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# NATIONAL PRACTICAL BANKRUPTCY CONGRESS AND COCKTAIL PARTY

**CONGRESS: Wednesday, 28 October 2015**  
**Wesley Conference Centre, 220 Pitt Street**  
**COCKTAIL PARTY: The ArtHouse Hotel, 275 Pitt Street, Sydney**

**OPTIONAL CONCURRENT WORKSHOPS: Thursday, 29 October 2015**

#### Topics include:

Dealing With Real Property in Bankruptcy  
Determination Of Voting Entitlements At Meeting Of Creditors  
Dealing With a Bankrupt...and when is a discussion of objections to discharge a "threat"?  
Trustee Independence - Under State and The ARITA Code Of Conduct  
Fees and Remuneration, Dealing with a surplus of assets, s146  
Orders, - and the importance of an inventory  
Voidable Transactions  
Family Law Panel Discussion: Section 35 & More  
Important Regulatory Issues  
After-Acquired Property  
Strategies for Choosing Whether To Bring Possession Matters And  
s.66G Applications In The Supreme Court or Federal Court

#### Speakers include:

**Bob Cruickshanks**, Personal Insolvency Consultant  
**Sally Nash**, Consultant Solicitor, O'Neill Partners  
**Stephen Mullette**, Principal, Matthews Folbigg Lawyers  
**Brian Skinner**, Barrister  
**Anthony Spencer**, Barrister  
**Andrew Combe**, Barrister  
**Michael Lhuede**, Partner, Piper Alderman  
**Peter Harrison**, Partner, Kemp Strang Lawyers  
**Sandrah Foda**, Barrister  
**Michael Rozdal**, Partner, Kemp Strang Lawyers  
**John Melliush**, Partner, Ferrier Hodgson  
**David Goldman**, Partner, Norton Rose Fulbright  
**Henry Weinreich Roth** (Chair)

#### TESTIMONIALS:

**Here's a small sample of what delegates wrote on their Evaluation Form from last year's event.:**

Excellent, 5 out of 5. Great conference. Fills a very important gap in the market. I look forward to it again next year!

**David Mansfield, Partner, Deloitte**

An excellent program which is in its second year is being recognised and supported by the profession. Well done.

**Wade Ballantyne, Pitcher Partners**

5 out of 5. An informative and well organised event. Topics are useful and presented in a thought-provoking way.

**Eloise Validum, Aravanis Insolvency**

If you practice in the field of personal Insolvency you cannot miss the Bankruptcy Congress as the contents are always relevant and topical. **Moira Carter, Principal, BRI Ferrier**

5 out of 5. Excellent Congress! A great avenue of keeping updated with the views and issues facing the industry.

**Andrea Kalik, Jirsch Sutherland**

It's a great conference dedicated to bankruptcy for anyone interested in bankruptcy law and practice.

**Con Nottas, Principal, Hutchinson Legal**

**Early Bird Closes Friday 16<sup>th</sup> October**

Exhibitor:



FOR FURTHER DETAILS ON REGISTERING, PRESENTING OR SPONSORING PLEASE CONTACT:

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# PROGRAM OUTLINE

## WEDNESDAY 28TH OCTOBER

7.45am Registration commences

8.20am Chairman's Introduction  
Henry Weinreich Roth

8.30 **Dealing With Real Property in Bankruptcy**

**Michael Lhuede**, will outline his "10 Rules" for trustees dealing with property in bankruptcy and will explore a series of practical issues trustees commonly face in obtaining orders for possession, warrants for possession & eviction and sale of real property.

**Michael Lhuede, Partner, Piper Alderman**

9.10 **Determination Of Voting Entitlements At Meeting Of Creditors**

**Kerr (Trustee), in the matter of Cross (Bankrupt) v Bechara [2015] FCA 284** (31 March 2015) is an extremely useful judgment - providing very helpful guidance for trustees as they go about the task of determining the voting entitlements at meetings of creditors – and how and why the process differs from the task of dealing with proofs of debt.

**Anthony Spencer, Barrister**

9.50 **Voidable Transactions**

Stephen Mullette will review the latest cases on s120 and s121 in relation to voidable transactions, s122 preferences; creditors remedies under s 37A Conveyancing Act and their interaction with the role of Trustees in Bankruptcy, and the use of statutory notices under 139ZQ – what are the lessons to be learned from these cases and the latest tricks being used by those seeking to hide assets in plain sight?

**Stephen Mullette, Principal, Matthews Folbigg Lawyers**

10.40 Morning tea

11.00 **Trustee Independence - Under State and The ARITA Code Of Conduct**

Both IG Practice Direction 14 and the ARITA Code of Conduct place higher standards on trustees for identifying and dealing with potential conflicts of interest. Our panel will review the recent Federal Court decision of **BC39 Pty Ltd v Rambaldi in the matter of Wharington (Bankrupt) [2014] FCA 1076** (7 October 2014) where an examination summons triggered a careful review of independence, and the DIRRI regime.

**John Melliush, Partner, Ferrier Hodgson**  
**David Goldman, Partner, Norton Rose Fulbright**

11.45 **Fees And Remuneration, Dealing With A Surplus Of Assets, S146 Orders, - And The Importance Of An Inventory**

A surplus of assets is not as unusual as outsiders might think. Sally Nash will take you through two recent cases: **Hacker v Weston [2015] FCA 363- now on appeal** highlights some of the practical issues in dealing with property which in this case led to the disallowance of fees, as well as a potential liability to compensate for the supposed loss of property which the trustee argued - but could not prove - was never there!

Considering and contrasting the outcome in **Stephens v Pattison [2014] FCCA 62** - trustee criticised for what the Court described as "rapacious fees," the trustee was denied the ability to recover his legal fees from the estate, leaving him personally liable.

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

12.35 **Dealing With A Bankrupt....and When Is A Discussion Of Objections To Discharge A "threat"?**

**Yeo v Weeden VSC 156** highlights a number of practical issues for trustees – how do they go about their job, push for the recovery of assets and highlight the consequences of non-compliance with the Act without facing claims of duress and abuse of process? Andrew Combe will take you through the practical issues in the cases to help you understand what can and can't be said.

**Andrew Combe, Barrister**

1.20 Lunch

2.10 **Family Law Panel Discussion: Section 35 & More**

Our Expert Panel will provide a review of the latest cases relating to the overlap (or should we say conflict) between Family Law and the Bankruptcy Act.

The team comprising of **Sally Nash, Stephen Mullette and Bob Cruickshanks** will take the floor with another valuable discussion, so come armed with your relevant questions for the experts.

3.00 **"Not the Regulator" Panel**

*(like last year but with a twist....)*

I have asked **Bob Cruickshanks** to travel back in time and resume his guise from the official receiver's office – and to work with industry bodies to take you through the key regulatory issues and concerns. Current regulatory priorities, common errors, issues and areas for improvement.

**Bob Cruickshanks, Personal Insolvency Consultant**

3.40 Afternoon tea

4.00 **After-Acquired Property**

Do you know enough about the concept and consequences of after-acquired property?

Michael Rozdal will take you through two recent cases: **Di Cioccio v Official Trustee in Bankruptcy (as Trustee of the Bankrupt Estate of Di Cioccio) [2015] FCAFC 30** – which considered whether assets acquired from saving below AITA income were "after acquired"; and

**Combis, the Trustee of the Property of Landers, a Bankrupt v Harding, Billington and Regan as the Executors of the Deceased Estate of Billington [2014] FCA 1391** which deals with the question of whether a stream of payments can be regarded as an asset or whether they should be treated as vesting property or assessable income of the bankrupt.

**Michael Rozdal, Partner, Kemp Strang Lawyers**

4.40 **Strategies for Choosing Whether To Bring Possession Matters And s.66G Applications In The Supreme Court or Federal Court.**

Brian Skinner will take you through the considerations you need when making decisions to reach the most favourable outcomes making reference to particular recent cases.

**Brian Skinner, Barrister**

**5.30pm Congress Concludes**

**6.00pm - 8.00pm Cocktail Party,**

**The Arthouse Hotel, 275 Pitt St, Sydney**

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## INVITATION

Dear Colleague,

I am delighted to invite you to join us for my **3rd Annual Traill & Associates' Bankruptcy Congress & Cocktails**.

From extensive research I know that I am presenting a program that practitioners think is both practical and technical. Whilst all sessions have been structured to be relevant to those practitioners developing their knowledge and skill base, the inclusion of most recent cases means that the sessions will also be of interest to more senior practitioners wanting to keep abreast of all the latest Bankruptcy developments.

This will be a great chance to network with other professionals in the personal insolvency sector - especially the cocktail party - as well as a great learning opportunity!

There will be optional workshops on Thursday 29th October for some more intensive interactive sessions, these will consist of full-day or half-day sessions in a relaxed and fun environment.

Please send me any queries that you may have for the presenters so we can tailor the workshops to cover your concerns and meet your needs more fully. There is also always scope to tailor the presentations, please get in touch with me with any specific questions so I can pass them on to our expert panel.

I hope to see you there. Thank you once again for all your on-going support of this Congress.

Warmest regards  
Rosie Traill

PS. Register now as numbers for the Congress, Cocktail Party and Workshops are limited and, at these rates, fill up quickly. The Early Bird rate will not be extended or repeated.

**Mark your diary for 15<sup>th</sup> Annual Practical Insolvency Conference  
21<sup>st</sup>-22<sup>nd</sup> March, 2016, Dockside, Sydney**

**OPTIONAL FULL-DAY WORKSHOP  
THURSDAY 29 OCTOBER 2015  
9.30am - 3.30pm  
PRACTICAL STRATEGIES FOR SUCCESSFUL OUTCOMES  
Interactive Intensive Bankruptcy Session**

**WORKSHOP LEADER & PRESENTERS: Sandrah Foda, *Barrister***

**Bob Cruickshanks, *Personal Insolvency Specialist***

**Peter Harrison, *Partner, Kemp Strang***

A team of personal insolvency experts will deal in-depth with some of the complex areas posing the greatest concerns for practitioners. Some of the areas which will be covered may include:

**Dealing with the ATO - “*The Ultimate Challenge*”:** When will the ATO accept a Repayment Plan to avoid bankruptcy, a PIA proposal or a s.73 Composition proposal?

**Conflicts of Interest: Actual and/or Perceived:** Where do you draw the line when disclosing relationships following the *ASIC V Franklin* appeal judgment?

**Dealing with “*Cranky Creditors*”:** Tips on dealing with creditors who are either unhappy, demanding, and/or have unrealistic expectations of the trustee.

**Dealing with “*Challenging Bankrupts*”:** Recent actions by “*ratty self-represented*” bankrupts and how the Courts dealt with them. Tips on how to deal with them and where possible, how to avoid being involved in costly litigation and/or disputes with them.

**Obtaining Property Possession Orders & Dealing with the Sheriff :** When and how to obtain Possession Orders and tips on how to have a harmonious working relationship with the Sheriff and his officers who assist you to gaining actual possession of a property. Engagement of a welfare agency in certain cases.

**Disclaiming property and/or contracts:** Why and when should a trustee disclaim real property or contract entered into by the bankrupt just prior to bankruptcy. Consequences of disclaiming.

**Income Contribution regime:** Examination of the “*grey areas*” including deeming income, determination of “*a dependent*”, re-assessment of liability, dealing with hardships applications. Adoption of a reasonable approach.

**Bankrupt’s book debts:** Assets or unpaid income? Application of *Sharpes* case.

**Realisation of Bankrupt’s shares in company & appointment of Liquidator to wind up the company:** Recent judgment of *Taylor (Trustee), in the matter of Kwok v Goldana Investments Pty Limited* details the procedural steps to be taken by the trustee to realise the bankrupt’s shares.

**Assets acquired with accumulated income during bankruptcy:** Harsh decision in *Di Cioccio v Official Trustee*. Contrary to “*fresh start*” concept and a need for amendment to the Bankruptcy Act to add income & accumulated income to the “protected assets” in s.116(2).

**Bankrupt’s interest in a deceased estate.** Determining whether the bequest is an asset or income. Property bequeathed to bankrupt subject to a life tenancy of a third party. Trustee’s entitlement no better than the bankrupt’s. Bankrupt’s rights under the *Succession Act* to challenge a will involving divisible property.

**Modern day relationships:** Increasing numbers of new bankrupts have been either married & divorced multiple times, or in same-gender relationships which present new challenges to trustees.

**Dealing with the Bankruptcy Regulation & Enforcement section:** Complaints by bankrupts and/or creditors. Errors detected during Annual inspections. IG reviews of objections and income contribution assessments. S.77C referrals. Prosecution referrals.

**Revision topics:** Remuneration regime. Interaction between Bankruptcy Act and Family Law Act. Bankrupt’s interest in jointly owned property.

Kindly hosted by Kemp Strang Lawyers Level 17, 175 Pitt Street, Sydney Phone: 02 9225 2500  
Lunch & morning tea provided

## **NOTE TO PARTICIPANTS**

Please email particular areas for concern to me directly and these will be confidentially passed on to the presenters to ensure that all your needs are met in these intensive workshops.

**BOOK EARLY AS NUMBERS ARE RESTRICTED TO ENSURE MAXIMUM PARTICIPATION BENEFITS TO ATTENDEES. IF YOU ATTENDED LAST YEAR’S WORKSHOP, THESE WORKSHOPS WILL BUILD ON SOME OF THE AREAS COVERED. 2014 ATTENDANCE IS NOT HOWEVER A REQUIREMENT.**

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**OPTIONAL HALF-DAY INTENSIVE WORKSHOP  
THURSDAY 29TH OCTOBER, 2015  
8.30am - 11.30am  
INTERACTION BETWEEN BANKRUPTCY &  
FAMILY LAW & PROPERTY ISSUES**

**WORKSHOP LEADER: SALLY NASH, CONSULTING SOLICITOR:  
O'NEILL PARTNERS COMMERCIAL LAWYERS**

Sally will cover a range of issues relating to the interaction between Family Law and Bankruptcy and provide tips on how to avoid being drawn into an acrimonious dispute between the spouses. The complex area of Property Law will also be covered in-depth dealing with the areas posing the greatest concerns for practitioners. Some of the areas which will be covered may include:

**Sale to co-owner** – Deed or Contract for Sale of Land?

**Exoneration** – creating a charge and security over the bankrupts interest

**Section 66G** of the Conveyancing Act

**Disclaiming onerous property** – why?

**Section 139** of the Bankruptcy Act – no liability for rates and taxes in certain circumstances.

**Applications for new Certificate of Title** – s138 Real Property Act

**Registering the Trustee on Title**

**Mortgagee sales and disputes with caveators**

**Binding Financial Agreements**

**Section 79** Family Law Act and property disputes

**Section 129AA** of the Bankruptcy Act- revesting

**Lapsing Caveats** and s178 of the Bankruptcy Act

**Appointment of Trustees for Sale** – 2 under Section 66G of the Conveyancing Act not 1 under Section 30 of the Bankruptcy Act.

**Orders for possession** – compare and contrast the Supreme Court default position or orders under Section 30 of the Bankruptcy Act.

**Section 139ZQ Notice** and its effect. On any Application to set it aside the Trustee must still prove his case in full Section 211 of Duties Act, 1997

**Determining security**

**Please book directly at [rtrail@traillassociates.com.au](mailto:rtrail@traillassociates.com.au)**

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## ABOUT YOUR WORKSHOP LEADERS

### **BOB CRUICKSHANKS, *Personal Insolvency Consultant***

Bob Cruickshanks is a consultant to number of firms and provides guidance on personal insolvency administration and associated investigations. He was a former Deputy Official Receiver for NSW and the ACT and retired after 34 years during which time he worked in all the front line sections of AFSA. Prior to his retirement he had a long standing association with registered trustees throughout Australia.

### **SANDRAH FODA, *Barrister***

Sandrah has expertise in the following areas: Bankruptcy, Building and Construction, Commercial, Contracts, Corporate Insolvency, Corporations Law, Domestic Arbitration, Equity, Local Courts, International Commercial Arbitration, Property, Revenue, Taxation Law, Trade Practices and Competition, Wills and Probate. After completing her studies at the University of Sydney in 1995, Sandrah was Tipstaff to the Honourable Mr Justice Powell AM QC of the Court of Appeal of New South Wales. In 1997 Sandrah was admitted as a solicitor and joined the firm of Hunt & Hunt Lawyers, Sydney. During her time at Hunt and Hunt Lawyers she was a commercial solicitor with a wide ranging practice acting for both domestic and international clients. In 2013, Sandrah completed an International Commercial Arbitration Course in Kuala Lumpur. Sandrah was called to the Bar in 2000. She has a broad commercial practice which includes matters involving building and construction, personal and corporate insolvency, real property, partnership disputes, contractual disputes, Corporations Act, Trade Practices Act, intellectual property, conveyancing disputes, taxation, wills and probate. Sandrah has had the pleasure of being briefed by the Commissioner of Taxation for the last ten years. In that time she has undertaken complex taxation review and debt recovery cases which have often resulted in the opportunity for her to exercise her expertise in the law of bankruptcy, insolvency and the Corporations Act 2001 generally. In addition, to practising in these areas, Sandrah is a lecturer for the Insolvency Practitioners Association in 2014 and leading presenter on personal and corporate insolvency. In addition to her law degree, Sandrah holds a Bachelor of Science majoring in Pure and Applied Mathematics.

### **PETER HARRISON, *Partner, Kemp Strang***

Peter is a specialist commercial disputes and insolvency lawyer, with over 20 years of experience in both personal and corporate insolvency. Peter acts for financiers in contentious and litigious matters. He also has significant experience acting for both insolvency practitioners and company directors in both formal insolvency administrations and turnaround management, as well as acting in disputes between partners, joint venture partners and shareholders. He has broad experience in commercial and property disputes, working in close collaboration with the firm's Property and Corporate practice group

### **SALLY NASH, *Consulting Solicitor, O'Neill Partners***

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 debt recovery, 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 the profession, her clients and fellow practitioners. Sally conducts litigation in all State and Federal Courts including the Supreme Court of New South Wales, Federal Court of Australia and the Federal Circuit Court of Australia, in particular to sue for unpaid debts and against guarantors and to enforce property orders. Sally is a member of the Law Society of NSW, Law Council of Australia, Commercial Insolvency and Reconstruction Committee; Australian Restructuring Insolvency & Turnaround Association. Sally lectures client and the profession and often speaks at conferences. In 2013 Sally reviewed and updated the Lawyers Practice Manual for New South Wales debt recovery chapter. In 2011 Sally wrote the Australian chapter on Australian Bankruptcy Law for INSOL, International in the INSOL publication "Consumer Debt Book". Sally Nash and her staff at Sally Nash & Co joined O'Neill Partners in January 2015.

## **BANKRUPTCY CONGRESS REGISTRATION TERMS & CONDITIONS**

These terms and conditions are to be read in conjunction with Terms and Conditions of [www.traillassociates.com.au](http://www.traillassociates.com.au) website.

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We will refund your registration in full, less \$110 administrative charge (incl gst) provided we receive cancellation in writing up to thirty working days prior to the event. A substitute is welcome at no extra charge. Regrettably, no refunds can be made less than thirty days prior to the event as all suppliers orders are based on estimated numbers of attendees and are paid in advance.

### **"YES" Campaign Policy**

Terms and conditions of this registration process: Once your "Yes" campaign email is received by us, you are officially registered for the conference. Cancellation policy as set out on the brochure and all other terms and conditions apply. You will be sent back a confirmation asking for your payment details. The lowest registration rate available at the time of your "yes" registration applies and will be held for you for up to 7 days when receipt of your payment details confirmation is required. Payment details received outside this timeframe cannot be guaranteed at the lowest registration rate.

### **CPD/CPE/CLE Points**

Accountants, Solicitors and Barristers, may earn in excess of 8 CPD, CPE or CLE points if they attend the conference and up to an additional 6 points for the full day workshop. One point per actual hour of attendance. Accreditation pending from Bar Association, one point per hour of attendance, to be allocated to strands according to the subject matter of sessions attended. Call Traill & Associates for more details.

### **Important Security Notice**

We want to take good care of you, so for venue requirements, security and safety reasons, highly visible official name badges must be worn at all times by all delegates.

**Registrations for the Bankruptcy Congress are NON TRANSFERABLE** - No substitutes or shared registrations will be permitted at this event unless written approval has been granted for extenuating circumstances and confirmed by Traill & Associates prior to the event.

If you have any queries or special requests, comments or suggestions, please contact: Rosie Traill on 02 9449 8919 or 0405 136 001.

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**NATIONAL PRACTICAL BANKRUPTCY CONGRESS**

**Wednesday, 28 October 2015 – Wesley Centre, 220 Pitt St, Sydney**

**OPTIONAL Workshops – Thursday, 29 October 2015**

**COCKTAILS – Wednesday, 28 October 2015 at ArtHouse Hotel, 275 Pitt Street, Sydney**

**REGISTRATION FORM**

**EARLY BIRD – Register and pay by Friday, 16 October**

**Yes, please register me for this event. FILL OUT BELOW, please print clearly, photocopy for multiple registrations**

First Name: \_\_\_\_\_ Last name : \_\_\_\_\_

Email : \_\_\_\_\_

Organisation : \_\_\_\_\_ Title : \_\_\_\_\_

Address : \_\_\_\_\_

Suburb : \_\_\_\_\_ State : \_\_\_\_\_ Postcode : \_\_\_\_\_

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**CONGRESS REGISTRATION FEES**

JT

**FOR EARLY BIRD RATES – REGISTER AND PAY BEFORE FRIDAY, 16 OCTOBER 2015**

<input type="checkbox"/> Congress – <b>Early bird</b>	\$490.00 plus GST (\$49.00)	Total \$539.00
<input type="checkbox"/> Cocktails (Congress delegates)	\$85.00 plus GST (\$8.50)	Total \$ 93.50
<input type="checkbox"/> Non Congress guests to cocktails	\$100.00 plus GST (\$10.00)	Total \$110.00
<input type="checkbox"/> Congress rates – <b>Standard</b>	\$565.00 plus GST (\$56.50)	Total \$621.50

**WORKSHOP FEES– FOR EARLY BIRD RATES REGISTER AND PAY BEFORE FRIDAY, 16 OCTOBER 2015**

<input type="checkbox"/> Half day workshop – <b>Early bird</b>	\$260.00 plus GST (\$26.00)	Total \$286.00
<input type="checkbox"/> Full day workshop – <b>Early Bird</b>	\$370.00 plus GST (\$37.00)	Total \$407.00
<input type="checkbox"/> Half day workshop – <b>Standard</b>	\$315.00 plus GST (\$31.50)	Total \$346.50
<input type="checkbox"/> Full day workshop – <b>Standard</b>	\$470.00 plus GST (\$47.00)	Total \$517.00

Registration subject to Terms and Conditions and Cancellation polices as set out in brochure

TOTAL : \_\_\_\_\_

**(Please ensure credit card payments include surcharges – see below)**

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Please note payment is required in advance. **NOTE:** Diners Card is not accepted

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Please return completed form by email to [rtraill@traillassociates.com.au](mailto:rtraill@traillassociates.com.au) or fax **02 9475 4314** or mail to **68 Lynbara Avenue, St Ives, NSW 2075**.

Enquiries : **02 9449 8919** or **0405 136 001**

Please keep a copy of the completed registration for your GST records. Confirmation will be sent by email. This document will be a Tax Invoice, for GST purposes, when you make full payment. ABN 47085 482 533. Organised by : Rosie Traill for Traill & Associates Pty Ltd – Insolvency, Bankruptcy, Turnaround & Restructuring Conference Specialists. [www.traillassociates.com.au](http://www.traillassociates.com.au)