sir ninian stephen insurance law MASTERCLASS

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THE UNIVERSITY OF WESTERN AUSTRALIA

A full day Masterclass undertaking a "deep dive" into technical and practical aspects of insurance law that are difficult, controversial or topical, with presentations from a range of Australian and international speakers.

PROGRAM & REGISTRATION

Friday 17 August 2018
The Pavilion, 1 Art Gallery Road, Sydney

www.aila.com.au

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About the Masterclass

Program Overview

Since 2013 these annual full day Masterclasses have undertaken a "deep dive" into technical and practical aspects of insurance law that are difficult, controversial or topical, with presentations from a range of Australian and international speakers.

This year's Masterclass incorporates themed sessions on:

- Pre-contractual disclosure under the *Insurance Contracts Act* 1984 (Cth);
- Causation and valuation issues resulting from natural catastrophes (including case studies from the 2010 Brisbane floods, the 2009 Victorian bushfires, and the 2011 Canterbury earthquakes);
- De-constructing exclusion and indemnity clauses; and
- Reinsurance and aggregation.

We are delighted that **His Honour Justice Michael Ball** of the Supreme Court of New South Wales has agreed to open the Masterclass, and that the confirmed speakers include:

- Keith Bethlehem, Colin Biggers Paisley
- The Hon. Justice Campbell QC
- Mark Doepel, Sparke Helmore
- Stuart Donaldson SC, Ground Floor Wentworth Chambers
- Dr Ian Enright, University of Technology Sydney
- Rebecca Gilsenan, Maurice Blackburn
- Ivan Griscti, Level 22 Chambers
- Fred Hawke, Clayton Utz
- Henry Holderness, University of Canterbury, New Zealand
- Peter Mann, Ground Floor Wentworth Chambers
- Dr Brenda McGivern, University of Western Australia
- Terry Mehigan, 12th Floor Wentworth Selborne Chambers
- Prof Elisabeth Peden, University of Sydney
- Prof. Julie-Anne Tarr, Queensland University of Technology
- Dr Anthony Tarr, Robyn Ashton Consulting

CPD Points

5 CPD points are available for the masterclass. ANZIIF & NIBA points are also applicable.

Dietary Requirements

It is important that you contact us prior to the day if you have any dietary requirements for the Masterclass.

Dress Code

The dress code for the Masterclass is smart casual or business attire.

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Program & Schedule

8.30 – 8.50am	**Registration**
9.00 - 9.10am	**Opening - Justice Michael Ball, Supreme Court of New South Wales**
9.10 - 10.15am	**Section 21 of the *Insurance Contracts Act 1984* (Cth)** Chairperson: **Ray Giblett | Norton Rose Fulbright Australia** 1. In what circumstances is a matter: a) *"known to the insured"* for the purpose of s 21(1)? b) known to the insurer for the purpose of s 21(2)(c)? **Prof Julie-Anne Tarr | Queensland University of Technology** (25 minutes) 2. In what circumstances is a matter: a) "*of common knowledge*" for the purpose of s 21(2)(b)? b) something that an insurer "*in the ordinary course of the insurer's business as an insurer ought to know*" for the purpose of s 21(2)(c)? **Dr Anthony Tarr | Robyn Ashton Consulting** (20 minutes) 3. How might an insurer waive compliance with the duty of disclosure for the purpose of s 21(2)(d)? **Fred Hawke | Clayton Utz** (20 minutes)
10.15 - 11.20am	**Some other pre-contractual disclosure issues** Chairperson: **Paul O'Brien | Yeldham Price O'Brien Lusk** 4. What is the difference between non-disclosure and misrepresentation? **Mark Doepel | Sparke Helmore** (20 minutes) 5. How, for the purpose of s 28(1), does an insurer prove it would not have entered into the contract, for the same premium and on the same terms and conditions, if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into? **Terry Mehigan | 12th Floor Wentworth Selborne Chambers** (20 minutes) 6. Does s 33 render void an exclusion that seeks to exclude cover by reason of pre-existing circumstances? For example, an exclusion in a landlord's rent default policy that seeks to exclude cover if the tenant had defaulted in payment of rent to the landlord prior to inception of the policy? **The Hon. J.C. Campbell QC FAAL** (25 minutes)
11.20 – 11.35am	**Morning Tea Break**

11.35am – 12.40pm	**Natural catastrophes** Chairperson: **Dr Robin Bowley | University of Technology Sydney** 7. In the case of an earthquake, how does an insurer go about valuing a first party loss? **Henry Holderness | University of Canterbury** (20 minutes) 8. Insurance issues from the Wivenhoe Dam flood class action - The plaintiff's view: Rebecca Gilsenan, Maurice Blackburn (20 minutes) 9. In the case of a bushfire: a) Is it the insurer or is it the insured that has the right to control a recovery claim for insured and uninsured losses? b) Can an insurer settle a recovery claim for: (i) insured losses without regard to the insured's claim for uninsured losses? (ii) insured and uninsured losses against the insured's wishes? **Stuart Donaldson SC | Ground Floor Wentworth Chambers** (25 minutes)
12.40 – 1.45pm	**Lunch**
1.45 - 2.50pm	**Deconstructing indemnity, exclusion and insurance procurement clauses** Chairperson: **Alexandra Nash | Ashurst** 1. How to go about construing an indemnity clause and an exclusion clause in an ordinary commercial contract? **Prof Elisabeth Peden | University of Sydney** (25 minutes) 2. How to go about construing adjacent indemnity and insurance procurement clauses in an ordinary commercial contract? **Ivan Griscti | Level 22 Chambers** (20 minutes) 3. How to go about construing the insuring clause and an exclusion in an insurance contract? **Dr Brenda McGivern | University of Western Australia** (20 minutes)

2.50 - 3.55pm	**Reinsurance** Chairperson: **Nicholas Zambetti | Gen Re** 10. Should the *Insurance Contracts Act 1984* (Cth) be amended so that it regulates reinsurance? **Peter Mann | Ground Floor Wentworth Chambers** (20 minutes) 11. Reinsurance: A is for Aggregation. **Keith Bethlehem | Colin Biggers & Paisley** (20 minutes) 12. Cuthbert at the Commission: A reinsurer takes the stand **Dr Ian Enright | University of Technology Sydney** (25 minutes)
3.55 - 4.05pm	**Closing address - Greg Pynt | Francis Burt Chambers, Perth**
4.05pm	**Drinks & Canapés**

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Speakers

Justice Michael Ball

Justice Ball graduated from the University of Adelaide in 1978. In 1983, Justice joined Allen Allen & Hemsley (now Allens). He became a partner of that firm specialising in litigation in 1987.
In 1981-1982 Justice Ball served as a senior law reform officer at the Australian Law Reform Commission under the chairmanship of Michael Kirby AC CMG, and worked on what later became the Insurance Contracts Act 1984.
Justice Ball, in partnership with David Kelly, is the author of the Insurance Legislation Manual: Principles of Insurance Law in Australia & NZ and the insurance chapter in Halsbury's Laws of Australia.
His Honour was sworn in as a Justice of the Supreme Court of NSW on 13 April 2010.

Keith Bethlehem | Colin Biggers Paisley

Keith Bethlehem is a partner in the insurance team. His focus is in the areas of financial institutions and directors' and officers' insurance, as well as professional indemnity insurance. Keith's practice incorporates both advice to insurers on coverage issues and defending litigated claims on behalf of insured individuals and entities. Keith has worked internationally gaining extensive experience in the Lloyd's market, with a particular specialisation in defending claims against financial institutions and investment professionals.
Keith's experience in Australia includes defending claims against corporations and their directors and officers by aggrieved shareholders, and negligence claims against investment managers, stockbrokers and valuers. He has also acted for both insureds and insurers on policy disputes involving insurance and reinsurance agreements. Keith has authored numerous insurance-related articles, co-authored the chapter entitled "Directors' & Officers' Liability" in the second edition of *Directors' Duties During Insolvency* published by Thompson in January 2007 and has presented at various forums on insurance topics both in London and Australia.

Keith was admitted as an attorney in South Africa in 1995 and as a solicitor in England and Wales in 1999. Keith spent six years as a foreign lawyer and solicitor at Barlow Lyde & Gilbert in London between 1997 and 2003.

The Hon JC Campbell QC FAAL | University of Sydney

Adjunct Professor Joseph Campbell was a judge of the Supreme Court of New South Wales from 2001 until his retirement in 2012. He sat as a first instance judge in the Equity Division 2001-2006, and as a judge of the Court of Appeal 2007-2012. In 2013 he was elected as a Fellow of the Australian Academy of Law. Also in 2013 he became an Adjunct Professor at the University of Sydney Law School, and has taught in undergraduate courses in Equity, Legal History, Introduction to Property and Commercial Law and Interpretation. Additionally, he is Deputy Chair of the Electoral Commission of NSW, and has sat occasionally as an Acting Judge in the NSW Court of Appeal.
After completing an Arts degree with honours in philosophy, he graduated from Sydney University with first class honours in law in 1974. He was admitted as a solicitor in 1974, and was called to the bar in 1975. He was appointed as Queens Counsel in 1988. At the bar his practice included appearing in the Supreme Court of New South Wales and the Supreme Courts of other states and territories, the Federal Court, the High Court and the Privy Council. He was a part-time lecturer in Equity at Sydney Law School, 1974-1978, and Challis Lecturer in Bankruptcy 1983-1986.

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Mark Doepel | Sparke Helmore

Mark specialises in professional indemnity and directors' and officers' claims and has been involved in some of Australia's most notable PI and D&O claims. He also has an interest in clinical negligence claims, reinsurance disputes and cyber issues. Mark is the current chairman and a director of Lloyd's Australia Limited.

He advises insurers and insureds on professional indemnity matters, directors' and officers' (D&O) claims and cyber risk. He conducts medico-legal and clinical negligence claims for a number of leading private hospitals, medical negligence insurers and one of the world's leading dental-legal organisations. He also acts in almost all aspects of reinsurance including coverage, arbitration claims and commutation works.
Mark lectures extensively in the field of professional indemnity insurance. He runs the national ANZIIF course Understanding Professional Indemnity Insurance and the two master classes of Advanced Professional Indemnity Claims and Advanced Directors' & Officers' Claims. Mark has also taught at the School of Law at the University of Sydney and is currently lecturing at the University of Notre Dame.

Stuart Donaldson SC | Ground Floor Wentworth Chambers

A specialist in commercial law, with a particular focus on insurance law, Stuart carries with him over 28 years experience at the Bar, including 14 years as Senior Counsel.
He is frequently retained by local and foreign insurers both as defence counsel and in connection with coverage issues related to general liability, professional indemnity and directors and officers liability policies.
Stuart maintains a strong appellate practice, and possesses widespread experience in construction and engineering-related litigation, and claims involving public authorities, financial advisors, auditors, lawyers and medical practitioners.

Dr Ian Enright | University of Technology Sydney

Ian is a lawyer, academic, author, insurance executive and company director. He is an Adjunct Professor of Law at University of Technology, Sydney and formerly the International and Australian Counsel for the Reinsurance Group of America. His book “Professional Indemnity Insurance Law” was described when he was awarded the British Insurance Law Association Book Prize as “the most notable contribution to literature in the field of law as it affects insurance”. Ian was the independent reviewer of the General Insurance Code of Practice. With Professor Rob Merkin QC, he is the author of the latest edition of Sutton on Insurance Law, Australia’s leading insurance text book. Ian was also the Geoff Masel lecturer in 2015: The Insurance Social Contract. Ian advises government, regulators and insurance industry bodies on regulation and policy matters.

Rebecca Gilsenan | Maurice Blackburn

Rebecca Gilsenan is a principal in Maurice Blackburn's class actions department in Sydney. She has extensive experience in running complex and novel litigation, including numerous class actions in the areas of price fixing, securities, failed investment schemes, product liability and catastrophes. Best Lawyers lists Rebecca as one of the top class actions lawyers in Australia.
Rebecca is currently acting for the plaintiff in the Queensland Floods class action.
Rebecca is a member of the board of Maurice Blackburn, she is the deputy chair of the Public Interest Advocacy Centre and the chair of the UNSW Law Advisory Council.

Ivan Griscti | Level 22 Chambers

Ivan came to the bar in 2001. He has a broadly based commercial practice with an emphasis in insurance related and financial services litigation. A large part of his practice includes the handling of disputes in the areas of professional indemnity, construction, directors and officers and public and product liability.
Other key areas of practice include financial services recovery and enforcement, equity, trade practices and property disputes.
Prior to coming to the bar Ivan was a partner at a medium sized Sydney law firm, having practiced as a solicitor for fifteen years.

Fred Hawke | Clayton Utz

Fred Hawke has extensive legal and practical experience in insurance law, claims management and insurance company operations. Before joining Clayton Utz, he was directly employed in the insurance industry for more than 20 years and was responsible for negotiating and settling insurance and reinsurance disputes involving some of Australia's largest liability losses.
Since joining Clayton Utz eighteen years ago, Fred has practised extensively in the field of insurance and reinsurance law, with special emphasis on regulatory and compliance issues, captive insurer arrangements, Bankers Bonds, crime and financial liability insurances, facultative and treaty reinsurance and retrocession arrangements. Trade credit and insolvency and political risk insurance are also areas in which he has had considerable experience, both in the insurance industry and in legal practice.
He is a well recognised and prolific writer and presenter on insurance law and insurance industry related legal matters and regularly teaches Insurance in the Graduate Studies Program at Melbourne University.
Fred is a member of the Editorial Board and former General Editor of the Insurance Law Journal published by Lexis Nexis and Former Chair of the Journal Advisory Council of the Australian Insurance Institute. He is also the Australian Reporter for the Center for International Legal Studies, and the author of the Chapter on Australia in Oceana Publications Inc's loose-leaf publication International Insurance Law and Regulation, as well as a number of other papers and articles on topics of insurance law and claims management.

Henry Holderness | University of Canterbury, New Zealand

Henry Holderness teaches insurance and employment law at the University of Canterbury in Christchurch. Prior to becoming a lecturer, he worked in private practice for a Christchurch law firm specialising in insurance and commercial litigation. He continues to do occasional private work as a barrister affiliated to Canterbury Chambers. He holds a LLM(Hons) from the University of Canterbury and is currently a PhD candidate at the T C Beirne School of Law at the University of Queensland. His thesis is about New Zealand's public scheme of natural disaster insurance, commonly known as EQC, in particular its performance in the aftermath of the Canterbury earthquakes in 2010-11 and how the scheme might be improved for the future.

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Peter Mann | Ground Floor Wentworth Chambers

Peter is a Barrister specialising in insurance law at Ground Floor Wentworth Chambers in Sydney. His specialisation covers the field of insurance and reinsurance both general and life.
Peter is an author of major insurance publications including *Mann's Annotated Insurance Contracts Act*, published by Thomson Reuters and currently in its 7th edition. He is an Adjunct Lecturer of the Faculty of Law at the University of Sydney.
Peter was the recipient of the prestigious AILA Annual Law Prize in 2012.

Dr Brenda McGivern | University of Western Australia

Brenda is a legal practitioner and academic who practises, researches and teaches in the areas of insurance, health and torts law.
She is the Deputy Executive Dean and Associate Dean (Community and Engagement) of the Faculty of Arts, Business, Law and Education at the University of Western Australia, and continues to practise as a Consultant with Moray & Agnew Lawyers in Perth.
Brenda is Chair of the WA Reproductive Technology Council, and is a longstanding member of the Clinical Ethics Service for the WA Child and Adolescent Health Service. She has recently been appointed to the Council of the Australasian Institute of Judicial Administration.
Brenda's qualifications include a PhD; LLB (Hons); B.Com.

Terry Mehigan | 12th Floor Wentworth Selborne Chambers

After qualification in New South Wales and three years with Blake Dawson, Terry practised in London for 17 years (mainly as a partner with Herbert Smith between 1994 and 2006) as a commercial litigator and Solicitor Advocate. In 2007 Terry returned to Australia and joined the New South Wales Bar. He won the inaugural Christopher Gee QC Prize for evidence and advocacy in the May 2007 Bar Practice Course.
Since returning to Australia, Terry's practice has principally focused on the areas of commercial litigation, arbitration, banking law, insurance and reinsurance, and shipping and maritime law.

Prof Elisabeth Peden | University of Sydney, FAAL

Elisabeth is a Professor at the University of Sydney and has an international reputation in contract, commercial law and evidence law. She teaches postgraduate and undergraduate courses for the University of Sydney, Australian National University, and University of Hong Kong. She completed her BA (1st Class Hons) and LLB (1stClass Hons; University Medal) at the University of Sydney. She was the associate to Justice Lockhart in the Federal Court and Justice McHugh in the High Court of Australia. She was a Tapp Scholar and Ivan Roberts Scholar at Gonville and Caius College, University of Cambridge, where she completed her PhD on implied terms in contract law. She was a consultant to a large international law firm for four years, while an academic, before being called to the bar. Elisabeth was admitted as a legal practitioner in 1994 and commenced practising as an academic barrister in 1999 and as a fulltime barrister in 2007. Her practice areas for litigation, arbitration and advice include appellate, commercial/contract, corporate and banking, construction, equity, property, and professional negligence. She has been an expert witness on Australian and New South Wales contract law in Singapore and New Zealand litigation. She is editor of the New South Wales Law Reports, the Commercial Law Quarterly and on the editorial board of the Journal of Contract Law.

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Julie-Anne Tarr | Queensland University of Technology

Julie-Anne Tarr has authored six books, treatises and a range of articles on Insurance Law. She has held senior administrative and professorial roles in Australia, the US and the South Pacific and is currently a Professor of Commercial Law at QUT, specialising in complex contracts, insurance and risk. She holds, or has held, directorships on a number of commercial, government and non-profit boards. Her formal qualifications include a PhD (UQ), LLM (Monash), JD (Cornell) and BA (Wisconsin).

Dr Anthony Tarr | Robyn Ashton Consulting

Tony has worked extensively in the insurance area over the last three decades as a practitioner, law reform consultant, arbitrator and researcher. He currently runs his own consulting company which provides advice on risk management, commercial partnering and joint venturing structures, particularly within the energy and insurance/reinsurance sectors. Prior to this he held executive roles across a number of commercial and academic institutions in Australia and the US, including as Dean of Law (Indiana, UQ, Bond, Adelaide) and as Vice Chancellor of the University of the South Pacific. His qualifications include a BA and LLB (Natal) LLM (Cambridge), PhD (Canterbury), PhD (Cambridge) ACIArb, and he is a Fellow of the Australian Institute of Management.

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REGISTRATION FORM & TAX INVOICE

Insurance Law Masterclass: Friday 17 August 2018

REGISTRATION DETAILS

	Delegates Name, Firm (if different) & Any Dietary Requirements	Member $395.00	Non-Member $445.00	Bring-a-Client* $356.00	Student $195.00	Table of 7 $2492.00
1						
2						
3						
4						
5						
				Total	$	

ALL PRICES ARE INCLUSIVE OF GST

*Bring-a-Client – must be industry-based clients, available to both member and non-member ticket purchases.

Firm	
Address	
Telephone	
Email	

PAYMENT METHOD

Credit Card			
Type (please indicate)	Visa	MasterCard	American Express
Card Number:			
Expiry Date:			
CCV/CAN			

Cheque	Send cheques with a copy of this Tax Invoice/Registration Form to AILA (postal details below) made payable to **'Australian Insurance Law Association'**.

EFT	Account Name: AILA NSW BSB: 033 172 A/C Number: 455 168 Reference: Use the delegate/firm name and event date

Return to: AILA, PO Box 2011 FOREST HILL VIC 3131 P: 1300 699 140 W: www.aila.com.au
Registration forms to: events@aila.com.au General enquiries: office@aila.com.au

FOR EVENT CANCELLATION AND PRIVACY POLICIES, PLEASE REFER TO THE AILA WEBSITE

Registration closes: 13 August 2018