

18th Annual Practical Insolvency Conference and Dinner

25-26 March 2019

**L'Aqua, Cockle Bay Wharf,
Sydney**



Media Partner



**Organised by Rosie Traill
Traill & Associates Pty Limited
Insolvency, Restructuring,
Bankruptcy & Turnaround Conference Specialists**

WHY YOU SHOULD ATTEND



Timing - conveniently timed before the end of March for the CPD/CPE cut off, there are CPD/CPE of 13+ hours/points if you attend every session.

Location –Overlooking Darling Harbour. Easy and cost -effective to get to for local and interstate practitioners, many affordable accommodation options (contact me for suggestions).

Cost/Value- including time away from the office, the early bird is on now!

Content- I work very hard to listen to your concerns and match your needs with technical, practical information from the experts, and I'm always open to how I can improve and will include on the program any new developments that arise before March.

Networking - catch up with your peers and increase your contact base, I will make personal introductions for you that will help you find opportunities in this market cycle, talk to me if you want to meet anyone in particular at my event.

Resource Papers - The preparation that goes into the presentations and discussion notes will benefit you in your daily practice immediately and provide you with an excellent resource to add to your library for you and your team.

Substitution/Sharing privileges - available on request *. If you can't get away for a day, you can send another colleague in your place and they will also benefit from the learning and networking (*t's & c's apply).

In addition, I ask you to support me, a small business independent learning provider who has shown commitment to the profession for close to 22 years and provided a quality technical training, mentoring, networking and platform for speakers to showcase their talents and build their profiles. I really care about your needs and I genuinely listen to your concerns and ask my speakers to go the extra mile to address them to help you achieve your goals and objectives.

My 18th Annual Practical Insolvency Conference & Gala Dinner is proving to be one of my most exciting to date and we have a slight change of scenery being one level up from where we usually, at the stunning L'Aqua overlooking Darling Harbour and I'm thrilled to welcome back to the Chair, the ever-popular **Richard Fisher AM**. The event covers all the recent developments and current judicial decisions, law reform and practice strategies to assist you to achieve even more successful outcomes. I am so thrilled to announce that over the course of the event there will be a large number of highly-experienced practitioners from the Legal, Accounting, Non-Bank Lending, Credit Finance and Government sectors in attendance.

I have invited some of the highest calibre speakers to do the hard work for you, many of whom have an intimate first-hand knowledge of their subject matter. As I specialise in commercial insolvency conferencing, I have the luxury of spending many months researching topics and speakers carefully. Selection is based on the feedback from my expert advisory panel consisting of past speakers, former delegates and personal contacts with whom I have developed strong relationships over the many years since I started to put my first Insolvency Conference together in 1995.

Sometimes I get conflicting ideas on what ought to be included so it is very tough for me to balance out the program and maintain freshness in an annual event. I try to strike up a happy medium between giving exposure to new speakers and securing those you have asked for again. The speakers all work extremely hard as I have requested they develop new papers based directly on your needs. It is not always their preference, but when I ask you to spend two days out of your busy practice, I am very aware that the time you spend away needs to be as valuable to you as if you were back on the job. I never want to hear anyone say "I've heard all this before".

I also want to provide you with outstanding value not just with the cost, but also measured in terms of who you meet. I encourage you to make the most of the networking opportunities and invite you to approach me personally if you would like personal introductions to any of your fellow attendees or speakers. If there is anyone whom you would like attend, please let me know now. Make sure you get in early and invite your guests to what I know will be another great opportunity for networking at the dinner. The feedback from my dinner last year was overwhelming.

Here's a sample of some of the overall comments:

"Great content, quality speakers & so well organised with lunches & dinner the cherry on the top! Congratulations yet again (Pure Legal); "A terrific opportunity to catch up with other delegates. Good food & wine. Well done to Rosie and Team!" (Korda Mentha) ; "Excellent work by the Barrister James Foley"; (BDO)

As always, I encourage you to get in touch with any feedback and any particular areas of concern you would like any of the presenters to cover at the conference. Thank you so much for your support and encouragement, I hope you find this event as stimulating as it is practical. I look forward to welcoming you there.

Warmest regards

A handwritten signature in cursive script that reads "R. Traill".

Rosie Traill
Managing Director



THE UNIVERSITY OF
SYDNEY

Richard Fisher AM
General Counsel
Adjunct Professor, Faculty of Law

07 March 2019

Chairman's Invitation

I am delighted to invite you to join me at Rosie's **18th Annual National Practical Insolvency Conference & Dinner, 25-26 March 2019, L'Aqua, Sydney.**

To set the scene for the intensive two days of technical conferencing, I will take you through the latest Law Reform developments including the *Anti-Phoenixing Bill* and proposals in *The Hayne Report* so you can plan for what lies ahead.

Some of the regular must-hear topics return: the Voidable Transactions update, State of the Market, although this year we see again the shift to participants in the non-bank sector who may provide more opportunities for practitioners; the Regulator Panel, with ASIC, FEG and AFSA, Remuneration and Sally Nash's Bankruptcy update.

There are also a host of new topics this year: Restricting Creditor Voting Rights (following the changes to the Law); Attacking (or defending!) Subrogation Claims; Using *Barnes v Addy* To Attack Phoenix Transactions; The High Court on Holding DOCAs, and Selling Assets *Without A Secured Creditor's Consent* – Caledon Coal Group Case Study. Many of you will also be interested in the sessions planned on Managing Information, Data Protection, Privacy and Intellectual Property with some external experts from these fields.

As always, the Networking Dinner on Monday night offers a tremendous opportunity to catch up with old friends, cement new friendships and share the latest news.

A review of the detailed program will persuade you that the Conference will assist you with the practical problems which you face on a daily basis.

I look forward to seeing you there.

Yours sincerely

R H Fisher

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CONFERENCE PROGRAM - MONDAY, 25 MARCH 2019

7.45-8.30 CONFERENCE REGISTRATION AND ARRIVAL COFFEE

8.30-8.35 WELCOME by Rosie Trill

8.35-9.20 Opening remarks from the Chair

Richard Fisher AM, *General Counsel, Adjunct Professor, Faculty of Law, Office of General Counsel, University of Sydney*

Insolvency Law Reform Review

Richard Fisher AM will give an update on any new important developments you need to be aware of including the Anti-Phoenixing Bill and proposals in The Hayne Report.

Restricting Creditor Voting Rights

On 30 November the Government tabled the Insolvency Practice Rules (Corporations) Amendment (Restricted Related Creditor Voting Rights) Rules 2018 which restrict the rights of related parties to vote at creditors meetings using debt that they have purchased.

This is a simple change conceptually, but it does throw up a number of practical issues for insolvency practitioners, and so I will be asking Richard to use case studies to explain:

- Which forms of corporate insolvency administration are affected?
- The appointee's obligation to inquire about assignment of debt
- What forms of assignment are caught? Will sub-participation arrangements or risk sharing structures be affected?
- What does "Related party" capture?
- Do the rules only apply to physical meetings?
- The extent of an appointee's obligation to identify related party status.

Richard Fisher AM, *General Counsel, Adjunct Professor, Faculty of Law, Office of General Counsel, University of Sydney; Consultant, Ashurst*

9.20-10.00 The High Court on 'Holding' DOCA's

The use of 'holding' DOCA's has not been without its critics: Is there really a proposal? How can the administrator actually form an opinion? These and other questions were considered by the **High Court in Mighty River International Limited v Hughes Limited [2018] HCA 38 (12 September 2018) [2018] HCA 38**.

I have asked **Robert Newlinds SC** - Counsel involved in the matter to give you the background to the decision which split the Court 3/2 on this important question, and tell you about the practical implications of the case and what it means for practitioners.

He will also detail the Impact of the ability of an insolvency practitioner as a chairperson to adjourn the second meeting of creditors for up to 45 business days unilaterally – (75-140 Insolvency Practice Rules).

Robert Newlinds SC, Banco Chambers

CONFERENCE PROGRAM - MONDAY, 25 MARCH 2019

10.00-10.50 Claims Against Directors

I work hard to keep my programs timely and topical, and so they very much reflect judgments and Court cases over the preceding twelve months. There haven't been many 420A decisions so that is a topic that "fell off" the program. By contrast claims against directors has forced its way back on with a flurry of cases.

Chris Prestwich will take you through a number of recent decisions including:

- **Re Ezyfix Caravan Repairs Pty Ltd (In Liq) [2018] VSC 343 (22 June 2018) [2018] VSC 343** - redirection of insurance claim proceeds and de facto director status
- **Simpson v Tropical Hire Pty Ltd (in liq) [2017] QCA 273** Alleged breaches of duties as a director of the respondent in distributing the proceeds of the sale of company's business
- **Australia's Residential Builder Pty Ltd (In Liq) & Anor v Robert Wiederstein & Ors [2018] VSC 37 (9 February 2018) [2018] VSC 37**
- **Peter Hillig in his capacity as liquidator of ACN 092 745 330 Pty Ltd (in Liquidation) & Anor v Battaglia & Ors [2018] NSWCA 67 (10 April 2018) [2018] NSWCA 67** - payments to senior employee's spouse and family company, de facto director status
- **Lewis Securities Ltd (in liq) v Carter [2018] NSWCA 118 (7 June 2018) [2018] NSWCA 118** - fraudulent scheme by director to create appearance that his personal indebtedness to the company had been repaid.

Chris Prestwich, Partner, Allens

10.50-11.10 MORNING TEA

11.10-11.50 Using Barnes v Addy To Attack Phoenix Transactions

The High Court decision in **Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited [2018] HCA 43 (10 October 2018) [2018] HCA 43** is not an insolvency matter per se - but it does deal with the situation that many insolvency practitioners will be familiar with, where key staff move to a business rival to utilise:

"valuable confidential information of their employer...to attack the commercial base of that employer... to take as quickly as possible the business presently enjoyed by [their former employer] and replicate its success for the benefit of the new prospective employer"

I have asked **Camilla Clemente**, (Ashurst acted for the successful respondents) to take you through the decision with a particular focus on phoenix transactions and to understand when it might provide a better way to claw back a business that has been transferred and what other tools are available to Insolvency practitioners in relation to Phoenix situations.

Camilla Clemente, Partner, Ashurst

11.50-12.35 Insolvency, Managing Information - Data Protection & The Privacy Act

Biondo v Baycorp Collections PDL (Australia) Pty Ltd & Anor [2018] FCCA 1853 highlights a practical problem for insolvency practitioners. A practitioner found themselves dealing with the son of a bankrupt - and no doubt at that time it appeared that the son was trying to assist - but roll forward however, and the trustee is dealing with claims of maladministration including breaches of the Privacy Act.

Using **Biondo** as a base, I've asked the leading expert, former Victorian Commissioner for Privacy and Data Protection **Professor David Watts** to take you through a more wide-ranging discussion of how the Privacy Act and insolvency/bankruptcy legislation interacts to ensure that you understand and comply with your personal obligations at law.

David Watts, Professor of Information Law and Policy, La Trobe University, formerly, Victorian Commissioner for Privacy and Data Protection

12.35-1.20 LUNCH

CONFERENCE PROGRAM - MONDAY, 25 MARCH 2019

1.20-2.05 Intellectual Property & Insolvency

As the world moves towards automation and digitisation, ideas, apps and computer code becomes increasingly valuable. I have asked **Peter Francis**, a specialist Intellectual Property expert to help you to understand:

- How ideas are protected through patents, copyright, and trademarks
- How insolvency practitioners can ascertain ownership of IP
- How to determine whether intellectual property assets are caught by security structures
- When an appointee might consider initiating IP protection.

Peter Francis, *Partner*, FAL Lawyers

2.05-3.05 Regulator Panel – ASIC, AFSA, FEG

Update on the important issues and focus areas for the 12 months ahead

Jason Harris will moderate this important session where you will have the opportunity to ask the regulators your pressing questions. Our Expert Panel comprises of:

Moderator: Jason Harris, *Professor of Corporate Law*, The University of Sydney, The University of Sydney Law School

Panellists: Thea Eszenyi, *Senior Executive Leader*, Insolvency Practitioners, Australian Securities and Investments Commission (ASIC)

Henry Carr, *Senior Executive Lawyer/Branch Manager*, Recovery and Litigation Branch, Australian Government Department of Jobs and Small Business

Paul Shaw, *National Manager*, Regulation and Enforcement, Australian Financial Security Authority (AFSA)

3.05-3.20 AFTERNOON TEA

3.20-4.00 Selling Assets Without A Secured Creditor's Consent Caledon Coal Group – A Case Study.

The liquidators of the **Caledon Coal Group** successfully secured orders from the Supreme Court of Queensland under section 99 (2) of the Property Law Act (Qld) (similar provisions in other states) facilitating a sale of property free of the security interest of a secured creditor who refused to consent to the sale and agree to release its security. We will look at the case, issues and consider the Court's power to make an order for sale and how else the circumstances, and ability to sell, may be utilized.

Glen Cussen, *Partner*, Cussen Advisory

4.00-5.00 State of the Market - Non-Bank Lending Issues and Opportunities

I'm not sure whether it is the continued good health of the economy which means that banks don't need to appoint, or perhaps the shadow of the Royal Commission making them slow to appoint, but it is true that activity from the banks is at a very low level.

To highlight the new paradigm, this year my State of the Market is going to be comprised wholly of non-banks who will give you some perspectives on where you might find opportunities for additional sources of work in this tough market for the profession.

Moderator: Joseph Hansell, *Senior Managing Director*, FTI Consulting

Panellists: Geoff Green, *Chair of the Investment Committee*, Ecosse Capital Partners

Peter Langham, *CEO*, Scottish Pacific

Andrea Beatty, *Partner*, Piper Alderman - Author of the leading consumer law text 'Annotated National Code' published by LexisNexis

Matt Aubrey, *Managing Director, Australia*, Gordon Brothers

5.30 CLOSE OF DAY ONE

6.30-7.00 PRE-DINNER DRINKS L'AQUA

7.00-11.00 NETWORKING DINNER featuring Sam Sykes, *Barrister*, 9th Floor Selborne Chambers

CONFERENCE PROGRAM - TUESDAY, 26 MARCH 2019

8.15-8.45 **ARRIVAL COFFEE**

8.45-9.00 **Opening remarks from the Chair**

Richard Fisher AM, *General Counsel, Adjunct Professor, Faculty of Law, Office of General Counsel, University of Sydney*

9.00-10.00 **Personal Insolvency Update for Corporate Practitioners**

There are still some very significant reforms in the wings, with legislation to implement so-called 'one-year bankruptcy'. **Sally Nash** will provide an overview to help you understand the changes and what they will mean for insolvency practice, including anything new and some recent cases impacting on the profession. Sally will bring up to date current case law, both good and bad news for Trustees.

- **Commissioner of Taxation v Tomaras (2018) HCA 62**
- **Sloan v Sloan (2018) FamCA610**
- **Trustee of the Bankrupt Estate of Hicks v Hicks [2018] FamCAFC 37**
- 12 month bankruptcy gone but not forgotten, elections, lost opportunities and changes to Statement of Affairs
- **Doggett v Commonwealth Bank of Australia [2019] FCAFC 19**
- **Szepesvary v Weston as Trustee of the bankrupt estate of Aaron Szepesvary**
- **Silvia (Trustee) v Williams [2018] FCAFC 194**
- **NSW Finance Pty Ltd v Borsellino (No. 2) (2016) NSWSC 1338 (followed by NSW Finance Pty Ltd v Borsellino (2018) NSWSC 134**
- **to Young v Randall; In the matter of Galtari Pty Ltd (in liq) [2018] NSWSC 917**
- **Robert Whitton as Trustee in Bankruptcy Estate of Steven Leonard Watton v Watton [2018] NSWCA 277**
- **Coshott v Parker [2019] FCAFC 14.**

Sally Nash, *Consultant Solicitor, O'Neill Partners Commercial Lawyers*

10.00-11.00 **Voidable Transactions Annual Briefing**

Voidable preferences might not be the sexiest part of insolvency practice - although our expert speaker, **Stephen Mullette** might beg to differ - but for many practices they can be the difference between a job being good or bad, and so this session is always one of the best attended and most listened to. Yet again there are a number of cases to keep up with, this year including:

- **In the matter of Bias Boating Pty Ltd [2017] NSWSC 1524** (joinder of multiple parties)
- **In the matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation) [2018] NSWSC 1977** (separate determination of insolvency)
- **In the Matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation) [2019] NSWSC 47** (all defendants liable for costs of separate issue)
- **Stone v Melrose Cranes & Rigging Pty Ltd, in the matter of Cardinal Project Services Pty Ltd (in liq) (No 2) [2018] FCA 530 (19 April 2018) [2018] FCA 530**
- **Melrose Cranes & Rigging Pty Ltd, in the matter of Cardinal Project Services Pty Ltd (in liq) (No 3) [2018] FCA 863 (12 June 2018)) [2018] FCA 863**
- **Re N.W.E.L. Pty Ltd (In Liq) [2018] VSC 634 (31 July 2018) [2018] VSC 634**
- **Re Cyberduck Software Pty Ltd (In Liq) & Anor [2018] VSC 122 (23 March 2018) [2018] VSC Quigley (Liquidator) v Minesite Maintenance Pty Ltd, in the matter of Perthmetro Pty Ltd (in liq) [2018] FCA 316**
- **Hayden Leigh White In His Capacity As Joint And Several Liquidator Of Port Village Accommodation Pty Ltd (In Liq) -V- Acn 153 152 731 Pty Ltd (In Liq) [2018] Wasca 119**
- **Featherstone v Ashala Model Agency Pty Ltd (in liq) & Anor [2017] QCA 260**
- **Shot One Pty Ltd (in liq.) & Anor v Day & Anor [2017] VSC 741 [2017] VSC 741**
- **In the matter of Heavy Plant Leasing Pty Ltd (In Liquidation) (ACN 151 786 677) [2018] NSWSC 707 (8 February 2018) [2018] NSWSC 707.**

Stephen Mullette, *Principal, Matthews Folbigg Lawyers*

11.00-11.20 **MORNING TEA**

CONFERENCE PROGRAM - TUESDAY, 26 MARCH 2019

11.20-12.00 **Dealing With Claims For Special Purpose/Quistclose & Express Trusts**

This is another topic which has forced its way back on to the program. Very clearly, appointees are increasingly having to deal with claims that assets are held in trust for other parties. **Bridget Slocum**, who has some first hand knowledge of this topic, will review a number of recent cases, including:

- **AAD Services Pty Ltd (In liq) v ALD Wholesale Pty Ltd & Anor [2018] VSC 585 (8 October 2018) [2018] VSC 585** – Whether an advance was made to borrower company or to the effective controller of the borrower company personally
- **Braham Investments v Sovereign MF [2017] VSC 801 (22 December 2017) [2017] VSC 801** Whether a transfer to solicitor's trust accountant was an express trust
- **In the matter of Courtenay House Capital Trading Group Pty Limited (in liquidation) [2018] NSWSC 404** Whether funds held in an unregistered managed investment scheme were held on trust for investors or part of general assets
- **In the matter of Stream Customised Claims Pty Ltd (recs & mgrs apptd) (in liquidation) [2018] NSWSC 1812 (27 November 2018) [2018] NSWSC 1812** whether reference in correspondence evidenced an intention to create a trust or a proprietary interest
- **In the matter of Australian Institute of Professional Education Pty Limited (In Liquidation) [2018] NSWSC 1028 (4 July 2018) [2018] NSWSC 1028** whether the Education Services for Overseas Students Act 2000 (Cth) operated to create a constructive trust.

Bridget Slocum, Barrister, Lonsdale Chambers, Victorian Bar

12.00-12.50 **Calculating & Approval of Remuneration**

I like a long list of cases in my program to provide readers with a glimpse of the detailed research that goes into my conferences, and in all honesty some of the cases are routine, but some such as **Provident, Beechworth**, and **Westpoint** are very clearly not.

Although the Court may decide in some cases that "It would be entirely impracticable...to undertake a line-by-line examination of the administrators' administration claims" (Ross J in **re Beechworth**), in other cases the Courts are quite prepared to do so!

Danielle Funston and **Sam Kingston** will spend time on the most significant cases, from at least the following:

- **Lock, in the matter of Cedenco JV Australia Pty Ltd (in liq) (No 2) [2019] FCA 93**
- **Re Firebrace Life Pty Ltd (in liquidation) [2018] VSC 252 (18 May 2018) –[2018] VSC 252**
- **Re Alternate Dwellings Pty Ltd (in liquidation) [2018] VSC 653 (1 November 2018) - [2018] VSC 653**
- **Australian Executor Trustee Ltd v Provident Capital Ltd [2018] FCA 439 (3 April 2018) [2018] FCA 439**
- **In the matter of Beechworth Land Estates Pty Ltd (in liq) and Griffith Estates Pty Ltd (in liq) (No 5) [2018] NSWSC 959 (22 June 2018) [2018] NSWSC 959**
- **Westpoint Corporation Pty Ltd (in liq) v Yeo [2018] VSC 705 (16 November 2018) [2018] VSC 705**
- **Re Matthew Forbes Pty Ltd (in liq) [2018] VSC 331 (19 June 2018) [2018] VSC 331**
- **In re Specialist Australian Security Group Pty Ltd (in liquidation) [2018] VSC 199 (27 April 2018) [2018] VSC 199**
- **Re Custometal Engineering Pty Ltd (in liquidation) [2018] VSC 726 (23 November 2018) [2018] VSC 726**
- **Re Tuscan Property Development Pty Ltd [2018] VSC 511 (7 September 2018) [2018] VSC 511**
- **In the matter of Banksia Securities Limited (in liquidation) (receivers and managers appointed) [2018] NSWSC 229 (28 February 2018) [2018] NSWSC 229**
- **In the matter of Say Enterprises Pty Ltd [2018] NSWSC 396 (29 March 2018) [2018] NSWSC 396**
- **In the matter of Idylic Solutions Pty Ltd as trustee for Super Save Superannuation Fund and Others [2018] NSWSC 700 (17 May 2018) [2018] NSWSC 700**
- **Re Houben Marine Pty Ltd (in liq) [2018] NSWSC 745 (24 May 2018) [2018] NSWSC 745.**

Danielle Funston, Partner, Maddocks
Sam Kingston, Special Counsel, Maddocks

CONFERENCE PROGRAM - TUESDAY, 26 MARCH 2019

12.50-1.50 **LUNCH**

1.50-2.30 **PPSR Review - A round-up of the most important cases impacting on Insolvency Practitioners from the past 12 months**

Nicholas Mirzai, back by popular demand, will be providing a PPSA case law update following the important end of the 7-year registration period on 30 January 2019. Amongst other topics, attendees can expect to traverse:

- Where the jurisprudence is at regarding extension of time applications generally
- Whether insolvency practitioners need Court orders when security is granted in a “trade-on” scenario
- When is a purchase money security interest classified as such and what does this mean for the vesting rules?
- The consequences of vexatious registrations and pollution on the PPSR
- Non-PPSA transactions and the PPSA – bequeaths of property under a will and the taking free rules.

Nicholas Mirzai, Barrister, Level 22 Chambers - Co-author of the Annotated Personal Property Securities Act and the PPS in Practice

2.30-3.10 **Attacking (or defending!) Subrogation Claims**

Most practitioners are familiar with the concept of subrogation, most commonly seen when a guarantor claims the benefit of a secured lender's security. But on 28 November, a judgment of **Marra Capital Investments Pty Ltd, in the matter of Tri-City Trucks (NSW) Pty Ltd (in liq) v Smith (liquidator) [2018] FCAFC 211** provides a very interesting example of a liquidator successfully challenging a subrogation, and achieving a very big win for unsecured creditors.

Karen Petch will review the case and help you to understand how badly constructed global settlements might inadvertently damage standing to claim the benefit of subrogation, and what insolvency appointees should do to confirm that a claim is valid.

Karen Petch, Barrister, New Chambers

3.10-4.00 **Special Purpose Liquidators**

There is an increasing use of special purpose liquidators, with a number of cases this year, including:

- **In the matter of Italian Prestige Jewellery Pty Limited (in liq) [2018] FCA 983** – where a creditor would only fund an investigation conducted by the special purpose liquidators
- **In the matter of ACN 093 117 232 Pty Ltd (in liquidation) [2018] FCA 1922** – application to appoint special purpose liquidator to investigate a company restructure which ‘resembled impermissible phoenix activity
- **In the matter of Umberto Pty Ltd (in liq) [2018] FCA 541** - where the appointment of special purpose liquidators was sought to investigate and prosecute claims arising from transactions with related companies
- **In the matter of ACN 152 546 453 Pty Ltd (formerly Hemisphere Technologies Pty Ltd (In Liq) [2018] NSW SC 1002** where creditor undertakes to fund investigations of additional liquidator to investigate potential recoveries.

Michelle Castle will look at the use of SPL appointment to see when it can be an alternative to an outright replacement, the factors that the Court will take into account, and consider whether it might lead to a different initial assessment of independence.

Michelle Castle, Barrister, 13th Floor, St James Hall

4.00-4.15 **CLOSING REMARKS FROM THE CHAIR**

4.15-4.30 **Afternoon tea and close of conference**

PRESENTERS - MONDAY, 25 MARCH 2019



RICHARD FISHER AM, GENERAL COUNSEL, ADJUNCT PROFESSOR, FACULTY OF LAW, OFFICE OF GENERAL COUNSEL, UNIVERSITY OF SYDNEY

He is also a company director and has returned to Ashurst as a Consultant. Prior to joining the University, Richard was a partner for some 25 years in Blake Dawson (now Ashurst) and is a past Chairman of Partners. Richard's area of practice was corporate law with a focus on corporate re-organisation and insolvency.

Richard was an international consultant to the Asian Development Bank and was a Commissioner of the Australian Law Reform Commission. He holds the degrees of Master of Economics and Bachelor of Laws.



ROBERT NEWLINDS SC, BANCO CHAMBERS

Robert is one of the leaders of the Australian Bar. He was admitted as a solicitor in July 1986, a barrister in August 1990 and appointed senior counsel in October 2003. He is well known to all of you, at least by reputation.

Robert has been the Head of Banco Chambers since 2012 and a Fellow of the Chartered Institute of Arbitrators since 2015.

Outside the law, Robert:

- is a competitive Masters Rower, a member of Mosman Rowing Club and has represented New South Wales in the Australian Championships
- is a keen skier and has been secretary of the Geebung Ski Club for 20 years
- is an active member of South Curl Curl Surf Club
- is learning the guitar and has a famous collection of early Beatles photographs.



CHRIS PRESTWICH, PARTNER, ALLENS

Chris specialises in commercial litigation and insolvency. He has acted for clients across a range of industries, including banking, infrastructure, private equity, mining and mining services, construction and media. His litigation practice includes high value commercial disputes, multi-jurisdictional litigation, regulatory investigations and arbitrations.

Chris' insolvency and restructuring practice involves advising lenders, corporates and insolvency practitioners in relation to liquidations, schemes of arrangement, receiverships, administrations and deeds of company arrangement.

Chris is the author of the Australian chapter of the Asset Tracing and Recovery Review.



CAMILLA CLEMENTE, PARTNER, ASHURST

Camilla specialises in complex restructuring matters, with particular expertise in creditors' schemes of arrangement, receivership, voluntary administration, deeds of company arrangement and liquidation. She advises lenders on enforcement strategy and acts for corporate clients, directors, banks and insolvency practitioners on all aspects of corporate restructuring, insolvency and related litigation.

PRESENTERS - MONDAY, 25 MARCH 2019



DAVID WATTS, *PROFESSOR OF INFORMATION LAW AND POLICY, LA TROBE UNIVERSITY, FORMERLY, VICTORIAN COMMISSIONER FOR PRIVACY AND DATA PROTECTION*

David Watts is Professor of Information Law and Policy at La Trobe University law school. He also provides specialised data protection legal advice as principal of Data Protection Legal and data protection policy and risk management advice through Bainbridge Associates, Data Protection Advisory.

He was Victoria's Commissioner for Privacy and Data Protection and Commissioner for Law Enforcement Data Security and has been General Counsel to several large Commonwealth and State Departments. Prior to that he was a partner at a few large commercial law firms.



PETER FRANCIS, *PARTNER, FAL LAWYERS*

Peter Francis is a Partner of FAL Lawyers and established the firm along with Jenni Lightowlers. He is one of Australia's pre-eminent lawyers on technology commercialisation and is considered to be a 'true expert with years of experience', 'particularly esteemed in non-contentious circles for his dexterous handling of commercialisation work for research organisations and technology developers' (IAM Licensing 250, 2011/2012, IAM Patent 1000, 2012).

Peter has more than 20 years experience advising listed companies, Commonwealth and State government agencies, Co-operative Research Centres, SMEs, not-for-profit funded research bodies and healthcare organisations.

Peter sits on the board of several not-for-profit organisations, including Knox-brooke Incorporated, a registered charity. He is Chairman of the Board of an ASX-listed biotechnology company.

Peter studied Law and Jurisprudence at Monash University. Prior to establishing FAL, he led the in-house legal team at Sirotech, the then commercialisation arm of CSIRO.



JASON HARRIS, *PROFESSOR OF CORPORATE LAW, THE UNIVERSITY OF SYDNEY, THE UNIVERSITY OF SYDNEY LAW SCHOOL*

Jason Harris is Professor of Corporate Law at Sydney Law School where he teaches insolvency, contracts and corporate law. Jason is the co-author of Keay's Insolvency (with Michael Murray) and the Annotated PPSA (with Nicholas Mirzai) and has published widely in scholarly and practitioner journals.

He is a Fellow of the Governance Institute of Australia and a member of the Insolvency and Corporate Law committees of the Law Council of Australia and is the chair of the academics committee of the Banking and Financial Services Law Association. Jason is an academic member of ARITA and of Insol International and a member of the Legal Committee of the Australian Institute of Company Directors.

His research has been cited in the Supreme Courts of NSW, South Australia, Western Australia and Victoria and in the Federal Court and Federal Circuit Court.

PRESENTERS - MONDAY, 25 MARCH 2019



THEA ESZENYI, SENIOR EXECUTIVE LEADER, INSOLVENCY PRACTITIONERS, ASIC

Thea Eszenyi is the Senior Executive Leader with ASIC's Insolvency Practitioners stakeholder team. Thea has over 30 years' experience in insolvency and restructuring including senior positions in a multi disciplinary accounting practice and a specialist insolvency and restructuring firm, where she gained experience across international, national and SME markets.

Thea is a registered liquidator, a Fellow of Chartered Accountants Australia & New Zealand (and past Regional Councillor and Chairperson for SA & NT), a member of Australian Restructuring, Insolvency and Turnaround Association (and past workshop leader), and past Deputy Member of the South Australian Legal Practitioners Conduct Board.



HENRY CARR, SENIOR EXECUTIVE LAWYER/BRANCH MANAGER, RECOVERY AND LITIGATION BRANCH, AUSTRALIAN GOVERNMENT, DEPARTMENT OF JOBS AND SMALL BUSINESS

Henry has advised Commonwealth government departments on insolvency matters for over 17 years, playing key roles in the Ansett and ABC Childcare matters. In 2009 Henry joined Hong Kong-based insolvency and forensic accounting firm Borelli Walsh, working on several high profile financial investigations and insolvencies. On returning to Australia in 2014, Henry re-joined the Commonwealth Government Department of Jobs and Small Business to manage the FEG Recovery and Litigation Programme.



PAUL SHAW, NATIONAL MANAGER, REGULATION AND ENFORCEMENT, AUSTRALIAN FINANCIAL SECURITY AUTHORITY (AFSA)

Paul Shaw is the National Manager, Regulation and Enforcement at the Australian Financial Security Authority, responsible for discharging the regulatory and review responsibilities of the Inspector-General in Bankruptcy under the Bankruptcy Act. The enforcement function is responsible for investigating all alleged offences under the Bankruptcy Act and preparing briefs for prosecution. Paul has been in that position since September 2013.

Prior to joining AFSA Paul worked for over 20 years at the Commonwealth Director of Public Prosecutions, where he previously undertook and oversaw commercial prosecution matters in NSW including those referred by ITSA (AFSA) and ASIC, which included the HIH prosecutions. Paul Shaw holds both accounting and legal qualifications.



GLEN CUSSEN, PARTNER, CUSSEN ADVISORY

Glen Cussen is a litigator with 30 years experience. He has extensive Court expertise in corporate insolvency matters and now continues to provide hands-on assistance and expertise, particularly in corporate insolvency and restructuring matters at Cussen Advisory. He practices extensively in all aspects of insolvency and commercial law, regularly advising and acting for liquidators, administrators, receivers, financiers and corporate clients on various aspects of insolvency recoveries and administrations.

Glen has been at the vanguard of corporate insolvency - being the author of the mothership concept in structuring Insolvency Proceedings and has been involved in many of the largest and well known administrations in Australia in varying capacities, including those involved in the Duke Group (mining), One.Tel (telecommunications), Henry Walker Eltin (mining and US-based noteholders) and REDgroup/Borders and most recently, acting in Red Lea Chickens and Patinack Farm.

PRESENTERS - MONDAY, 25 MARCH 2019



JOSEPH HANSELL, SENIOR MANAGING DIRECTOR, FTI CONSULTING

Joseph Hansell is a Senior Managing Director in the Corporate Finance & Restructuring segment of FTI Consulting. Mr. Hansell has developed extensive experience in corporate advisory matters which have primarily involved providing strategic advice, assisting in negotiations and developing solutions with respect to a range of reconstruction and turnaround proposals.

As a registered Liquidator, Mr. Hansell has experience in a range of corporate restructuring and recovery matters which have involved the trade on and sale of distressed businesses and conducting independent business reviews.



GEOFF GREEN, CHAIR OF THE INVESTMENT COMMITTEE, ECOSSE CAPITAL PARTNERS

Geoff Green is a Chartered Accountant with eleven years' experience in Ernst & Young's Corporate restructuring team. Geoff is a current workshop leader, Victorian State Chair and National Board member of ARITA.

For ten years Geoff managed a national portfolio of large and complex workouts for Nab, and represented the bank at various Senate Inquiry and Parliamentary Joint Inquiry hearings.

Geoff established Harbourside Advisory in June last year, undertaking debt advisory and banking expert witness engagements. Geoff is also Chair of the Investment Committee for Ecosse Capital Partners, a private investment firm specialising in direct lending to businesses and corporate groups which focuses on under-performing business and those at the margins of traditional lending.



PETER LANGHAM, CEO, SCOTTISH PACIFIC

Having trained as an accountant, Peter entered the realms of working capital for business through debtor finance in 1983. His industry experience started in audit and credit but later included international factoring, client management and eventually sales. In 1998 he joined the Bank of Scotland debtor finance business and became head of sales for England and Wales.

In 1993 Peter was offered a role with Scottish Pacific (then owned by Bank of Scotland) in Perth, Australia, where he turned a struggling sales office in to a fully-fledged operations centre.

In 1997 Peter joined AGC, the finance arm of Westpac, before establishing Benchmark Debtor Finance in 1998. Over 7 years Benchmark grew to become a national company with offices in Perth, Adelaide, Melbourne, Sydney and Brisbane. In 2005 the founding shareholders sold their interests to BA Ventures and Benchmark continued on a growth path which culminated in the acquisition of Scottish Pacific Business Finance in September 2007.

In 2010 BA Ventures sold to Lazard Private Equity, who then sold to Next Capital in 2013. Through 2015 and 2016 Peter led the merging of four working capital businesses to become the largest specialised working capital provider in Australia. In July 2016 Scottish Pacific floated on the ASX and was in the ASX top 300 companies. In December 2018, Scottish Pacific was taken private by Affinity Equity Partners, with a \$600m+ takeover.

Peter has remained CEO and shareholder throughout. Scottish Pacific now handles over \$18 billion in sales per annum, provides \$1.3 billion of funding to some 1600 clients and has offices across Australia and New Zealand, as well as China.

PRESENTERS - MONDAY, 25 MARCH 2019



ANDREA BEATTY, PARTNER, PIPER ALDERMAN

Andrea Beatty is a commercial Partner at Piper Alderman focusing on financial services. She is a leading financial services lawyer who has been listed in Australia's Best Lawyers every year since 2012 in the areas of financial institutions and regulatory practice. She has written five editions of the leading consumer law text 'Annotated National Credit Code' published by Lexis Nexis, with a sixth edition currently in production.

Andrea advises and represents clients including start-ups, Australian financial services licensees (AFSL) and Australian credit licensees (ACL) on all aspects of financial services regulation and corporate finance including licence applications, regulatory compliance projects and audits, regulatory enforcement defences, and regulator investigations and disputes. Andrea's experience includes advising clients on financial products and channels, including peer to peer lending platforms, crowd funding, payment systems, crypto currency, reward programs, gift cards and financial services acquisitions, disposals and alliances.

Andrea also has in-depth knowledge of privacy laws and regularly advises clients on data and privacy security and breach remediation.



MATT AUBREY, MANAGING DIRECTOR AUSTRALIA, GORDON BROTHERS

Matthew Aubrey is responsible for developing liquidity and asset-based solutions for clients across Australia. Matt brings nearly 20 years of experience providing customised asset management strategies, valuations and strategic advice pertaining to asset sale campaigns to maximise outcomes for institutional and corporate clients throughout Asia Pacific. Areas of expertise include mining and mining services, construction and transport, manufacturing and printing, marine and automotive, medical, hospitality, general plant, and retail.

Prior to joining Gordon Brothers, Matt was the founder and director of Plant & Equipment Solutions, which specialised in asset management and disposition solutions via integrated valuation, marketing and sales processes.

In 2012 he sold the business to GraysOnline. Matt has a background in commercial real estate, auctioneering, asset management and remarketing of plant & equipment. Matt is a certified valuer and licensed auctioneer. He is based in Sydney.



SAM SYKES, BARRISTER, 9TH FLOOR SELBORNE CHAMBERS

Sam was admitted as a solicitor in 2011 and called to the Bar in 2015. He practices at 9th Floor Selborne Chambers and has a general commercial, equity, property and insolvency practice.

PRESENTERS - TUESDAY, 26 MARCH 2019



SALLY NASH, CONSULTANT LAWYER, O'NEILL PARTNERS COMMERCIAL LAWYERS

Sally is acknowledged as a leading insolvency lawyer in NSW, Australia. She was admitted to practice in 1977 and has practiced in insolvency, general commercial litigation and debt recovery litigation since that time. Her practice is in all NSW State and Australian Federal Courts involving commercial and insolvency litigation acting for creditors, Trustees, Liquidators, bankrupts and directors. She also has extensive experience acting for secured creditors in the enforcement of their securities.

Sally has been involved in many leading cases and is very highly regarded by her clients and fellow practitioners.

Sally is a member of the Law Society of NSW, Law Council of Australia, Commercial Insolvency and Reconstruction Committee; Australia Reconstruction Insolvency and Turnaround Association and Member of the Smaller Practice Issues Committee of INSOL International, International Association of Restructuring, Insolvency and Bankruptcy Professionals.

Sally merged her practice with O'Neill Partners Commercial Lawyers, incorporating Sally Nash & Co in January 2015.



STEPHEN MULLETTE, PRINCIPAL, MATTHEWS FOLBIGG LAWYERS

Stephen is a specialist insolvency and financial restructuring practitioner. He has extensive experience in all forms of both corporate and personal insolvency, including bankruptcy, liquidations, voluntary administrations, receiverships, as well as informal and formal financial restructuring. He regularly advises and represents insolvency practitioners and also personal and corporate creditors and debtors in relation to insolvency and restructuring matters.

Stephen regularly appears in Federal, Family and State Supreme Courts on behalf of insolvency practitioners in respect of legal issues involved with insolvency administrations, including trust and property disputes and the recovery of voidable transactions under the Bankruptcy and Corporations Acts.

He also advises on asset protection and acts for individuals and corporations in dealings with insolvency practitioners, negotiating deeds of company arrangement, personal insolvency agreements and compositions, and claims for the recovery and sale of real property as well as disputes over voidable transactions, insolvent trading, and director's duties as well as the interaction of Family Law with insolvency.

PRESENTERS - TUESDAY, 26 MARCH 2019



BRIDGET SLOCUM, *BARRISTER*, LONSDALE CHAMBERS, VICTORIAN BAR

Bridget Slocum is a commercial disputes professional with a sub-specialty in insolvency. In addition to her 10 years of experience in Victoria, Bridget was a member of Counsel in New Zealand, commencing in March 2005.

Bridget represents a wide range of clients in commercial, trade practices, class actions and corporations disputes. As a solicitor, Bridget acted for the administrators and liquidators of the Timbercorp Group, the Willmott Group, Retravisson Southern Group and Bob Jane's Calder Park trading entities. Her extensive commercial litigation experience includes complex shareholder and director disputes, insurance litigation, regulatory prosecutions, class actions, taxation, administrative appeals, civil interlocutory disputes (discovery, subpoenas, freezing orders, security for costs and strikeout/summary judgment) and general contract disputes.

Bridget also has a wealth of experience advising insolvency practitioners, creditors and directors on all aspects of insolvency, including under the Corporations Act 2001 (Cth), the Bankruptcy Act 1966 (Cth) and the Personal Property Securities Act 2009 (Cth), voidable transaction claims, contract, partner, shareholder and director disputes, securities enforcement, Court approval for the sale of distressed assets and maximising the recovery of personal debts.

Bridget has also been briefed to draw Court documents, advise and appear in all State and Federal jurisdictions and at mediation concerning a wide range of commercial disputes, insolvency matters and examinations and is retained by the Victorian Office of Public Prosecutions for Proceeds of Crime work.



DANIELLE FUNSTON, *PARTNER*, MADDOCKS

Danielle, a Partner at Maddocks, is an experienced lawyer specialising in Restructuring and Insolvency. She advises insolvency practitioners, banks and corporations across a wide range of industries, including property, construction, retail, hospitality, automotive, aviation and agriculture.

Danielle is recognised as an expert in remuneration, having run a number of remuneration applications including *Idylic Solutions Pty Limited* [2016] NSWSC 1292, in which Black J of the Supreme Court of NSW reaffirmed that time-cost charging is an appropriate method of calculating remuneration in circumstances where there is sufficient evidence to justify the remuneration sought. That judgment was the first to buck the trend in limiting or reducing practitioner remuneration by reference to a proportion of the funds recovered and set out the high level of evidential detail that may be required to succeed in seeking remuneration on a time-cost basis. The decision has been followed in a number of subsequent decisions, including *Sanderson* as Liquidator of *Sakr Nominees*.

PRESENTERS - TUESDAY, 26 MARCH 2019



SAM KINGSTON, *SPECIAL COUNSEL, MADDOCKS*

Sam is an insolvency and restructuring practitioner who focuses primarily on dispute resolution. Sam has broad ranging experience in a wide variety of disputes dealing with all aspects of external administrations and security enforcement.

Sam has extensive experience in commercial litigation in a variety of State and Federal Courts and has conducted complex commercial litigation in the insurance, corporate and banking and finance sectors.

Sam also has experience in a diverse range of regulatory issues and investigations, including dealings with regulatory bodies like ASIC and AFCA. Sam has detailed experience in royal commissions and held the position of Principal Legal Officer of the Queensland Racing Commission of Inquiry.



NICHOLAS MIRZAI, *BARRISTER, LEVEL 22 CHAMBERS*

Nicholas was called to the Bar in 2013 and practices from Level 22 Chambers in Sydney. He typically appears unled in State and Federal Court across Australia in a range of commercial, corporate and equity matters. Nicholas has particular interest and expertise in all aspects of corporate insolvency and personal property securities law and he maintains a specialist advisory practice alongside appearance work.

Nicholas has lectured in Commercial Law and Finance Law at UTS for over 7 years. He is co-author of the Annotated Personal Property Securities Act and the PPS in Practice.



KAREN PETCH, *BARRISTER, NEW CHAMBERS*

Karen is a barrister at New Chambers in Sydney. She has specialised experience in Corporations Act matters, particularly insolvency and cases involving detailed transaction structures and financial products. She regularly acts for and advises financial institutions, insolvency practitioners, companies, individuals and government on a full spectrum of domestic and cross-border insolvency issues. Prior to coming to the Bar, Karen was a solicitor at Allen & Overy LLP in London and New York, where she acted for creditors in the administration of Lehman Brothers International Europe and advised insolvency practitioners, corporates and financial institutions in relation to insolvency issues and pre-insolvency structuring.

Prior to that, she was a tipstaff to the Honourable Justice Robert McDougall of the Supreme Court of NSW (Equity Division) and a lawyer at Minter Ellison, Sydney, specialising in leveraged finance and restructuring.

She holds a Master of Corporate Law (First Class) from the University of Cambridge, a Bachelor of Law (First Class Honours) and a Bachelor of Arts (Communication) from the University of Technology, Sydney.

In 2016 she was awarded a Jennings Prize by the University of Cambridge for first class performance in the examinations. In 2018 she was awarded the Christopher Gee QC Memorial Prize for achieving the highest result on the NSW Bar Practice Course.

She was called to the Bar in New South Wales in 2017, admitted as a solicitor in England and Wales in 2014 and admitted to practice in Australia in 2010.

PRESENTERS - TUESDAY, 26 MARCH 2019



MICHELLE CASTLE, *BARRISTER*, 13TH FLOOR, ST JAMES HALL

Michelle Castle was called to the Bar in 2007.

After graduating from the University of Sydney in 1991, Michelle worked as tipstaff to Justice Simon Sheller in the NSW Court of Appeal. Thereafter Michelle practised as a solicitor with Allen Allen & Hemsley in the Construction and Arbitration department before working with, and ultimately being principal of, DGT Thompson. It was there that Michelle became a recognised expert in the law and practice of legal costs.

Michelle is also a court appointed costs assessor and serves on the Costs Assessment Rules Committee established under the Legal Profession Uniform Law Application Act 2014.

At the Bar, Michelle has a diverse practice in commercial and equity matters, building and construction, bankruptcy and insolvency, corporations law, administrative law, professional negligence, succession law and costs law.

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Via Foot: Walk down Market Street past the Darling Park monorail station on your right. Go down the escalators onto the Pyrmont Pedestrian Bridge level and turn left.

Via Train: Alight at Town Hall Station, and follow the directions as above

Taxi Drop Off : Ask to be dropped off at Cockle Bay Wharf under the blue canvas awning. The driver needs to take Wheat Road by keeping left going past the former Imax Theatre site. Take the escalators up one level to Dockside.

Via Car: Darling Park car park is located at 201 Sussex Street. We recommend this car park for evening events.

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