

## PRESENTERS

### ***Bruce Patterson, Duncan Cotterill, Auckland***

Bruce Patterson LLB is a partner in the Auckland Office of Duncan Cotterill. Bruce established the Auckland office of Duncan Cotterill in 1987 and is a past chairman of Duncan Cotterill. He has acted for New Zealand and Australian clients doing business in both jurisdictions and has a good understanding of the peculiar issues arising. He is a strong advocate of exploiting closer economic relations with Australia and believes that the profession must be in a position to give relevant advice regarding this market.

Bruce has a background in general commercial law with specialities in information technology, taxation and commercial property (including trans-Tasman property and investment issues). He is a past presenter of NZLS and ADLS seminars in business, property and company law and was the co-author of the ADLS form of company constitution.

### ***Mark Smith, Duncan Cotterill, Sydney***

Mark Smith LLB MBA (Hons) is Managing Partner of the Sydney Office of Duncan Cotterill. Mark has considerable experience in the corporate and commercial area, both in New Zealand and in Australia.

Mark's specialist areas of legal practice are in information technology and intellectual property, acquisitions and mergers, competition law, tax, corporate recovery and insolvency, superannuation and management. He also has longstanding experience in banking law, franchising and in national and international trading arrangements.

Mark is a member of the Executive Committee of the Australia New Zealand Business Council and is a director of a number of trans-Tasman companies.

## **Acknowledgment**

The presenters wish to acknowledge the following, whose material assisted with the preparation of this paper:

CCH Australia  
CCH New Zealand  
Lexis Nexis Butterworths  
Thomson Brookers  
Australian Government publications  
New Zealand Government publications

*The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>1 INTRODUCTION .....</b>	<b>1</b>
REFERENCES AND ACRONYMS .....	1
NZ IN PERSPECTIVE .....	2
THE RELATIONSHIP .....	3
WHAT’S DIFFERENT ABOUT AUSTRALIA.....	6
THE AUSTRALIAN POLITICAL SYSTEM .....	8
THE AUSTRALIAN COURT SYSTEM .....	16
<b>2 ESTABLISHING A BUSINESS IN AUSTRALIA .....</b>	<b>23</b>
STRUCTURES – A BRIEF OVERVIEW .....	23
BUSINESS NAMES.....	29
ABNs, ACNs AND ALL THAT.....	31
RETAIL LEASING.....	33
LABOUR LAWS .....	33
FOREIGN INVESTMENT REVIEW BOARD.....	35
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION .....	36
<b>3 SELLING GOODS AND SERVICES IN AUSTRALIA .....</b>	<b>39</b>
METHODS OF SELLING GOODS AND SERVICES.....	39
IMPORTING GOODS, DUTIES AND TARIFFS.....	40
RULES OF ORIGIN .....	43
INDUSTRY LICENSING.....	44
TRADE PRACTICES (PART IV - COMPETITION REGULATION) .....	45
TRADE PRACTICES (PART V - CONSUMER PROTECTION).....	47
<b>4 CORPORATIONS .....</b>	<b>61</b>
RELEVANT LAW .....	61
ASIC ADMINISTERS THE ACT.....	62
COMPANY NAMES.....	64
REGISTERING A COMPANY .....	65
CONSTITUTIONS .....	66
TYPES OF COMPANY .....	67
PROPRIETARY VS PUBLIC COMPANIES .....	67
REGISTERED OFFICE .....	68
SHARE CAPITAL .....	69
REGISTRATION IN A STATE OR TERRITORY.....	69
COMMON SEAL .....	69
CONTRACTS AND AGENTS .....	69
COMPANY OFFICERS .....	70
FINANCIAL REPORTING.....	72
<b>5 THE AUSTRALIAN TAX SYSTEM.....</b>	<b>75</b>
A BRIEF HISTORY .....	75
INCOME TAX .....	76
GOODS & SERVICES TAX.....	80
CAPITAL GAINS TAX.....	91
THE SUPERANNUATION GUARANTEE SCHEME.....	93
FRINGE BENEFITS TAX.....	94
TAXES APPLICABLE ON WINDING UP.....	97
DUTIES .....	98
PAYROLL TAX .....	102
LAND TAX.....	103
VARIOUS OTHER TAXES .....	104
PUBLIC OFFICER.....	105
PAYG WITHHOLDING .....	105
POOLED DEVELOPMENT FUNDS AND SMES.....	108
<b>6 TAXATION OF TRUSTS.....</b>	<b>111</b>
THE CONCEPT OF “PRESENTLY ENTITLED” .....	111

LIABILITY OF TRUSTEES .....	111
LIABILITY OF BENEFICIARIES .....	111
MINOR BENEFICIARIES .....	112
TAXATION OF FOREIGN TRUST INCOME .....	112
REVOCABLE TRUSTS .....	112
UNIT TRUSTS.....	113
TRANSFEROR TRUST RULES .....	113
CARRY FORWARD OF LOSSES .....	114
<b>7 TAXATION OF COMPANIES.....</b>	<b>117</b>
THE IMPUTATION SYSTEM.....	117
TRANS-TASMAN TRIANGULATION IMPUTATION RULES .....	120
CARRY FORWARD OF LOSSES .....	122
<b>8 TAXATION OF NON-RESIDENTS .....</b>	<b>123</b>
RESIDENCY .....	123
SOURCE INCOME – EG RENTALS .....	126
DIVIDENDS, INTEREST AND ROYALTIES .....	126
TRANSFER PRICING .....	129
THIN CAPITALISATION REGIME .....	131
<b>9 DEBT AND EQUITY FUNDING .....</b>	<b>135</b>
SOURCES OF FUNDS .....	135
MANAGED INVESTMENT SCHEMES .....	137
MUTUAL RECOGNITION OF SECURITIES OFFERS .....	138
<b>10 INSOLVENCY .....</b>	<b>139</b>
MEANING OF “INSOLVENT” .....	139
ARRANGEMENTS AND RECONSTRUCTIONS .....	139
RECEIVERSHIP .....	140
ADMINISTRATION.....	141
WINDING UP (COURT).....	143
WINDING UP (VOLUNTARY).....	146
LIABILITY OF DIRECTORS FOR BREACH OF DUTIES .....	146
LIABILITY OF DIRECTORS FOR INSOLVENT TRADING .....	147
<b>11 BUYING AND SELLING PROPERTY IN AUSTRALIA .....</b>	<b>149</b>
CONVEYANCING PRACTICE .....	149
<b>12 MOVING TO AUSTRALIA TO LIVE .....</b>	<b>155</b>
CLOSURE / OPENING – PRACTICAL ISSUES .....	155
RESIDENCE AND CITIZENSHIP .....	155
TAX IMPLICATIONS .....	160
<b>13 MISCELLANEOUS.....</b>	<b>163</b>
TRANS-TASMAN MUTUAL RECOGNITION FACTORS.....	163
RESOURCES – WEBSITE ADDRESSES; SOURCES OF LAW .....	164
<b>APPENDIX 1 .....</b>	<b>165</b>
MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF AUSTRALIA ON COORDINATION OF BUSINESS LAW (AUGUST 2000) .....	165
<b>APPENDIX 2 .....</b>	<b>169</b>
BILATERAL COMPARISON OF AUSTRALIA’S AND NEW ZEALAND’S ECONOMIC INDICATORS .....	169
<b>APPENDIX 3 .....</b>	<b>171</b>
DOUBLE TAXATION RELIEF (AUSTRALIA) ORDER 1995.....	171