

# BFSLA ACADEMIC COMMITTEE

## APRIL 2025 NEWSLETTER

Dear BFSLA Academic Committee members,

### Recent News

As we reported last year, on 5 September, 2024, the Academic Committee held its **Banking and Financial Services Law Academic Symposium**.

It was a free event open to academics and also to those registered to attend the BFSLA Annual Conference. It was held at the Sheraton Mirage on the Gold Coast, on the first day of the 40th Annual BFSLA Conference.

It was a great day with a fabulous program of diverse topics presented by members of the Academic Committee: Paul Rogerson, Professor Jodi Gardner, Professor Sheelagh McCracken, Dr Anton Didenko, Associate Professor Mark Wellard, and Professor Jeannie Patterson.

Papers from the Symposium have just been published in special issue of the *Australian Law Journal* (2025) 99 ALJ.



### Events Coming Up

The next **Banking and Financial Services Law Academic Symposium** will be held on the first day of the Annual BFSLA Conference on **30 August 2025** at the beautiful Hilton Queenstown Resort & Spa, Kawarau Village, 79 Peninsula Rd, Queenstown, 9300, New Zealand. The program is attached.



All academic members are welcome – it is free event with a great mix of academics and like-minded practitioners. Academic members are also welcome to join in the Conference Drinks at the end of the day. You can also register to attend the Annual Conference – there is a discounted rate for Academic Members. The details of the Conference will be advertised shortly to all members. (Please check that your individual membership is up to date to ensure you receive correspondence from the BFSLA).

Please email the Conference Organiser Julia Clancy at [julia@bflsa.org](mailto:julia@bflsa.org) to register your interest in attending the Symposium for catering purposes. If you are interested in also attending the Conference, you will be able to register for that through the BFSLA website shortly.

The next annual **BFSLA Academic Colloquium** will be held in Sydney, on **Wednesday, 3 December 2025**.

The Colloquium has been a fixture in the Academic Committee's calendar for over a decade, offering academics at all stages in their careers an opportunity to present completed work or work in progress in a supportive and collegiate environment. There is invariably a good discussion and members gain valuable feedback on their papers. The Colloquium is not recorded and Chatham House rules apply, allowing for a free-flowing and lively discussion. Topics presented at the Colloquium may be selected for presentation at the BFSLA Academic Symposium the following year, or for inclusion in the following year's Annual Conference, or for webinars presented periodically to the BFSLA membership. It is also a great opportunity to meet with other academics.

There will also be a dedicated **HDR session**, so please let us know of any Masters or PhD candidates who may wish to attend. Subject to space, we will extend this to appropriate Honours level students as well.

We will have a self-funded dinner after the Colloquium so that there is time to catch up socially, meet new people, particularly for those flying in from other states and from New Zealand.

### **Details**

**Date: Wednesday 3 December 2025**

**Time: 10:00am – 4:00pm**

**Where: TBA, in Sydney**

The Colloquium will have a hybrid format to allow for in-person and remote presentations and attendance, but preference will be given to presenters who intend to attend in person.

### **Funding**

The BFSLA very generously offers funding for travel expenses and accommodation of one or two nights (depending upon where members are travelling from) for those presenting a paper at the Colloquium. Depending upon the number of presenters, these funds may be shared pro rata.

Some funding support may also be available for participants attending but not presenting subject to priority for funding offered to presenters travelling from interstate or New Zealand.

We will be able to confirm funding by the week of 13 October for those who register their interest to attend whether or not presenting.

## Call for Papers for the Annual Colloquium Now Open

The scope of expertise within the Academic Committee is wide and varied, with academics specialising in fields including corporate and commercial law, consumer law, financial services regulation, insurance, insolvency, superannuation, PPSA, and private law doctrines and remedies as applied in Australian and New Zealand law. Colloquium papers are welcome on any topic with relevance to current issues in banking and financial services law.

Please submit an expression of interest in presenting, along with a draft title and a short abstracts of up to 250 words, to the Chair of the Academic Committee Executive Committee, Allison Silink at [Allison.silink@uts.edu.au](mailto:Allison.silink@uts.edu.au) by **Friday, 3 October 2025**.

You are also welcome to attend without presenting. Please confirm your interest in attending as a participant by **Friday, 3 October 2025** for planning and funding consideration purposes.

Please feel free to invite colleagues, including Early Career Researchers, whose research interests fall within the broad remit of the Academic Committee, to attend. The BFSLA Academic Committee is growing as a vibrant academic forum for private law, commercial consumer law and regulatory scholars whose work has relevance to the broader delivery of banking and financial services in Australia and New Zealand. As a Committee of the Banking and Financial Services Law Association, it offers valuable opportunities for impact and engagement with the profession and judiciary for academics in Australia and New Zealand.

Please encourage any of your colleagues who may have an interest in joining to get in contact or consider joining the Academic Committee. It is a very inclusive forum representing a diverse range of areas of expertise. The common factor is that some aspect of our work is relevant to the financial services sector, and it does not have to be exclusively focused in this way.

## Membership

If you have not already done so, we invite you to join the BFSLA as an individual member to ensure that you are on the Association mailing list. Annual membership is only \$55 a year and you can join on this link: <https://bfsla.org/membership/>

## The Academic Committee is going global!

Given the global nature of modern financial services, the Academic Committee is inviting international academics with an interest in banking and financial services (which naturally extends to corporate law and commercial aspects of private law) that is relevant to Australian and New Zealand law, to join the BFSLA Academic Committee.

Beyond the Symposium and Conference there are opportunities for presenting at or participating in webinars presented to the BFSLA Academic Committee or to the Association as a whole, and many other benefits from collaborating with this growing academic community.

Please feel free to pass on this newsletter and information about how to join, or alternatively, invite interested colleagues in other jurisdictions to email us or further information about joining.

## 2025 Webinars

This year we are proposing opportunities for academic contributions to webinars to the BFSLA Association, to be presented online to both the broader practitioner membership and the Academic Committee. Please get in touch if you would be interested in presenting or

contributing to a panel discussion with another academic or practitioner on a topical issue, with potential topics or a paper outline, for consideration by the BFSLA Board.

## **Allison and Jodi**

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**2024-2025 Executive Committee:** Helen Dervan, Jodi Gardner (Deputy Chair), Steve Kourabas, Anne Matthew, Louise Parsons, Sagi Peari, Kerry Smith, Allison Silink (chair), Ann Wardrop

# BFSLA 2025 ACADEMIC SYMPOSIUM

41<sup>st</sup> Annual BFSLA Conference

Hilton Hotel, Queenstown

30<sup>th</sup> August 2025

## Program

	Time	Speakers and Topics
	12:30pm-1:00pm	Light Lunch and Registration
1	1:00pm-1:40pm	Speaker: <b>The Hon Justice Ashley Black, Supreme Court NSW</b> <i>Title: Remedies for breach of fiduciary duty in financial services</i>
2	1:40pm-2:20pm	Speaker: <b>Professor Alex Andhov and Professor Jodi Gardner (University of Auckland)</b> <i>Title: Duties of Care for Algorithmic Decision-Making in the Financial Industry</i>
3	2:20pm-3:10pm	Speaker: <b>Professor Jason Harris (University of Sydney)</b> <i>Title: Rethinking Corporate Group Insolvency</i>
	3:10pm-3:30pm	Afternoon Tea
4	3:30pm-4:10pm	Speaker: <b>Associate Professor Dora Neo, National University of Singapore</b> <i>Title: Digitising Trade Finance</i>
5	4:10pm-4:50pm	Speaker: <b>Peter Watts KC</b> <i>Title: When do banks as agents have a privilege and even a duty not to follow a customer's instructions?</i>
	4:50pm	Close to join the Conference Welcome Drinks at 5:00pm

## Academic Symposium Program with Abstracts

	Time	Program
	12:30pm- 1:00pm	Light Lunch and Registration
1	1:00pm- 1:40pm	<p><b>Speaker: The Hon Justice Ashley Black, Supreme Court NSW</b></p> <p><b><i>Title: Remedies for breach of fiduciary duty in financial services</i></b></p> <p><b>Abstract:</b> Justice Black will review recent developments in remedies for breach of fiduciary duty in financial services, including the decision in <i>Anderson v Cannacord Genuity Financial Ltd</i> (2023) 113 NSWLR 151; [2023] NSWCA 294; the open issues where constructive trusts are sought over land under the <i>Real Property Act 1900</i> (NSW) on the basis of knowing receipt or knowing assistance; claims made on the basis that a defendant is an “alter ego” of a defaulting fiduciary; and the potential availability of statutory relief in claims in respect of financial services, where a fiduciary also holds an Australian financial services licence..</p>
2	1:40pm- 2:20pm	<p><b>Speaker: Professor Alex Andhov and Professor Jodi Gardner (University of Auckland)</b></p> <p><b><i>Title: Duties of Care for Algorithmic Decision-Making in the Financial Industry</i></b></p> <p><b>Abstract:</b> Tort law has historically demonstrated remarkable adaptability in responding to societal changes, particularly in evolving standards for establishing duty of care in novel contexts. However, the unprecedented rapid development of artificial intelligence (AI) poses significant challenges that currently outpace the judicial system's capacity to create appropriate legal doctrines. This presentation, therefore, considers how the traditional tort law duties of care may respond to two AI challenges that are particularly relevant in the banking and financial services industry: algorithmic trading and algorithmic credit scoring. It will look at how these developments fit into the existing tort law legal tests and doctrines, as well as what legal reform might be necessary to ensure that our common law is sufficiently flexible to address future technological challenges. Both case studies represent a distinct challenge to tort law's traditional harm, responsibility, and causation conceptualisations. Algorithmic trading has challenges associated with latency, market impact and technological errors. Algorithmic credit scoring introduces nuanced issues of potential discriminatory impact and systemic bias that may not fit neatly into existing legal tests for negligence. By analysing these technologies through the lens of established tort law principles, this research aims to demonstrate both the resilience and potential limitations of current legal frameworks.</p>
3	2:20pm- 3:10pm	<p><b>Speaker: Professor Jason Harris (University of Sydney)</b></p> <p><b><i>Title: Rethinking Corporate Group Insolvency</i></b></p> <p><b>Abstract:</b> This paper evaluates the pooling regime that operates in Part 5.6 Div 8 of the Corporations Act 2001 (Cth), which allows for groups of companies in liquidation to be consolidated for the purposes of the</p>

		<p>insolvency. Consolidation of corporate groups in insolvency has long been a problematic issue in insolvency law. While the US has common law procedural and substantive consolidation regimes, other jurisdictions (including New Zealand and Ireland) have specific statutory contribution powers. Australia introduced limited group contribution powers for employee entitlements in Pt 5.7B Div 8 in 2019, but these have yet to be used. The Department of Employment and Workplace Relations released a discussion paper in March 2025 raising a range of proposals to address the misuse of corporate group structures in insolvency. India is also currently considering introducing a consolidation regime for its Insolvency and Bankruptcy Code. This paper will critically evaluate the treatment of corporate groups in Australian insolvency law and will include a comparison of other common law countries..</p>
	3:10pm-3:30pm	Afternoon Tea
4	3:30pm-4:10pm	<p><b>Speaker: Associate Professor Dora Neo, National University of Singapore</b></p> <p><b>Title: <i>Digitising Trade Finance</i></b></p> <p><b>Abstract:</b> Transferable documents such as bills of lading are of paramount importance in global trade financing. The UNCITRAL Model Law on Electronic Transferable Records 2017 (MLETR) paved the way for digital trade financing by providing for transferable records to be available in electronic form and conceptualising functional equivalents for key concepts like possession. MLETR principles have been adopted in Singapore and in the UK's new Electronic Trade Documents Act. Legislation based on the MLETR is also being considered in Australia. This paper will examine the impetus for these developments and their implications for digital trade financing.</p>
5	4:10pm-4:50pm	<p><b>Speaker: Peter Watts KC</b></p> <p><b>Title: <i>When do banks as agents have a privilege and even a duty not to follow a customer's instructions?</i></b></p> <p><b>Abstract:</b> This paper considers some circumstances in which an agent might be entitled not to follow a principal's instructions, and indeed might be under a duty to depart from instructions. In the absence of express terms in the banking contract, the courts have had to fashion answers. Much of the case law involves banks acting as agents for their customers. Consideration is given of the differing conclusions that English courts have reached as to when a bank has a duty not to follow its customer's instructions on the basis that the bank should have realised that the customer was being defrauded. It seems to depend on whether the fraudster is another agent of the customer or an outside party. Also considered is the entitlement of a bank not to follow instructions on the basis that a third party has made a claim on the moneys in the customer's account. That leads to a discussion of the concept of interpleader.</p>
	4:50pm	Close join the Welcome Drinks at 5:00pm