

5th ANNUAL



NATIONAL PRACTICAL BANKRUPTCY CONGRESS & COCKTAIL PARTY

CONGRESS: Wednesday, 6th December, 2017

Wesley Conference Centre, 220 Pitt Street

COCKTAIL PARTY: The ArtHouse Hotel, 275 Pitt Street, Sydney

OPTIONAL CONCURRENT FULL AND HALF DAY WORKSHOPS:

Tuesday, 5th December 2017

Draft Program for research and discussion:

POSSIBLE TOPICS INCLUDE:

- The One Year Bankruptcy Regime
- Insolvency Law Reform Act - How will it change Bankruptcy Practice? Areas of Uncertainty?
- Voidable Transactions
- The Famous Family Law Experts In Conversation
- Insolvency Practitioner Rules / AFSA Issues
- Professional Body Regulation of Trustees
- Fees and Remuneration
- Reviews of Recent Decisions Impacting on Practitioners
- Tax Issues – including Tax Return timings and new laws on Credit Records for ABN Holders

CONGRESS PANEL INCLUDES:

John Melliush, Bankruptcy Trustee, Conference Chair
Bob Cruickshanks, Personal Insolvency Consultant
Sally Nash, Consultant Solicitor,
O'Neill Partners Lawyers
Stephen Mullette, Principal, Matthews Folbigg Lawyers
Michael Murray, Principal, Murrays Legal
Peter Harrison, Partner, Kemp Strang Lawyers
Michael Heath, Barrister
Ross Burns, Director, Complex & Strategic
Recovery, Australian Taxation Office
Australian Financial Security Authority

MEDIA PARTNER:



FOR FURTHER DETAILS ON REGISTERING, PRESENTING OR SPONSORING PLEASE CONTACT:

ROSIE TRAILL Ph 02 9449 8919 M 0405 136 001 F 02 9475 4314

Organised by TRAILL & ASSOCIATES PTY LIMITED ABN:47085 482 533

Email rtraill@traillassociates.com.au

Website www.traillandassociates.com

7.30 REGISTRATIONS OPEN

8.30 CONFERENCE COMMENCES – Opening Remarks from The Chair

John Melliush, *Bankruptcy Trustee*

1. Voidable Transactions

One of the most popular sessions at every conference is the voidable transactions update, presented again this year by **Stephen Mullette**. Stephen will review a host of cases, including at least (no doubt there will be a couple more by the time we get to the conference!):

- *Mogilevsky v Leroy (Trustee)* [2017] FCAFC 52 (29 March 2017)
- *Carrara v Gomez & Anor (No.3)* [2016] FCCA 3139 (7 December 2016)
- *Pekar v Holden (Trustee)* [2017] FCA 596
- *Rambaldi (Trustee) v Commissioner of Taxation, in the matter of Alex (Bankrupt)* [2017] FCA 567
- *Lo Pilato (Trustee) v Kamy Saeedi Lawyers Pty Ltd, in the matter of Adzic (Bankrupt)* [2017] FCA 34
- *Woods & Lombe as Trustees of the Bankrupt Estate of Ulusoylu v Ulusoylu* [2017] FCCA 935 (12 May 2017) [2017] FCCA 935
- *Jones v Official Receiver & Anor (No.4)* [2017] FCCA 1101 (16 June 2017)

Stephen Mullette, *Principal, Matthews Folbigg Lawyers*

2. Bankruptcy / Family Law - Experts In Conversation

Practitioners tell me that the interactions between Family Law and Bankruptcy Law continue to evolve and develop and that this panel session with three of the foremost experts 'in conversation' continues to be one of the most practically useful sessions on the program.

Sally Nash, Stephen Mullette and Bob Cruickshanks will take you through the very latest cases:

- *Official Trustee in Bankruptcy & Galanis and Anor* - An application to set aside a section 90D agreement entered after discharge from bankruptcy which dealt with a property acquired prior to bankruptcy and subject to a caveat lodged by the trustee. The FCFCJA had to determine whether the FCA had jurisdiction to deal with the trustee's claim to have the agreement set aside under section 90K of the FLA.
- *Beaman v Bond & Anor (No. 2)* - A party to Family Law proceedings applied to the FCCA seeking an order to annul her former partner under section 153B of the BA on the basis that his debtor's petition should not have been presented because related party loans should be ignored.
- *Weston v. McAuley* [2017] FCCA 1 – What is the current state of case law regarding the principle of equal ownership of matrimonial property discussed in the High Court's decision in *Cummins*. This case tested whether this principle applied to a property registered in the name of the non-bankrupt spouse as to 95% and 5% to the bankrupt.
- *Needham & Trustee of Bankrupt Estate of Needham* (2016) FCAFC102 - where the Full Court reduced the Trustee claim to 20% after a review of the wife's post-separation payments.

Bob Cruickshanks, *Personal Insolvency Consultant*

Sally Nash, *Consultant Solicitor, O'Neill Partners Commercial Lawyers*

Stephen Mullette, *Principal, Matthews Folbigg Lawyers*

3. Insolvency Practice Rules – How They Will Change Bankruptcy Practice

There's been a heap of ILRA training and discussion, I know, so hasn't this been done to death?

No. Firstly, there's been the very recent release of forms and further changes, most recently on 30 August. As the changes will have been in practice for three months by the time of my congress – and just as we found that there was more to learn when the PPSR went live, I'm sure that we'll learn a whole lot more when the ILRA goes live too. I have arranged for our speaker to present the authoritative summary of what we have 'learnt by doing'. [As well areas of uncertainty surrounding transitional provisions where a matter began before or after 1 September 2017.](#)

4. Important Tax Issues –

Our speaker will outline the latest in ATO technology capabilities; Tax Return timings and new laws impacting Credit Records for ABN holders. Also what can, or ought a Trustee do in relation to an adverse BRU audit (legit or illegit conclusion) and what consequence if not addressed by the Trustee?

5. Regulator Feedback Session

6. Trusts and Bankruptcy

Most of you who practice in Corporate Insolvency will be aware of the Amerind/Independent Contractor (and other) decisions. *Lane (Trustee), in the matter of Lee (Bankrupt) v Deputy Commissioner of Taxation* [2017] FCA 953 is the August 2017 'equivalent decision' for personal insolvency practice. I've asked our speaker to explain what it means and how it will affect your practice. In relation to duties of Trustees, our speaker will review *Young v Thompson* (formerly Trustee of Young) [2017] FCAFC140. As well updates on questions of priority and income contributions.

7. Property Cases

There continue to be a steady stream of cases dealing with a trustee's ability to recover and realise property. Our speaker will review some of the most recent cases, including:

- *Francis In His Capacity As Trustee Of The Bankrupt Estate Of Franco v Franco* [2016] FCCA 2882 – Application for orders for sale of property and to vacate land.
- *Quin v Smalley* [2017] FCCA 594– Application to obtain vacant possession of real property.
- *Yeo & Rambaldi v Arifovic & Anor* [2017] FCCA 604 - Trustee's application for sale of real property purchased solely in bankrupt's name which dealt with issues of a constructive trust & and examination of complex banking arrangements between bankrupt and his de-facto partner.
- *Juratowitch as Trustee of the Bankrupt Estate of McDougall v McDougall & Anor* [2017] FCCA 446 - Which deal with a bankrupt "selling" land to her daughter on the day of the sequestration order, as well as issues of constructive trust.

8. One Year Bankruptcy?

The 'Jungle drums' tell me that there is a fair chance that we will see draft legislation on the 'one year bankruptcy' reform proposal by the time of my conference – but there is nothing concrete at the date of writing. This session is a placemaker – if the draft legislation is released I will run a session to help you understand how a one year terms will interact with the three year contribution regime, what will happen to the objection to discharge rules, and the various other necessary changes.

If the draft legislation is not out by then I will be working hard to add a useful and informative session!

Possible topics

1. Section 50 Appointments

Section 50 allows the Court to make interim orders to protect property *in advance* of a possible appointment. Our speaker will explain what they are, how they work (how you will be remunerated!), referencing the following recent cases:

- Trust Company (PTAL) Limited (Trustee for the LM Managed Performance Fund
- Taylor (Trustee), in the matter of Jarvie (Bankrupt) v Jarvie
- Axxess Debt Management Pty Ltd v Haykal, in the matter of Haykal
- Makinna Pty Ltd (in liq) v Trives

2. Exceptions to Divisible property s116(2)

Sub-section 116(2) sets out a number of different exceptions to 'divisible property.' In this session our speaker will take you through a 'grab-bag' of different recent decisions: including:

- Trustees of the Property of Morris (Bankrupt) v Morris (bankrupt) - dealt with protection held by superannuation as regards payments from a spouse's superannuation fund, and Super generally. What obligations does a Trustee have re a SMSF where the bankrupt is the sole director and sold store holder?
- *Berryman v Zurich* [2016] WASC 196 – dealt with a TPB claim.
- *Ramsay (Trustee) v Upson* – questions of tracing of compensation money into the purchase of a property.
- *Cunningham (Trustee) v Gapes* – dealt with a distribution to a beneficiary under a will
- Trustees of the Property of Morris (Bankrupt) v Morris (Bankrupt) – dealt with life insurance payments to widowed bankrupt spouse.

5.30 Closing Remarks from the Chair and Close of Congress

6.00 Move to The ArtHouse Hotel for those attending the Cocktail Party

5th Annual National Practical Bankruptcy Congress, Cocktail Party & Optional Workshops

Dear Bankruptcy Friends,

As always, a great deal of research goes into the development of a program that will meet your needs: relevant, up-to-date, and cost effective. And because every session includes the very latest developments and the very latest cases, every session will be of interest to senior practitioners wanting to “keep up to date”, as well as to those who are still building their skill and knowledge base.

Of course, with such a strong attendance from the key players in Bankruptcy, the event offers fantastic opportunities for networking and business development, even more so at the cocktail party.

The Cocktail Party is a great way to make some new and valuable connections, catch up with old friends and find out what’s happening in the personal insolvency industry.

As usual there will be optional **concurrent workshops on 5th December** which offer the chance to develop and expand the conference material, with either a full day or half-day session in a relaxed but educational context. Our workshop leaders are so knowledgeable and generous with their information that participants have consistently told me how invaluable these sessions are which is why I continue to bring them to you. The collective experience of the audience also adds so much to the quality of the learning. **It is definitely a great use of your time.** You will come away with knowledge and valuable strategies that you can implement in your practice straight away.

Please make sure that you let me know if there are any aspects that you would like the presenters to address – I’ll do our best to make sure that every session is as helpful and relevant as possible.

Finally, please help me to grow the event by forwarding details to your network and in particular to those whom you would like to meet at the event.

I look forward to welcoming you personally and assisting you with making those valuable connections. Thank you once again for all your on-going support of this Congress.

Warmest regards

R. Traill

Rosie Traill

PS. **Register now** as numbers for the Congress and Workshops are limited to ensure maximum participation, and at these rates and with the track record of very satisfied attendees re-attending each year, will fill up quickly.

TESTIMONIALS: Here's a small sample of what delegates wrote on their Evaluation Form from a previous Congress:

“Excellent, 5 out of 5. Great conference. Fills a very important gap in the market. I look forward to it again next year!”

David Mansfield, Partner, Deloitte

“An excellent program. being recognised and supported by the profession. Well done.” **Wade Ballantyne, Pitcher Partners**

“5 out of 5. An informative and well organised event. Topics are useful and presented in a thought-provoking way. “

Eloise Validum, Aravanis Insolvency

“If you practice in the field of personal Insolvency you cannot miss the Bankruptcy Congress as the contents are always relevant and topical.”; **Moira Carter, Principal, BRI Ferrier**

“5 out of 5. Excellent Congress! A great avenue of keeping updated with the views and issues facing the industry.”

Andrea Kalik, Jirsch Sutherland

“It’s a great conference dedicated to bankruptcy for anyone interested in bankruptcy law and practice.”

Con Nottas, Principal, Hutchinson Legal

OPTIONAL FULL-DAY PRE-CONGRESS WORKSHOP
TUESDAY 5TH DECEMBER 2017
9.30am - 3.30pm
PRACTICAL STRATEGIES FOR SUCCESSFUL OUTCOMES
Interactive Intensive Bankruptcy Session

WORKSHOP PRESENTERS

Bob Cruickshanks, *Personal Insolvency Specialist*
Peter Harrison, *Partner, Kemp Strang*

A team of personal insolvency experts will deal in-depth with some of the complex areas posing the greatest concerns for practitioners. Some of the areas which will be covered may include:

Insolvency Law Reform Issues:

- 1) The amendments were sold as “*the most significant suite of reforms to Australia’s bankruptcy and corporate insolvency laws in twenty years and is an integral component of the Federal Government’s agenda of improving economic incentives for innovation and entrepreneurialism plus are intended to improve efficiency, competition and consumer confidence in the insolvency profession.*” Have they delivered or perhaps just driven up costs with the additional regulations?
- 2) **Lack of communication on the existence of flaws & subsequent rectification.**
- 3) **Good bits:** Meeting procedures, remuneration claim notices.
- 4) **Not so good bits:** Responding to “*reasonable requests*” to provide documents to creditors & bankrupts.
- 5) **Challenging bits: 42-15 Communication:** “*Communications by a registered trustee must be: (a) clear and concise and, where appropriate, expressed in lay terms; (b) objective; (c) responsive; and (d) timely; and (e) expressed in a professionally courteous tone and manner.*”
- 6) The implications of the **One Year Bankruptcy**.

Profiling a new bankrupt and their creditors: Important lessons to be learnt from *Young v Thomson (formerly trustee of the property of Young)* [2017] FCAFC 140 (1 September 2017).

Litigation- Expect the unexpected: Lessons to be learnt from *Kiem Dang Investment v Mansfield & Anor* [2017] FCCA 725 (24 May 2017).

Conflicts of Interest: Actual and/or Perceived: Have the amendments changed the obligations to disclose? Where do you draw the line when disclosing relationships?

Bankrupt’s interest in a deceased estate. Determining whether the bequest is an asset or income. Property bequeathed to bankrupt subject to a life tenancy of a third party. Trustee’s entitlement no better than the bankrupt’s. Bankrupt’s rights under the *Succession Act* to challenge a will involving divisible property. **Deceased superannuation funds - discretion of the trustee of the super fund.**

Dealing with the Bankruptcy Regulation & Enforcement section: Complaints by bankrupts and/or creditors. Errors detected during Annual inspections. IG reviews of objections and income contribution assessments. S.77C referrals. Prosecution referrals.

Dealing with the ATO - “*The Ultimate Challenge*”: When will the ATO accept a Repayment Plan to avoid bankruptcy, a PIA proposal or a s.73 Composition proposal?

Obtaining Property Possession Orders & Dealing with the Sheriff: When and how to obtain Possession Orders and tips on how to have a harmonious working relationship with the Sheriff and his officers who assist you to gaining actual possession of a property. Engagement of a welfare agency in certain cases.

Disclaiming property and/or contracts: Why and when should a trustee disclaim real property or contract entered into by the bankrupt just prior to bankruptcy. Consequences of disclaiming.

Bankrupt’s book debts: Assets or unpaid income?

Realisation of Bankrupt’s shares in company & appointment of Liquidator to wind up the company

Dealing with “Cranky Creditors”: Tips on dealing with creditors who are either unhappy, demanding, and/or have unrealistic expectations of the trustee.

Dealing with “Challenging Bankrupts”: Recent actions by “*ratty self-represented*” bankrupts and how the Courts dealt with them *Deputy Commissioner of Taxation v Webb* [2017] FCCA 1137 (30 May 2017). Tips on how to deal with them and where possible, how to avoid being involved in costly litigation and/or disputes with them

Income Contribution regime: Examination of the “*grey areas*” including deeming income, determination of “*a dependent*”, re-assessment of liability, dealing with hardships applications. Adoption of a reasonable approach. Implications of trustee’s use of collection agencies.

Assets acquired with accumulated income during bankruptcy: Contrary to “*fresh start*” concept and a need for amendment to the Bankruptcy Act to add income & accumulated income to the “protected assets” in s.116(2).

Modern day relationships: Increasing numbers of new bankrupts have been either married & divorced multiple times, or in same-gender relationships which present new challenges to trustees.

Revision topics: Remuneration regime. Interaction between Bankruptcy Act and Family Law Act. Bankrupt’s interest in jointly owned property.

ABOUT YOUR WORKSHOP LEADERS

BOB CRUICKSHANKS, *Personal Insolvency Consultant*

Bob Cruickshanks is a consultant to number of firms and provides guidance on personal insolvency administration and associated investigations. He was a former Deputy Official Receiver for NSW and the ACT and retired after 34 years during which time he worked in all the front line sections of AFSA. Prior to his retirement he had a long standing association with registered trustees throughout Australia.

PETER HARRISON, *Partner, Kemp Strang*

Peter is a specialist commercial disputes and insolvency lawyer, with over 20 years of experience in both personal and corporate insolvency. Peter acts for financiers in contentious and litigious matters. He also has significant experience acting for both insolvency practitioners and company directors in both formal insolvency administrations and turnaround management, as well as acting in disputes between partners, joint venture partners and shareholders. He has broad experience in commercial and property disputes, working in close collaboration with the firm’s Property and Corporate practice group.

Kindly hosted by Kemp Strang Lawyers Level 17, 175 Pitt Street, Sydney Phone: 02 9225 2500
Lunch & morning tea provided

NOTE TO PARTICIPANTS

Please email particular areas for concern to me directly and these will be confidentially passed on to the presenters to ensure that all your needs are met in these intensive workshops.

BOOK EARLY AS NUMBERS ARE RESTRICTED TO ENSURE MAXIMUM PARTICIPATION BENEFITS TO ATTENDEES.

If you attended last year’s workshop, these workshops will build on some of the areas covered, however attendance at 2016 is not a requisite for this 2017 workshop.

www.traillassociates.com.au rtraill@traillassociates.com.au

**OPTIONAL HALF-DAY INTENSIVE PRE-CONGRESS WORKSHOP
TUESDAY 5TH DECEMBER, 2017
8.30am - 11.30am
INTERACTION BETWEEN BANKRUPTCY &
FAMILY LAW & PROPERTY ISSUES**

**WORKSHOP LEADER: SALLY NASH, CONSULTING SOLICITOR,
O'NEILL PARTNERS COMMERCIAL LAWYERS**

Sally will cover a range of issues relating to the interaction between Family Law and Bankruptcy and provide tips on how to avoid being drawn into an acrimonious dispute between the spouses. The complex area of Property Law will also be covered in-depth dealing with the areas posing the greatest concerns for practitioners. Some of the areas which will be covered may include:

Sale to co-owner – Deed or Contract for Sale of Land?

Exoneration – creating a charge and security over the bankrupts interest

Section 66G of the Conveyancing Act

Disclaiming onerous property – why?

Section 139 of the Bankruptcy Act – no liability for rates and taxes in certain circumstances.

Applications for new Certificate of Title – s138 Real Property Act

Registering the Trustee on Title

Mortgagee sales and disputes with caveators

Binding Financial Agreements

Section 79 Family Law Act and property disputes

Section 129AA of the Bankruptcy Act and re-vesting

Lapsing Caveats and s178 of the Bankruptcy Act

Appointment of Trustees for Sale – 2 under Section 66G of the Conveyancing Act not 1 under Section 30 of the Bankruptcy Act.

Orders for possession – compare and contrast the Supreme Court default position or orders under Section 30 of the Bankruptcy Act.

Section 139ZQ Notice and its effect. On any Application to set it aside the Trustee must still prove his case in full Section 211 of Duties Act, 1997

Determining security

Please book directly at rtrail@traillassociates.com.au

NOTE TO PARTICIPANTS

Please email particular areas for concern to me directly and these will be confidentially passed on to the presenters to ensure that all your needs are met in these intensive workshops.

ABOUT YOUR WORKSHOP LEADER

SALLY NASH, Consulting Solicitor, O'Neill Partners

Sally is acknowledged as a leading insolvency lawyer in NSW, Australia. She was admitted to practice in 1977 and has practiced in insolvency, general commercial litigation and debt recovery litigation since that time. Her practice is in all NSW State and Australian Federal Courts involving debt recovery, commercial and insolvency litigation acting for creditors, Trustees, Liquidators, bankrupts and directors. She also has extensive experience acting for secured creditors in the enforcement of their securities. Sally has been involved in many leading cases and is very highly regarded by the profession, her clients and fellow practitioners. Sally conducts litigation in all State and Federal Courts including the Supreme Court of New South Wales, Federal Court of Australia and the Federal Circuit Court of Australia, in particular to sue for unpaid debts and against guarantors and to enforce property orders. Sally is a member of the Law Society of NSW, Law Council of Australia, Commercial Insolvency and Reconstruction Committee; Australian Restructuring Insolvency & Turnaround Association. Sally lectures client and the profession and often speaks at conferences. In 2013 Sally reviewed and updated the Lawyers Practice Manual for New South Wales debt recovery chapter. In 2011 Sally wrote the Australian chapter on Australian Bankruptcy Law for INSOL, International in the INSOL publication "Consumer Debt Book". Sally Nash and her staff at Sally Nash & Co joined O'Neill Partners in January 2015.

NOTE: BOOK EARLY AS NUMBERS ARE RESTRICTED TO ENSURE MAXIMUM PARTICIPATION BENEFITS TO ATTENDEES.

If you attended last year's workshop, these workshops will build on some of the areas covered, however attendance at 2016 is not a requisite for this 2017 workshop.

www.traillassociates.com.au rtrail@traillassociates.com.au

BANKRUPTCY CONGRESS REGISTRATION TERMS & CONDITIONS

These terms and conditions are to be read in conjunction with Terms and Conditions of www.traillassociates.com.au website.

Privacy

Your information is added to our delegate database to register you for this event and provide you of details of our upcoming conferences in your field. We may also from time to time share some of this information with event sponsors and speakers so they know who is in their audience and can deliver accordingly (subject to strict conditions). From time to time, we may contact you about other related events. If you DO NOT wish to receive this information notify us using the contact information in the Contact Us tab / menu item. Please do the same if you do not wish to have your details made available to sponsors or write it on your registration form.

Disclaimer

Trail & Associates reserves the right to change some elements of the program at any time in the event of unforeseen circumstances. Trail & Associates accepts no liability for any loss or damage suffered by any person at any event organised by Trail & Associates by reason of any act or omission on the part of any other person however that loss or damage is caused including but not limited to any negligence on the part of any other person. Information obtained at the event does not constitute legal advice and should not be relied upon as such.

Cancellation Policy

We will refund your registration in full, less \$110 administrative charge (incl gst) provided we receive cancellation in writing up to thirty working days prior to the event. A substitute is welcome at no extra charge. Regrettably, no refunds can be made less than thirty days prior to the event as all supplier orders are based on estimated numbers of attendees and are paid in advance.

"YES" Campaign Policy and Pre-Sale Conditions

Terms and conditions of this registration process: Once your "Yes" or pre-sale campaign email is received by us, you are officially registered for the conference. Cancellation policy as set out on the brochure and all other terms and conditions apply. You will be sent back a confirmation asking for your payment details. The lowest registration rate available at the time of your "yes" registration applies and will be held for you for up to 7 days when receipt of your payment details confirmation is required. Payment details received outside this timeframe cannot be guaranteed at the lowest registration rate.

CPD/CPE/CLE Points

Accountants, Solicitors and Barristers, may earn in excess of 8 CPD, CPE or CLE points if they attend the conference and up to an additional 6 points for the full day workshop. One point per actual hour of attendance. Accreditation pending from Bar Association, one point per hour of attendance, to be allocated to strands according to the subject matter of sessions attended. Call Trail & Associates for more details.

Important Security Notice

We want to take good care of you, so for venue requirements, security and safety reasons, highly visible official name badges must be worn at all times by all delegates.

Registrations for the Bankruptcy Congress are NON TRANSFERABLE - No substitutes or shared registrations will be permitted at this event unless written approval has been granted for extenuating circumstances and confirmed by Trail & Associates in writing prior to the event.

If you have any queries or special requests, comments or suggestions, please contact: Rosie Trail on 02 9449 8919 or 0405 136 001.

The contents of a conference program are the copyright of Trail & Associates ©2017