## CHAIR



## Miriam Dean CNZM KC, Auckland

Miriam has more than 38 years of experience in commercial dispute resolution and over 25 years in governance shaping the advice she provides, and the investigative work she carries out. Hand in hand with her broad commercial dispute resolution experience goes a particular specialty in competition, consumer and regulatory law representing a diverse range of industries. Miriam's reviewrelated work is extensive with recent involvement in reviews on Weta Digital, Auckland Council, Department of Corrections and the Government's Electricity Price Review.

## **SPEAKERS**



## Garth Gallaway, Chapman Tripp, Christchurch

One of New Zealand's leading legal experts in health and safety, Garth acts for employers in investigations and prosecutions, both on direct instructions and through insurers. He has been involved in some of New Zealand's highest-profile coronial inquests and provides strategic legal advice to leading corporates and boards on health and safety matters.



#### Katie Hogan, City Chambers, Auckland

Katie specialises in criminal proceeds and money laundering litigation and undertakes criminal and civil litigation at all levels. She is a leading litigator in the areas of criminal proceeds, financial crime, and pecuniary penalties under the AML/CFT regime. Katie serves on the NZ Bar Association Criminal Committee, and she is a member of the Serious Fraud Office prosecution panel.



### Tracey Hu, City Chambers, Auckland

Tracey acts in criminal and civil cases, specialising in defending clients against criminal and regulatory investigations and prosecutions. Prior to joining the bar, she prosecuted regulatory offending on behalf of various government departments at Meredith Connell. She has also worked in a top-tier boutique litigation firm defending clients against regulatory proceedings involving allegations of complex fraud, breaches of securities legislation, and professional disciplinary issues.



#### Sarah Keene, Webb Henderson, Auckland

Sarah is a Partner in Webb Henderson's Auckland office. She has over 25 years of experience practising in New Zealand and the UK in the area of competition, consumer and economic regulatory law, including advising local and global clients on major investigations, litigation, strategic compliance advice, and in respect of merger control. Sarah specialises in Commerce Commission investigations, prosecutions, appeals, leniency applications, and licencing, distribution, and other collaborative arrangements.

## **SPEAKERS**





## Fletcher Pilditch KC, Richmond Chambers, Auckland

Fletcher has over 22 years' experience as an advocate in regulatory/criminal and public law litigation. He has extensive court experience at every level having conducted many jury and judge-alone trials, appeals, tribunal and inquiry proceedings. Fletcher represents and provides advice to clients who are subject to investigation by diverse Government agencies including the Serious Fraud Office, the Commerce Commission, the Financial Markets Authority, and WorkSafe.

### Rachael Reed KC, City Chambers, Auckland

Rachael practises in civil and criminal law with particular expertise in serious fraud and financial and regulatory investigations and prosecutions. In practice for over 25 years and appointed a QC in 2017, she has appeared as senior counsel in complex fraud cases on many occasions in all courts. Rachael also sits on the New Zealand Markets Disciplinary Tribunal and the New Zealand Institute of Chartered Accountants Disciplinary Tribunal.

## Adam Ross KC, Shortland Chambers, Auckland

Adam practises in civil, corporate, and commercial law, and regulatory crime (securities, corporate, trade practices, environmental). He commenced practice as a barrister sole at Shortland Chambers in March 2015 and since has enjoyed a diverse civil and commercial law practice. Adam was recognised by Chambers & Partners as a "Band 1" lawyer in litigation, dispute resolution and insurance. Other notable awards include the Cleary Memorial Prize, and Fulbright, Rotary and Spencer Mason Scholarships.

# CONTENTS

ROCEEDS INVESTIGATIONS – A DRACONIAN REGIME 1
AN OVERVIEW OF THE CRIMINAL PROCEEDS (RECOVERY) ACT 2009
Costs regime = pressure and restricts access to justice
ACTING FOR CLIENTS INVOLVED IN INVESTIGATIONS ALLEGING COMMERCIAL CRIME: THE SFO AND FMA
INTRODUCTION 17   INSPECTION POWERS – SFO 19   PART 2 INVESTIGATION – SS 9, 27, 28 19   NO PRIVILEGE AGAINST SELF-INCRIMINATION 20   LIMITS TO S 9 20   THE CHOICE OF INTERVIEW FORMAT 22   THE FMA'S INSPECTION AND INTERVIEW POWERS 22   APPENDIX A – SERIOUS FRAUD ACT 1990 31   APPENDIX B – FINANCIAL MARKETS AUTHORITY ACT 2011 38
THE COMMERCE COMMISSION
INTRODUCTION 45   THE COMMISSION'S POWERS. 46   YOUR CLIENT'S RIGHTS AND PRIVILEGES, INCLUDING REPRESENTATION, ATTENDING INTERVIEWS, HOW 47   TO DEAL WITH SEARCH WARRANTS, AND IMMUNITY APPLICATIONS. 47   THE IMPACT OF CRIMINALISATION AND MARKET STUDIES. 52   CONFIDENTIALITY ISSUES, INCLUDING INFORMATION SHARING BETWEEN REGULATORS 53   SUMMARY AND OBSERVATIONS 54   APPENDIX 1 – FULL TEXT OF RELEVANT COMMERCE ACT PROVISIONS 56
VORKSAFE NZ – RIGHTS AND PRIVILEGES 63
Regulatory investigations – health and safety investigations 65   Preliminary steps and obligations 65   Investigation 69   Outcome 73   Individuals and officers 75