

CONFERENCE PRESENTATIONS

Crumble in the jungle

lessons from the Crunch

Cover photo courtesy of Imogen Loxton

Sheraton Mirage Resort, Gold Coast 31 July - 1 August 2009

26th Annual Banking & Financial Services
Law & Practice Conference

Presented by



FRIDAY 31st JULY, 2009

9.00am -
10.30am

Opening Plenary
Good Faith in Contracts in financial services

Implied term or general duty? What is good faith? The impacts on the exercise of rights. Possibilities for exclusion

Chair: Diccon Loxton, Partner, Allens Arthur Robinson, Sydney

Speakers: [Hon. Justice Paul de Jersey](#), Supreme Court of Queensland, Brisbane
[Dr. Elisabeth Peden](#), Professor, Faculty of Law, University of Sydney, Sydney
[Hon. Justice Peter Blanchard](#), New Zealand Supreme Court, Wellington

11.00am -
12.30pm

Concurrent Sessions 1A & 1B

(1A)

National Credit Reform Take 3: The Ascendance of the Commonwealth

The Federal Government has announced a two-phase plan to implement the COAG agreement for the Federal takeover of credit regulation, with Phase One legislation to be in place by the middle of this year. The plan is not confined to consumer credit and includes investment property lending, margin lending and the licensing of lenders, advisers and brokers. Phase Two includes the proposed regulation of the provision of credit to small businesses. Speakers will provide Government, private practice and industry perspectives on what the changes will mean, including future policy directions. The session will also include a discussion of related aspects of the proposed Australian Consumer Law

Chair: Elisabeth Wentworth, Barrister, Victorian Bar, Melbourne

Speakers: [Mark Sneddon](#), Partner, Clayton Utz, Melbourne
[Alix Gallo](#), Head, Consumer Credit Unit, Corporations & Financial Services Division, Commonwealth Treasury, Canberra

Comments: [Steve Edwards](#), Director, SME Associates, Sydney

Friday 31st July continued

11.00am - (1B) **Set-off as a security device**
12.30pm
Set-off usually only becomes crucial on insolvency: if everybody could pay, there would be no need for the protection of set-off. The speakers will explore the ambit of set-off and the extent to which different types of set-off operate as effective security. They will discuss chinks in the armoury of set-off which may prevent set-off being used to reduce exposure, and will explore whether it is always available on insolvency, against attaching creditors, assignees and other interveners. The speakers will discuss priority issues that arise with set-off and will compare different set-off regimes under the common law, the PPSA in New Zealand and the proposed Australian personal property securities legislation
Chair: Jason Morris, Partner, Allens Arthur Robinson, Melbourne
Speakers: **Associate Prof. Sheelagh McCracker**, Applied Finance Centre, Macquarie University, Sydney
Jason Boyes, Partner, Buddle Findlay, Wellington

1.30pm - **Concurrent Sessions 2A & 2B**
3.00pm
(2A) **Capital raising by banks and other financial institutions following the credit crisis**
(Panel presentation – no papers available); This session will look at the development of alternative funding sources for the finance sector. Consideration will be given to the benefits and disadvantages of Government support provided through, for example, government guarantees and the Australian AOFM arrangements. It will also consider the longer term solutions, including whether securitisation will remain a funding tool and alternative funding sources, such as covered bonds and the treatment of such instruments in different jurisdictions. Finally, greater Government regulation of the finance sector and the impact this may have on capital raising will be considered
Chair: Angela Flannery, Partner, Clayton Utz, Sydney
Speakers: Therese McCarthy-Hockey, Treasurer: Australia & New Zealand Deutsche Bank AG, Sydney
Jason Elphick, General Counsel - Capital & Funding, National Australia Bank, Melbourne
Ross Pennington, Partner, Russell McVeagh, Auckland

1.30pm - (2B) **Privacy Law in Evolution: Across the Pacific**
3.00pm
This session gives an overview of proposed changes to the Privacy laws of Australia and New Zealand; focusing on the differences and similarities in the evolution of the laws in the two countries; and considering the practical implications of proposed changes, particularly in regard to credit reporting
Chair: Amanda Parshall, General Counsel, HSBC Bank Australia Ltd. Sydney
Speakers: **Karen Curtis**, Australian Privacy Commissioner, Canberra
Marie Shroff, New Zealand Privacy Commissioner, Wellington
Katherine Forrest, Partner, Mallesons Stephen Jaques, Melbourne

Friday 31 July continued

3.30pm -
5.00pm

Concurrent Session 3A & 3B

(3A)

Hostage to the Vibe – the Future of Statutory Unconscionability in Banking Transactions

- *Foundations of unconscionability in statutory and non-statutory law in Australia and New Zealand*
- *Wider policy and regulatory trends in unconscionability*
- *Banking-specific regulatory investigations and authorities*
- *Areas of concern for future litigation*
- *Approaches for risk minimization*

Chair: Adam Thatcher, Partner, Allens Arthur Robinson, Brisbane

Speakers: **Prof. Bryan Horrigan**, Professor & Associate Dean (Research) Monash University, Melbourne

Hon. Justice Andrew Greenwood, Federal Court of Australia, Brisbane

Hon. Justice Peter Blanchard, New Zealand Supreme Court, Wellington

3.30pm -
5.00pm

(3B)

Securities Lending – Lessons Learnt (papers not available)

The speakers will address some of the practical and legal issues arising in relation to the insolvency of a business engaged in securities lending, and in particular under the terms of the standard Australian Master Securities Lending Agreement (or AMSLA)

These issues include:

- *What is the true nature of a loan of securities?*
- *When can an AMSLA be closed out, and by whom?*
- *How does the netting mechanism under the AMSLA operate in an insolvency scenario?*

Chair: Richard Fawcett, Partner, Blake Dawson, Sydney

Speakers: Salvatore Algeri, Partner, Deloitte Touche Tohmatsu, Melbourne

Ross McClymont, Partner, Blake Dawson, Melbourne

SATURDAY 1st AUGUST, 2009

8.45am - (Plenary) **Director Duties and insolvent trading – the existing law and its effects**
10.00am
The speakers will consider the current insolvent trading and reckless trading laws that apply in Australia and New Zealand (respectively) and whether or not such laws require amendment having regard to, amongst other things, similar laws in the UK and US, the policy objectives of such laws and the fact that there is no distinction between insolvent trading laws that apply to directors of private companies and those that apply to publicly listed companies. The session will also include discussion of the practical effects of the current insolvent trading laws in the context of distressed companies and the course of action available to the directors of such companies

Chair: Jonathan Oldham, Partner, Mallesons Stephen Jaques, Melbourne
Speakers: [John Sheahan SC](#), 5 Wentworth Chambers, Sydney
[James Douglas](#), Partner, Minter Ellison Rudd Watts, Wellington
Margaret Cole, Group General Counsel, Babcock & Brown Aust. P/L, Sydney

10.15am - (Plenary) **For whom the bell tolls - lenders, directors and workouts following Bell**
11.35am

Chair: [John Evans](#), Partner, Henry Davis York, Sydney
Speakers: David Clarke, CEO, Investec Bank (Australia)
Margaret Cole, Group General Counsel, Babcock & Brown Aust. P/L, Sydney
Prof. John Stumbles, Faculty of Law, University of Technology, Sydney
Simon Lynch, Partner, Allens Arthur Robinson, Melbourne
Mark Korda, Partner, KordaMentha, Melbourne

11.35am - **Concurrent Sessions 4A & 4B**
12.50pm

(4A) **PPS: Specific Issues - Chaos In The Making....**
Chair: Michael Robinson, Partner, Simpson Grierson, Auckland
Speakers: [David Turner](#), Victorian Bar, Melbourne
[Patrick Lowder](#), Partner, Freehills, Sydney
[Steve Flynn](#), Special Counsel, Simpson Grierson, Wellington

11.35am - (4B) **NZ Finance Companies "The Way Forward"**
12.50pm
This session will look at the New Zealand Finance company scene following recent collapses, what happened, some of the contributing factors and where the industry goes from here

Chair: Dennis Church, General Manager - Corporate Trustee Services, Public Trust, Auckland
Speakers: [Grant Graham](#), Partner, KordaMentha, Auckland
[Clynton Hardy](#), Chairman, Trustee Corporations Association of New Zealand Inc, Wellington
[Ian Woolford](#), Manager, Financial System Policy, Reserve Bank of New Zealand

Saturday 1 August continued

1.30pm - (Plenary) **Indefeasibility and All Advances Mortgages: Are they a thing of the past?**
2.45pm *This session examines the latest developments in New Zealand and Australia in the area of mortgage security, particularly all advances mortgages. There have been a number of recent cases in both New Zealand and Australia which have put into question whether lenders are able to rely on them as granting an indefeasible interest*

Chair: Mariette van Ryn, General Manager, Regulatory Affairs, Customer Advocacy & General Counsel Westpac New Zealand Limited, Auckland

Speakers: Emeritus Prof. Peter Butt, School of Law, Sydney University, Sydney
Hon. Justice Margaret Stone, Federal Court of Australia, Sydney
Michael Robinson, Partner, Simpson Grierson, Auckland

3.00pm - (Plenary) **The Credit Crunch - Lessons for Lawyers**
4.30pm (Panel session)
Much has been written and said about the causes of the Credit Crunch. But what of lawyers (including lawmakers)? What was our role in its causes? Were we asleep at the wheel, or were we all too busy making hay while the sun shone? To what extent were those in the law responsible and did we have a broader role that we didn't press? How should the answers to these questions inform our behaviour, as lawyers, going forward? How can we resist the "private equiteer effect" in the next rising market?

Chair: Nuncio D'Angelo, Partner, Mallesons Stephen Jaques, Sydney

Speakers: Ian Greer, Managing Director, Standard & Poor's, Sydney
Tim L'Estrange, Group General Manager, Governance, ANZ Banking Group, Melbourne
Bill Moss, Chairman & Founder, Moss Capital, and Chairman, PBB Advisory, Sydney
Michael Pelly, Legal Affairs Journalist, The Australian, Sydney
