworth Chambers; Chris Parkin, 5 Wentworth Chambers; Sally Moten, Partner, Workplace Relations & Safety, Lander & Rogers (Chair)

Building and Design Practitioners master class

5 November

Jeffrey Goldberger, Special Counsel, Norton Rose Fulbright

Developments in the law of deceptive, misleading and unconscionable conduct under the ACL

19 November, CLA QLD

Melanie Hindman QC, Northbank Chambers; Mark Steele, Northbank Chambers; Ben Whitten, 35 West Chambers (Chair)

Bringing commercial and corporate proceedings in the Brisbane Federal Court

30 November, CLA QLD

Hon Justice Roger Derrington, Federal Court of Australia; Hon Justice Kylie Downes, Federal Court of Australia

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 Insignia Financial Ltd. 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*. Edmund has been the general editor of the *Company and Securities Law Journal* (Thomson Reuters) since 2018.



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.



Ben Whitten LLB, LLM (Com), FCLA

Ben has practised as a barrister in Queensland since 1999. He holds a Bachelor of Laws and a Master of Laws majoring in commercial law. Ben practises in all aspects of commercial and insurance litigation, with special interests in matters involving technology, engineering and construction issues. Having practised both as a solicitor and as a barrister, he has gained considerable practical experience in representing companies, businesses and individuals in mediations and in interlocutory, trial and appeal hearings in all levels of State and Federal courts. Ben is a committee member of the Building Dispute Practitioners Society, member of the Society of Construction Law of Australia, member of the Australian Insurance Law Association, and an interstate member of the Melbourne Technology Engineering and Construction Chambers. Ben's work has been recognised in Doyle's Guide as recommended leading counsel in construction law for 2019, 2020 and 2021. Ben is a Fellow and Director of the CLA, and the inaugural Chairman of the Queensland Division of the CLA. He was appointed to the CLA's board in 2021.

Standing Committees as at December 31, 2021

QUEENSLAND BRANCH COMMITTEE

Ben Whitten (Chair)
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
Dr Elisabeth Peden SC
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.