

The Commercial Law Association of Australia Ltd
ACN 001 290 115

Annual Report 2022

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, 2022

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

Registered Office

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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)

Hon Justice Elisabeth Peden, BA Hons, LLB Hons (Syd), PHD (Cantab)

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



President and Directors' Report

2022: year in review

During 2022 Norman Donato stepped down as President of the CLA. Norman's dedication and careful guidance of the CLA, particularly through the difficult COVID-19 years, has been exceptional and the CLA has benefited greatly from Norman's hard work and commitment.

Following Norman's retirement, I was elected as President and hope to honour Norman's legacy by providing a steady helm, championing all the excellent services and professional development opportunities the CLA offers and of course working with the CLA's wonderful and dedicated executive team and staff.

Whilst the COVID-19 years were challenging, it has become clear that the most enduring legacy of the pandemic from the CLA's point of view has been the addition of Zoom to our seminars. We have found that being able to join the seminars online has been enormously popular with those interstate, in the regions and working from home. Registrations have been running two to one in favour of attending via Zoom. That said, we noticed that by the end of 2022 there was a small but determined trend towards being in the room. There's a lot to be said for the atmosphere of a live event.

This year saw the Commercial Law Quarterly celebrate its 35th year of continuous publication. To honour the occasion, the CLA settled on an essay competition. The topic of the essay had to relate to commercial law practice or issues in commercial law in Australia. Two prizes were available. The Open Category prize of \$3,500 plus free CLA seminars and the Student Category prize of \$1,000. The winner will be announced early in 2023. The first of the entries can be found in CLQ Vol 36, No 4, December 2022-February 2023.

We'd like to take this opportunity to thank Dr Gregory Tolhurst and the Hon Justice Elisabeth Peden (as she is now) who have been CLQ's editors since 1999. It is their hard work that has turned it into the refereed journal it is today.

Anniversaries are very much on our mind just now as the CLA approaches its 60th anniversary in 2025. The Board took the opportunity to hold a planning retreat in July to look at the big picture and set out a framework for what we want to focus on over the next few years. We are currently working through and considering the issues, ideas and priorities that came out of the meeting. Our thanks to John Peacock from Associations Forum for facilitating the meeting.

We were also very pleased to welcome Michael Drummond from Hemmant's List in Brisbane to the board of the CLA. He was elected at the AGM in May.

CLA QLD

The CLA Qld branch spent this year consolidating its position. They ran four very well-attended seminars that attracted an online audience from around Australia. With help from Emma Heuston, our social media expert, a CLQ QLD LinkedIn page was set up focusing on matters of particular interest to our Queensland members. The focus is now shifting to building up the number of financial members.

Seminars

The line-up of speakers for this year's June Judges series was outstanding. We count ourselves very fortunate that the former Chief Justice Tom Bathurst, the Hon Justice Julie Ward, President of the NSW Court of Appeal, and the Hon Justice Ashley Black all agreed to speak for us. To no great surprise the series was extremely well attended.

Our other hugely successful event was 'The evolving class actions landscape in Australia' half-day seminar. The event featured some very high-profile speakers including the Hon Justice Bernard Murphy, the Shadow Attorney-General Mark Dreyfus (as he was then) along with William A D Edwards, Rebecca Gilson, Christine Tran, Stephen Conrad, Christian Gergis and Vicky Antzoulatos. We are very grateful for the generous help and hard work that Shine Lawyers put into this event to make it the success it was.

This year our list of events jumped to 17 seminars altogether. It features regular speakers such as Emeritus Professor John Carter, Jeffrey Goldberger along with some new faces such as Hon Justice John Bond, Hon Justice Thomas Bradley, Ian Neal SC, Professor Michael Legg, Harry Lakis and John McKenna QC. Our Mandatory CPD half-day seminar was once again organised for us by the University of Notre Dame Australia.

Social media

Our CLA LinkedIn page continued to grow during 2022 and we have over 1,250 followers, who are more interactive than in years past. Some highlights are:

- An increase in click throughs from posts;
- Engagement in regular polls from topics like, are you working back at the office, have you been impacted by the Optus data breach and have you completed your CPD for the year?
- Article of the month spotlights to extend our reach beyond existing members
- The appointment of an ambassador (Christine Lithgow) who regularly shares posts;
- Regular sharing by our board members of content and/ or commenting and liking has also helped to expand our reach; and
- An increase in sharing our content. For example: by contributors to the Commercial Law Quarterly; and by virtue of our joint promotion with Shine Lawyers.

Our CLA Facebook page is slowly growing and re-shares much of the LinkedIn content.

Financial update

The CLA ended the year with a deficit of \$17,477.75. To view the audited 2022 financial reports, please visit our website.

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.

Sarah Hill, President

2022 Seminar Program

Goldberger on Contract master class

18 February

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

Taxation issues arising in litigation settlements and judgments

24 February, CLA QLD

Harry Lakis, Inns of Court, Brisbane; Richard Schulte, Hemmant's List, Brisbane

Mandatory CLE halfday seminar

4 March

Professor Gerard Ryan, University of Notre Dame Australia (Chair); Professor Keith Thompson, University of Notre Dame Australia; Angus Macinnis, Director of Dispute Resolution, StevensVuaran Lawyers; Richard Perrignon, Denman Chambers, Senior Member of the NSW Civil and Administrative Tribunal, Member of the NSW Personal Injury Commission

The ethical limits of advocacy at mediation

4 March

Robert Angyal SC, 6 St James Hall Chambers

Preliminary agreements — binding or not?

11 March

Dr Elisabeth Peden SC, 3 Wentworth Chambers; Norman Donato, Partner, Bartier Perry (Chair)

Loss of Bargain Damages

14 March

Emeritus Professor John Carter, consultant, Herbert Smith Freehills

The Evolving Class Actions Landscape in Australia: impacts of recent judgements, legislative reforms and international developments

18 March

Jan Saddler, Head of Class Actions, Shine Lawyers (Chair); Hon Justice Bernard Murphy, Federal Court of Australia; Vicky Antzoulatos, Practice Leader NSW Class Actions, Shine Lawyers; Hon Mark Dreyfus QC, Shadow Attorney-General; Rebecca Gilson, Executive Director/Principal Lawyer, Maurice Blackburn; Christine Tran, Partner, Freehills; Stephen Conrad, CEO, Litigation Lending Services; Christian Gergis GAICD, Head of Policy Advocacy, Australian Institute of Company Directors; William A D Edwards, Level 22 Chambers, Sydney (Panel Chair)

2022 issues in employment and industrial law

18 March

Ian Neal SC, 6 St James Hall Chambers; Sally Moten, Partner, Lander & Rogers (Chair)

Case management of large commercial disputes

28 April, CLA QLD

Hon Justice Thomas Bradley, Supreme Court of Queensland; Ben Whitten, Hemmant's List, Brisbane

The current property law issues facing your clients

20 May

Ian Hemmings SC, (Chair), Janet McKelvey, Lara Nurpuri, Fenja Berglund, Lauren Sims, Angela Pearman, Mark Seymour, Dr James Smith — all from Martin Place Chambers

Regulatory enforcement and class actions: conflict and co-ordination

20 May

Professor Michael Legg, University of NSW

Pleading caution

26 May, CLA QLD

Hon Justice John Bond, Queensland Court of Appeal

Problems with restraint of trade

10 June

Former Chief Justice of NSW, the Hon Thomas Bathurst AC QC; Norman Donato, Partner, Bartier Perry (Chair)

Equity's path to justice

17 June

Hon Justice Julie Ward, President, NSW Court of Appeal; Sarah Hills, 4 Selborne Chambers (Chair)

Practice in the Corporations List of the Supreme Court of NSW and recent case law

8 July

Hon Justice Ashley Black, Supreme Court of NSW; Norman Donato, Partner, Bartier Perry (Chair)

The modern use of expert determination

28 July, CLA QLD

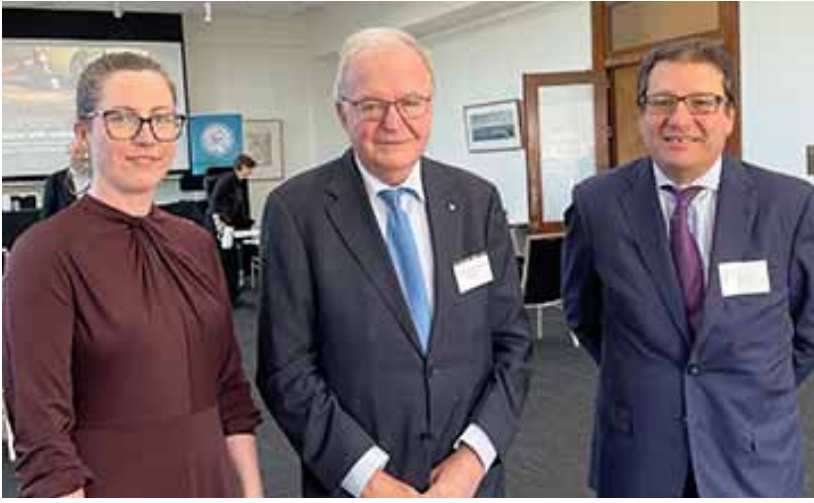
John McKenna QC, 16 Quay Central Chambers, Brisbane; Richard Schulte, Hemmant's List, Brisbane (Chair)

Contract damages following termination: taking later events into account

19 September

Emeritus Professor John Carter, consultant, Herbert Smith Freehills

Seen at the seminars



Current Board of Directors



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 President of the CLA.



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). From 2009 to 2022 he was the 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.



Norman Donato BEc, LLB, LLM, FCLA

Norman 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 was the President of the CLA from 2015 to 2022 when he resigned. Norman is the founder of Donato Legal Pty Ltd.



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.



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.



Michael Drummond BA (JCU), LLB (QUT)

Michael Drummond was a practicing solicitor, working in small, mid-tier and large law firms before opening his own practice. More recently, Michael left private practice to take up the positions of In-house Counsel, Director of Corporate Services and eventually Head of Sales — Global for an Australian coffee roaster operating in Australia, New Zealand, China and the USA. Michael commenced as the Clerk for Hemmant's List in November 2018. He was elected to the Board of the CLA in 2022.

Standing Committees as at December 31, 2022

QUEENSLAND BRANCH COMMITTEE

Ben Whitten (Chair)
Alex Tuhtan
Richard Schulte
Michael Drummond
Samantha Amos
Edmund Finnane
James Biady

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon
Michael Drummond
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
Hon Justice 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.