



SIR NINIAN STEPHEN INSURANCE LAW MASTERCLASS

**INSURANCE GANGNAM
STYLE (UNIQUE TO PERTH)**
is a full day Masterclass
taking a “deep dive” into
technical and practical
aspects of insurance law that
are difficult, controversial or
topical.



8:30am to 4:00pm
Fri 21 July 2023



The Melbourne,
33 Milligan Street, Perth



Members \$325
Non members \$375
Bring-a-Client \$350
Student \$125

CPD
POINTS

5 legal 5 ANZIIF 5 NIBA

REGISTER ONLINE
aila.com.au

MASTERCLASS INFORMATION

About The Rt Hon Sir Ninian Stephen

This annual Masterclass is named after the Rt Hon Sir Ninian Stephen (1923–2017) PC, KG, AK, GCMG, GCVO, KBE, QC, former Justice of the High Court of Australia and of the Supreme Court of Victoria, Judge of the International Court of Justice, Governor-General of Australia and Australian Ambassador for the Environment.

Sir Ninian 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.

There was a great deal of publicity about Sir Ninian's appointment as Governor-General of Australia. Apparently, during his flight from Melbourne to Canberra to take up that position an air hostess approached him and said: "I know you from somewhere. What do you do?" Sir Ninian replied that he was "between jobs". The air hostess responded: "Never mind dear, something will turn up."

Registration & Cost

Registration is available online via www.aila.com.au

Members \$325.00

Non-Members \$375.00

Bring-a-Client \$350.00*

Student \$125.00

*Bring-a-client only available to client of AILA members, clients must be industry based.

CPD Points

This event will incur:

- 5 legal CPD Points (1 ethics, 4 substantive law)
- 5 NIBA Points
- 5 ANZIIF Points

LPBWA - delegates wishing to claim LPBWA points **must** supply their practitioner ID during the registration process. AILA will report all attendance to the Practitioners Board on your behalf.

Dietary Requirements

Dietary requirements must be advised at least 48 hours prior to the event.

Details can be included either via the registration process or by contacting the AILA Office directly office@aila.com.au.

Dress Code

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

PROGRAM

8:30am	REGISTRATION, COFFEE AND TEA
9.00am	Opening address: The Honourable Ken Martin KC
9.10am	<p>LOOKIN' FOR THE ANSWER JUST GIVES ME INDIGESTION I SPENT SO MUCH TIME, JUST DEALIN' WITH THE QUESTION</p> <p>1. More ethics in insurance law Presenter: Ian Enright</p> <p>CPD points i CA3: Ethics and Professional Responsibility 1</p>
10.15am	<p>LOOK WHAT HAVE THEY'VE DONE TO MY SONG, MA</p> <p>Chairperson: The Hon. Ken Martin KC</p> <p>1. Waiver and election by affirmation after Delor Vue. Presenter: Sean Popperwell (20 min)</p> <p>2. Estoppel after Delor Vue. Presenter: Fiona Stanton (20 min)</p> <p>3. Utmost good faith after Delor Vue. Presenter: Fred Hawke (25 min)</p> <p>CPD points - CA4: Substantive Law (Legal Knowledge) 1</p>
11.20am	MORNING TEA
11.35am	<p>WHAT DO I KNOW?</p> <p>Chairperson: Peter Foss SC, former insurance lawyer</p> <p>1. For the purpose of s 21(1) of the Insurance Contracts Act 1984 (Cth), what is a "matter that is known to the insured"? Presenter: Fred Hawke (25 min)</p> <p>2. For the purpose of s 21(1)(b) of the Insurance Contracts Act 1984 (Cth), how do we know when a "reasonable person in the circumstances could be expected to know to be a matter so relevant"? Presenter: Dr Simon Allison (20 min)</p> <p>3. For the purpose of s 21(2)(c) of the Insurance Contracts Act 1984 (Cth), what "in the ordinary course of an insurer's business" does an insurer know or ought an insurer know? Presenter: Justine Siavelis (20 minutes)</p> <p>CPD points - CA4: Substantive Law (Legal Knowledge) 1</p>

PROGRAM

12:40pm	LUNCH
1.40pm	<p>WALK A MILE IN MY SHOES</p> <p>Chairperson: Angie Gimisis, Special Counsel, Hall & Wilcox</p> <p>1. In a subrogated action, which of the insurer and the insured has the right to control the conduct of the action? And what obligations does that person owe the other? Presenter: James O’Hara (20 min)</p> <p>2. Insurer fully indemnifies insured for a first party loss caused by a negligent third party. Apart from ss 65 and 66 of the Insurance Contracts Act 1984 (Cth), in what circumstances will the insurer be prevented from exercising a right of subrogation against the negligent third party? Presenter: Clara Wren (25 min)</p> <p>3. In what circumstances might a third party’s liability to pay damages to an insured be reduced by insurance payments received by an insured or to which an insured is entitled? Presenter: Jehan-Philippe Wood (20 min)</p> <p>CPD points - CA4: Substantive Law (Legal Knowledge) 1</p>
2.45pm	<p>YES, THERE ARE TWO PATHS YOU CAN GO BY, BUT IN THE LONG RUN THERE’S STILL TIME TO CHANGE THE ROAD YOU’RE ON</p> <p>Chairperson: Rebecca Pember, Investigator, QBE Insurance (Australia) Limited</p> <p>1. Independent, interdependent and intervening causes. Presenter: Anthony Hillary (25 min)</p> <p>2. When can an insured recover under an insurance policy for a deliberately caused loss or event? Presenter: Jenny Thornton (25 min)</p> <p>3. What is an allocation clause and how does it work? Presenter: Chris Rimmer (20 min)</p> <p>CPD points - CA4: Substantive Law (Legal Knowledge) 1</p>
3:50pm	Closing Address: Ian Enright
4:00pm	NETWORKING, DRINKS & CANAPES

SPEAKERS

DR IAN ENRIGHT, LAWYER, ACADEMIC, AUTHOR

Ian is a lawyer, academic and author. He also worked as an insurance executive and company director. Ian was 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 an occasional lecturer and presented papers in commercial law subjects: Geneva Association, Warsaw University, London School of Economics, Cambridge University, University of Sydney and Monash University. He designed, developed and led the teaching for the University of New South Wales and University of Technology Sydney insurance course in the Master of Laws Degree in Australia. 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. He was awarded the AILA Insurance Law Prize in 2015 in recognition of his contribution to Insurance Law and Insurance Law Education. Ian was an independent expert and insurance adviser to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. He is a consultant to the Australian Law Reform Commission on the inquiry into the legislative framework for corporations and financial services regulation.

Ian was awarded the degree of Doctor of Philosophy in Law by the University of Exeter. He advises government, regulators and insurance industry bodies on regulation and policy matters. Ian is the Founding Chairman, Australian College of Insurance Studies, a not-for-profit entity in development, comprising leading academics, lawyers and insurance practitioners. The aim is to produce academically and practically educated insurance practitioners for the insurance and financial services industries.

FRED HAWKE, CONSULTANT, CLAYTON UTZ, MELBOURNE

Fred 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 twenty 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.

SPEAKERS

JAMES O'HARA, BARRISTER, FRANCIS BURT CHAMBERS

James is a barrister at Francis Burt Chambers. He has experience in the conduct of high value commercial disputes in superior courts across Australia. He has particular expertise in class actions, corporate insolvency, energy and resources, and insurance.

Before joining the Bar, James was a Senior Associate in the disputes team at Herbert Smith Freehills. He has advised on D&O policies and represented directors involved in commercial litigation and shareholder class actions. He is published on insurance law.

SEAN POPPERWELL, PARTNER, POPPERWELL & CO, PERTH

Sean practises primarily in professional indemnity insurance and manages actions in the Supreme, District and Federal Courts. Sean regularly appears in these jurisdictions and the Court of Appeal and has appeared as junior counsel in the High Court of Australia. Sean represents lawyers, company directors and officers and professionals in the construction industry.

Sean has served the Law Society of Western Australia on various ad hoc committees. He delivers papers relevant to risk management for lawyers and has presented papers for Legalwise and the Australian Insurance Law Association.

Away from the office Sean can be found tending his olive oil, amongst his modest vines or on the golf course.

CHRIS RIMMER, PARTNER, SPARKE HELMORE, PERTH

Chris is an experienced insurance litigation practitioner with expertise in public and product liability, workers' compensation, professional indemnity and motor vehicle and personal injury claims.

Chris provides advice to clients on the management of insurance claims across all classes of insurance and regularly appears as counsel in the District Court, the Court of Appeal and in the Conciliation and Arbitration Service.

Chris acts for a number of Australian insurers and London-based syndicates and underwriters as well as large corporate entities who carry significant deductibles on their liability policies.

Chris also provides advice to the local insurance broking market on their clients' indemnity and insurance obligations in contracts and the extent to which the insurance program in place complies with the contractual obligations.

SPEAKERS

JUSTINE SIAVELIS, PARTNER, GILCHRIST CONNELL, PERTH

Justine has been practising insurance law in Australia and London for over 20 years, both in house and in private practice. Justine was a founding member of Gilchrist Connell Perth where she is a principal.

Justine specialises in financial lines insurance, assisting and representing professionals in all areas including law, accounting, property, construction and health, as well as in their capacities as directors and officers. Justine also assists clients under management, statutory and general liability policies including with safety matters, inquiries and prosecutions and injury claims. Justine has a keen interest in coverage issues and enjoys the opportunity to learn and to assist others navigate insurance policies and with issues arising under the Insurance Contracts Act 1984 (Cth).

FIONA STANTON, BARRISTER, FRANCIS BURT CHAMBERS, PERTH

Fiona Stanton has over 25 years of broad litigation experience and has extensive experience as counsel in State and Federal Courts, Commissions and Tribunals.

Fiona has managed a substantial personal injury practice and developed particular expertise in medical negligence and medical disciplinary matters.

She has also managed a substantial practice in employment law, acting for employers in a wide range of disputes concerning employees and contractors. She advises employers in relation to workforce re-structuring and redundancy, and has expertise in workplace health and safety from investigation to prosecution.

Fiona has acted in contractual and property disputes for clients from a wide range of industries including real estate, professional services, labour assistance, medical, rehabilitation, aviation, manufacturing, communications and construction.

Fiona has regularly acted in disciplinary proceedings for the Medical Board of Australia and other health boards established under the Health Practitioner Regulation National Law 2010 and has acquired expertise in related coronial proceedings.

Fiona is interested in all aspects of medical law and medical administration. She is a former member of the Board of the South Metropolitan Health Service and a former member of the Governing Council of the North Metropolitan Health Service

DR SIMON ALLISON, LECTURER, CURTIN UNIVERSITY LAW SCHOOL

Simon is an Associate Lecturer at Curtin University Law School.

He has a PhD (Law) from the University of Cambridge (Queens' College) and a Masters of Philosophy (Law), a Bachelor of Laws (First Class Honours) and a Bachelor of Economics from the University of Western Australia.

Simon was a Ministerial Research Officer (Part Time): Perth and Canberra Office of the Commonwealth Minister for Environment and Heritage from 2005 to 2007 and a Ministerial Liaison Officer, Office of the Western Australian Minister for Energy and Training Department of Premier and Cabinet (Western Australia) from 2008 to 2010.

SPEAKERS

JENNY THORNTON, BARRISTER, QUAYSIDE CHAMBERS

Jenny advises in a range of professional indemnity actions including in respect of engineers, architects, investment managers, financial planners, auditors, accountants, solicitors and medical practitioners.

Jenny also advises on directors and officers' insurance claims and, on insurers' instructions, defends directors/officers involved in commercial litigation and quasi-judicial inquiries. She has represented directors in actions alleging breaches of OH&S legislation and allegations of wrongful dismissal, misleading and deceptive conduct, and insider trading.

She advises on industrial special risks, contractors all risks and contract works policies. She also drafts and negotiates clauses in project contracts which reflect appropriate insurance arrangements and she handles coverage, defence and subrogated recovery matters.

Jenny has been recognised as a leading lawyer in Doyle's WA Professional Indemnity and Public Liability rankings and Australia's Best Lawyers (since 2011). She has also been named as a leading insurance lawyer in Australia in Chambers Asia Pacific and Legal 500 Asia Pacific (both since 2015).

JEHAN-PHILIPPE WOOD, PARTNER, CLYDE & CO, PERTH

Jehan-Philippe is a partner at Clyde & Co. Before arriving in Perth in January 2015, he worked as a solicitor in the London insurance market for some 15 years. His practice in Perth includes acting for insurers and insureds across professional risks, D&O, general liability, property damage and fraud/crime, commercial litigation, investigations, regulatory proceedings and enquiries. He is recognised as a recommended lawyer in Insurance by Legal 500.

CLARA WREN, BARRISTER, QUAYSIDE CHAMBERS

Clara focuses on resources, infrastructure and insurance matters. Clara has significant experience in high value disputes involving mining projects, joint ventures, state agreements and royalties, as well as in construction, professional liability, public liability and complex contractual claims. Before joining the bar, Clara was a Senior Associate at Allens. Clara was educated at The University of Western Australia. In 2006 and 2007, she was Associate to the Hon. President Steytler of the Court of Appeal in the Supreme Court of Western Australia.