

The 39th Annual Conference of the Banking
& Financial Services Law Association

BFSLA

STRONGER TOGETHER



2-4 September 2023
QT Hotel Queenstown

**CONFERENCE PROGRAM
AND REGISTRATION BROCHURE**

PRESIDENT'S MESSAGE

Dear Colleagues

I am delighted to invite you to attend the BFSLA's 39th annual conference from 2nd to 4th September 2023.

This year we are returning to beautiful Queenstown in New Zealand. The theme of this year's conference is 'Stronger Together', and reflects that for the first time since 2019, delegates from both sides of the Tasman will gather together in person following the upheaval of the last few pandemic affected years.

We are however conscious that some delegates may not be able to attend in person and so, for the first time ever, delegates may attend either virtually or in person.

I do hope to see as many of you as possible in Queenstown; one cannot attach a value to the serendipitous and ad-hoc meetings that take place in the bar or over the coffee breaks at an in-person conference. I am particularly looking forward to reconnecting with Kiwi colleagues who I have not seen for several years.

We are also holding the conference in a new hotel. This year the conference will be held at the QT and Rydges Hotels in Queenstown. These hotels (which are joined together) are centrally located with a (level) 5-minute walk into town and afford outstanding views of Lake Wakatipu as well as comfortable hotel rooms and a selection of dining facilities.

We have a packed conference program exploring aspects of security, crypto collapses, greenwashing, sustainability-linked financing, New Zealand banking regulatory reform to name but a few. We will finish with a thorough examination of the mortality of the deed, followed by a vineyard tour!

We are delighted to welcome the Honourable A.S. Bell, Chief Justice of New South Wales as our keynote speaker this year. His Honour will address us on 'The corporation in private international law'. We are also honoured to welcome the Honourable Justice Brigitte Markovic and the Honourable Justice David Goddard as speakers for the Judicial case law session.

I am indebted to our Conference Planning Committee who have once again put together a wonderful and varied program.

I am delighted that we are returning to New Zealand for the first time since 2018 and look forward to welcoming you to the BFSLA's 39th annual conference.

James Connell
President



KEYNOTE PRESENTERS

The Honourable A.S. Bell, Chief Justice of New South Wales Eighteenth Chief Justice of NSW 07 March 2022 – Current

The Hon. Andrew Bell was sworn in as Chief Justice of New South Wales on 7 March 2022. Prior to being appointed as Chief Justice, his Honour was President of the New South Wales Court of Appeal, having been appointed to that position on 28 February 2019. His Honour is also President of the Judicial Commission of New South Wales.

His Honour graduated from the University of Sydney with a Bachelor of Arts and a Bachelor of Laws, receiving First Class Honours and the University Medal in both degrees, and was also awarded the Sydney University Convocation Medal. He was awarded a Rhodes Scholarship to Oxford University where he graduated in 1993 with First Class Honours in the Bachelor of Civil Law, also being awarded the Vinerian Scholarship for first place in that degree. His Honour completed his doctorate the following year with his thesis forming the basis for his subsequent book *Forum Shopping and Venue*

in *Transnational Litigation* published by Oxford University Press. He is also co-author of *Nygh's Conflict of Laws in Australia* and has taught and published extensively, especially in relation to private international law and transnational litigation.

His Honour was admitted to the Bar in 1995 and was appointed Senior Counsel in 2006. During his time at the Bar, his Honour had a broad national practice at trial and appellate levels, and was also engaged in numerous international arbitrations. At the time of his appointment to the Bench, his Honour was Senior Vice-President of the New South Wales Bar Association. He is also Fellow of the Australian Academy of Law and an Adjunct Professor at the University of Sydney where he taught part time for many years.

Beyond the law, the Chief Justice is an avid cricket fan and was formerly the long-time Chairman of *Sculpture by the Sea*.



The Honourable Justice Brigitte Markovic

The Honourable Justice Brigitte Markovic was appointed a judge of the Federal Court of Australia on 24 August 2015.

From 1988 to 2015, Justice Markovic practised as a solicitor at a national Australian law firm. She was appointed a partner in 1997 and for a period of 4 years (2010 to 2014) was national managing partner of the firm's litigation and dispute resolution department. As a solicitor and partner, Justice Markovic practised in the areas of insolvency, corporations including

in relation to regulatory inquiries, commercial and administrative law for a range of clients including liquidators, receivers, ASX listed companies, commonwealth government departments and regulators. Notably she acted in a number of high profile insolvencies and significant proceedings in the superior courts in Australia.

Justice Markovic graduated from the University of New South Wales in 1988 with degrees of Bachelor of Commerce and Bachelor of Laws.



KEYNOTE PRESENTERS

The Honourable Justice Goddard

Justice Goddard was appointed as a judge of the High Court and Court of Appeal of New Zealand in July 2019.

Justice Goddard studied french, mathematics and law at Victoria University of Wellington, New Zealand; then studied law at Oxford University on a Rhodes Scholarship. He taught law at Bristol University, England, before returning to New Zealand to practise law, initially with the firm Chapman Tripp then at the bar. He was appointed Queen's Counsel in 2003. Before his appointment to the bench he had a wide-ranging practice with a particular focus on appellate litigation. He also had an extensive involvement in law reform in New Zealand and overseas, advising ministers and government agencies, representing New Zealand in bilateral and multilateral

negotiations, and drafting legislation and international agreements. He was the Chair of the Diplomatic Session of the HCCH that adopted the HCCH 2019 Judgments Convention, Vice-President of the Diplomatic Session that adopted the HCCH 2005 Choice of Court Convention, and a member of the drafting committee for that Convention.

Justice Goddard has taught and published widely in his areas of particular interest, including company law, competition law and regulation, contract law, and private international law. He spent the 2018-19 academic year at New York University Law School as a Senior Global Fellow from Practice and Government, working on his recently published book 'Making Laws That Work: How Laws Fail', and 'How We Can Do Better' (Hart Publishing, 2022).

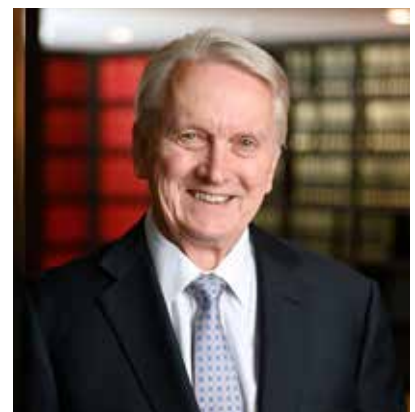


Justice Goddard is the chair of the New Zealand judiciary's Legislation and Law Reform Committee, and of the joint Judiciary/Ministry of Justice Information Governance Committee. He led preparation of the judiciary's Digital Strategy for Courts and Tribunals, and is currently judicial lead for Te Au Reka: the new digital case management and document management solution for the courts of Aotearoa New Zealand.

Dr Robert P Austin AM

Robert Austin AM; BA, LL.M (Syd), D Phil (Oxon), PhD (honoris causa, Syd) has been an academic lawyer 1970/1990, a partner at Minter Ellison Solicitors 1990/1998, and a judge of the Supreme Court of NSW 1998/2011. He returned to legal practice in 2011 and since 2016 he has been a member of the New South Wales Bar. He

continues to teach postgraduate law part-time as Challis Lecturer in Law at the University of Sydney. His publications include *Austin & Black's Annotated Corporations Act* and (from 1989 to 2022) *Ford, Austin & Ramsay's Principles of Corporations Law*.



PROGRAM AT A GLANCE

AGENDA TIMINGS

SATURDAY 2 SEPTEMBER

5.30pm Welcome Function at Skyline Queenstown

SUNDAY 3 SEPTEMBER

NZT	AEST	#	Session	Venue
8.45am	6.45am		Welcome	
9:00am	7.00am	PLENARY	<p>The corporation in private international law</p> <p><i>Keynote speaker:</i> The Honourable Andrew S. Bell, Chief Justice of New South Wales</p> <p><i>Chair:</i> Rebecca Hope, Deputy General Counsel, Advisory, ANZ Banking Group</p>	Queenstown Room
10:00am	8.00am		Coffee Break sponsored by Equity Trustees	
10:30am	8.30am	CONCURRENT	<p>Pulled this way and that: the privacy, data retention and cybersecurity legal balancing act facing financial institutions</p> <p><i>Chair:</i> Christine Baumberg, Counsel, Ashurst</p> <p><i>Panellists:</i> Professor Jeannie Paterson, Melbourne Law School, University of Melbourne</p> <p>Bronwyn Furse, Partner, Thomson Geer</p> <p>Sam Leggett, Senior Analyst, Threat and Incident Response, CERT NZ</p>	Queenstown Room
10:30am	8.30am	CONCURRENT	<p>It's not easy being green: managing the risk of greenwashing</p> <p><i>Chair:</i> Louise McCoach, Special Counsel, Gilbert + Tobin</p> <p><i>Speakers:</i> Aaron DeLacey, Deputy General Counsel, BNZ</p> <p>Rebecca Hope, Deputy General Counsel, Advisory, ANZ Banking Group</p>	Clancy Room
11:45am	9.45am	CONCURRENT	<p>Fixed, floating, featherweight and springing – the complicated dance of taking security over contractual rights</p> <p><i>Chair:</i> Nick Adkins, Partner, Allens</p> <p><i>Panellists:</i> Nathan Collins, Partner, King & Wood Mallesons</p> <p>Liz Lim, Partner, Dentons Kensington Swan</p> <p>Professor Greg Tolhurst, Lecturer, University of Sydney Law School</p>	Queenstown Room

SUNDAY 3 SEPTEMBER continued...

NZT	AEST	#	Session	Venue
11:45am	9.45am	CONCURRENT	Banking unlocked: navigating digital trust and the consumer data right <i>Chair:</i> Brad Husband , Partner, Corrs Chambers Westgarth <i>Speakers:</i> Tim Sherman , Partner, Chapman Tripp Bruno Solia , Partner, MinterEllison	Clancy Room
1.00pm	11.00am		Lunch	
2:00pm	12.00pm	PLENARY	The shifting sands: directors' duties, creditors and financial distress <i>Chair:</i> Dr R P Austin AM , University Chambers <i>Speakers:</i> Tim Fitzgerald , Partner, Bell Gully Scott Sharry , Partner, Clayton Utz	Queenstown Room
3.15pm	1.15pm		Coffee Break sponsored by Equity Trustees	
3.45pm	1.45pm	CONCURRENT	Sustainability-linked Finance <i>Chair:</i> Kerryn Smith , Executive Manager, Financial Markets – WIB Compliance, Westpac Banking Corporation <i>Panellists:</i> John Feeney , Martialis Consultancy Yu Zhang , Partner, Allens Tom Hunt , Partner, Russell McVeagh	Queenstown Room
3.45pm	1.45pm	CONCURRENT	Mandatory breach reporting – finding the balance between oversharing and under reporting <i>Chair:</i> Emmeline Rushbrook , Partner, Russell McVeagh <i>Panellists:</i> Simon Burnett , Head of Regulatory Investigations & Litigation, Westpac Banking Corporation Georgie Carr , Breach Reporting Lead, ANZ Banking Group Paul Hay , General Manager, Regulatory Affairs, BNZ Mark Bradley , Partner, Dispute Resolution, Ashurst	Clancy Room
5.00pm	3.00pm		AGM and Board Meeting	
7.00pm			Pre-Dinner drinks and Gala Dinner in Bazaar Room, QT Hotel	

MONDAY 4 SEPTEMBER

NZT	AEST	#	Session	Venue
7.30am	5.30am		Opinions Breakfast – Bazaar Restaurant <i>Host:</i> Diccon Loxton , Senior Finance Counsel, Allens	
9.00am	7.00am	PLENARY	Judicial case law update <i>Chair:</i> Josh Cairns , Partner, Simpson Grierson <i>Speakers:</i> The Hon. Justice David Goddard , Court of Appeal of New Zealand The Hon. Justice Brigitte Markovic , Federal Court of Australia	Queenstown Room
10.00am	8.00am		Coffee Break sponsored by Equity Trustees	
10.30am	8.30am	CONCURRENT	(Another) seismic shift in New Zealand – banking regulatory reform – a new prudential framework <i>Chair:</i> Katrina Gardiner , Associate General Counsel, ANZ <i>Speakers:</i> Kerry Beaumont , Director of Enforcement & Resolution, RBNZ Luke Ford , Partner, Chapman Tripp	Queenstown Room
10.30am	8.30am	CONCURRENT	(Corrupt) benefits for trustees: when will commonplace transactions constitute a crime? <i>Chair:</i> Dr Ann Wardrop , La Trobe University <i>Panellists:</i> Dr Allison Silink , Barrister and Senior Lecturer, UNSW Faculty of Law and Justice Associate Professor Scott Donald , UNSW Faculty of Law and Justice	Clancy Room



MONDAY 4 SEPTEMBER continued...

NZT	AEST	#	Session	Venue
11.45am	9.45am	CONCURRENT	<p>Setting the standard - the new unfair regime for contracts</p> <p><i>Chair:</i> Dale Rayner, Partner, King & Wood Mallesons</p> <p><i>Speakers:</i> Richard Wells, Partner, MinterEllisonRuddWatts</p> <p>Charlotte Henry, Partner, Herbert Smith Freehills</p>	Queenstown Room
11.45am	9.45am	CONCURRENT	<p>Crypto collapses – a deep dive into recovery in an insolvency scenario</p> <p><i>Chair:</i> Camilla Clemente, Partner, Ashurst</p> <p><i>Speakers:</i> Scott Barker, Partner, Buddle Findlay</p> <p>Tom Aspin, Senior Manager Financial Advisory Services, Grant Thornton</p> <p>Lee Pascoe, Special Counsel, Norton Rose Fulbright</p>	Clancy Room
1.00pm	11.00am		Lunch	
2.00pm	12.00pm	PLENARY	<p>The great debate: is the deed dead? (Or, if not, is it time to drive a stake through its ancient heart?)</p> <p><i>(Not necessarily impartial) Chair:</i> Dr Nuncio D'Angelo, Partner, Norton Rose Fulbright</p> <p><i>Speakers:</i> Diccon Loxton, Senior Finance Counsel, Allens</p> <p>Dr Nuncio D'Angelo, Partner, Norton Rose Fulbright</p> <p><i>Commentators:</i> Diccon Loxton, Senior Finance Counsel, Allens</p> <p>Dr Nuncio D'Angelo, Partner, Norton Rose Fulbright</p>	Queenstown Room
3.00pm	1.00pm		Closing	
3.30pm	1.30pm		Wine Tasting Excursion to local Queenstown vineyard	

THE PROGRAM IN DETAIL

SATURDAY 2 SEPTEMBER

5.30pm

Welcome Function, Skyline Queenstown. Please make your own way to the Skyline Queenstown, 53 Beacon Street, Queenstown, Gondola Building.

SUNDAY 3 SEPTEMBER

8.45am

Welcome

9.00am

The corporation in private international law

Keynote speaker: **The Honourable Andrew S. Bell**, Chief Justice of New South Wales

Plenary

Chair: **Rebecca Hope**, Deputy General Counsel, Advisory, ANZ Banking Group

10.00am

Morning Break

Coffee Cart sponsored by Equity Trustees



SUNDAY 3 SEPTEMBER continued...

10.30am

Pulled this way and that: the privacy, data retention and cybersecurity legal balancing act facing financial institutions

Concurrent

Banks and other financial institutions must grapple with the tension between their obligation to collect and store personal customer information on the one hand (for example under AMLCTF and verification of identity and authority rules), and their customers' right to data privacy under the Privacy Act on the other.

What are these seemingly contradictory rules trying to achieve? In a world of cybercrime involving compromise of personal information, how is this inherent tension being managed – and how should it be managed – by banks, lawyers and regulators? What considerations come into play when third party identity agents are involved?

How could recent and proposed developments in privacy and data security law affect the balancing act facing financial institutions?

Chair: **Christine Baumberg**, Counsel, Ashurst

Panellists: **Professor Jeannie Paterson**, Melbourne Law School, University of Melbourne

Bronwyn Furse, Partner, Thomson Geer

Sam Leggett, Senior Analyst, Threat and Incident Response, CERT NZ

10.30am

It's not easy being green: managing the risk of greenwashing

Concurrent

Banks have a critical role in funding and facilitating the transition to a low-carbon economy but the intense scrutiny of transition commitments also brings greenwashing risk. This session will examine greenwashing risk, including themes that are emerging from recent claims and key focus points for banks. This session will also highlight how transaction lawyers can play a part in managing greenwashing risk.

Chair: **Louise McCoach**, Special Counsel, Gilbert + Tobin

Speakers: **Aaron DeLacey**, Deputy General Counsel, BNZ

Rebecca Hope, Deputy General Counsel, Advisory, ANZ Banking Group



SUNDAY 3 SEPTEMBER continued...

11.45am

Fixed, floating, featherweight and springing – the complicated dance of taking security over contractual rights

Concurrent

For many loan products (such as project finance, leveraged finance, securitisation etc.) security over contractual rights will be a critical part of the security package. Yet taking effective security over such contracts can be put into doubt where the underlying contracts have restrictions on the grant of security and / or assignment (or are silent on the issue).

This session will look at some of the typical problems with taking security over contracts and consider some practical solutions as to how security can be structured to reduce or eliminate risk, including through the use of featherweight security, springing security and tripartites.

Chair: **Nick Adkins**, Partner, Allens

Speakers: **Nathan Collins**, Partner, King & Wood Mallesons

Liz Lim, Partner, Dentons Kensington Swan

Professor Greg Tolhurst, Lecturer, University of Sydney Law School

11.45am

Banking unlocked: navigating digital trust and the consumer data right

Concurrent

The Consumer Data Right offers a multitude of opportunities to banks to provide innovative solutions and products to consumers. However, recent data breaches have affected consumers' trust in organisations, which may impact their uptake of any potential solutions offered through the Consumer Data Right. How can banks and financial institutions take advantage of the Consumer Data Right and improve their consumer relationships? Is the Consumer Data Right a positive step forward for improving digital trust in organisations?

Chair: **Brad Husband**, Partner, Corrs Chambers Westgarth

Speakers: **Tim Sherman**, Partner, Chapman Tripp

Bruno Solia, Partner, MinterEllison



SUNDAY 3 SEPTEMBER continued...

1.00pm

Lunch Break

2.00pm

The shifting sands: directors' duties, creditors and financial distress

Plenary

The session will explore the changing content of directors' duties, and the intrusion of creditor interests when directors are confronted by financial distress. How and when does the content of the duty change? What do directors need to take account of in seeking a pathway to financial rehabilitation? Could the recent decision of the UK Supreme Court in *BTI 2014 LLC v Sequana SA* affect the duties owed by Australian and New Zealand directors?

Chair: **Dr R P Austin AM**, University Chambers

Speakers: **Tim Fitzgerald**, Partner, Bell Gully

Scott Sharry, Partner, Clayton Utz

3.15pm

Afternoon Break

Coffee Cart sponsored by Equity Trustees

3.45pm

Sustainability-linked Finance

Concurrent

Finance plays a key role in the decarbonisation of the global economy – most commonly in the form of sustainability-linked derivatives, green loans, green bonds and carbon units. Drafting and structuring these products is challenging as market conventions and legal documentation are evolving, while regulators and industry associations have recently issued a plethora of guides, taxonomies, undertakings and models of third party verification. Three experts will help Australian and New Zealand finance lawyers to navigate through the maze of regulation and guidance.

Chair: **Kerryn Smith**, Executive Manager, Financial Markets – WIB Compliance, Westpac Banking Corporation

Panelists: **John Feeney**, Martialis Consultancy

Yu Zhang, Partner, Allens

Tom Hunt, Partner, Russell McVeagh



SUNDAY 3 SEPTEMBER continued...

3.45pm

Mandatory breach reporting – finding the balance between oversharing and under reporting

Concurrent

In ASIC's words from its Insights from the reportable situations regime Report 740: "The reportable situations regime is a cornerstone of the financial services regulatory structure. Reports lodged under the regime are a critical source of regulatory intelligence for ASIC. If lodged in a timely manner, they help ASIC detect significant non-compliant behaviours early, take action where appropriate, and identify and address emerging trends of non-compliance in the industry."

In New Zealand there is also a focus by regulators on self-reporting. In some instances, for example under the RBNZ's Material Breach Disclosure Regime, such self-reporting is required. However, in other situations, while self-reporting is not mandatory, regulators still expect financial institutions to self-report breaches of regulatory requirements and have signalled the potential of increased consequences for those who fail to do so. For example, the FMA in a speech in November 2021 stated "As recently found by the High Court last year, timely self-reporting to the regulator is expected. Delayed, incomplete self-reporting is considered an aggravating factor."

This panel session will offer perspectives on the recent Australian and New Zealand experience of financial services breach reporting including the policy which underpins breach reporting and how breach reporting is informing the evolution of supervisory and enforcement practices in Australia and New Zealand.

Attendees at this session will come away with enhanced understanding as to how key stakeholders can contribute to the successful and meaningful operation of these regimes, in particular how to:

- make sound and compliant decisions about their reporting practices
- undertake reporting in a manner which supports the sustainable and balanced evolution of breach reporting regimes
- understand how regulators use breach reports in their supervisory and enforcement functions
- understand the legal and practical considerations for breach reports which are more likely to lead to regulatory investigation and potential enforcement action
- understand the likely priorities of regulators as the regimes mature.

Chair: **Emmeline Rushbrook**, Partner, Russell McVeagh

Panelists: **Simon Burnett**, Head of Regulatory Investigations & Litigation, Westpac Banking Corporation

Georgie Carr, Breach Reporting Lead, ANZ Banking Group

Paul Hay, General Manager, Regulatory Affairs BNZ

Mark Bradley, Partner, Dispute Resolution, Ashurst

5.00pm

AGM and Board Meeting

7.00pm

Pre-dinner drinks in the Rees Bar, QT Hotel

7.30pm

Gala Dinner in Bazaar Room, QT Hotel

MONDAY 4 SEPTEMBER

7.30am

Opinions Breakfast – Bazaar Restaurant

Host: Diccon Loxton, Senior Finance Counsel, Allens

9.00am

Judicial case law update

Chair: **Josh Cairns**, Partner, Simpson Grierson

Plenary

Speakers: **The Hon. Justice David Goddard**, Court of Appeal of New Zealand

The Hon. Justice Brigitte Markovic, Federal Court of Australia

10.00am

Morning Tea

Coffee Cart sponsored by Equity Trustees

10.30am

(Another) seismic shift in New Zealand – banking regulatory reform - a new prudential framework

Concurrent

Significant changes to the New Zealand deposit taking landscape are on the horizon, with the Deposit Takers Bill currently before Parliament and expected to be passed soon.

The Bill, once enacted and in force,* will replace the existing prudential regulatory regime contained in the Banking (Prudential Supervision) Act 1989 and the Non-bank Deposit Takers Act 2013. The integration of these previously separate regimes will create a single, consistent framework for the regulation and supervision of financial institutions that essentially engage in the same activity – the business of taking ‘deposits’ from the public, and lending to individuals, households and businesses. This will be a major change for financial institutions in New Zealand and for the prudential regulator – The Reserve Bank of New Zealand – Te Pūtea Matua.

This session will outline why these changes to New Zealand’s prudential landscape are being made and will highlight the key pillars of the reforms together with the significant features that in-house and external counsel should be aware of, which include a new regulatory boundary, the provision for new prudential standards, a new depositor compensation scheme, a new resolution regime, and new enforcement tools.

*The Bill was introduced to Parliament in September 2022, with Select Committee reporting back in April 2023. At the date this brochure was produced, the Bill has not been passed by Parliament. This is expected to occur before the conference.

Chair: **Katrina Gardiner**, Associate General Counsel, ANZ

Speakers: **Kerry Beaumont**, Director of Enforcement & Resolution, RBNZ

Luke Ford, Partner, Chapman Tripp

MONDAY 4 SEPTEMBER continued...

10.30am

(Corrupt) benefits for trustees: when will commonplace transactions constitute a crime?

Concurrent

This session explores controversial developments in 2022 under Australian law in relation to serious criminal offences in most states that address the provision of corrupt benefits to trustees in relation to the appointment of a replacement trustee. In two *ex parte* decisions in NSW, (*In Re BT Funds Management Limited as trustee for the Retirement Wrap Superannuation Fund* [2022] NSWSC 401 and *Application of MLC Investment Limited* [2022] NSWSC 1541) the offence under s 249E of the Crimes Act 1900 (NSW) was held to render the provision of routine benefits to an outgoing trustee upon replacement, such as an indemnity as to costs, a serious criminal offence if done without unanimous beneficiary consent or the consent of the court - even where the provision of the benefits was held to be in the best interests of the beneficiaries. Another case, *H.E.S.T Australia Ltd v Attorney-General (Qld) & Anor; Mercy Super Pty Ltd v Attorney-General (Qld) & Anor (No 2)* [2022] QSC 244, found that the Queensland form of the offence did not apply in the context of a specialised form of superannuation merger, but did not need to consider the NSW provision or the broader application of these offences in funds management generally.

What does this mean for the routine appointment and replacement of a custodian, for example, or for superannuation mergers? This session examines these developments, their implications and whereto from here.

Chair: **Dr Ann Wardrop**, La Trobe University

Panellists: **Dr Allison Silink**, Barrister and Senior Lecturer, UNSW Faculty of Law and Justice
Associate Professor Scott Donald, UNSW Faculty of Law and Justice

11.45am

Setting the standard – the new unfair regime for contracts

Concurrent

The unfair contract terms regime under the *Australian Consumer Law* and the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) currently provides that an unfair contract term is unenforceable. However, from 9 November 2023, the regime will cover an expanded range of contracts and new penalties and increased penalties will apply to a breach. The harsher regulatory landscape is causing banks and other businesses to review their contracts for unfair contract terms with a closer eye. This session will look at:

- the changes to be introduced and the market reaction to date
- what the changes will mean in practice for lending and markets documents
- lessons from recent cases on when a contract term will be unfair

Chair: **Dale Rayner**, Partner, King & Wood Mallesons

Speakers: **Richard Wells**, Partner, MinterEllisonRuddWatts

Charlotte Henry, Partner, Herbert Smith Freehills

MONDAY 4 SEPTEMBER continued...

11.45am

Crypto collapses – a deep dive into recovery in an insolvency scenario

Concurrent

“Crypto winter”, contagion and collapses. And the failures were not synthetic! Our speakers will examine some of the issues thrown up by the recent spate of crypto collapses, including the Cryptopia insolvency in New Zealand. Is crypto property? What are the clients’ rights? How are the interests held by insolvent exchanges determined, preserved, and distributed on insolvency?

Chair: **Camilla Clemente**, Partner, Ashurst

Speakers: **Scott Barker**, Partner, Buddle Findlay

Tom Aspin, Senior Manager Financial Advisory Services, Grant Thornton

Lee Pascoe, Special Counsel, Norton Rose Fulbright

1.00pm

Lunch Break In Bazaar Restaurant

Future Leaders’ Lunch to be held in the Lil Red Room, QT Hotel

2.00pm

The great debate: is the deed dead? (Or, if not, is it time to drive a stake through its ancient heart?)

Plenary

Deeds are almost too familiar. We see them everywhere. Though venerable, they are archaic and arcane.. Bound up in esoteric formalities, they draw their force and their limitations from ancient rules, now much modified in a mosaic of statutes in various jurisdictions. But those formalities and rules are not always well-enough known or understood, and are traps for the unwary.

In this debate to conclude the conference, our speakers will put their arguments as to:

- Why do we, or should we, use deeds?
- When shouldn’t (or needn’t) we use them?
- What are the traps and problems?
- Can they be electronic?
- Should we put them out of their misery (or our misery)?
- Should we reform the rules and requirements? If so how?

(Not necessarily impartial) Chair: **Dr Nuncio D’Angelo**, Partner, Norton Rose Fulbright

Speakers: **Diccon Loxton**, Senior Finance Counsel, Allens

Dr Nuncio D’Angelo, Partner, Norton Rose Fulbright

Commentators: **Diccon Loxton**, Senior Finance Counsel, Allens

Dr Nuncio D’Angelo, Partner, Norton Rose Fulbright

3.00pm

Closing

3.30pm

Coaches depart to Wine Tasting Excursion at local Queenstown vineyard

SOCIAL FUNCTIONS

Saturday 2 September

5:30pm Welcome reception drinks
and canapes at
Queenstown Skyline

Sunday 3 September

7:00pm Pre-dinner drinks
7:30pm Conference dinner

Monday 4 September

1:00pm Future Leaders' Lunch
3:00pm Closing
3.30pm Wine tasting excursion to
local Queenstown vineyard



VIRTUAL PARTICIPATION

The conference will be live-streamed and recorded.

If you are not able to attend the conference in person, you will be able to register as a delegate attending virtually and have access to the live-stream via a virtual online links.

All delegates will have access to the conference app, including the conference papers, Q&A box, and recordings, but the live-stream will only be available to registered virtual attendees.

The recorded sessions will be available to all delegates to watch on the conference app for two weeks after the conference and then loaded to the BFSLA website for future viewing.

DELEGATE FEES

All amounts are expressed in Australian dollars for Australian attendees and New Zealand dollars for New Zealand attendees.. As the conference is being held in New Zealand, all delegate fee amounts include NZ GST of 15%.

Via the online registration link on page 19 you register via either the NZ or Australian link to register and pay.

Delegates are invited to take advantage of the discounted rates for members by joining the BFSLA as part of their registration process. You can access the membership application forms at <https://bfsla.org/membership-to-bfsla/>.

		Early fee (By 28 July)	Full fee
General rates	Members**	\$1,950	\$2,150
	Non-members	\$2,150	\$2,450
In-house lawyers	Members**	\$950	\$1,095
	Non-members	\$1,150	\$1,295
Full-time academics & students	Members	\$850	\$995
	Non-members	\$1,050	\$1,195

General Member Group Rate (5 plus) early bird	General Member Group Rate (5 plus) full
First 5 @ \$1950 full price Subsequent registrations at \$1,150 (ie non-member in-house rate)	First 5 @ \$2,150 full price Subsequent registrations at \$1,295 (ie non-member in-house rate)

****Group Discounts: For groups of more than 5 attendees from the same organisation please contact Julia (julia@bfsla.org) for details.**

CONFERENCE REGISTRATION

You can register for the conference via the link below.



Click the above link to register online

The old-fashioned way

If you are unable to use the link for any reason, you can register by completing the form on pages 19 to 20 and emailing it to Julia at [Julia@bfsla.org](mailto:julia@bfsla.org). We will then process your registration and send you a confirmation and invoice.

CANCELLATIONS

Our cancellation and refunds policy is set out on page 22.

BFSLA ABN: 61 006 354 089, BFSLA NZBN: 9429042481614

BFSLA 39TH ANNUAL CONFERENCE REGISTRATION FORM

Please print clearly, scan and send this form to julia@bfsla.org

Surname _____ Title: Mr, Mrs, Ms, Dr, Professor (other) _____

Given name _____ Preferred name for name badge _____

Position _____ Organisation _____

Postal address _____

_____ Post code _____ Country _____

Phone () _____ Mobile _____

Email address: *(Please print clearly)* _____

REGISTRATION DETAILS

Please TICK the appropriate category

EARLY FEES for bookings made and paid by Friday 28 July

- Member general \$1950
- Non-Member general \$2150
- Member In-house lawyer \$950
- Non-member In-house lawyer \$1150
- Member full-time academic / student \$850
- Non-Member full-time academic / student \$1050

FULL FEES for bookings made and paid after Friday 28 July

- Member general \$2150
- Non-Member general \$2450
- Member In-house lawyer \$1095
- Non-member In-house lawyer \$1295
- Member full-time academic / student \$995
- Non-Member full-time academic / student \$1195

REGISTRATION FEE TOTAL \$ _____

Attendance at events during the Conference

Please indicate below if you would like to attend the following events (please note that this is inclusive within the registration price):

- Future Leaders' lunch on Monday 4th of September
- Opinions Breakfast on Monday 4th of September
- Wine Tasting Tour on conclusion of conference on Monday 4th of September

IMPORTANT NOTE: As the conference is being held in New Zealand, the above amounts will be subject to NZ GST of 15%. These amounts include GST. For Australian attendees, please pay in Australian dollars into the CBA bank account specified below or via CBA credit card payment gateway. For New Zealand attendees, please make payment in NZ dollars into the ANZ bank account specified below or via Windcave credit card gateway.

BFSLA 39TH ANNUAL CONFERENCE NON ONLINE REGISTRATION FORM

CATERING REQUIREMENTS

DIETARY REQUESTS FOR DELEGATE

Lunch is included for in-person delegates.

Please specify any dietary requirements: _____

ACCOMPANYING PERSONS

In-person delegates are welcome to bring accompanying persons to the conference lunch and dinner.

Name(s) _____

Please book the following:

Lunch Tickets @ \$45 per person \$ _____

Dinner Tickets @ \$200 per person \$ _____

TOTAL GUEST CATERING FEES \$ _____

IMPORTANT NOTE: All amounts are expressed in the currency of your conference location. All catering fees include GST at the rate of NZ GST of 15%.

Please specify any dietary requirements for accompanying persons: _____

PAYMENT TOTALS

Registration fee total (from page 20) \$ _____

Guest catering fees (from page 21) \$ _____

TOTAL PAYMENT \$ _____

PAYMENT OPTIONS

- EFT in Australian dollars to: CBA BSB: 064-451 Account: 1006 0612
- EFT in New Zealand dollars to: ANZ Account: 01 0129 00475760 00
- Credit card – If you tick this box, Julia will call you to take your credit card details over the phone.

PAYMENTS BY CREDIT CARD

Please note that a service fee of 1.5% applies to Visa and MasterCard, and of 3% to AMEX credit card payments. We are not able to accept payment by Diners.

ACKNOWLEDGEMENT

By registering for the conference, you acknowledge and agree to the Cancellation & Refund Policy and the BFSLA Policies on page 22.

Your name and employer/organisation will be included in the list of conference delegates made available to conference sponsors and delegates unless you indicate otherwise below.

No, thank you.

QUEENSTOWN ACCOMMODATION

QT Queenstown <https://www.qthotels.com/queenstown>, 30 Brunswick Street, Queenstown, +64 3 450 3450



Please book via the accommodation links to ensure you receive the special BFSLA rate:

[QT Hotel accommodation](https://www.qthotels.com/private-page/bfsla-conference/) <https://www.qthotels.com/private-page/bfsla-conference/>

[Rydges Hotel accommodation](https://www.rydges.com/private-page/bfsla-conference/) <https://www.rydges.com/private-page/bfsla-conference/>



CANCELLATION & REFUND POLICY

In-person attendance

Substitution: If you had planned to attend a conference venue in person, you are welcome to substitute someone from your organisation at no extra cost. Please let us know your colleague's name and details no later than 48 hours prior to the conference.

Cancellation: Alternatively, a full refund less a \$50 service charge will be made for cancellations received in writing (by email) 10 working days or more prior to the conference. Regrettably, no refund is available for cancellations that are made less than 10 working days prior to the conference.

Restriction on travel: If you will be travelling to attend the conference in person, we will convert your registration from in-person to virtual if, within 5 days prior to the conference, a government authority in the place where you reside:

- advises against or restricts non-essential travel to the place where you will be attending the conference; or
- announces that you would be prevented from returning, or required to self-isolate for 7 days or longer upon return, to your place of residence.

Please advise us as soon as possible so that we can convert your registration type.

If you have also registered to attend the conference dinner, we will refund 50% of the dinner fee. Unfortunately, we are unable to provide a full refund in these circumstances as the full cost of the dinner remains payable to the conference venue.

Restriction on gathering: If a government authority restricts us from holding the conference at a conference venue or imposes a density limit with a lower density than currently permitted under the COVID restrictions in New Zealand, we will convert all in-person registrations at that conference venue to virtual registrations.

If you have also registered to attend the conference dinner, we will refund 100% of the dinner fee.

Covid: If you are unable to attend the conference in person due to testing positive to COVID or are otherwise required to isolate, you are welcome to convert your registration to a virtual registration. Please advise us as soon as possible so that we can convert your registration type. Alternatively you can nominate a substitute for the in person conference.

If you have also registered to attend the conference dinner, we will refund 50% of the dinner fee. Unfortunately, we are unable to provide a full refund in these circumstances as the full cost of the dinner remains payable to the conference venue.

Virtual attendance

Substitution: If you had planned to participate virtually, you are welcome to substitute someone from your organisation at no extra cost. Please let us know your colleague's name and details no later than 48 hours prior to the conference.

Cancellation: Alternatively, a full refund less a \$50 service charge will be made for cancellations received in writing (by email) 10 working days or more prior to the conference. Regrettably, no refund is available for cancellations that are made less than 10 working days prior to the conference.

No refunds are available for connectivity issues or because you are unable to access the virtual online platform through your organisation's firewall. Please ensure that you test your access to the virtual online platform on the device that you intend to use to live-stream the conference in advance.

BFSLA POLICIES

Privacy Statement

The Banking and Financial Services Law Association's privacy statement is available on our website (www.bfsla.org/our-policies/).

Responsible Behaviours Policy

By registering for the conference, you agree to comply with the BFSLA's Responsible Behaviours Policy. A copy of the policy is available on our website (www.bfsla.org/our-policies/).

2023 CONFERENCE PLANNING COMMITTEE

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* Board members

THANK YOU

The BFSLA gratefully acknowledges the financial support generously given by the following organisations.

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