

# AFTERSHOCKS!

Thursday, 10 - Friday, 11 March 2022  
Hotel Realm Canberra

THE SUPERANNUATION COMMITTEE OF THE LEGAL PRACTICE SECTION OF THE LAW COUNCIL OF AUSTRALIA



DAY ONE - THURSDAY, 10 MARCH 2022	
8.00am – 4.30pm	<b>Registration</b> Foyer Area, Conference Floor, Hotel Realm Canberra 18 National Circuit, Barton ACT 2600
9.00am – 9.20am	<b>Official Opening</b> National Ballroom 2, Conference Floor <b>Tass Liveris</b> President, Law Council of Australia
9.20am – 9.30am	<b>Address by the Chair</b> Superannuation Committee, Law Council of Australia <b>Lisa Butler Beatty</b> Partner, KPMG
9.30am – 10.30am	<b>Session 1: Libby Slater Plenary Session</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Dr Allison Silink</b> Barrister, Level 22 Chambers Senior Lecturer, UNSW Law Faculty, School of Private and Commercial Law  <b>Chair</b> <b>Michael Vrisakis</b> Partner, Herbert Smith Freehills	<b>Topic: The best financial interests duty: a new duty or new name?</b>  In this session we explore the implications of the recent amendment to the best interests duty: <ul style="list-style-type: none"> <li>• how (if at all) the insertion of the word “financial” alters the scope of the best financial interests duty as previously understood</li> <li>• the impact of the duty to act in the best financial interests of members for trustees and any impact upon reporting obligations?</li> <li>• examines some of the types of decisions to which the duty might be argued to apply in new ways.</li> </ul>
10.30am – 11.00am	<b>Morning Tea</b> Foyer Area, Conference Floor
11.00am – 12.00pm	<b>Session 2</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Anthony Donohoe</b> Partner, Risk Strategy & Technology, KPMG Australia  <b>Chair</b> <b>Natalie Cambrell</b> Principal Solicitor, KHQ Lawyers	<b>Topic: FAR out!</b>  One of the most significant outcomes of the Royal Commission is the introduction of the Financial Accountability Regime (FAR) to superannuation funds. In this session, we will look at what FAR entails, issues superannuation trustees will face in implementing FAR and practical implications for superannuation trustees.
12.00pm – 1.00pm	<b>Lunch</b> National Ballroom 3, Conference Floor

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1.00pm – 2.00pm	<b>Session 3</b> National Ballroom 2, Conference Floor
<b>Speakers</b> <b>Geoff Sanders</b> Partner, Allens <b>Andrew Taylor</b> Special Counsel, KHQ Lawyers <b>Deanne Wilden</b> General Counsel, Australian Retirement Trust  <b>Chair</b> <b>Ian Pendleton</b> General Counsel, Aware Super	<b>Topic: Mergers</b>  This session will examine the range of current obstacles to SFTs, will discuss how recent legislative changes complicate matters (including dealing with trustee capital), and will touch on alternate models to achieve the benefits of merger.
2.00pm – 2.35pm	<b>Session 4A</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Margaret Cole</b> Executive Board Member, Australian Prudential Regulation Authority (APRA)  <b>Chair</b> <b>Lisa Butler Beatty</b> Partner, KPMG	<b>Topic: Regulatory perspective – APRA</b>  This session will be a fireside chat to get to know our newest APRA Member, to hear about her background, and to discuss her thoughts on APRA’s direction for 2022 as well as her insights and perspectives on various issues that the industry is currently facing.
2.35pm – 3.10pm	<b>Session 4B</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Jane Eccleston</b> Senior Executive Leader, Superannuation, Australian Securities & Investments Commission (ASIC)  <b>Chair</b> <b>Mark Cerche</b> Lawyer and Director, EquipSuper	<b>Topic: Regulatory perspective – ASIC</b>  In this session, ASIC will discuss: <ul style="list-style-type: none"><li>• its priorities for 2022</li><li>• regulatory interventions/actions taken</li><li>• enforcement of the DDO regime</li><li>• what part will it play, and its approach, in enforcing the FAR regime?</li><li>• general observations/concerns.</li></ul>
3.10pm – 3.40pm	<b>Afternoon Tea</b> Foyer Area, Conference Floor

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3.40pm – 4.40pm	<b>Session 5</b> National Ballroom 2, Conference Floor
<b>Speakers</b> <b>Sarah Forman</b> Group Executive Advice, Aware Super <b>Alison Wheatley</b> Head of Legal, Financial Advice, AMP  <b>Chair</b> <b>Michelle Levy</b> Partner, Allens	<b>Topic: Future of advice model in super</b>  In this session, we will discuss: <ul style="list-style-type: none"> <li>• Anti-Hawking and DDO</li> <li>• external vs. internal model</li> <li>• issues regarding advice fees</li> <li>• monitoring advisers</li> <li>• advice model and retirement</li> <li>• impact of the retirement income covenant.</li> </ul>
5.30pm – 7.30pm	<b>Networking Function</b> Ostani Bar at Hotel Realm Canberra

## DAY TWO – FRIDAY, 11 MARCH 2022

8.00am – 3.30pm	<b>Registration</b> Foyer Area, Conference Floor, Hotel Realm Canberra <i>18 National Circuit, Barton ACT 2600</i>
9.00am – 10.00am	<b>Session 6: David Maclean Plenary Session</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Dominique Hogan-Doran SC</b>  <b>Chair</b> <b>Maged Girgis</b> Partner, MinterEllison	<b>Topic: Trustee resilience – balancing liability and indemnification</b>  In this session, we will discuss: <ul style="list-style-type: none"> <li>• issues and limitations in ensuring trustee resilience</li> <li>• use of trust assets in defending regulatory and class action proceedings</li> <li>• use of the Courts to manage trustee liability risk.</li> </ul>
10.00am – 10.30am	<b>Morning Tea</b> Foyer Area, Conference Floor
10.30am – 11.30am	<b>Session 7</b> National Ballroom 2, Conference Floor
<b>Speaker</b> <b>Cameron Hanson</b> Partner, Herbert Smith Freehills  <b>Chair</b> <b>Luke Barrett</b> General Counsel, UniSuper	<b>Topic: Litigation</b>  In this session, we will discuss: <ul style="list-style-type: none"> <li>• the impact of the decisions in:               <ul style="list-style-type: none"> <li>○ <i>David Shimshon v MLC Nominees Pty Ltd and NULIS Nominee (Australia) Ltd (Victorian Court of Appeal)</i></li> <li>○ <i>Kayler-Thomson v Colonial First State Investments Limited (No 2) [2021] FCA 854</i></li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>○ <i>Thomas v Commonwealth Financial Planning Limited [2021] FCA 665</i></li> <li>● issues arising in the determination of penalties (including impact of s56 on the determination of penalties)</li> <li>● ASIC litigation and notices.</li> </ul>
<b>11.30am – 12.30pm</b>	<b>Session 8</b> National Ballroom 2, Conference Floor
<p><b>Speaker</b> <b>Malcolm Stephens</b> Partner, Allens</p> <p><b>Chair</b> <b>Joanne Dwyer</b> Of Counsel, Jones Day</p>	<p><b>Topic: “Houston, we may or may not have a problem”</b></p> <p>This session will do a deep dive into the new breach reporting requirements that commenced from October 2021, and the breach regime proposed under FAR.</p>
<b>12.30pm – 1.30pm</b>	<b>Lunch</b> National Ballroom 3, Conference Floor
<b>1.30pm – 2.30pm</b>	<b>Session 9</b> National Ballroom 2, Conference Floor
<p><b>Speaker</b> <b>Jonathan Steffanoni</b> Managing Partner, QMV Legal</p> <p><b>Chair</b> <b>Tony Nemec</b> Head, Mercer Legal Consulting</p>	<p><b>Topic: Annual case law update</b></p> <p>A judicial year in review looking at key cases, including decisions on superannuation guarantee, AFCA’s jurisdiction, regulatory breaches and the judicial advice applications by superannuation trustees.</p>
<b>2.30pm – 3.30pm</b>	<b>Session 10</b> National Ballroom 2, Conference Floor
<p><b>Speakers</b> <b>Andrew Bradley</b> Partner, MinterEllison</p> <p><b>Tim Jenkins</b> Partner, Mercer</p> <p><b>Chair</b> <b>Michael Mathieson</b> Senior Regulatory Counsel, Allens</p>	<p><b>Topic: Performance anxiety</b></p> <p>In this session, we will look at:</p> <ul style="list-style-type: none"> <li>● how does the performance test work!</li> <li>● reporting of data</li> <li>● communication to members</li> <li>● implications for fund strategy.</li> </ul>
<b>3.30pm</b>	<b>Conference Close</b> <b>Maged Girgis, Conference Chair</b> Partner, MinterEllison