

# Commercial Law & Government

An Australian National University and Commercial Law Association conference

Super early bird price: CLA members/ANU alumni \$395 (valid from 18 April to 15 July)

CLA members/ANU alumni \$495, non-members \$695

9.00am-5.00pm, Friday, 16 September, 2016. Dixon Room, Mitchell Wing, NSW State Library (5 CLE points)

Register now at [www.cla.org.au](http://www.cla.org.au)

## 9.00am Registration



### 9.15am Welcome

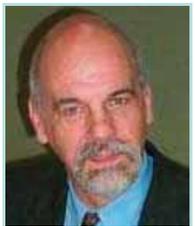
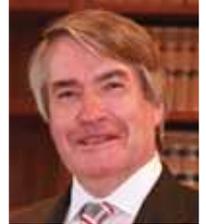
Associate Professor Pauline Ridge, Director, Centre for Commercial Law, ANU

### 9.30am Application of the Australian Consumer Law to government activities

Speaker: The Hon Justice John Griffiths, Federal Court of Australia

Chair: Graeme Johnson, Partner, Herbert Smith Freehills

The presentation will consider current case law on the limits of the existing legislation as it applies to some Government commercial activities (effectively conferring an immunity not enjoyed by the private sector) and will discuss the recent recommendations of the Harper Committee to extend the coverage to the public sector to the extent that the Crown in right of the Commonwealth or the States or Territories undertakes activity in trade and commerce. This will expose such activities to provisions such as the former s52 TPA.



## 10.30am Morning tea

### 11.00am Dangerous deeds: does the use of deeds manage risk or create risk?

Speaker: Professor Nicholas Seddon, ANU

Chair: Daren Armstrong, Partner, Banki Haddock Fiora

This presentation will focus on some awkward truths about the use of deeds by commercial private and public sector lawyers. Government use of deeds raises a particular problem.



### 12.00pm Litigating with corporate regulators

Speaker: Rani John, Partner, DLA Piper

Chair: Professor Stephen Bottomley, Dean, ANU College of Law

Rani John will discuss some of the practical and policy issues that arise in corporate regulatory litigation — what we say we expect from our corporate regulators, some of the practical realities of corporate regulatory litigation, and the gaps between expectation and reality.

## 1.00pm Lunch



### 2.00pm Maintaining confidentiality in commercial dealings with government

Speaker: Daniel Stewart, ANU

Chair: Professor John McMillan AO, Acting NSW Ombudsman

This presentation will consider how confidentiality is affected when the government is involved, including the role of statutory interpretation and legislative obligations of disclosure (such as freedom of information, privacy and public interest, disclosure legislation).



## 3.00pm Afternoon tea

### 3.30pm Contracts and executive discretion: what are the limits?

Speaker: Michael O'Meara, 6 Selborne/Wentworth Chambers

Chair: Jeremy Kirk SC, 11 Wentworth Chambers

This paper considers the principles which determine the extent to which Governments can limit or restrict the exercise of executive discretion by entering into contracts".



## 4.30pm Close



Australian  
National  
University

### ■ Associate Professor Pauline Ridge

Pauline Ridge is an Associate Professor at the ANU College of Law and Director of the Centre for Commercial Law. She graduated from the ANU with a BA/LLB (Hons) and a University Medal in Law. She also holds a BCL from the University of Oxford. She researches in equity, restitution and contract law, and the regulation of religious financing. She is the co-editor of *Fault Lines in Equity* (Hart Publishing, 2012), co-author with Joachim Dietrich of *Accessories in Private Law* (Cambridge University Press, 2015) and publishes in leading law journals such as the *Law Quarterly Review*.

### ■ Justice John Griffiths

Justice Griffiths' tertiary qualifications include a BA and LLB (First Class Hons and University Medal) from the Australian National University, an LLM from Harvard University and a PhD from Cambridge University. Prior to returning to Australia in 1983 he was a Fellow and Director of Studies in Law at Emmanuel College, Cambridge University and lectured in law at that University. After working for three years as the Director of Research of the Federal Administrative Review Council, he joined Dawson Waldron in 1986, where he became a partner. In 1994 he was admitted to the Bar of NSW. He was appointed Senior Counsel in 2001. Immediately prior to his appointment Justice Griffiths was also a member of the Judicial Commission of NSW and Chairman of the Human Rights Committee of the NSW Bar Association.

### ■ Graeme Johnson

Graeme has been a commercial litigation partner at Herbert Smith Freehills since 1992 and is an ANU law alumnus. His areas of expertise include the use and misuse of government powers and general commercial dispute resolution. Graeme represents major corporations as well as public sector clients such as the Australian Government. He has acted and advised on numerous complex commercial disputes in the Federal Court of Australia, State Supreme Courts and international venues.

### ■ Professor Nicholas Seddon

Dr Nick Seddon is recognised as a leading authority in contract law. He advises Australian Government agencies and the private sector in common law and commercial law matters, including major contracts, major acquisitions, and application of the Competition and Consumer Act. Nick also advises on the operation of legislation affecting government and private sector entities. He provides legal awareness training to both the public and private sector. In 2004, Nick was appointed adjunct professor with the ANU College of Law. Nick is the author of the leading text, *Government Contracts: Federal, State and Local*, (5th ed 2013) and *Seddon on Deeds* (2015), as well as co-author of Cheshire & Fifoot *Law of Contract* (10th Aus ed 2012). As a consultant to the Laws of Australia project, he contributed to volumes on the general principles of the law of contract. He was editor of the *Federal Law Review* from 1997-2000.

### ■ Daren Armstrong

Daren Armstrong is a specialist in legal issues concerning emerging technologies, statutory authorities, the tertiary education sector, agribusiness, renewable energy, major acquisitions, listed public companies and the structuring and financing of professional services firms. He has served as a Director of the Commercial Law Association of Australia and as Secretary to its Legislative Review Task Force. He is a Fellow of the Australian Institute of Company Directors and holds BSc and LLB (Hons) degrees from ANU and a LLM degree from the University of Sydney.

### ■ Rani John

Rani John, a partner with DLA Piper, is a leading dispute resolution and investigations lawyer, with wide-ranging and deep experience in complex commercial litigation and advice work, including high profile and large scale commercial and trade practices litigation, regulatory and internal investigations (including investigations conducted by the ASIC, the ACCC and the Australian Federal Police) and corporations and securities law. She has represented major corporates across a range of industries, as well as financial institutions, statutory corporations and professional advisers, and is known for her strategic acumen in litigating

and resolving disputes. Rani holds BCom and LLB (Hons) degrees from ANU and an LLM from the University of NSW.

### ■ Professor Stephen Bottomley

Stephen Bottomley is Dean of the ANU College of Law and Professor of Commercial Law at the Australian National University. His main areas of research interest are corporate law, with a particular focus on corporate governance and accountability in the private and public sectors, and the regulatory and legislative process. Stephen is the author of *The Constitutional Corporation: Rethinking Corporate Governance* (2007), and co-author of *Law in Context* (2012, 4th ed), *Corporations Law in Australia* (2002, 2nd ed), and *Directing the Top 500 - Corporate Governance and Accountability in Australian Companies* (1993). He is also co-editor of *Commercial Law and Human Rights* (2002), and *Interpreting Statutes* (2005).

### ■ Daniel Stewart

Daniel Stewart has been a lecturer in the Faculty of Law since 1999 and senior lecturer since 2005. He was a National Undergraduate Scholar and received first class honours degrees in both Economics and Law from the Australian National University. He also has a Masters in Law from the University of Virginia, where he was a John M Olin Fellow in Law and Economics. He has practiced as a solicitor, been employed with the Corporate Law Economic Reform Program in the Commonwealth Attorney General's Department and was associate to Justice A M North of the Federal Court.

### ■ Professor John McMillan AO

Professor John McMillan AO is the Acting NSW Ombudsman. He was formerly the Australian Information Commissioner from 2010-2015; the Commonwealth Ombudsman from 2003-2010; and the Integrity Commissioner (Acting) for the Australian Commission for Law Enforcement Integrity in 2007. He is an Emeritus Professor of the ANU. He is co-author of a leading student text *Control of Government Action*. Professor McMillan is a National Fellow of the Institute of Public Administration Australia, a Fellow of the Australian Academy of Law, and former President of the Australian Institute of Administrative Law. Prof McMillan was made an Officer of the Order of Australia (AO) in the Australia Day Honours List 2010 for his work as Ombudsman, academic and in professional societies.

### ■ Michael O'Meara

Michael was called to the Bar in 2005. Prior to coming to the Bar he was a Senior Associate at Minter Ellison. Michael graduated from the Australian National University as a Bachelor of Arts and a Bachelor of Laws (Hons) in 2000, winning the University Medal in Law and the Supreme Court Judges' prize. He graduated from the University of Sydney as a Master of Laws in 2006. Michael practises in all areas of commercial law and public law and regularly appears in the Federal Court of Australia, the Supreme Court of NSW and the High Court of Australia. He regularly appears for and against the Commonwealth and its regulatory agencies. He has particular specialisation in the areas of tax, corporations law, banking and insolvency, civil liability of public authorities and representative proceedings.

### ■ Jeremy Kirk SC

Jeremy Kirk SC practises nationally, undertaking both trial and appellate work across a wide range of areas. He obtained law and arts degrees at the ANU, receiving a University Medal for law along with 14 other prizes. He then attended the University of Oxford on a Rhodes Scholarship, obtaining a Masters degree (the BCL) and a doctorate. He was awarded the Vinerian Scholarship at Oxford for the top student in the BCL course. When coming to the bar, he received the Bar Association's prize for coming top of the bar exams. He has published many articles on constitutional, administrative and tort law. His main practice areas include: Appellate, Administrative law, Commercial and corporate law, Constitutional law, Environment and planning law, Industrial law, Professional liability, Public and private international law, and Trade practices and competition law

## SEMINAR REGISTRATION/TAX INVOICE

Commercial Law Association of Australia Ltd • (02) 9979 1364 • ABN 91 914 874 903

Register at [www.cla.org.au](http://www.cla.org.au)

or email your registration form to [memberservices@cla.org.au](mailto:memberservices@cla.org.au) or mail to: GPO Box 5186, Sydney NSW 2001

Friday, 16 September, 2016 from 9.00am to 5.00pm. Dixon Room, Mitchell Wing, NSW State Library.

**Super early bird price: CLA members/ANU alumni \$395 (valid from 18 April to 15 July)**

CLA members/ANU alumni \$495; non-members \$695 (GST & lunch inc).

Conference = five CLE points

How many places should we register for you?

At a total cost of \$

I would like to join the CLA at the individual member rate of \$220 (optional) \$

Total \$

Name

Firm/Chambers

Address

Phone

Email

Additional guests' names

Please debit my Visa, Mastercard, Amex and Diners (please circle one).

Card Number

Name of Cardholder

Expiry date

Today's date

Signature

If you wish to pay by cheque please make cheques payable to the Commercial Law Association of Australia Ltd and send a copy of this page with your cheque.

CANCELLATION AND SUBSTITUTION POLICY. Where 14 days or more written (fax, email, post) notice of cancellation is received a full refund will be given less an administration charge of \$55 (inc GST). Thereafter, no refund is available; however you may nominate a substitute delegate at no additional charge up to the seminar date. PRIVACY STATEMENT. The information you provide on this form is being collected by the Commercial Law Association of Australia Ltd for the purposes of processing your seminar registration and keeping you informed of upcoming offers and events. We may disclose personal information about you to third party contractors (ie, mailing houses), but if we do so we take steps to ensure that your privacy is respected. We understand that you may wish NOT to receive information from us. If you do not want to receive any promotional material about the services we can offer you, please tick the following box  DISCLAIMER. Should circumstances dictate, the organiser reserves the right to alter the program, however every effort will be made to ensure a program of equivalent standard and value should unavoidable changes occur.