

4th ANNUAL

NATIONAL PRACTICAL BANKRUPTCY CONGRESS & COCKTAIL PARTY

CONGRESS: Monday 14th November, 2016

Wesley Conference Centre, 220 Pitt Street, Sydney

COCKTAIL PARTY: The ArtHouse Hotel, 275 Pitt Street, Sydney

OPTIONAL CONCURRENT FULL AND HALF DAY WORKSHOPS:

Tuesday, 15th November 2016

TOPICS INCLUDE:

- Insolvency Practice Rules -
How will they change Bankruptcy Practice?
- Voidable Transactions
- Fees and Remuneration
- The Famous Family Law Experts In Conversation
- Dealing with Joint Property & Real Estate in
Bankruptcy
- The New Discipline Processes - Scrutinising AFSA
and Professional Body Regulation of Trustees
- Trust Property
- Setting Aside a PIA & Trustees Costs
- Sourcing and Dealing with Information
- Reviews of Trustee's Decisions
- Keeping Creditors in the loop

CONGRESS PANEL INCLUDES:

John Melluish, Bankruptcy Trustee, Conference Chair
Bob Cruickshanks, Personal Insolvency Consultant
Sally Nash, Consultant Solicitor, O'Neill
Partners Commercial Lawyers
Stephen Mullette, Principal, Matthews Folbigg Lawyers
Michael Murray, Principal, Murrays Legal
Michael Rozdal, Consulting Principal, Keypoint Law
Peter Harrison, Partner, Kemp Strang Lawyers
Karen McLean, McLean and Associates Solicitors
Anthony Spencer, Barrister
Juliet Curtin, Barrister
Irina Hoskinson, Barrister
Mark Findlay, Director Regulation & Enforcement Central
Region, Australian Financial Security Authority
Greg Sirtes SC

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ROSIE TRAILL Ph 02 9449 8919 M 0405 136 001 F 02 9475 4314
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Invitation

Dear Bankruptcy Friends,

November is the time for the Spring Racing Carnival – but it is also the month of my:

4th Annual National Practical Bankruptcy Congress, Cocktail Party & Optional Workshops

As always, a great deal of research goes into the development of a program that will meet your needs: relevant, up-to-date, and cost effective. And because every session includes the very latest developments and the very latest cases, every session will be of interest to senior practitioners wanting to “keep up to date”, as well as to those who are still building their skill and knowledge base.

Of course, with such a strong attendance from the key players in Bankruptcy, the event offers fantastic opportunities for networking and business development, even more so at the cocktail party.

The Cocktail Party is a great way to make some new and valuable connections, catch up with old friends and find out what’s happening in the personal insolvency industry.

As usual there will be optional **concurrent workshops on 15th November** which offer the chance to develop and expand the conference material, with either a full day or half-day session in a relaxed but educational context. Our workshop leaders are so knowledgeable and generous with their information that participants have consistently told me how invaluable these sessions are which is why I continue to bring them to you. The collective experience of the audience also adds so much to the quality of the learning. **It is definitely a great use of your time.** You will come away with knowledge and valuable strategies that you can implement in your practice straight away.

Please make sure that you let me know if there are any aspects that you would like the presenters to address – I’ll do our best to make sure that every session is as helpful and relevant as possible.

Finally, please help me to grow the event by forwarding details to your network and in particular to those whom you would like to meet at the event.

I look forward to welcoming you personally and assisting you with making those valuable connections. Thank you once again for all your on-going support of this Congress.

Warmest regards

R. Traill

Rosie Traill

PS. **Register now** as numbers for the Congress and Workshops are limited to ensure maximum participation, and at these rates, will fill up quickly.

TESTIMONIALS: Here's a small sample of what delegates wrote on their Evaluation Form from a previous Congress:

“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.. 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

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Keypoint Law is a full service commercial law firm established in Australia by United Kingdom firm Keystone Law. Since launching 2 years ago, Keypoint has grown to 21 Principals, with offices in Sydney, Melbourne and Canberra. The firm offers a deleveraged model, in which clients receive dedicated service provided by senior lawyers, personally. The firm's operational structure and use of technology reduces overhead and eliminates duplication, driving an efficient service, which can be flexibly tailored to client needs. Keypoint has received a number of awards in recognition of its innovative approach to legal services, including "Australian Boutique Law Firm of the Year" at the 2016 Australasian Law Awards.

The firm's **Insolvency and Litigation team** comprises a number of talented senior lawyers all of whom held partnerships in leading firms before joining Keypoint. This includes Michael Rozdal (recognised in Best Lawyers 2016/7 for his expertise in insolvency), Penelope Pengilley, Rupert Gray and Luma Sherif. More about our firm can be found at www.keypointlaw.com.au.



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SYDNEY INSOLVENCY NEWS

Real Journalism, Real People and Real-time Commentary on Sydney's Insolvency Scene.

**PROGRAM OUTLINE MONDAY 14TH NOVEMBER, 2016 -
8.00AM – 5.30PM**

7.30 REGISTRATIONS OPEN

**8.30 CONFERENCE COMMENCES –
Opening Remarks from The Chair
John Melluish, *Bankruptcy Trustee***

8.30 Sourcing and Dealing With Information

You may know something – but how did you find out, and what can you do with the information? In this session, Karen McLean *and* Anthony Spencer, deal with practicalities and possible restrictions of using information, drawing on important decisions such as *Nicholls (Trustee) v Hertslet [2016] FCA 655 (3 June 2016)* and also covering the requirements of the Privacy Act. Also, dealing with a bankrupt's interest in a deceased estate and the implications of the Succession Act. Karen also tells me that they have been involved in additional recent cases which will be reviewed.

**Karen McLean, *McLean and Associates Solicitors*
Anthony Spencer, *Barrister***

**9.15 Voidable Transactions & Express
Bankruptcy**

This is a session I run every year – and yet it is not at all the same session each year! Confused? In fact there are so many new decisions in voidable transactions recoveries in what is such a key area of practice that there is always 100% new content. In this session, **Stephen Mullette**, will take you through the key cases in the last twelve months focusing on the usual suspects, section 120, 121, 122 Bankruptcy Act; and the equivalent property law and conveyancing legislation for recovery actions - including (but not limited to!) *Aravanis & Roy (Trustees), in the matter of Destanovic (Bankrupt) v Destanovic [2016] FCA 388*, *Leroy as trustee of the bankrupt estate of Mogilevsky v Mogilevsky (No.2) [2016] FCCA 1967*, *Turner in his Capacity as Trustee of the Bankrupt Estate of Wallace v Wallace [2016] FCCA 963*, *Carrafa v Gomez & Anor [2016] FCCA 1397*, and *Sutherland (Trustee) v Yip [2016] FCCA 1009*. Use of section 139ZQ Notices and the consequential registering of a section 139ZR charge.

I have also asked Stephen to outline the proposals to reduce bankruptcy to 1 year which will raise a lot of questions:

What happens to the contribution regime term? How will objections work? How will trustees ensure compliance? Furthermore, will this change bring an end to Debt Agreements with the consequential increase in bankruptcies? In this session we'll explain what personal insolvency practitioners need to know and the timeline for the changes and; can they be stopped/amended? Stephen will also consider the implications for voidable transactions.

Stephen Mullette, *Principal, Matthews Folbigg Lawyers*

10.00 Trust Property

During my research it became clear and confirmed by the experts that there is a tremendous misunderstanding of Trusts law and so I have asked **Sally Nash** to revisit that topic. Sally has formulated a session that will cover the following:

- Constructive and/or Resulting Trusts
- Section 116(2)(a) Trust Property does *not* vest
- Claims that vest in the trustee are the right of indemnity and the repayment of monies expended by the bankrupts on trust property, see *Truthful Endeavour Pty Ltd v Condon (Trustee) in the matter of Rayhill (Bankrupt) [2015] FCAFC 70*
- Superannuation as trust property, see sections 128A, 128B, 128C of the Bankruptcy Act, see *Trustees of the Property of Morris (Bankrupt) v Morris (Bankrupt) [2016] FCA 846*
- Transfers to trusts remain void even with the benefit of section 116(2)(a) – see *Official Trustee in Bankruptcy v Trevor Newton Small Superannuation Fund Pty Ltd [2001] FCA 1267*
- Trustee's right of indemnity section 70 of the Trustee Act (NSW) noting *David Lewis Clout in his capacity as Liquidator of Mainz Developments Pty Ltd (in liquidation) [2016] NSWSC 1146*.
- Ipso facto clauses and the general impact, where a Trustee of property is insolvent
- Section 134(4) Applications for directions being proper costs in the bankruptcy administration, see *Quinn (Trustee) in the matter of Rowe (Bankrupt) (No 2) [2016] FCA 849*
Sally Nash, *Consulting Solicitor, O'Neill Partners Commercial Lawyers*

10.45 Morning Tea

**11.00 Bankruptcy / Family Law - Experts In
Conversation**

The intersections between Family Law and Bankruptcy Law is one of the most challenging and constantly evolving areas of practice, and this session - and the expertise of the panel - is looked forward to by the regular attendees. This year **Sally Nash, Stephen Mullette** and **Bob Cruickshanks** will help you to learn about the very latest developments and most recent decisions including the appearance in the Family Court of Liquidators (in a professional capacity, that is) and:

- *Needham and Trustees of the Bankrupt Estate of Needham [2016] FamCA 253* (which is on appeal)
- *Megalos & Katsaros & Ors [2015] FamCA 1094* which deals with Issues concerning liquidations and bankruptcy in a Family Law context, see
- *Miller & Coulson & Ors [2015] FamCA 637* which addressed complexities arising from the involvement of spouses, partners, businesses in an insolvency dealt with in the Family Court,
- *VR Dye & Co (a Firm) v Peninsula Hotels Pty Ltd (In Liquidation) & Anor [1999] VSCA 60* concerning secured creditors in bankruptcy having priority, principally as solicitors acting in the litigation

obtaining charging clauses and providing services, see *Rambaldi v Mullins (No 2)* [2016] FCA 977 (474 paragraphs) dealing with an interesting question of a Deed of Defamation.

Bob Cruickshanks, Personal Insolvency Consultant

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

Stephen Mullette, Principal, Matthews Folbigg Lawyers

12.00 Insolvency Practice Rules – How They Will Change Bankruptcy Practice

One of the noteworthy things about AFSA is its willingness to engage with the profession to explain and discuss the issues that concern them and gather feedback. I am absolutely delighted that **Mark Findlay** will be the star of this session to discuss the new law under the Insolvency Law Reform Act and the draft rules – handling moneys, conduct of meetings, answering creditor requests for information, remuneration processes - so as to assist trustees get their practices in order for the new world of Personal Insolvency practice in 2017.

Mark will also discuss current issues in bankruptcy practice on which AFSA is focusing.

Mark Findlay, Director Regulation & Enforcement Central Region, Australian Financial Security Authority

12.45 Lunch

1.30 The New Discipline Processes - Scrutinising AFSA and Professional Body Regulation of Trustees

The changes to misconduct processes arrive in March 2017. They give increased powers to AFSA and allow the professional associations to refer trustees' conduct to AFSA, and to use confidential information in their own disciplinary processes. With that power and authority comes responsibility. Just as high standards of conduct are expected of trustees, so too should trustees expect high standards of natural justice and transparency in matters that may affect their livelihood. This is one of the fundamental expectations recently identified by the Australian Law Reform Commission. **Michael Murray** will test the new processes against these accepted legal standards, and identify issues for particular scrutiny when disciplinary proceedings are taken.

Michael Murray, Principal, Murrays Legal

2.15 Dealing with Joint Property & Real Estate

I know that dealing with real estate and particularly jointly owned property is a key topic but even so the sheer number of cases in the last twelve months astonished me: (*Reaper v Vrsecky (Trustee)* [2016] FCA 509; *Turner in his Capacity as Trustee of the Bankrupt Estate Of Wallace v Wallace* [2016] FCCA 963; *Palmer As Trustee Of The Bankrupt Estates Of Frank Capocchiano, Italia Capocchiano v Capocchiano & Anor* [2016] FCCA 1291; *Scott (as trustee of the Bankrupt Estate of Ryan) v Ryan* [2016] FCCA 1209; *Duncan as Trustee of the Bankrupt Estate of Devine v Devine* [2016] FCCA 690; *Dixon (Trustee) v*

Gamble (Bankrupt) & Anor [2016] FCCA 572; and *Gleeson (Trustee) v Khoury* [2016] FCCA 1263). In this session, **Juliet Curtin** will tell which of these are important and which are not, and most importantly how you should adapt to maximise and speed up your recoveries plus avoid unexpected "road-blocks".

Juliet Curtin, Barrister

3.00 Setting Aside a s.73 Composition or Sequestration Order & the Trustee's Remuneration

The starting point for this session is *Bendigo and Adelaide Bank Limited v Clout (No 2)* [2016] FCA 561 (20 May 2016) where there was an attempt to remove a trustee on the grounds that he was "partisan" and his investigation was criticised as 'incomplete' - although he argued that this was because he was unfunded. These of course are complaints that are regularly raised because anyone who disagrees with a trustee's decision seems to argue that it reflects bias! This session will review the decision and what it means for practitioners. Likewise, where does a trustee stand in respect of their remuneration when a Sequestration Order is set aside?

Irina Hoskinson, Barrister

3.45 Afternoon Tea

4.00 Reviews of Trustees' Decisions - Keeping Creditors in the loop

The reference point here is the February 16 decision: *Sammut v Paul Leroy as Trustee Of The Bankrupt Estates Of Joanne De Rome & Geoffrey De Rome & Ors* [2016] FCCA 348. This session will cover the Court review process, the criteria by which decisions can be overturned, but *most* practically, help you understand how to minimise the chances that your decisions will be overturned. Also, encountering and dealing with bankrupts and related parties, with apparent mental health issues.

Greg Sirtes SC

4.45 Trustee's Remuneration – Approval, Claiming & Reviewing Regime:

Scott (as trustee of the Bankrupt Estate of Ryan) v Ryan [2016] FCCA1209 (20 May 2016)

In this session, I have asked **Michael Rozdal**, to examine the fine line which the trustee is required to walk along when taking action to realise a property with significant equity to obtain funds to pay creditors and the trustee's remuneration when the bankrupt resists the sale and objects to the quantum of the trustee's remuneration which has increased due to the resistance of the bankrupt.

Michael Rozdal, Consulting Principal, Keypoint Law

5.30 Closing Remarks from the Chair and Close of Congress

6.00 Move to The ArtHouse Hotel for those attending the Cocktail Party

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**OPTIONAL FULL-DAY WORKSHOP
TUESDAY 15TH NOVEMBER 2016
9.30am - 3.30pm - Level 17, 175 Pitt Street, Sydney
PRACTICAL STRATEGIES FOR SUCCESSFUL OUTCOMES
Interactive Intensive Bankruptcy Session**

WORKSHOP PRESENTERS

Bob Cruickshanks, *Personal Insolvency Specialist*

Peter Harrison, *Partner, Kemp Strang*

David Sampson, *Managing Partner, BPS Recovery*

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:

Law Reform Issues: The implications of the One Year Bankruptcy

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.

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?

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.

Bankrupt's book debts: Assets or unpaid income?

Realisation of Bankrupt's shares in company & appointment of Liquidator to wind up the company

Conflicts of Interest: Actual and/or Perceived: Where do you draw the line when disclosing relationships?

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.

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.

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.

Assets acquired with accumulated income during bankruptcy: 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).

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.

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. 2015 ATTENDANCE IS NOT HOWEVER A REQUIREMENT.

www.traillassociates.com.au rtraill@traillassociates.com.au

**OPTIONAL HALF-DAY INTENSIVE WORKSHOP
TUESDAY 15TH NOVEMBER, 2016
8.30am - 11.30am - Symantec House, Level 5, 207 Kent Street, Sydney
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 rtraill@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.

DAVID SAMPSON, *Managing Partner, BPS Recovery*

David has twenty nine years experience in Corporate Insolvency and Reconstruction together with Personal Insolvency and started his career with one of the big three accounting firms in their Sydney Insolvency Division. Since that time David has worked with other leading Sydney based Insolvency firms and has gained a depth of experience in providing advice to stakeholders to assist in the sale of distressed assets, the sale of business and conducting formal insolvency administrations.

In July 2009 he became a founding partner with Mitchell Ball and Maxwell Prentice of BPS Recovery. David has been responsible for a number of insolvency engagements in the Property, Finance, Manufacturing, IT and Health Industries. He holds a Bachelor of Commerce (University of Tasmania) and is both a Registered Liquidator, Official Liquidator and a Registered Trustee in Bankruptcy

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.

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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 Trail & 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.

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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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