



The 41st Annual Conference of the Banking  
& Financial Services Law Association

# LAW IN A TIME OF DISRUPTION



CONFERENCE PROGRAM  
AND REGISTRATION  
BROCHURE

Saturday 30 August - Monday 1 September 2025

Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel

# PRESIDENT'S MESSAGE

I am delighted to invite you to the BFSLA's 41st annual conference, taking place from Saturday, **30 August 2025** to Monday, **1 September 2025**, at the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel in stunning Queenstown. This year's conference promises to be an exceptional event, offering unique opportunities for networking, learning, and professional growth in a picturesque lakeside setting.

## ***Our theme***

Our theme for this year's conference, ***Law in a Time of Disruption***, invites us to explore how banking, financial services, and insolvency laws are being transformed by a flurry of disruptions:

- *technological disruptions*, such as the rise of artificial intelligence, digital assets and other technologies;
- *regulatory disruptions*, as Parliaments and Regulatory Authorities grapple with changes across many fronts; and
- *geopolitical disruptions*, including the apparent retreat of globalisation, international free trade, and global governance, in favour of more local, parochial and national postures.

Our theme also provokes us to consider how judges, legal professionals, policymakers, and academics are navigating the turbulent waters of transformation, and responding to new opportunities and challenges.

This year, we will peer into the future through sessions on changes arising from technological innovations (cyber security breaches, crypto and digital assets and artificial intelligence), market and practice changes (the rise of liability management exercise clauses, private credit and carbon credits) and regulatory developments (unfair contract terms and cross border insolvency).

## ***Our judicial speakers***

This year we are thrilled to welcome **The Right Honourable Dame Helen Winkelmann GNZM, Chief Justice of the Supreme Court of New Zealand** and **The Honourable Stephen Gageler AC, Chief Justice of the High Court of Australia** as our keynote speakers.

We are also delighted to welcome **The Honourable Justice Michael Robison of the High Court of New Zealand** and **The Honourable Justice Catherine Button of the Federal Court of Australia**, who will present a judicial case law update.

We are truly honoured to welcome such distinguished judicial guest speakers. We thank them sincerely for their valuable contributions to this year's conference.

## ***A New Venue***

For the first time in our 42-year history, this year we were required to pivot at very short notice and move the conference to this fabulous new venue, due to urgent and unanticipated seismic strengthening works required at the venue we used in 2023. While this development was outside our control, I'm very pleased to confirm that the Board and our indefatigable events planner (and Manager of our Secretariat) Julia Clancy immediately sprang into action. We were delighted to secure the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel. This picturesque lakeside venue offering outstanding conference facilities, beautiful surrounds, and all the amenities needed to ensure a very BFSLA Conference experience.

## ***This year's conference is "In-Person" only***

After the success of last year's "In-Person Only" conference in the Gold Coast, the Board has again decided not to stream or record the audio or video from the sessions at this year's conference, in order to foster a trusting environment where ideas can be exchanged honestly and without reservation, and our guest speakers can engage in spontaneous and nuanced communication.

## ***Thank you***

I extend my deepest thanks to our Conference Planning Committee and our volunteer Members of the Board, each of whom has contributed selflessly of their time and expertise, and undertaken a huge amount of work in order to ensure the Association can host this year's annual conference. I also extend my thanks to our Sponsors, without whom our conference simply would not be possible.

## ***See you in Queenstown!***

I encourage you to join us at this year's conference to take full advantage of this unique opportunity to engage with our distinguished speakers, panellists, and fellow attendees, and continue to grow your professional connections and friendships.

I look forward to seeing you all in Queenstown in late August!



Matt Cunningham  
*President*

## KEYNOTE PRESENTERS

### **The Right Honourable Dame Helen Winkelmann GNZM, Chief Justice of the Supreme Court of New Zealand**

The Rt Hon Dame Helen Winkelmann was sworn in as New Zealand's 13th Chief Justice on 14 March 2019. She is the second Chief Justice since the Supreme Court of New Zealand was established in 2004.

A graduate from Auckland University, Justice Winkelmann began her career at Auckland firm Nicholson Gribbin (later Phillips Fox, now DLA Piper). Justice Winkelmann remained at the firm until 2001, when she began practice as a barrister sole specialising in insolvency, commercial litigation, and medical disciplinary litigation.

She was appointed as a High Court Judge in 2004, and as Chief High Court Judge in 2010. She was appointed to the Court of Appeal in 2015, before being appointed to the Supreme Court in 2018.

As Chief High Court Judge, Justice Winkelmann introduced reforms to improve the Court's processes and, alongside other Heads of Bench, adapted court procedures to reflect New Zealand's founding cultures. Court sessions now begin and conclude in English and te reo Māori.

As Chief Justice, her priorities include facilitating access to justice, connecting the courts to the community, supporting a more representative judiciary, and making the courts more resilient to enable them to deal with disruption and change.

In addition, the Chief Justice is concerned with positioning the courts to benefit from the adoption of new technology, without compromising the human quality of the justice system. To this end, she oversaw the development of the *Digital Strategy for the Courts and Tribunals of Aotearoa New Zealand*, which outlines 13 core principles for adopting digital technology in the court system. She also established an AI working group to guide the responsible use of AI in the courts and is developing principles for remote participation.



### **The Honourable Stephen Gageler AC, Chief Justice of the High Court of Australia**

Stephen John Gageler was appointed to the High Court in October 2012, at which time he was Commonwealth Solicitor-General. He was then appointed as Chief Justice on 6 November 2023. He is a graduate of the Australian National University and has post-graduate qualifications from Harvard University. He was admitted as a barrister of the Supreme Court of New South Wales in 1989 and was appointed Senior Counsel in 2000. Before his appointment as Solicitor-General in 2008, he practised as a barrister extensively throughout Australia principally in constitutional law, administrative law and commercial law.



## KEYNOTE PRESENTERS

### **The Honourable Justice Michael Robinson, High Court of New Zealand**

Justice Michael Robinson graduated with a BA and an LLB (Hons) from the University of Auckland in 1996, and commenced practice as a solicitor with Brookfields in Auckland. In 1998 he travelled to London where he spent two years working at Richards Butler, Solicitors. Upon his return to New Zealand in 2000 Justice Robinson joined Russell McVeagh before joining Simpson Grierson as a Senior Associate in 2005, becoming partner in 2007. His practice involved acting for a range of clients involved in civil, commercial and regulatory disputes working on matters involving banking and financial services, insolvency, trusts, property and company law issues. He regularly appeared as counsel in the Courts. In 2019 Justice Robinson joined the independent bar specialising in insolvency, banking and financial services, company law and general commercial litigation before being appointed a Judge of the High Court in June 2021. Justice Robinson sits in Auckland.



### **The Honourable Justice Catherine Button, Federal Court of Australia**

Justice Button was appointed to the Federal Court in January 2023, having been a judge of the Supreme Court of Victoria since 2021. Justice Button primarily hears trials and appeals in the corporate and commercial lists of the Federal Court, including class actions and proceedings brought by regulators (ASIC and the ACCC).

Her Honour graduated with a Bachelor of Arts and a Bachelor of Laws in 1997 from the University of Melbourne, and also studied at the University of Oxford as a Rhodes Scholar from 2000 to 2003 (BCL (Dist) 2000, MPhil 2001, DPhil 2003).



## PROGRAM AT A GLANCE

The conference program at a glance is set out below. Delegates are also welcome to attend any session of interest at the Academic Symposium. For the Academic Symposium program at a glance, see page 7 and for the detailed program, see page 16.

### CONFERENCE

#### SATURDAY 30 AUGUST

12:30pm	<b>Academic Symposium</b>	<i>Coronet Room</i>
3:00pm	<b>Registration opens</b>	<i>Hotel foyer</i>
5:00pm	<b>Welcome function</b>	<i>Wakatipu</i>
7:00pm	<b>Future Leaders' reception</b>	<i>TBA</i>

#### SUNDAY 31 AUGUST

9:00am		<b>Conference opening and welcome</b>	<i>Remarkables Room</i>
9:00am	<b>Plenary</b>	<b>Keynote presentation</b> Chair: <b>Matt Cunningham</b> , Partner, MinterEllison Keynote speakers: <b>The Right Honourable Dame Helen Winkelmann GNZM</b> , Chief Justice of the Supreme Court of New Zealand <b>The Honourable Stephen Gageler AC</b> , Chief Justice of the High Court of Australia	<i>Remarkables Room</i>
10:00am		Morning break <i>Coffee cart sponsored by Equity Trustees</i>	<i>Wakatipu</i>
10:30am	<b>Concurrent</b>	<b>Defence or detour: are clauses to defend against liability management exercises necessary?</b> Chair: <b>Camilla Clemente</b> , Partner, Ashurst Speakers: <b>Jamie Donnelly</b> , Head of Legal – Fund Investments, Metrics <b>Lewis Grimm</b> , Partner, Jones Day <b>John Schembri</b> , Partner, Gilbert + Tobin	<i>Remarkables Room</i>

## SUNDAY 31 AUGUST (continued)

10:30am	<b>Concurrent</b>	<p><b><i>Disruption in property law – a comparative analysis of the effects of ‘cryptonite’</i></b></p> <p>Chair: <b>Associate Professor Allison Silink</b>, University of Technology Sydney</p> <p>Speakers: <b>Professor Katy Barnett</b>, Melbourne Law School  <b>Vladimir Hicak</b>, Visiting fellow at Faculty of Law, University of Auckland, Financial Intelligence Unit Slovakia.  <b>Professor Kelvin Low</b>, University of Hong Kong, Faculty of Law</p>	Coronet Room
11:45am	<b>Concurrent</b>	<p><b><i>Heading down under: when global restructurings meet Australian and New Zealand insolvency law</i></b></p> <p>Chair: <b>Janko Marcetic</b>, Senior Associate, Chapman Tripp</p> <p>Speakers: <b>Alinta Kemeny</b>, Partner, Ashurst  <b>Matt Kersey</b>, Partner, Russell McVeagh  <b>Sam Kinsey</b>, Partner, King &amp; Wood Mallesons</p>	Remarkables Room
11.45am	<b>Concurrent</b>	<p><b><i>Old rules, new tools: navigating financial services law in the age of digital assets</i></b></p> <p>Chair: <b>David Kreltszheim</b>, Partner, Cornwalls</p> <p>Speakers: <b>Dr Rhys Bollen</b>, Senior Executive Leader – Fintech, Australian Securities and Investments Commission  <b>Liam Hennessy</b>, Partner, Thomson Geer  <b>Jeremy Muir</b>, Partner, MinterEllisonRuddWatts</p>	Coronet Room
1:00pm		Lunch break	Wakatipu
2:00pm	<b>Plenary</b>	<p><b><i>Data gone rogue: legal responses to cyber breaches</i></b></p> <p>Chair: <b>Sarah Atchison</b>, Senior Corporate Lawyer, BNZ</p> <p>Speakers: <b>Kelly McFadzien</b>, Partner, Chapman Tripp  <b>Nicholas Mavrakis</b>, Partner, Ashurst  <b>Dan Richardson</b>, Executive Director – Cyber Strategy and Risk, CyberCX</p>	Remarkables Room
3:15pm		<p>Afternoon break</p> <p><i>Coffee cart sponsored by Equity Trustees</i></p>	Wakatipu
3:45pm	<b>Concurrent</b>	<p><b><i>A global view of class actions: comparative legal approaches in New Zealand, Australia, and international markets</i></b></p> <p>Chair: <b>Emma Peart</b>, Senior Associate, Chapman Tripp</p> <p>Speakers: <b>Kirsten Massey</b>, Partner, Russell McVeagh  <b>Moira Saville</b>, Partner, King &amp; Wood Mallesons</p>	Remarkables Room

## SUNDAY 31 AUGUST (continued)

3:45pm	<b>Concurrent</b>	<p><b><i>New assets out of thin air – carbon credits for banking lawyers</i></b></p> <p>Chair: <b>Allison Hancock</b>, Partner, MinterEllisonRuddWatts</p> <p>Speakers: <b>John Erbacher</b>, Director, Environmental Markets, ANZ</p> <p><b>Ilona Millar</b>, Partner, Gilbert + Tobin</p> <p><b>Matthew Triggs</b>, Senior Associate, Buddle Findlay</p>	<i>Coronet Room</i>
5:00pm		AGM and Board Meeting	<i>Coronet Room</i>
6:30pm		Meet in hotel lobby for transfer to conference dinner	<i>Hotel Foyer</i>
7:00pm		Pre-dinner drinks	<i>The Winehouse</i>
7:30pm		Conference dinner	<i>The Winehouse</i>

## MONDAY 1 SEPTEMBER

7:30am	<b>Keynote</b>	<p>Opinions Committee breakfast</p> <p>Host: <b>Helena Busljeta</b>, Special Counsel, King &amp; Wood Mallesons</p>	<i>Milford Room, Double Tree Hotel</i>
9:00am	<b>Plenary</b>	<p><b><i>Judicial case law update</i></b></p> <p>Chair: <b>Dr Nuncio D'Angelo</b>, Partner, Norton Rose Fulbright</p> <p>Speakers: <b>The Honourable Justice Michael Robinson</b>, High Court of New Zealand</p> <p><b>The Honourable Justice Catherine Button</b>, Federal Court of Australia</p>	<i>Remarkables Room</i>
10:00am		<p>Morning break</p> <p><i>Coffee cart sponsored by Equity Trustees</i></p>	<i>Wakatipu</i>
10:30am	<b>Concurrent</b>	<p><b><i>Setting off from the foundations: unpacking the law of set-off</i></b></p> <p>Chair: <b>Clare Samson</b>, Special Counsel, Norton Rose Fulbright</p> <p>Speakers: <b>Ian Paterson</b>, Partner, King &amp; Wood Mallesons</p> <p><b>Dr Peter Turner</b>, Barrister, Ninian Stephen Chambers</p>	<i>Remarkables Room</i>

## MONDAY 1 SEPTEMBER (continued)

10:30am	<b>Concurrent</b>	<b><i>The rise of private credit</i></b> Chair: <b>Lynette Ladhams</b> , Division Director, Macquarie Bank Speakers: <b>Geoff Earl</b> , Partner, MinterEllison <b>Samantha Findley</b> , Managing Director, Capital, Gordon Brothers <b>John Mosley</b> , Partner, Corrs Chambers Westgarth <b>Dominic Toomey</b> , Partner, Simpson Grierson	<i>Coronet Room</i>
11:45am	<b>Concurrent</b>	<b><i>Staying on guard: strategic considerations for secured creditors in voluntary administration and deed of company arrangement contexts</i></b> Chair: <b>Geoff Green</b> , Harbourside Advisory Speakers: <b>Tim Fitzgerald</b> , Partner, Bell Gully <b>Maria O'Brien</b> , Partner, Clayton Utz <b>Liam Williams</b> , GM Legal, Judo Bank	<i>Remarkables Room</i>
11:45am	<b>Concurrent</b>	<b><i>That's just not right: recent cases on unfair contract terms</i></b> Chair: <b>Llon Riley</b> , Managing Associate, Allens Speakers: <b>Campbell Featherstone</b> , Partner, Dentons <b>Charlotte Henry</b> , Partner, Herbert Smith Freehills	<i>Coronet Room</i>
1:00pm		Lunch break	<i>Wakatipu</i>
1:00pm		Future Leaders' lunch	
2:00pm	<b>Plenary</b>	<b><i>AI governance in financial services: law, regulation, and corporate governance in the age of increasingly capable machines</i></b> Chair: <b>Rossana Bellina</b> , Special Counsel, MinterEllison Speakers: <b>Samantha Haeusler</b> , General Counsel, Technology, Data & Procurement, ANZ <b>Tom Maasland</b> , Partner, MinterEllisonRuddWatts <b>Professor Jeannie Paterson</b> , Melbourne Law School	<i>Remarkables Room</i>
3:00pm		Conclusion of conference	<i>Remarkables Room</i>
3:10pm		Winter Wine Tasting tour departure	

# PROGRAM AT A GLANCE

## ACADEMIC SYMPOSIUM

Delegates are welcome to attend any session of interest at the Academic Symposium.

### SATURDAY 30 AUGUST

12:30pm		Light lunch and registration	
1:00pm	<b>Plenary</b>	<b><i>Remedies for breach of fiduciary duty in financial services</i></b> <b>The Honourable Justice Ashley Black</b> , Supreme Court of New South Wales	Coronet Room
1:40pm	<b>Plenary</b>	<b><i>Duties of care for algorithmic decision-making in the financial industry</i></b> <b>Professor Alexandra Andhov</b> , University of Auckland and <b>Professor Jodi Gardner</b> , University of Auckland	
2:20pm	<b>Plenary</b>	<b><i>Rethinking corporate group insolvency</i></b> <b>Professor Jason Harris</b> , University of Sydney	
3:10pm		Afternoon tea	
3:30pm	<b>Plenary</b>	<b><i>Digitising trade finance</i></b> <b>Associate Professor Dora Neo</b> , National University of Singapore	
4:10pm	<b>Plenary</b>	<b><i>When do banks as agents have a privilege and even a duty not to follow a customer's instructions?</i></b> <b>Peter Watts KC</b> , Barrister, Bankside Chambers	
4:50pm		Closing discussion	

# THE PROGRAM IN DETAIL

## CONFERENCE

### SATURDAY 30 AUGUST

3:00pm

Registration opens

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5:00pm

Welcome function

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7:00pm

Future Leaders' reception

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7:00pm

Dinner – own arrangements

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### SUNDAY 31 AUGUST

9:00am

Conference opening and welcome

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9:00am

#### ***Keynote presentation***

Plenary

Chair:

**Matt Cunningham**, Partner, MinterEllison

Keynote speakers: **The Right Honourable Dame Helen Winkelmann GNZM**, Chief Justice of the Supreme Court of New Zealand

**The Honourable Stephen Gageler AC**, Chief Justice of the High Court of Australia

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## SUNDAY 31 AUGUST (continued)

10:00am

### Morning break

Coffee cart sponsored by Equity Trustees

10:30am

Concurrent

### ***Defence or detour: are clauses to defend against liability management exercises necessary?***

As the landscape of liability management exercises (**LMEs**) evolves, the implications for both lenders and borrowers come into sharper focus. Increasingly, lenders aim to safeguard against potential risks such as losing access to a borrower's crucial assets or becoming inadvertently subordinated. However, for borrowers operating in Australia and New Zealand, LMEs may present strategic opportunities to optimise their capital structure and potentially lead to better outcomes for participating lenders.

In this session, the panel will:

- discuss the dual perspectives of lenders and borrowers on LMEs within existing documentation frameworks in Australia and New Zealand (in particular whether the possibility of a LME should overturn the majority rule principle of syndicated lending)
- examine potential vulnerabilities in facility agreements that could be leveraged for LMEs, coupled with corresponding lender safeguards aiming to close such gaps.

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

Speakers: **Jamie Donnelly**, Head of Legal – Fund Investments, Metrics

**Lewis Grimm**, Partner, Jones Day

**John Schembri**, Partner, Gilbert + Tobin

10:30am

Concurrent

### ***Disruption in property law – a comparative analysis of the effects of ‘cryptonite’***

This session will examine the differences in doctrinal analysis of crypto as a form of property in the UK, EU, Singapore, HK and compare with Australia and New Zealand. It will consider both judicial and academic analyses, and focus on the jurisdictional divergence that has emerged between the UK and Australia.

It will also consider the equitable process of tracing - a cornerstone in equitable remedies to vindicate property law rights and the practical issues with tracing global transactions with particular focus on the newly implemented EU Markets in Crypto Assets Regulation (MiCA), considering how global networks of shell companies are being used to evade sanctions and how global exchanges can be manipulated and the vulnerabilities that enable financial crime, and navigating the risks and regulations of digital finance in a rapidly shifting environment, and lessons for Australia and NZ.

Chair: **Associate Professor Allison Silink**, University of Technology Sydney

Speakers: **Professor Katy Barnett**, Melbourne Law School

**Vladimir Hicak**, Visiting fellow at Faculty of Law, University of Auckland, Financial Intelligence Unit Slovakia.

**Professor Kelvin Low**, University of Hong Kong, Faculty of Law

## SUNDAY 31 AUGUST (continued)

11:45am

Concurrent

### ***Heading down under: when global restructurings meet Australian and New Zealand insolvency law***

Recent years have seen a number of complex cross-border restructuring processes involving Australian and New Zealand entities and assets, and more may be on the horizon. Such processes raise complex considerations for the relevant companies, their financiers and their respective advisors, both at the 'front end' thinking ahead, and at the time of the distressed restructuring.

By drawing on recent practical experiences, this session will address the essential features of US Chapter 11 and UK restructuring processes, the interplay of those processes with Australian and New Zealand insolvency law, and strategic considerations involved in utilising those processes.

Chair: **Janko Marcetic**, Senior Associate, Chapman Tripp

Speakers: **Alinta Kemeny**, Partner, Ashurst

**Matt Kersey**, Partner, Russell McVeagh

**Sam Kinsey**, Partner, King & Wood Mallesons

11:45am

Concurrent

### ***Old rules, new tools: navigating financial services law in the age of digital assets***

This session will examine how Australian and New Zealand courts and regulators are applying existing financial services laws to the rapidly developing world of digital assets, while also navigating new regulation and legal solutions as they emerge.

The presenters will map the current and emerging legal regimes for digital assets by discussing:

- recent case law
- regulatory initiatives and guidance
- emerging legal frameworks and changes to familiar ones, such as tax, anti-money laundering and payments
- where there may be a need for a new approach to regulation in this area.

Chair: **David Kreltszheim**, Partner, Cornwalls

Speakers: **Dr Rhys Bollen**, Senior Executive Leader - Fintech, Australian Securities and Investments Commission

**Liam Hennessy**, Partner, Thomson Geer

**Jeremy Muir**, Partner, MinterEllisonRuddWatts

## SUNDAY 31 AUGUST (continued)

1:00pm

**Lunch break**

2:00pm

Plenary

### ***Data gone rogue: legal responses to cyber breaches***

Data breaches are becoming all too common – ranging from small businesses, to multinationals, to Government departments. The first hours of responding to these breaches are crucial and can potentially have a significant effect on the consequences for the business and its customers. This will be a multi-faceted session covering:

- the law in Australia and New Zealand on reporting cyber breaches (including privacy) and attacks, including the regulatory and other obligations for banks/financial institutions
- practical takeaways for responding to attacks and best-practice responses for various types of breaches/attacks.

Chair: **Sarah Atchison**, Senior Corporate Lawyer, BNZ

Speakers: **Kelly McFadzien**, Partner, Chapman Tripp

**Nicholas Mavrakis**, Partner, Ashurst

**Dan Richardson**, Executive Director- Cyber Strategy and Risk, CyberCX

3:15pm

**Afternoon break**

Coffee cart sponsored by Equity Trustees

3:45pm

Concurrent

### ***A global view of class actions: comparative legal approaches in New Zealand, Australia, and international markets***

A class action can present a significant risk to financial institutions, both due to the scale of potential remedies as well as the time and costs to defend. As class actions become more prevalent in New Zealand, Australia and elsewhere, financial institutions need to be aware of the risk they present and how to respond. This session will cover:

- key recent class action cases against banks and financial institutions in NZ, AU and elsewhere
- trends and overarching themes that we have learnt from these cases
- predictions and key risk areas for the future.

Chair: **Emma Peart**, Senior Associate, Chapman Tripp

Speakers: **Kirsten Massey**, Partner, Russell McVeagh

**Moira Saville**, Partner, King & Wood Mallesons

## SUNDAY 31 AUGUST (continued)

3:45pm

Concurrent

### ***New assets out of thin air – carbon credits for banking lawyers***

Carbon credits play a key role in the transition to net-zero. For banks and their customers they also represent new financial assets to trade or use as collateral.

This session will look at the lifecycle of a carbon credit and consider some of the key legal issues for finance lawyers, such as:

- how carbon credits are created
- the impact of a carbon project for the landowner and mortgagee
- current and emerging industry standard documentation
- the development of new market infrastructure
- carbon credits as financial products under financial services legislation
- using carbon credits as collateral to raise finance
- practical challenges with taking security.

Chair: **Allison Hancock**, Partner, MinterEllisonRuddWatts

Speakers: **John Erbacher**, Director, Environmental Markets, ANZ

**Ilona Millar**, Partner, Gilbert + Tobin

**Matthew Triggs**, Senior Associate, Buddle Findlay

5:00pm

**AGM and Board Meeting**

6:30pm

**Meet in hotel lobby for transfer to conference dinner**

7:00pm

**Pre-dinner drinks**

7:30pm

**Conference dinner**

Dress code: Smart casual

## MONDAY 1 SEPTEMBER

7:30am

### Opinions Committee breakfast

This session is for delegates interested in hearing about updates to BFSLA opinion templates.

Host: **Helena Busljeta**, Special Counsel, King & Wood Mallesons

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9:00am

### Judicial case law update

Chair: **Dr Nuncio D'Angelo**, Partner, Norton Rose Fulbright

Speakers: **The Honourable Justice Michael Robinson**, High Court of New Zealand

**The Honourable Justice Catherine Button**, Federal Court of Australia

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Plenary

10:00am

### Morning break

Coffee cart sponsored by Equity Trustees

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10:30am

### *Setting off from the foundations: unpacking the law of set-off*

The law of set-off has evolved to be a heady mix of contract, equity, insolvency legislation and procedure.

This session will explore:

- the different species of set-off being contractual set-off, set-off provided for by statute, equitable set-off and procedural rights and remedies which are analogous to set-off
- how the vocabulary of set-off shows the interplay between judicial and statutory usage
- the extent and nature of the influence of Napoleonic

Chair: **Clare Samson**, Special Counsel, Norton Rose Fulbright

Speakers: **Ian Paterson**, Partner, King & Wood Mallesons

**Dr Peter Turner**, Barrister, Ninian Stephen Chambers

Concurrent

## MONDAY 1 SEPTEMBER (continued)

10:30am

Concurrent

### ***The rise of private credit***

The private credit market (that is, lending to businesses by non-bank lenders) has boomed in Australia and New Zealand, driven, in part, by traditional lenders, such as banks, altering their lending practices. Private credit is filling the vacuum left by banks vacating the field in anything non-ESG focussed like oil, gas and coal. This has led to a heightened interest from many offshore non-bank participants in the somewhat previously untapped markets of Australia and New Zealand, and competition from these participants is now also disrupting the traditional lender space.

The panel will consider:

- how private credit seeks and exits
- how private credit deals are documented
- how this approach to loan, intercreditor and security documentation differs from traditional lend documentation
- how traditional lenders are responding to any competition.

Chair: **Lynette Ladhams**, Division Director, Macquarie Bank

Speakers: **Geoff Earl**, Partner, MinterEllison

**Samantha Findley**, Managing Director, Capital, Gordon Brothers

**John Mosley**, Partner, Corrs Chambers Westgarth

**Dominic Toomey**, Partner, Simpson Grierson

11:45am

Concurrent

### ***Staying on guard: strategic considerations for secured creditors in voluntary administration and deed of company arrangement contexts***

Voluntary administration (**VA**) is on the rise, and secured creditors need to ensure they position themselves carefully after an administrator is appointed to protect their interests. This session will provide perspectives from both sides of the Tasman and a practical refresher on strategic considerations for secured creditors in a VA and deed of company arrangement (DOCA) context, including:

- rights of enforcement of security following appointment
- how and why responding to DOCA proposals matters, including reputational issues that can arise from supporting (or not opposing) particular DOCAs
- new money lending before, during and after the administrator's appointment
- issues arising from the "clean slate" that DOCAs are intended to deliver.

Chair: **Geoff Green**, Harbourside Advisory

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

**Maria O'Brien**, Partner, Clayton Utz

**Liam Williams**, GM Legal, Judo Bank

## MONDAY 1 SEPTEMBER (continued)

11:45am

Concurrent

### ***That's just not right: recent cases on unfair contract terms***

The unfair contract terms regime can be a powerful tool for regulators, and a big concern for financial institutions. This session will analyse cases and trends across Australia and New Zealand on unfair contract terms laws, including:

- takeaways from recent key decisions
- the shift from consent judgments to contested judgments in Australia
- the role of industry laws and codes in helping to frame issues of fairness, legitimate interests of financial institutions, and imbalance of rights

Chair: **Llon Riley**, Managing Associate, Allens

Speakers: **Campbell Featherstone**, Partner, Dentons

**Charlotte Henry**, Partner, Herbert Smith Freehills

1:00pm

**Lunch break**

1:00pm

**Future Leaders' lunch**

2:00pm

Plenary

### ***AI governance in financial services: law, regulation, and corporate governance in the age of increasingly capable machines***

- AI in financial services – where we've been, and where we're headed: A brief survey of AI in financial services via three stories / case studies that illustrate how AI is increasingly integrated into key processes and functions within banking and financial services. Given this increasing integration of AI, we discuss why generative AI represents a step change and create novel legal, ethical, and regulatory considerations.
- The unique regulatory challenges of AI: The emerging gap between AI governance and AI development in financial services, and regulator response – including ASIC's Governance Gap report and global regulatory trends and lessons from international frameworks (eg EU AI Act, US regulatory approaches).

Chair: **Rossana Bellina**, Special Counsel, MinterEllison

Speakers: **Samantha Haeusler**, General Counsel, Technology, Data & Procurement, ANZ

**Tom Maasland**, Partner, MinterEllisonRuddWatts

**Professor Jeannie Paterson**, Melbourne Law School

3:00pm

**Conclusion of conference**

3:10pm

**Winter Wine Tasting**

# THE PROGRAM IN DETAIL

## ACADEMIC SYMPOSIUM

Delegates are welcome to attend any session of interest at the Academic Symposium.

### SATURDAY 30 AUGUST

12:30pm

Light lunch and registration

1:00pm

Plenary

#### ***Remedies for breach of fiduciary duty in financial services***

Justice Black will review recent developments in remedies for breach of fiduciary duty in financial services, including the decision in *Anderson v Cannacord Genuity Financial Ltd* (2023) 113 NSWLR 151; [2023] NSWCA 294; the open issues where constructive trusts are sought over land under the *Real Property Act 1900* (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.

**The Honourable Justice Ashley Black**, Supreme Court of New South Wales

1:40pm

Plenary

#### ***Duties of Care for algorithmic decision-making in the financial industry***

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

**Professor Alexandra Andhov**, University of Auckland and **Professor Jodi Gardner**, University of Auckland

## SATURDAY 30 AUGUST (continued)

2:20pm

Plenary

### ***Rethinking corporate group insolvency***

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 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.

**Professor Jason Harris**, University of Sydney

3:10pm

### **Afternoon tea**

3:30pm

Plenary

### ***Digitising trade finance***

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 2023*. 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.

**Associate Professor Dora Neo**, National University of Singapore

4:10pm

Plenary

### ***When do banks as agents have a privilege and even a duty not to follow a customer's instructions?***

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.

**Peter Watts KC**, Barrister, Bankside Chambers

4:50pm

### **Closing discussion and invitation to speakers to network with Conference delegates at the welcome function**

# SOCIAL FUNCTIONS

## SATURDAY 30 AUGUST

- 5:00pm Welcome function  
Drinks and canapes at  
Wakatipu Room
- 7:00pm Future Leaders' reception

## SUNDAY 31 AUGUST

- 6:30pm Pre-dinner drinks
- 7:30pm Conference dinner

## MONDAY 1 SEPTEMBER

- 1:00pm Future Leaders' lunch
- 3:10pm Winter Wine Tasting

## DELEGATE FEES

All amounts are expressed in Australian dollars. 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 20 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/>.

		<b>Early bird fee (by 25 July)</b>	<b>Full fee</b>
<b>General rates</b>	Members**	\$2,150	\$2,400
	Non-members	\$2,500	\$2,800
<b>In-house lawyers/regulators</b>	Members**	\$995	\$1,150
	Non-members	\$1,250	\$1,450
<b>Full-time academics</b>	Members	\$895	\$1,095
	Non-members	\$1,150	\$1,395
<b>Full-time students</b>	Members	\$895	\$1,095
	Non-members	\$1,150	\$1,395

<b>General Member Group Rate (5 plus) early bird</b>	<b>General Member Group Rate (5 plus) full</b>
First 5 @ \$2,150 full price	First 5 @ \$2,400 full price
Subsequent registrations at \$1,250	Subsequent registrations at \$1,450

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

# CONFERENCE REGISTRATION

You can register for the conference via the link below.

## CONFERENCE REGISTRATION

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 20 to 22 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 24.

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

## BFSLA 41st ANNUAL CONFERENCE REGISTRATION FORM

Please print clearly, scan and send this form to [Julia@bfsla.org](mailto:Julia@bfsla.org)

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

Given name \_\_\_\_\_ Preferred name for name badge \_\_\_\_\_

Position \_\_\_\_\_

Postal address \_\_\_\_\_

\_\_\_\_\_ Post code \_\_\_\_\_ Country \_\_\_\_\_

Phone ( ) \_\_\_\_\_ Mobile \_\_\_\_\_

Email address: *(Please print clearly)* \_\_\_\_\_

### REGISTRATION DETAILS

Please TICK the appropriate category

#### EARLY BIRD FEES for bookings made and paid by Friday 25 July

- |  |  |
|--|--|
| <input type="checkbox"/> Member general \$2,150                    | <input type="checkbox"/> Non-Member general \$2,500                      |
| <input type="checkbox"/> Member In-house lawyers/regulators \$995  | <input type="checkbox"/> Non-member In-house lawyers/regulators \$1,250  |
| <input type="checkbox"/> Member full-time academic / student \$895 | <input type="checkbox"/> Non-Member full-time academic / student \$1,150 |

#### FULL FEES for bookings made and paid after Friday 25 July

- |  |  |
|--|--|
| <input type="checkbox"/> Member general \$2,400                      | <input type="checkbox"/> Non-Member general \$2,800                      |
| <input type="checkbox"/> Member In-house lawyers/regulators \$1,150  | <input type="checkbox"/> Non-member In-house lawyers/regulators \$1,450  |
| <input type="checkbox"/> Member full-time academic / student \$1,095 | <input type="checkbox"/> Non-Member full-time academic / student \$1,395 |

REGISTRATION FEE TOTAL \$ \_\_\_\_\_

## DIETARY REQUESTS

Please specify any allergies or dietary requirements: \_\_\_\_\_

### ATTENDANCE AT EVENTS DURING THE CONFERENCE

For the BFSLA conference we offer delegates an opportunity to extend their conference experience with the following events that are included within the registration price. However, please note that each event is catered for and we would appreciate if the intended delegate considers and agrees to the attendance to ensure they do wish to attend. Please indicate below if you would like to attend the following events (please note that this is included in the registration fees):

- Welcome function on Saturday 30 August**
- Academic Symposium on Saturday 30 August**  
 Half day afternoon
- Future Leaders' reception at 7:00pm on Saturday 30 August**
- Lunch at 1.00pm on Sunday 31 August**
- Conference dinner at 7.30pm on Sunday 31 August**
- Opinions Committee breakfast at 7:30am on Monday 1 September**  
This event is for interested delegates in the area of updates on opinion templates
- Regular lunch at 1:00pm on Monday 1 September**  
or
- Future Leaders' lunch at 1:00pm on Monday 1 September**  
This event is for new and younger professionals within BFSLA to meet and network
- Winter Wine Tasting on conclusion of conference at 3:10pm on Monday 1 September**  
This event is for everyone to celebrate the success of the conference

**BFSLA 41st 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 @ \$55 per person                      \$ \_\_\_\_\_

Dinner                     Tickets @ \$250 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 this page)                      \$ \_\_\_\_\_

**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 – this can be actioned on registration, otherwise call Julia on 64 21 966 679 to pay 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 24.

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.

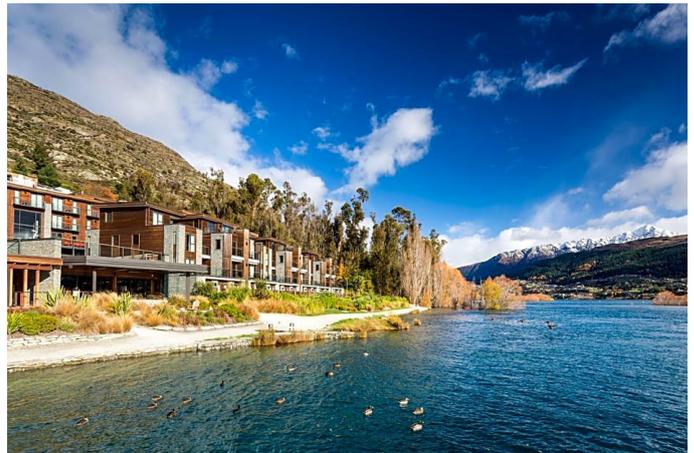
## ACCOMMODATION

**Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel**, 79 Peninsula Road, Kawarau Heights, Queenstown 9300, New Zealand

We have secured competitive rates for BFSLA delegates at the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel.

**BFSLA conference room rate:  
the Hilton from \$520 to \$820 (dependent on type of room)  
Double Tree @ \$440**

Rates are quoted in New Zealand dollars. They include GST of 15% and are for sole/twin occupancy.



Below is the link to the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel accommodation booking website. All accommodation must be booked directly with the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel via the online link or by calling +64 3 450 9400. Please remember to quote **BFSLA Conference 2025** for the conference rate.

[HILTON QUEENSTOWN ACCOMMODATION BOOKING](#)

[DOUBLE TREE BY HILTON ACCOMMODATION BOOKING](#)

If unable to use the Hilton Queenstown Resort & Spa and DoubleTree by Hilton Hotel online link internally please call the reservations team for assistance on +64 3 450 9400. Please note it is very important not to send credit card details by email.

## 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.

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.

## BFSLA POLICIES

### **Privacy Statement**

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

## 2025 CONFERENCE PLANNING COMMITTEE

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