



## CONFERENCE

# COLLECTIVE REDRESS & LITIGATION FUNDING

Sydney 11 December 2009 & Canberra 12–13 December 2009

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The Centre for Law and Economics at The Australian National University is coordinating a major research program examining collective redress and litigation funding globally with a focus on the US, Europe, Australia and Asia. Over the next three years it is planned to coordinate a series of global conferences in Australia, the UK, the US and Asia. These Conferences will further act as follow-up conferences to two previous conferences held in Oxford in 2007 and 2008 on the Globalisation of Class Actions, but will expand the focus to cover other forms of collective redress and litigation funding.

The Conference in 2009 will be in Australia and consist of two sessions:

- ◀ the first session on **11 December** will be held at **The Sydney Law School, University of Sydney**, and focuses on law and policy issues of interest to law professionals, regulators and policy makers.
- ◀ the second session on **12 and 13 December** will be held at **the ANU in Canberra**, and focuses on the research agenda and collaboration opportunities to help advance research in the area internationally.

The objectives of the two-day Conference are:

- ◀ to share information on continuing major developments around the world, and
- ◀ to discuss in greater detail key issues now confronting many jurisdictions.

There will be a particular focus on the results of the recent UK Inquiry into Civil Litigation Costs headed by Lord Justice Jackson.

## SPEAKERS

A number of keynote international speakers have already been confirmed, including:

**Professor THEODORE EISENBERG**, *Henry Allen Mark Professor of Law at Cornell Law School & Adjunct Professor of Statistical Sciences, Cornell University*

Professor Eisenberg is a leading scholar on the empirical analysis of class actions. He has used innovative statistical methodology to shed light on such diverse subjects as punitive damages,





victim impact evidence, capital juries, bias for and against litigants, and chances of success on appeal.

**Professor PAUL FENN**, *Norwich Union Professor of Insurance Studies & the Head of Industrial Economics at Nottingham University Business School*

Professor Fenn is a member of the current UK Review of Civil Litigation Costs headed by Lord Justice Jackson. He has been deeply involved in the economic analysis of the civil justice system in the UK, particularly following Lord Woolf's Review of Civil Procedure in England and Wales in the 1990s. Professor Fenn has also worked extensively on examining evidence on the operation of funding arrangements in several areas of personal injury litigation.

**Professor DEBORAH HENSLER**, *Judge John W Ford Professor of Dispute Resolution & Associate Dean for Graduate Studies, Stanford University*

Professor Hensler was the director of the RAND Corporation's Institute for Civil Justice before joining the Stanford Law School. Her empirical research on dispute resolution, complex litigation, and mass tort liability has won international recognition. She has testified before state and federal legislatures on asbestos litigation and mass torts, and consulted with judges and lawyers outside of the United States on the design of class action regimes. She co-authored RAND's 2002 report on the status of asbestos litigation in the United States and is the lead author of *Class Action Dilemmas: Pursuing Public Goals For Private Gain*.

**Dr CHRISTOPHER HODGES**, *Head of the CMS Research Programme on Civil Justice Systems at the Centre for Socio-Legal Studies at Oxford University*

Dr Hodges is a leading expert on UK and European Law and author of the recent book *The Reform of Class and Representative Actions in European Legal Systems*. He is Chairman, Pharmaceutical Services Negotiating Committee; Board Member, UK Research Integrity Office and a member of the Expert Working Group of the European Commission on Directive 85/374 on product liability.

**Professor NEIL RICKMAN**, *Professor of Economics and Head of the Department of Economics, University of Surrey, & Director of the RAND Institute for Civil Justice Europe*

Professor Rickman was a member of the UK Civil Justice Council's sub-committee on Court Fees and the Advisory Panel for the Clementi Review of the Regulatory Framework for Legal Services in England and Wales. He was also invited to give advice to Lord Woolf's Review of Civil Procedure in England and Wales. Professor Rickman recently joined the Editorial Board of the *International Review of Law and Economics*. He is a CEPR (Public Policy) Research Affiliate and became Chair of the Royal Economic Society's Conference of Heads of University Departments of Economics (CHUDE) in January 2007.





Local speakers include:

**Dr GEORGE BARKER**, *Director of the Centre for Law and Economics at The Australian National University, and President of the Australian Law and Economics Association*

Dr Barker was awarded the Olin Fellowship in Law and Economics at Cornell University in 2000. He gained a DPhil in Economics from Oxford University 1992, and holds both a Bachelor of Laws and Master of Economics. He is the Chief Investigator on the ARC funded Discovery Project on *A Comparative Law and Economics Analysis of Class Actions in Australia, the US and the UK*. He has previously led a number of major empirical studies on the determinants and outcomes of legal dispute procedures in Australia and NZ.

**Professor PETER CASHMAN**, *Kim Santow Chair in Social Justice at Sydney University Law School & Barrister*

Professor Cashman is a past Commissioner with the Victorian Law Reform Commission in charge of the enquiry into the civil justice system in Victoria. He is the founding Director of the Public Interest Advocacy Centre; a former Governor of the Association of Trial Lawyers of America (now the American Association for Justice); former National President of the Australian Plaintiff Lawyers Association (now the Australian Lawyers Alliance); founder of the firm Cashman & Partners which merged with the Melbourne firm of Maurice Blackburn to form the national legal practice Maurice Blackburn Cashman; former Commissioner with the Australian Law Reform Commission jointly in charge of the reference on class actions; He has been involved in the conduct of major public interest litigation and class actions and group proceedings, in Australian, English and United States courts, including in the areas of product liability. He is the author of *Class Action Law and Practice* (Federation Press, 2007).

**Professor PETA SPENDER**, *ANU College of Law, Presidential Member of the ACT Civil and Administrative Tribunal*

Professor Spender is a co-author of the leading casebook on litigation in Australia. She has written and commented upon class actions (eg, her work on securities class actions and mass torts) and test cases such as the McCabe tobacco litigation. She has also engaged in comparative analysis of litigation, with an emphasis on class actions. Her article 'Blue Asbestos and Golden Eggs: Evaluating Bankruptcy and Class Actions as Just Responses to Mass Tort Liability' compared the asbestos litigation in the US, the UK and Australia. Her work on securities class actions has compared recent developments in the area in the US with Australia.





# Background Overview

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The Conference will examine collective redress and litigation funding.

Around the world, individuals, non-profit organisations and other collective entities are turning to court systems for remedies to group harms: mass injuries caused by defective products or environmental exposure to toxic chemicals, mass financial losses resulting from violations of anti-trust, securities and other consumer protection statutes, and historical and contemporaneous civil rights and human rights abuses. What were once viewed as disputes between individuals, or between an individual and a corporation, are now viewed as group struggles against multi-national corporations and other global institutions.

In many respects, the United States has led the way in these developments. But today, in the United States, there is vigorous controversy over the costs and benefits of class litigation and efforts have been made at the federal and state level to rein in the litigation, by statute and court decision. Interestingly, at the same time, class actions and other mechanisms for collective action have gained support in other parts of the world. On virtually every continent, one or more nations—including both common law and civil law regimes—have now adopted class action regimes.

In Australia, Federal Court civil procedure rules initially took a restrictive approach until the changes under Part IVA of the Federal Court of Australia Act 1976 took effect in 1992. In addition pursuant to Part 4A of the Supreme Court Act 1986 (Vic) groups of similarly situated claimants have further been able to institute class proceedings in the Supreme Court of Victoria since January 2000.

Canada's major provinces have all adopted class action statutes and the Canadian Supreme Court recently held that courts in all jurisdictions have inherent authority to authorise class actions. England and Wales adopted a multi-party management rule in

1999; Indonesia and Sweden both adopted class action rules in 2002; Israel adopted a class action rule in 2006. South Africa provides in its Constitution for class actions brought in the public interest. Germany, Italy, the Netherlands, South Korea and Taiwan provide a legal procedure for group litigation of securities fraud claims; Chile and Brazil provide for consumer class actions. The number of countries considering adoption of class actions continues to rise.

On the surface, the adoption of a class action procedure may appear to be a technical matter of interest only to lawyers but the social, economic and political consequences of permitting class





actions (ie, representative collective litigation) are vast. Because class actions empower individuals with relatively modest claims that would be impractical to litigate to band together to seek redress, these legal vehicles dramatically shift the power between legal 'haves' and 'have nots'. As a result, class actions and other forms of collective litigation have enormous potential to deter corporate and other institutional misbehaviour. But collective litigation also may impose costs on economic actors that are larger than any benefits they create, thereby increasing social inefficiency.

Policy debates over the adoption of these changes in legal regimes frequently reference the US experience, which is often portrayed inaccurately, based on anecdotes that travel quickly over international borders. As more countries adopt procedures for class actions and other forms of collective litigation, more anecdotes and half-truths about their experiences are generated, which policymakers in other countries then rely on as they debate the virtues and demerits of facilitating collective litigation in their own legal systems. A remarkable transformation in national legal regimes is taking place without adequate knowledge about the short- or long-term social, economic and political consequences of the change.

In Australia, it is estimated that over 50% of the cases funded by Australia's main litigation funder involve class actions. To date however there has been limited theoretical or empirical research in Australia on the role of law firms, insurance companies and LFCs in litigation funding and the effect of relevant legal rules. The Conference will thus examine the role of third parties in litigation funding, such as lawyers, insurance companies and litigation funding companies (LFCs), and the effect of the legal rules surrounding their involvement. Unlike the US, Australia adopts the English rule for cost allocation whereby the loser pays both sides costs, and further unlike the US, in Australia a lawyer cannot be compensated through contingency fees, which involve a share of the judgment. Only conditional fees are available or an uplift or premium if the case is won, a premium unrelated, however, to the adjudicated amount.

Since 1995 in Australia, a statutory exception to the rule against champerty further enabled insolvency practitioners to contract for the funding of lawsuits under their statutory powers of sale. LFCs emerged to service this market. A number of LFCs have also recently begun to fund non-insolvency plaintiff lawsuits, and the High Court recently endorsed such litigation funding in *Campbells Cash & Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386. LFCs however have been a relatively new development, and there has to date been very limited scope for scholarly analysis of their role.

The last major international academic conference on group litigation was held in Oxford UK in 2007 with a follow up in 2008.





This conference will bring together academics, policy analysts and legal practitioners to systematically review the status of collective litigation and litigation funding in their respective regimes, and debate outcomes to date.

## Organisers

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The project and conference is organised by the Centre for Law and Economics of The Australian National University College of Law. Dr George R Barker is the Centre's Director and leads a major ARC Discovery Project research grant on class actions with Professor Peta Spender.

## Sydney Session Format

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The focus of the Sydney session will be on current law and policy issues with an emphasis on practice. This will begin in the morning with a review of major new developments across major jurisdictions (Europe, North America and Asia) led by keynote international speakers.

In the afternoon the focus will turn to Australia with two major sessions

- ◀ First on recent developments in litigation – involving presentations from practitioners on such issues as investor class actions, product liability and cartel cases
- ◀ Second law reform and policy – involving presentations from judges and key participants in law reform

## Canberra Session Format

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The focus at the ANU in Canberra will be on laying the foundations for collaborative academic research. Together with presentations from our key note speakers on the conference topic, reporters from all major jurisdictions in the world that have class or collective actions remedies will be asked to respond to a protocol on collective litigation rules and practices, case filings, case outcomes, and current debates within their respective regimes as to the application of collective litigation rules and their consequences. These 'country reports' will be used as a basis for identifying cross-country problems and questions, to be used as the organising framework for the conference.





At the conference, a series of sessions will cover cross-country topics. Each topic will be presented by a panel of contributors, drawn from the national reporters and from others, chaired by a leading expert as interlocutor.

The proceeds of the conference will be a published volume comprising the country reports and articles on cross-country problems and questions, and a web-based mechanism for maintaining and extending a global network of experts on developments in collective litigation and website for accumulating information about such developments.

## Transport to conference

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All conference delegates are responsible for their own travel arrangements to and from Sydney and Canberra. International participants must obtain a visa to enter Australia. A link to the official government site for visas and to a number of air travel and car hire organisations have been supplied on the CLE conference website:

[http://law.anu.edu.au/cle/CRLF\\_Conf09/general\\_info.pdf](http://law.anu.edu.au/cle/CRLF_Conf09/general_info.pdf)

or email:

[Law&EconConference@law.anu.edu.au](mailto:Law&EconConference@law.anu.edu.au)

Transport from Sydney to Canberra may be provided depending on the level of interest. Please indicate your interest when returning your Registration Form.

## Accommodation & travel

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All conference delegates are responsible for their own accommodation arrangements. Some suggestions are listed below. Please visit the CLE conference website for additional options or email [Law&EconConference@law.anu.edu.au](mailto:Law&EconConference@law.anu.edu.au).

CLE does not guarantee availability of the hotels/apartments mentioned below or on the website.

### Sydney options

- ◀ The Menzies Hotel, 14 Carrington Street Sydney: Standard King Room—\$165/night T: 02 9299 1000 W: [www.sydneymenzieshotel.com.au](http://www.sydneymenzieshotel.com.au)
- ◀ Sofitel Wentworth, 61 Phillip Street Sydney: Classic Room—\$170/night; Superior Room—\$220/night T: 02 9228 9188 W: [www.sofitelsydney.com.au](http://www.sofitelsydney.com.au)
- ◀ Radisson Plaza, 27 O'Connell Street Sydney: Atrium Room—\$220/night T: 02 8214 000 W: [www.radisson.com/hotels/ausplaza](http://www.radisson.com/hotels/ausplaza)





- ◀ Medina Classic, 74–80 Ivy Street Chippendale: Studio Suite—\$183/night T: 1300 633 462 W: [www.medina.com.au](http://www.medina.com.au)
- ◀ Rydges Camperdown, 9 Missenden Road Camperdown: Standard Queen Room—\$119/night; City View Room—\$129/night T: 02 9516 1522 W: [www.rydges.com](http://www.rydges.com)
- ◀ Quest Serviced Apartments, 23–33 Missenden Road Camperdown: Studio Suite—\$185/night T: 02 9557 6100 W: [www.questcamperdown.com.au](http://www.questcamperdown.com.au)
- ◀ Link to other accommodation in Sydney W: <http://www.hotelscombined.com.au/City/Sydney.htm>

### Canberra options

- ◀ University House Hotel, 1 Balmain Cres, ANU Campus: Single Room—\$127/night; Queen Room—\$141/night T: 02 6125 5211 W: [www.anu.edu.au/unihouse](http://www.anu.edu.au/unihouse)
- ◀ Liversidge Court Apartments, Liversidge St, ANU Campus: Studio Apartment—\$149/night; One Bedroom Apartment—\$160/night T: 02 6125 1100 W: <http://accom.anu.edu.au/UAS/189.html>
- ◀ Rydges Lakeside, 1 London Circuit: Standard Queen Room—\$169/night T: 02 6247 6244 W: [www.rydges.com](http://www.rydges.com)
- ◀ Diamant Boutique Hotel, 15 Edinburgh Avenue: Standard Room—\$175/night; Deluxe Room—\$215/night T: 02 6175 2222 W: [www.diamant.com.au](http://www.diamant.com.au)
- ◀ Link to other accommodation in Canberra W: <http://www.totaltravel.com.au/travel/nsw/canberraact/canberracity/directory/accommodation>

## Organiser's contact details

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Dr George R Barker  
Director, Centre for Law & Economics, ANU College of Law  
[George.Barker@anu.edu.au](mailto:George.Barker@anu.edu.au)

Conference details will be continuously updated on the conference website.  
For queries about registration and accommodation, please contact staff at below address.

CRLF Conference	T: 02 6125 3487
COAST	F: 02 6125 0103
ANU College of Law	E: <a href="mailto:Law&amp;EconConference@law.anu.edu.au">Law&amp;EconConference@law.anu.edu.au</a>
The Australian National University	W: <a href="http://law.anu.edu.au/cle">http://law.anu.edu.au/cle</a>
Canberra ACT 0200	



# REGISTRATION FORM

## COLLECTIVE REDRESS & LITIGATION FUNDING

11 December 2009 | Sydney 12 & 13 December | 2009 Canberra

**Please register by 27 November 2009**

Title: \_\_\_\_\_ First name: \_\_\_\_\_ Family name: \_\_\_\_\_

Position: \_\_\_\_\_ Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Special dietary requirements: \_\_\_\_\_

**REGISTRATION FEE** (registration includes morning/afternoon teas & lunch) **Please choose one of the 3 options.**

### SYDNEY CONFERENCE 11 DECEMBER ONLY

- Government/Corporate \$895 (AUD)  
 Academics/NGOs \$375 (AUD)

### CANBERRA CONFERENCE 12 & 13 DECEMBER ONLY

- Government/Corporate \$895 (AUD)  
 Academics/NGOs \$375 (AUD)

### SYDNEY & CANBERRA CONFERENCE 11-13 DECEMBER

- Government/Corporate \$1,790 (AUD)  
 Academics/NGOs \$750 (AUD)

*Organisers may provide transport from Sydney to Canberra depending on the level of interest. Please indicate if you are interested in this option.*

- yes, interested in organised transport to Canberra

Registration fee is GST inclusive. This form will become a tax invoice once payment has been made. A receipt will be provided on payment.

The Australian National University ABN 52234063906

### PAYMENT

Please pay by one of the following options:

1. CHEQUE Made payable to: *The Australian National University*

or by

2. CREDIT CARD (AMEX/Diners not accepted)

VISA  MASTERCARD

Credit Card number

Total amount \$ \_\_\_\_\_ Expiry date \_\_\_\_ / \_\_\_\_

Name of cardholder \_\_\_\_\_ Signature \_\_\_\_\_

### SEND REGISTRATION

Please forward this form & payment to:

Domestic Fax: (02) 6125 0103  
International Fax: +61 2 6125 0103

Post:  
CRLF Conference (COAST)  
ANU College of Law  
The Australian National University  
ACT 0200 AUSTRALIA