

SIR NINIAN STEPHEN  
MASTERCLASS  
Insurance Law 2016



Friday 20 May 2016  
480 Queen Street, Brisbane

**2016 MASTERCLASS  
REGISTRATIONS**  
E. [2016Masterclass@straight2.com](mailto:2016Masterclass@straight2.com)

 Barry Nilsson.  
LAWYERS  
Strategic edge. Connected advantage.



## SIR NINIAN STEPHEN 2016 MASTERCLASS IN INSURANCE LAW

Supported  
by:



### Masterclass Program Friday 20 May 2016

8.00 – 8.45am

**Registration**

8.50 - 9.00am

**Welcome**

- Berren Hamilton, Chair, Moray & Agnew Lawyers

9.00 - 9.20am

**Revisiting Carter v Boehm on its 250th Anniversary**

Carter v Boehm (1766) 3 Burr 1905 has been said to be the most important insurance case ever to have been decided. Lord Mansfield described at that time the duty of utmost good faith on the part of the insured and the insurer.

This session will revisit the decision and the pivotal role it has played in creating the pre-contractual duties of disclosure, which exist today.

Speaker:

- Professor James Davey, Professor of Law, University of Southampton

9.20 - 10.30am

**Insurance Contract Disclosure: A Comparative Review**

This session will provide a more detailed review of the insurance contract disclosure obligations as they exist now and as they may be amended in the future, including by comparison with the obligations set out in the United Kingdom, and also the intersection of the Electronic Transactions Act and the Insurance Contracts Act.

Speakers:

- Dr. Tony Tarr, Director of Robyn Ashton Consulting Pty Ltd
- Samantha Traves, Former Lecturer and Visiting Fellow at Queensland University of Technology; Member Queensland Law Reform Commission, Member Qld Civil and Administrative Tribunal, Consultant, Barry.Nilsson. Lawyers.

10.30 - 11.00am

**Morning Tea**

Sponsored  
by:



Strategic edge. Connected advantage.



Further sponsorship opportunities:

E. 2016masterclass@straight2.com

## SIR NINIAN STEPHEN 2016 MASTERCLASS IN INSURANCE LAW

Supported  
by:



11.00 -12.20pm

### Bad Faith

The panel will consider various issues including:

- Why Australia does not follow the US doctrine of 'bad faith';
- What constitutes and what falls short of utmost good faith;
- The issues in daily practice which continue to test the doctrine of utmost good faith;
- How the courts will wrestle with these issues and further define the shape of the doctrine of utmost good faith.

Speakers:

- Moderator: Robert Samut, Partner, Barry.Nilsson. Lawyers;
- Professor James Davey, Professor of Law, University of Southampton;
- Professor Sarah Derrington, Head of School and Dean of Law, University of Queensland;
- Dr. Brenda McGivern, Deputy Dean, Law School, University of Western Australia.

12.20 - 1.00pm

### Full Reinstatement Cover in Property Insurance and the Principle of Indemnity

This session will consider the development and theory behind full reinstatement cover in property insurance and the issues which policies of this kind have thrown up in several high-profile cases in NZ following the Canterbury earthquakes. The relationship between full reinstatement cover and the principle of indemnity will be explored.

Speaker:

- Henry Holderness, Lecturer, University of Canterbury

1.00 - 2.00pm

Lunch

Sponsored  
by:



Strategic edge. Connected advantage.



Further sponsorship opportunities:  
E. 2016masterclass@straight2.com



## SIR NINIAN STEPHEN 2016 MASTERCLASS IN INSURANCE LAW

Supported  
by:



2.00 - 3.00pm

### **The Burden of the Onus – You got to be Triggering Me!**

This first part of this session will consider the importance of careful policy drafting and the interpretation of policy wordings which can shift and alter the onus of proof. This session will identify tips and traps for optimal drafting of policy wordings, including exclusions and endorsements, keeping in mind the intents and expectations of how the wording should operate in practice.

The second part of this decision will discuss a developing issue for professional indemnity insurers being the recent increased requirement of ASIC and like regulators to require alternative dispute resolution processes to be undertaken prior to a traditional “claim” being made, and will consider the issues that arise out of these processes, and the relevance of the “claims trigger” in these policy lines.

Speakers:

- Lucy Terracall, Partner, Clayton Utz Melbourne
- Mark Waller, Partner, Clayton Utz Brisbane

3.00 - 3.30pm

### **Indemnity Clauses and Insurance Clauses**

This session will consider the effect of indemnity and insurance clauses in contracts entered into by an insured, which are often difficult and prone to ambiguity, and the potential ramifications for the insurer.

Speaker:

- Brett Heath, Special Counsel, Carter Newell Lawyers

3.30 - 4.15pm

### **Courting the Risk**

If the meaning of an insurance policy must take account of its commercial purposes, how is the commercial purpose to be found?

This session concerns important issues relating to the interpretation of policies of insurance, in the context of decisions concerning the meaning of “accident” and circumstances involving “courting the risk.”

Speaker:

- Roger Traves QC, Barrister-at-Law

4.15 - 4.20pm

### **Closing Address**

- Greg Pynt, Barrister-at-Law

**4.30 – 6.30pm**

**Drinks Reception on Rooftop Deck sponsored by**



This event attracts 5 CPD points (NIBA code 10560)

Sponsored  
by:



Further sponsorship opportunities:  
E. 2016masterclass@straight2.com

**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
**Southampton**



THE UNIVERSITY OF  
**WESTERN  
AUSTRALIA**

**SIR NINIAN STEPHEN**

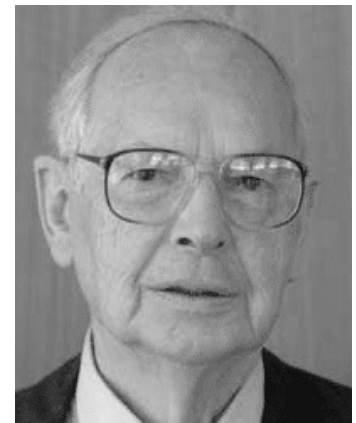
Sir Ninian Stephen, past Justice of the High Court of Australia and past Australian Governor-General, made significant contributions to the development of insurance law. His judgment in the matter of *The Distillers Company Biochemical (Australia) Pty Ltd v Ajax Insurance Company Ltd* [1974] HCA 3; (1974) 130 CLR 1, is still regularly referred to more than 40 years later as the starting point for any discussion in relation to the post-contractual duty of utmost good faith and aggregation clauses.

The post-contractual duty of utmost good faith connection is particularly apt as 2016 is the 250th anniversary of the seminal utmost good faith case of *Carter v Boehm*.

**AILA**

The Australian Insurance Law Association (AILA) is a national non-profit organisation formed to provide a forum for the promotion, review, development and debate of insurance law through seminars, workshops and conferences.

AILA (Qld) is honoured to host the 2016 Sir Ninian Stephen Masterclass in Insurance Law.



**Sir Ninian Stephen**

**SPEAKERS**



**Professor James Davey**  
University of Southampton

**PROFESSOR JAMES DAVEY** is Professor within the Southampton Law School at the University of Southampton. His research and teaching interests lie in contract and commercial law generally. He notably harbors a strong interest in the Law and Economics of insurance, a strong field of study in the US but not generally intensively considered in the UK where insurance law research tends to be centered on contract law.

**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
Southampton



THE UNIVERSITY OF  
WESTERN  
AUSTRALIA



**Tony Tarr**  
**Robyn Ashton Consulting**

**ANTHONY (TONY) TARR** has held Senior managerial positions across several sectors including resources & education. He has had extensive business development experience, underpinned with qualifications in law and economics.

Following closure of the Xstrata Queensland office in the aftermath of the Glencore merger Tony resuscitated his consultancy company, Robyn Ashton Consulting Pty Ltd, and has remained engaged in the resource and gas industry consulting to Origin Energy and Arrow Energy. Tony's work with the coal and CSG companies focuses on negotiation around contracts and joint ventures; management of land tenures, access and compensation matters and dispute resolutions.



**Samantha Traves**  
**Queensland University of  
Technology**

**SAMANTHA TRAVES** is a Visiting Fellow at the Faculty of Law, at the Queensland University of Technology. She lectures in insurance, commercial and corporate law. Samantha has published a commercial law text that is currently being used by students in Australian Universities and Australian Practitioners as a valued resource. Samantha has consulted to Barry.Nilsson Lawyers group since 2003.

She has published most extensively in the area of insurance law including articles on many insurance related issues, including fraudulent claims, s54 of the Insurance Contracts Act, double insurance and contribution, defence cost clauses in liability insurance policies and directors and officers insurance. She is a regular speaker at specialist insurance law conferences convened by the Queensland Law Society in conjunction with the Australian Insurance Law Association and has also been invited to speak at the National Claims Management Symposium & Brisbane Insurance Forum.

Samantha has extensive experience in the provision of education to members of the insurance industry. She received an award from the President of the Australian and New Zealand Institute for Insurance and Finance in recognition of the contribution she has made to the education of the insurance law industry and is a past recipient of the Australian Insurance Law Association Insurance Law prize.

**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
Southampton



THE UNIVERSITY OF  
WESTERN  
AUSTRALIA



**Robert Samut**  
Barry Nilsson Lawyers

**ROBERT SAMUT** has been a Partner of Barry.Nilsson.'s Insurance & Health Law team since 2002. He acts for insurers, self-insureds and underwriters particularly in areas surrounding medical negligence, public/products liability, management liability, professional indemnity and commercial claims. His interest in medical negligence has resulted in a number of partnerships including the Mater Hospital and Uniting Health Care.

Robert has achieved outstanding outcomes, not only in his legal practice, but as a facilitator of Elevista – Barry.Nilsson.'s insurance and corporate risk management training initiative. As a facilitator, Robert hosts both public and in-house workshops educating the wider industry sector on topical insurance issues.

Robert is a presenter in demand with international commentators and websites often picking up his commentary on insurance and risk issues.



**Professor Sarah Derrington**  
University of Queensland

**PROFESSOR SARAH DERRINGTON** is Dean of Law at the University of Queensland and a barrister specialising in maritime and shipping law, general commercial law and arbitration.

She has published in leading international journals in the field of marine insurance and carriage of goods by sea and, with James M Turner of the English Bar, co-authored The Law & Practice of Admiralty Matters (OUP, 2007). She was the co-Editor of the Queensland Reports from July 2011 until May 2015.

Sarah is a Director of the Australian Maritime Safety Authority (AMSA) and of the Australian Maritime College (AMC), Immediate Past President of the Maritime Law Association of Australia and New Zealand (MLAANZ), a member of the Commonwealth's Admiralty Rules Committee, the Chartered Institute of Arbitrators, the Institute of Company Directors, the Council of the Australian National Maritime Museum and is a Fellow of the Nautical Institute and of the Australian Academy of Law

## SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW

Friday 20 May 2016

## Masterclass Program

Supported  
by:THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIAUNIVERSITY OF  
SouthamptonTHE UNIVERSITY OF  
WESTERN  
AUSTRALIA

**Dr Brenda McGivern**  
University of Western Australia

**DR BRENDA MCGIVERN** is the Deputy Dean of Law at the University of Western Australia and a consultant with Moray & Agnew Lawyers (Insurance and General Liability). Brenda specialises in health law and has significant experience in a range of professional indemnity and liability matters.

Brenda has advised and represented insurers and their insured in a range of professions with a particular focus on the health industry. In this capacity, she has acted across a broad spectrum of matters, including professional negligence litigation, disciplinary proceedings, professional complaints and inquiries and coronial proceedings.

Brenda has developed a strong interest in risk management as a means of limiting exposure to liability. In particular, she has run a number of legal risk management seminars for health care institutions and practitioners.



**Henry Holderness**  
University of Canterbury

**HENRY HOLDERNESS** is a lecturer in law at the University of Canterbury. He teaches insurance, company and employment law, with a research focus on insurance issues; commercial and corporate law, including insolvency and securities law; insurance and employment law. He also has an interest in civil procedure.

Henry practiced as a commercial and insurance litigator in Christchurch, which included acting for clients in numerous earthquake-related cases following September 2010. Henry is currently researching and writing towards a PhD.



**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
Southampton



THE UNIVERSITY OF  
WESTERN  
AUSTRALIA



**Lucy Terracall**  
Partner, Clayton Utz

**LUCY TERRACALL** is an experienced and reputable practitioner, specialising in insurance law and related disputes. Her areas of expertise include insurance, reinsurance, alternative dispute resolution and commercial litigation with a specific focus on professional indemnity. Lucy's disputes work has seen her act for compulsory insurers in Supreme Court proceedings, and work on large-scale litigation, including advising on insurance issues in relation to class actions. She also regularly advises corporate and government clients in relation to the insurance aspects of major project contracts, tenders and contract negotiations, and specialist insurance such as aviation and maritime insurance.

Lucy is an active member of the Law Institute of Victoria, a regular contributor to the Prahran Insurance Group and is a Member of the General Committee of Women in Insurance (Victoria). and Eastern Pipeline Interconnector Projects and the Tugun Bypass.



**Mark Waller**  
Partner, Clayton Utz

**MARK WALLER** is a Partner in the Litigation and Dispute Resolution group and he heads up the Queensland Insurance and Risk Practice of Clayton Utz. Mark acts for some of Australia's leading publicly listed companies as well as Government corporations and agencies and he has practiced as a litigator for over 25 years. The services provided by Mark and his team include litigation and dispute resolution, insurance and legal liability risk management, director's and officer's liability and insurance reviews and corporate and infrastructure insurance reviews.

Mark has a broad range of commercial and general litigation experience. This experience includes acting for financial institutions and insolvency practitioners in respect of class actions and other multi-party group actions. Mark has been involved in some of the more prominent claims arising from the global financial crisis, including the CBA and Storm litigation and the investor claims against Lehman Brothers Australia Limited (in liquidation).

Mark has acted for clients advising on insurance and liability risk transfer issues and related contentious insurance claims in respect of some of the State's most significant infrastructure projects, including The 2018 Commonwealth Games Village, Brisbane Airport New Parallel Runway Project, The North East Gas Interconnector, Gibson Island and Luggage Point Waste Water Treatment Plants, Airport Link, Northern Busway, Southern Regional Water Pipeline Alliance, the Northern Pipeline and Eastern Pipeline Interconnector Projects and the Tugun Bypass

**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
Southampton



THE UNIVERSITY OF  
WESTERN  
AUSTRALIA



**Brett Heath**  
Carter Newell Lawyers

**BRETT HEATH** is a Special Counsel at Carter Newell Lawyers and has specialised in commercial and insurance litigation since 1988. Having worked in-house for a specialist professional liability insurer, Brett now specialises in professional liability and large scale public liability and construction claims.

Brett provides advice to underwriters and insured with respect to policy construction and interpretation. Brett has also prepared, attended and conducted numerous mediations before highly accredited professional mediators, has appeared as advocate in applications and trials in the Magistrates Court, District Court, Federal Court and Supreme Court and has extensive experience involving litigation in the District Court, the Supreme Court, the Federal Court, the Court of Appeal and the High Court of Australia.

Brett is a regular and sought after speaker on continuing professional development issues, particularly with respect to risk prevention for professionals, developments in insurance law, commercial drafting techniques and mediation and litigation strategies.



**Roger Traves QC**  
Barrister

**ROGER TRAVES** is a leading silk with a wide-ranging commercial, insurance and public law practice. He is a qualified mediator and former President of the Bar Association of Queensland.

**SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW**

**Friday 20 May 2016**

**Masterclass Program**

**Supported  
by:**



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

UNIVERSITY OF  
Southampton



THE UNIVERSITY OF  
WESTERN  
AUSTRALIA



**Berren Hamilton**  
Moray & Agnew Lawyers

**BERREN HAMILTON** is a senior associate at Moray & Agnew Lawyers. He specialises in defendant insurance litigation, including public and product liability, professional indemnity and property damage claims. He has successfully handled coverage disputes, partly covered claims, nuisance claims, the investigation of fraudulent claims, commercial litigation and fire, flood and business interruption claims. He also conducts the defence of personal injury claims.

Through the various insurers and self-insureds Berren acts for, he has represented and conducted the defences of large corporations, principal and sub-contractors, local authorities, construction and labour hire companies, shopping centre, residential complex and body corporate managers, occupiers of licensed premises, security providers and sporting associations, often involving multiple parties and sometimes involving catastrophic personal injuries. Berren has also obtained excellent recovery outcomes, particularly regarding large-scale property damage.

Berren has served on the committee of the Queensland Chapter of the Australian Insurance Law Association since 2008.



**Greg Pynt**  
Francis Burt Chambers

**GREG PYNT**, Barrister joined Francis Burt Chambers as a barrister in July 2013 after a short stint as a Claims Officer at Law Mutual. Prior to that he was a partner at Pynt + Partners.

Greg won the Australian Insurance Law Association Insurance Prize in 2000 and is an AILA Honorary Life Member. He is a Visiting Fellow at the University of Western Australia where he has co-ordinated and lectured in insurance law in the Faculty of Law at undergraduate and postgraduate level since 1991. In 2011, LexisNexis published the second edition of his book 'Australian Insurance Law: A First Reference'. Greg is also the General Editor of the Insurance Law Journal, published by LexisNexis.

## SIR NINIAN STEPHEN MASTERCLASS IN INSURANCE LAW

Hosted by Australia Insurance Law Association (Qld) and supported by the University of Canterbury, University of Queensland, University of Southampton, University of Western Australia

Friday 20 May 2016  
Rooftop Level, 480 Queen Street, Brisbane

### Masterclass Program

	<p><b>SECURE ONLINE REGISTRATION</b> is available for payments via credit card on the AILA website – <a href="http://www.aila.com.au">www.aila.com.au</a>.</p> <p>For registrations with payment by direct deposit or cheque please complete this form and enclose with cheque or remittance advice to PO Box 1629 New Farm, QLD 4005.</p> <p><b>REGISTRATION FORM /TAX INVOICE – ABN# 81 052 374 713</b> All prices include GST. This document will be a tax invoice for GST purposes when you make payment. Please retain a copy of this for GST purposes.</p>
<b>DELEGATE INFORMATION</b>	<p>First Name _____ Last Name _____</p> <p>Organisation _____</p> <p>Postal Address _____</p> <p>City /Town _____ Postcode _____</p> <p>Phone (bh) _____</p> <p>Special Dietary requirements?</p>
<b>REGISTRATION INCLUSIONS</b>	<ul style="list-style-type: none"> <li>• Sir Ninian Stephen Masterclass in Insurance Law – 8.50am – 4.20pm</li> <li>• Coffee on arrival, AM &amp; PM Teas, and Lunch</li> <li>• Reception Drinks 4.30pm – 6.30pm</li> <li>• Delegate list &amp; speaker papers (subject to privacy and permission received)</li> </ul>
<b>REGISTRATION RATES</b>	<p><b>MEMBER:</b> Early Bird <b>\$200</b> by 22<sup>nd</sup> April, 2016 Standard <b>\$250</b></p> <p><b>NON-MEMBER:</b> Early Bird <b>\$250</b> by 22<sup>nd</sup> April, 2016 Standard <b>\$300</b></p> <p><b>MEMBER &amp; INVITED INDUSTRY GUEST:</b> Early Bird <b>\$300</b> by 22<sup>nd</sup> April, 2016 Standard <b>\$350</b> <i>Industry guest details:</i> Name _____</p> <p>Company _____ Email _____</p>
<b>PAYMENT</b>	<p><b>Cheques</b> payable to 'AILA (Qld) – Masterclass' and posted to PO Box 1629 New Farm, QLD 4005. <b>Direct Deposit</b> BSB: 033 172 Account: 45 5205 - Ref Delegate Full Name <b>For payment via Credit Card</b> please go to address at the top of this form. Registrations with payment by cheque or by direct deposit <b>must</b> accompany a registration form.</p>
<b>PRIVACY</b>	<p><i>In registering for this Masterclass, relevant details will be incorporated into a delegate list for the benefit of all delegates and sponsors or Masterclass (name, organisation and email).</i> Please circle <b>NO</b> if you do not wish to have your name included in the delegate list. <b>NO</b></p>