

15th Annual Practical Insolvency Conference and Gala Dinner

21 - 22 March 2016
Dockside, Cockle Bay, Sydney



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CONFERENCE PROGRAMME - MONDAY, 21 MARCH 2016

8.50 - 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 - 10.10 **KEYNOTE PRESENTATION:**

Insolvency Reform Is Finally Here - What Does This Mean For The Profession?

A new framework for regulation, registration and remuneration for insolvency practitioners based on the Senate Economics References Committee report in 2010 on the role of liquidators and administrators, their fees and practices and the involvement of ASIC is contained in the Insolvency Law Reform Act 2016. That Act commenced in a limited fashion on 29 February 2016 with most of the provisions commencing in March 2017. Amendments to the Corporations Act contained in the Insolvency Law Reform Act don't deal with reform of laws related to corporate restructuring. Corporate restructuring reforms and some changes to personal bankruptcy laws are the subject of the Productivity Commission report publicly released on 7 December 2015. Some of those recommendations received the Government's support when Prime Minister Malcolm Turnbull on 7 December released the Innovation Statement. Ian Walker, Partner Minter Ellison will update you on the changes contained in the Insolvency Law Reform Act as well as the further reforms recommended by the Prime Minister and the Productivity Commission.

Ian Walker, Partner, Minter Ellison

10.10 - 10.40 **Freezing Orders - The When, Why And How**

Where you have significant assets at risk Freezing orders can be a powerful tool. **Hathway (Liquidator), in the matter of Tighrope Retail Pty Ltd (in liq) v Tripolitis [2015] FCA1003** provides a very useful summary and reminder of how, when and whether to employ freezing orders.

10.40 - 11.00 **MORNING TEA**

11.00 - 11.50 **Claims Against Directors For Breach Of Duty**

Robert Newlinds SC, leader of Banco Chambers, will review a number of 2015 decisions which highlight potential avenues of recovery for liquidators and receivers, including:

Smith v Starke, in the matter of Action Paintball Games Pty Ltd (in liq) (No 2) – where the company's funds were used to service a loan taken by directors after the company was unable to purchase property itself

Prestige Lifting Services Pty Ltd v Williams [2015] FCA 1063 – where it was claimed that directors and senior employees had set up a business in competition and diverted business opportunities

Inform Numbers Australia Pty Ltd & Anor v Angelovski & Ors [2014] VSC 537 – where company assets were transferred before liquidation

Australian Institute of Fitness Pty Limited v Australian Institute of Fitness (Vic/Tas) Pty Limited (No 3) [2015] NSWSC 1639 – where directors were claimed to have run a competing business, using business information, and whether the businesses were competitive in the same market, and provided similar services.

Robert Newlinds SC, Banco Chambers

11.50 - 12.30 **PPSA 2015/2016 Update**

Paul Apathy, Partner, Herbert Smith Freehills will deliver a technical briefing on the key developments in respect of the Personal Property Securities Act 2009 (PPSA) over the last year. The discussion will include an explanation of the changes introduced by the Personal Property Securities Amendment (Deregulatory Measures) Act 2015, and will also cover important recent PPSA cases such as **Forge Group v General Electric, Central Cleaning Supplies v Elkerton and Primplas v Gelpack**. The update will also reflect on potential law reform in light of the final report on the review of the PPSA.

Paul Apathy, Partner, Herbert Smith Freehills

CONFERENCE PROGRAMME CONT'D

12.30 - 1.15 **Insolvent Trading Masterclass**

With two significant cases in 2015: *Trinick as Liquidator of Forgione Family Group Pty Ltd (in liq) v Forgione [2015] FCA 642* and *Smith v Boné, in the matter of ACN 002 864 002 Pty Ltd (in liq) [2015] FCA 319* insolvent trading is a hot topic. Garry Bigmore QC will review these new cases and explain their implications for identifying, investigating and pursuing an insolvent trading claim.

Garry Bigmore QC, Lonsdale Chambers

1.15 - 2.15 **LUNCH**

2.15 - 3.00 **A Mortgagee's "Duties" to Subsequent Mortgagees**

In Fingal Developments Pty Ltd v Nom De Plume Nominees Pty Ltd & Anor [2015] VSC 44 a secured creditor found itself being sued by a second mortgagee. Chris will highlight the "duties" of a secured creditor, explain how they can be modified by an inter-creditor agreement, and explain when and how this might become an issue for a receiver.

Chris Prestwich, Partner, Allens and Angela Martin, Managing Associate, Allens

3.00 - 3.40 **When Is A Secured Creditor Done Out Of Its Debt By A DOCA?**

For 25 years it has been accepted that secured creditors stand outside a DOCA process unless they have specifically agreed otherwise. The decision in *Bluenergy Group Ltd* arguably 'fundamentally alters this position'. Philip Hoser, Partner from Jones Day, considers whether this is so and explains how this will affect secured creditors, when and how they may be at risk of losing their rights as a result of a DOCA, and what secured creditors need to do differently.

Philip Hoser, Partner, Jones Day

3.40 - 4.00 **AFTERNOON TEA**

4.00 - 5.30 **State of the Market - Banker's Panel**

One of my most popular sessions, Dominic Emmett, Partner, Gilbert & Tobin Lawyers will chair a panel of senior bankers and non-bank lenders which will include Tim Williams, General Manager, Group Strategic Business Services, Group Risk, National Australia Bank and Shaun Brailey, Director, Lending Services, ANZ, updating you about the industries and issues that are of concern to them. Which way is the market heading? What is the impact of media and political scrutiny on lenders, and how does it impact their choice of strategy and advisers? How has the landscape changed with influx of alternative finance sources?

Session Chair: Dominic Emmett, Partner, Gilbert & Tobin Lawyers
Tim Williams, General Manager, Group Strategic Business Services, Group Risk, National Australia Bank
Shaun Brailey, Director, Lending Services, ANZ
Steve Allan, Executive Director, Nomura

5.30 - 5.35 **Closing remarks from the Chair and close of day one**

5.35 - 7.00 **Informal Drinks - Pontoon Bar, Cockle Bay Wharf**

7.00 - 7.30 **Pre-dinner drinks**

7.30 - 11.30 **Gala dinner proudly sponsored by Herbert Smith Freehills**



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CONFERENCE PROGRAMME - TUESDAY, 22 MARCH 2016

8.55 - 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 - 9.50 **Bankruptcy Update**

This session is the “best of” my 2015 Bankruptcy Congress – Sally Nash will highlight and summarise the most significant developments in bankruptcy practice, what are the likely changes and how will you be affected?

9.50 – 10.40 **Family Law and...Liquidations! The Bad News for Corporate Practitioners**

If you’ve ever read some of the Sally Nash sessions about bankruptcy and the Family Court and felt happy that as a corporate practitioner you don’t have to worry about family law, I have bad news: ***Austec Wagga Wagga Pty Ltd (in liq) v Cullen [2015] FCA 400*** shows us that Family Law can be an issue for liquidators too, with ***Kijurina (as liquidator of ET Family Pty Limited) v Taouk [2015] FCA 424*** – which dealt with the transfer of company assets by a director to a spouse pursuant to a Binding Financial Agreement under the Family Law Act 1975 (Cth) also considered. This session will walk you through the case and explain the issues for you.

Sally Nash, *Consultant Solicitor*, O’Neill Partners, Incorporating Sally Nash & Co.

10.40 - 11.10 **MORNING TEA**

11.10 - 12.00 **Insolvent Transactions Round-Up**

Farid Assaf, Barrister, Banco Chambers literally wrote the book on Voidable Transactions (Voidable Transactions in Company Insolvency, Lexis Nexis). Farid will present an authoritative round up of all of the key cases from 2015 and 2016 to date and also examine the potential impact of the proposed changes in the Insolvency Law Reform Act 2016 to voidable transactions.

Farid Assaf, *Barrister*, Banco Chambers

12.00 - 12.50 **STOP PRESS: Independent Contractor Services (Aust) Pty Limited ACN 119 186 971 (in liquidation) (No 2) [2016] NSWSC 106**

In a watershed judgment handed down on 23rd February 2016 the NSW Supreme Court found that there was a fundamental difference between the winding up of a company and the winding up of a company that acted as a corporate trustee.

The Court held that the section 556 priorities do not apply to the distribution of trust assets. It also limited remuneration to a commission rate of 2% of assets realised in the liquidation and 15% of the value of the distribution. Mitchell Mathas, Partner, Norton Rose Fulbright Australia will review the facts of the case, explain the decision and highlight its significant implications for practitioners.

Mitchell Mathas, *Partner*, Norton Rose Fulbright Australia

12.50 - 1.50 **LUNCH**

1.50 - 2.40 **Remuneration Issues for IP’S.**

Always important! This session will round up all the key remuneration decisions including: ***Hayes, in the matter of Henry Walker Eltin Group Limited (in liquidation) (No 4) [2015] FCA 656***, ***Re Traditional Values Management Ltd (In Liq) (No 2) [2015] VSC 126 (9 April 2015)***, ***Melbourne Co-Operative Book Shop Limited [2015] VSC 69 (6 March 2015)***

Michael Rozdal, *Partner*, Kemp Strang

CONFERENCE PROGRAMME CONT'D

2.40 - 3.40 **Regulation Of The Profession – ARITA, AFSA, ASIC, CALDB and others**

Now that the Insolvency Law Reform Act is at last a reality, how will the changes to the disciplinary regime affect you?

How are disciplinary matters being dealt with in the meantime?

Is ASIC replacing CALDB referrals with enforceable undertakings?

Was there uniform fairness to all practitioners in the previous system and will there be more or less fairness in the new system?

The CALDB will be replaced by bankruptcy style committees but as yet there are no Rules.

Do practitioners want to face a disciplinary panel without a lawyer?

How will complaints be identified and referred to the Committee?

Who is going to select the Committee?

Will the composition of the Committee impact on disciplinary outcomes?

David Castle, former Chair, CALDB will lead a panel of experts including Bob Cruickshanks, former Deputy Official Receiver NSW/ACT and Michael Hayter, Senior Partner, Gillis Delaney Lawyers to consider changes – now and anticipated – to the regulatory framework.

How will practitioners feel about ASIC conducting the investigation, having the sole power to refer matters to the Committee, having their own nominated representative on the committee and then prosecuting the disciplinary proceedings before their nominated representative?

These changes will affect all insolvency and bankruptcy practitioners.

Session Chaired by: David Castle, Former Chair, CALDB

Bob Cruickshanks, Former Deputy Official Receiver NSW/ACT, Personal Insolvency Consultant
Michael Hayter, Senior Partner, Gillis Delaney Lawyers

3.40 - 4.00 **AFTERNOON TEA**

4.00 - 4.40 **Appointments, Independence and DIRRIS**

This remains a very significant topic, as law and practice continues to develop. We look at three significant 2015 cases: *In the matter of Recycling Holdings Pty Limited [2015] NSWSC 1016*. Look before you leap! Administrators are entitled to have some idea of what it is that they are being asked to take on.

In the matter of *Warwick Keneally as administrator of Australian Blue Mountain International Cultural & Tourist Group Pty Ltd (admin apptd) [2015] NSWSC 937* (16 July 2015) focuses on the adequacy of notice of directors' meetings – here by text message less than two hours prior to commencement

Jack James as Administrator of ZYL LTD [2015] WASC 57 (12 February 2015) – dealt with the validity of a resolution where the number of directors was below the statutory minimum.

Samantha Kinsey, Partner, King & Wood Mallesons

4.40 - 5.25 **Taxation Issues for IP's**

This session will round up tax issues for IPs. We now have the High Court judgement in Commissioner of Taxation v *Australian Building Systems Pty Ltd (in liq) [2015] HCA 48*, but our speaker will also address developments in section 260-5 notices and the *Bell Group Limited (in liq) v Deputy Commissioner of Taxation [2015] FCA 1056* decision.

Simon McKenna, Director, PwC

5.25 - 5.30 **Closing remarks from the Chair and conference close**