



# UNRAVELLING CORPORATE FRAUD

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CONFERENCE  
22 FEBRUARY 2024  
HFW, PERTH & ONLINE

# UNRAVELLING CORPORATE FRAUD

We are pleased to welcome you to the 2024 Unravelling Corporate Fraud Conference, sponsored by HFW and the University of Western Australia Law School.

Unravelling Corporate Fraud presents and debates the research findings and recommendations of Professor Bant's Australian Research Council grant project into corporate responsibility. Five panel sessions involving eminent experts in the field will unpick the conditions and laws that have enabled corporations committing commercial fraud to evade effective regulation. These include uncertainty and apathy over the nature and reform of corporate culture, the practical failure of existing attribution models to adapt to the reality of modern corporate actors, and the role of legal counsel. The conference will enable participants to understand and assess Bant's novel model of corporate responsibility entitled 'Systems Intentionality', which aims to provide a principled and practical way forward for common law jurisdictions. The conference will also shed light on how this model can support the new darlings of corporate liability reform, the 'Failure to Prevent' offences. It offers a unique opportunity for all stakeholders, across the corporate and legal fields of practice, to understand the ethical, practical and legal implications of this dynamic research.

In person registrations will be strictly limited and will attract 5 CPD point for full day attendance. Remote participation is welcome, however only WA participants will attract CPD points. CPD points for other jurisdictions may be available depending on local requirements. A certificate of attendance can be issued on request. This conference is run on a not-for-profit basis, all unspent registration funds being donated for the research activities of the University of Western Australia Law School.



THE UNIVERSITY OF  
**WESTERN  
AUSTRALIA**



**Australian Government**  
**Australian Research Council**

**HFW**

## VENUE

Brookfield Place - Tower 2  
Conference Centre - Room 1 Auditorium  
123 St Georges Terrace, Perth

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## REMOTE ATTENDANCE

Prior to the event, a Teams link will be circulated for the day.  
Join at any time throughout the event using this link.

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## REGISTRATION

Follow this [link](#) or scan QR code for registration.

In person registration \$150

Online registration \$50

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## TIMEZONES

Events will take place in Australian Western Standard Time (UTC +8)

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## CONTACT

Ms Ana Philpott

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# ORDER OF EVENTS

9.30 AM	Registration and Morning Tea for In Person Participants
10.00 AM	<p><b>Conference opens</b> Professor Sharon Mascher, Dean of UWA Law School</p> <p><b>Welcome to Country</b> Jayden Boundary, Wadjak Ballardong Noongar and Badimaya Yamatji</p>
10.15 AM	<p><b>Introduction to Unravelling Corporate Fraud</b> Professor Elise Bant</p>
<p><b>SESSION 1</b> 10.30 AM</p>	<p><b>Challenges in Australian Corporate Culture</b> Chair: Justice Katrina Banks-Smith The Hon Neville Owen, The Hon Ray Finkelstein KC, Professor Jeannie Marie Paterson</p> <p><b>1 CPD point: Practice Management</b></p>
11.35 - 11.50 AM	Break
<p><b>SESSION 2</b> 11.50 AM</p>	<p><b>Challenges in Corporate Fraud Litigation</b> Chair: Justice Jenni Hill Justice Sarah Derrington AM, Mr Joseph Longo, Mr Kanaga Dharmananda SC</p> <p><b>1 CPD point: Professional Skills/ Barristers' Skills</b></p>
12.55 - 2.00 PM	Lunch
<p><b>SESSION 3</b> 2.00 PM</p>	<p><b>Challenges for Lawyers in Promoting Responsible Corporations</b> Chair: The Hon Neville Owen The Hon Andrew Beech SC, Professor Liz Campbell, Mr Paul D Evans</p> <p><b>1 CPD point: Ethics and Professional Responsibility</b></p>
3.05 - 3.20 PM	Break
<p><b>SESSION 4</b> 3.20 PM</p>	<p><b>Systems Intentionality</b> Professor Elise Bant Justice Darren Jackson</p> <p><b>1 CPD point: Substantive Law</b></p>
4.25 - 4.35 PM	Break
<p><b>SESSION 5</b> 4.35 PM</p>	<p><b>Failure to Prevent Offences</b> Chair: Justice Gail Archer Professor Jonathan Clough, Ms Rebecca Faugno, Mr Kevin Warburton</p> <p><b>1 CPD point: Substantive Law</b></p>
5.45 PM	<p>Conference Concludes HFW networking event 5.45pm - 7pm (RSVP to <a href="mailto:natalie.warrick@hfw.com">natalie.warrick@hfw.com</a>)</p>

## INTRODUCTORY SESSION

# UNRAVELLING CORPORATE FRAUD

This session will introduce participants to the research project and key findings of Professor Bant's Australian Research Council grant project into corporate responsibility for serious civil and criminal misconduct. A particular focus of this research is the conundrum that many forms of corporate fraud arising at common law, in equity and under statute contain 'state of mind' elements, reflecting their historical roots in individual wrongdoing. To date, the law has struggled to develop principled and practical attribution rules for establishing equivalent culpability on the part of artificial, corporate actors. Professor Bant's model of 'Systems Intentionality' is offered as a means to meet these challenges, fit for purpose in the modern age of complex and devolved corporate structures, and in the face of increasing automation of core corporate activities. This session will enable participants to engage fully with all scheduled sessions, by providing the critical context for understanding the challenges of, and potential solutions for, the existing laws of corporate responsibility.

**Professor Elise Bant**, Professor of Private Law and Commercial Regulation at the University of Western Australia

## SESSION 1

# CHALLENGES IN AUSTRALIAN CORPORATE CULTURE

Corporate culture is widely recognised as key to developing responsible organisations. Yet, time and again, supposedly expert and ethical corporations have been found to have cultures that tolerate or actively promote misconduct, generally in the name of increased profit. Beyond 'board and management renewal', what can and should be done? A panel of experts will examine leading case studies in misconduct with a view to identifying common 'red flags', as well as barriers to and strategies for the effective reform of corporate culture.

**Chair: Justice Katrina Banks-Smith**, Federal Court of Australia

**The Hon Neville Owen**, 2003 Royal Commission into the collapse of the HIH Insurance group & 2021 Perth Casino Royal Commission

**The Hon Ray Finkelstein AO KC**, 2021 Royal Commission into the Casino Operator and Licence

**Professor Jeannie Marie Paterson**, Professor of Law and the Co-Director of the Centre for Artificial Intelligence and Digital Ethics (CAIDE) at the University of Melbourne.

## SESSION 2

# CHALLENGES IN CORPORATE FRAUD LITIGATION

It is one thing to identify poor corporate culture and the harms that result: it is quite another to hold corporate wrongdoers to account for serious and complex misconduct. Join our panel of experts who will identify some of the key challenges, with a particular focus on regulator enforcement actions and the role of specialist prosecuting authorities and defending counsel.

**Chair: Justice Jenni Hill**, Supreme Court of Western Australia

**Justice Sarah Derrington AM**, Federal Court of Australia

**Mr Joseph Longo**, Chair of Australian Securities and Investments Commission

**Mr Kanaga Dharmananda SC**, Quayside Chambers

## SESSION 3

# CHALLENGES FOR LAWYERS IN PROMOTING RESPONSIBLE CORPORATIONS

Lawyers play a pivotal role in promoting responsible corporations. However, both in-house and external counsel frequently face a myriad of contractual, equitable, statutory and ethical obligations, not always clearly pointing in the same direction.

Essential to navigating these challenges is a clear understanding of lawyers' hierarchy of responsibilities, their substantive content and practical application. This session explores these issues using topical examples, including the perils of discovery and claims of legal professional privilege, and the liability implications of adopting practices that privilege client aims over loyalty to the law.

**Chair: The Hon Neville Owen**

**The Hon Andrew Beech SC**, UWA Law School Judge-in-Residence

**Professor Liz Campbell**, Francine V McNiff Chair in Criminal Jurisprudence at Monash Law

**Mr Paul D Evans**, Partner, HFW

## SESSION 4

# SYSTEMS INTENTIONALITY

'Systems Intentionality' posits that corporations manifest their states of mind through their de facto systems of conduct, policies and practices. Although simple and intuitive, the model has profound implications for both corporate governance and corporate regulation, including through court proceedings. This session explores and critically interrogates the model, with a particular emphasis on its practical utility in a range of different scenarios.

**Professor Elise Bant**, Professor of Private Law and Commercial Regulation at the University of Western Australia

**Justice Darren Jackson**, Federal Court of Australia

## SESSION 5

# FAILURE TO PREVENT OFFENCES

'Failure to Prevent' Offences have rightly been identified as offering new and workable models of corporate responsibility, fit for purpose in the modern corporate age. These combine a strict liability limb, which is engaged on commission of a primary offence (such as bribery) by an 'associate' of the corporate defendant, with a second limb offering 'reasonable precaution'-style defences. This bifurcated approach seems to avoid the pitfalls of corporate attribution while addressing real-world examples of corporate blameworthiness. Is this the way forward for corporate liability reform? Can the models be even further improved? And what do their increasing adoption mean for corporations and corporate practitioners alike? Join the expert panel as they discuss the models' contributions towards Unravelling Corporate Fraud.

**Chair: Justice Gail Archer**, Supreme Court of Western Australia

**Professor Jonathan Clough**, Professor in the Faculty of Law, Monash University

**Ms Rebecca Faugno**, Lecturer in Corporations Law and Professional Practice at the University of Western Australia

**Mr Kevin Warburton**, Partner, HFW

# SPEAKERS



**Professor Sharon Mascher** is joining UWA in February 2024 as Dean and Head of Law School. Sharon has held academic positions in the Faculties of Law at University of Calgary, Thompson Rivers University, Victoria University of Wellington, University of Saskatchewan and Centre for Mining, Energy and Resources Law at UWA Law School. Sharon's research focuses on legal issues relating to climate change law, environmental law, property law and laws affecting Indigenous peoples. She was co-editor of the *Journal of Environmental Law and Practice* from 2012-2020. She is currently a review editor for *Frontiers in Climate, Climate Law and Policy* and a Climate Governance Experts with the Canadian Climate Law Initiative. While in Australia, Sharon was a member of the Management Committee of the Environmental Defender's Office (WA) and principal policy officer for the Greenhouse Unit in WA Department of Environment and Conservation, a legal consultant to the WA Department of Water and a member of the WA Water and Rivers Commission Legislative Compliance Advisory Group.



Artwork: Noongar Seasons by Dr Richard Barry Walley OAM.

Welcome to Country performed by **Jayden Boundary**, Wadjak, Ballardong Noongar and Badimaya Yamatji man with strong ties throughout the Southwest of WA.



**Professor Elise Bant FAAL** is Professor of Private Law and Commercial Regulation at The University of Western Australia, a Professorial Fellow at the University of Melbourne and a Fellow of the Australian Academy of Law. Her main areas of teaching and research interests lie in the fields of unjust enrichment and restitution law, contract, commercial and consumer law, civil remedies, property, equity and trusts. She is a general editor of the *Journal of Equity*. Prof Bant was appointed an Australian Research Council Future Fellow to examine corporate liability for serious civil misconduct, including fraud and predatory trading practices. Professor Bant's research is developed in close collaboration with the profession, including in her role as consultant to HFW Perth.



**Justice Katrina Banks-Smith** was appointed to the Federal Court of Australia on 12 February 2018. Prior to her appointment, she had been a justice of the Supreme Court of Western Australia since 2016. Her Honour grew up in Tasmania and graduated from the University of Tasmania with a Bachelor of Laws with First Class Honours in 1988. In 1993 she obtained a Master of Laws degree with First Class Honours from the University of Cambridge. Justice Banks-Smith was a partner of the firm now known as Herbert Smith Freehills in Perth before joining the Independent Bar in 2009. She was appointed Senior Counsel for Western Australia in 2013 and practised in commercial litigation, particularly in the areas of contract, banking, insolvency and mining law, as well as undertaking regulatory work. Her Honour is the Chair of the Law School Advisory Board at Fremantle's Notre Dame University.





**The Hon Neville Owen** has a long and distinguished 40-year career as a judge, barrister, solicitor, advocate and reformer. He has worked closely with many charities and educational bodies advising on governance and reform initiatives. From 1991 to 2010 he was a judge of the Supreme Court of Western Australia and from 2005 an inaugural member of the Court of Appeal following its establishment as a separate division of the Supreme Court. In April 2003 he completed the two-year Royal Commission into the collapse of the HIH Insurance group. In July of the same year he started the three-year hearing into Alan Bond's Bell group of companies. It was one of the nation's longest running and most expensive civil actions. Neville has a long held and deep interest in the education system. He is an Adjunct Professor of Law and visiting lecturer in law at both University of Western Australia and the University of Notre Dame Australia (UNDA).



**The Hon Ray Finkelstein AO KC** graduated in law in 1970 and was admitted to practice in 1971. He was called to the Bar in 1975, specialising in equity, commercial and corporate law. He was appointed King's Counsel in 1986. Thereafter he concentrated on appellate work often acting for State and Federal Governments and their instrumentalities. He was acting Solicitor General for the State of Victoria during 1992. He was appointed a judge of the Federal Court in 1997 and held additional appointments as Deputy President of the Australian Competition Tribunal and the Copyright Tribunal of Australia. In December 2008 he was appointed President of the Australian Competition Tribunal. He retired as a judge of the Federal Court and President of the Competition Tribunal on 30 June 2011 and has returned to private practice at the Victorian Bar. In 2011 he was appointed Adjunct Professor in the Law Faculty at Monash University. During 2011/2012 at the appointment of the Commonwealth Government he was Chair of the Independent Inquiry into Aspects of the Media.



**Professor Jeannie Marie Paterson FAAL** is a Professor of Law and Director of the Centre for AI and Digital Ethics in the Faculty of Engineering and Information Technology at the University of Melbourne. Jeannie is a graduate of ANU and Monash University. She teaches and researches in the fields of consumer protection, product liability and data protection law, with a particular interest in the regulation of AI, automated decision-making and social robots. Jeannie holds a current practising certificate and regularly consults to government and not for profits.



**Justice Jenni Hill** was appointed as a judge of the Supreme Court of Western Australia on 4 June 2019. She graduated with a Bachelor of Science and Bachelor of Laws (Honours) from the Australian National University in 1992, and was admitted to practice in Western Australia in 1994. She joined Bennett and Co as an articled clerk in 1994 and was promoted to partner in 2001. She joined Deacons (now Norton Rose Fulbright) as a partner in litigation and dispute resolution in 2005, remaining with the firm until 2015. Before her appointment to the Court, her Honour was a partner in litigation and dispute resolution at Clifford Chance acting on disputes primarily in the energy and resources sectors. Justice Hill is the judge in charge of the Corporations List at the Supreme Court.



**Justice Sarah Derrington AM** was appointed to the Federal Court of Australia in 2018. In 1990, she was admitted to the Bar in Queensland and as a Barrister & Solicitor of the Supreme Court of the ACT. Justice Sarah Derrington pursued dual careers at the Bar and in the Academy and was appointed Professor of Admiralty Law in 2008. Immediately prior to her appointment to the Court, she was the Dean of Law at the University of Queensland. Justice Sarah Derrington is Past President of the Maritime Law Association of Australian and New Zealand (MLAANZ) and, from 2012-2017 served on the Board of the Australian Maritime Safety Authority (AMSA). She has been a member of the Admiralty Rules Committee since 2006, and was a member of the Council of the Australian Maritime College (AMC) from 2012 -2023. She continues to serve on the Council of the Australian National Maritime Museum (ANMM). From 2018 to 2023, she was the President of the Australian Law Reform Commission.



**Mr Joseph Longo** is Chair of Australian Securities and Investments Commission. He has more than 38 years' experience in corporate law, financial services, governance and regulation in Australia and overseas. Most recently, he was a senior adviser at Herbert Smith Freehills, specialising in regulatory matters, enforcement, commercial law and internal legal matters. Joseph was the general counsel for Deutsche Bank in London and Hong Kong for 17 years, advising on a range of regulatory issues, governance, infrastructure and non-financial risk. He has experience navigating multi-jurisdictional investigations and enforcement activity across financial services. He holds a Bachelor of Jurisprudence (Hons) and a Bachelor of Laws (Hons) from the University of Western Australia and a Master of Laws from Yale Law School.



**Mr Kanaga Dharmananda SC** has a broad commercial litigation and arbitration practice, with a focus on corporate resources, projects, and insolvency matters. He has acted as counsel in a range of high profile and high value commercial disputes in Court, on appeal, and in arbitrations in Australia and abroad. His practice as Senior Counsel spans the mining, energy, and commodities industries. He appears in matters concerning regulated industries and in Royal Commissions or other inquiries. He has acted in white collar crime matters, defending breach of duty and failure to disclose claims.



**The Hon Andrew Beech SC** was a judge of the Supreme Court of Western Australia from 2007 to 2023, including as a Judge of Appeal from May 2017 to November 2023. He graduated with a Bachelor of Jurisprudence (Honours) in 1983 and a Bachelor of Laws (Honours) in 1984 from the University of Western Australia. He also graduated with a Bachelor of Civil Law (BCL) in 1988 from Oxford University, England. After some years working in the amalgam, he joined the Independent Bar in 1994 and was appointed Senior Counsel in 2004. Andrew was Editor of the Western Australian Reports from 1997 - 2002 and Consultant Editor from 2002 - 2007. Andrew has been appointed to the position of UWA Law School Judge-in-Residence, commencing January 2024.



**Professor Liz Campbell** is the inaugural Francine V McNiff Chair in Criminal Jurisprudence at Monash Law, and is adjunct professor at her alma mater University College Cork, Ireland. Liz's research centres around two themes: corporate crime, and biometrics in the criminal process. Her research is socio-legal in considering the law in context and often involves a comparative dimension. She is a member of the Law Council of Australia's Foreign Corrupt Practices Working Party and was an appointed member of the Australian Law Reform Commission's Advisory Committee for its Review into Australia's Corporate Criminal Responsibility Regime. She also sat on the UK Home Office Biometrics and Forensics Ethics Group (2017-23).



**Mr Paul D Evans** has more than 35 years' experience handling complex commercial litigation, with a focus on disputes relating to corporate governance, transactions and takeovers, and competition and economic law. He also advises clients on disputes in the energy & resources sector, including large oil and gas construction litigation, and pricing arbitrations. Prior to joining HFW, Paul founded the Perth office of Quinn Emanuel Urquhart & Sullivan after serving as the State Solicitor for Western Australia for more than 5 years. As the State Solicitor for Western Australia, Paul led a team of more than 200 and was responsible for some of the State's most significant civil and regulatory matters, including key aspects of the Bell Litigation – one of Australia's most complex and longest-running commercial disputes. He is an Adjunct Professor with Murdoch School of Law, and has held board positions on several listed companies.



**Justice Darren Jackson** was appointed to the Federal Court of Australia on 20 March 2019. His Honour graduated from the University of Western Australia with a B Juris and LLB (Hons) and was admitted to practice in 1992. He worked as a commercial litigation solicitor for many years, and also took a few years away from legal practice. In 2010 his Honour went to the Western Australian Bar. There he appeared as counsel in commercial cases including in the areas of corporations, insolvency, competition and consumer law and arbitrations. Justice Jackson was appointed Senior Counsel for Western Australia in 2016. He also held positions on the Education Committee of the Law Society of Western Australia and the Competition and Consumer Committee of the of the Business Law Section of the Law Council of Australia, and served as a director and Chair of Francis Burt Chambers.



**Justice Gail Archer** was appointed to the Supreme Court of Western Australia on 29 May 2017. Justice Archer is a former state prosecutor, Principal Counsel of Legal Aid WA and Acting Commissioner of the Western Australian Corruption and Crime Commission. Her Honour joined the Bar in 2004 and was appointed as Senior Counsel in 2007. That same year, Justice Archer was chosen to conduct a statutory review of the Corruption and Crime Commission Act 2003 (WA). Justice Archer has a keen interest in forensic advocacy. Prior to her appointment to the Court, she was a regular coach in the Australian Bar Association's advanced advocacy residential course. She also coached in an advocacy course in Singapore and in England.



**Professor Jonathan Clough** is a Professor in the Faculty of Law, Monash University, Australia. He teaches and researches in the fields of criminal law and evidence, with a particular focus on corporate criminal liability, judicial communication with jurors, and cybercrime. Professor Clough teaches 'Corporate and White-Collar Crime' in the LLM program at Monash and is co-author of *The Prosecution of Corporations* (Oxford University Press, 2002) as well as numerous articles on corporate crime in national and international journals. His particular focus is on models of corporate criminal liability, and corporate criminal liability for human rights abuses. He has contributed expert advice to law reform inquiries and to the United Nations Office on Drugs and Crime in relation to the criminal liability of legal persons.



**Ms Rebecca Faugno** is a Lecturer in the UWA Law School who teaches Corporations Law and Professional & Ethical Practice. She is currently Director of the Juris Doctor degree. Rebecca's research interests lie in the fields of corporate fraud, corporate governance and corporate responsibility. She is currently working on doctoral research into corporate culture. Prior to joining the University of Western Australia Rebecca worked in commercial practice and has advised on general corporate matters (including directors' duties), corporate restructures, mergers and acquisitions and large-scale commercial litigation.



**Mr Kevin Warburton** is experienced in advising clients in Hong Kong and overseas, including private and listed companies, financial institutions, high net worth individuals, entrepreneurs and multinational organisations. His commercial disputes practice includes advising clients on high-value and complex cross-border disputes, whether arbitration or litigation. Kevin also advises on both internal investigations as well as investigations and inquiries by regulators in Hong Kong (e.g. SFC, ICAC, Communications Authority, Competition Commission) and overseas (e.g. UK SFO and FCA as well as various US agencies including the DOJ, OFAC and others). Kevin also provides clients with strategic advice on data breaches and cybersecurity issues, including representing them in any subsequent enforcement action.