



# Simon Cathro

Managing Principal and Founder

## CONTACT

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## Overview

Simon has been the Managing Principal of Cathro & Partners since August 2021. Prior to Cathro & Partners, Simon was a Partner with Worrells Forensic and Solvency Accountants in Sydney. Simon has over 29 years of experience in the field of insolvency, safe harbour advice, corporate restructuring services and legal entity rationalisation. He also has extensive experience in property receivership, financial services and hotel accommodation.

Previously, Simon worked at EY as a partner between August 2011 and November 2015, at Deloitte as a partner between November 2006 to August 2011 and prior to that worked as a director at PricewaterhouseCoopers for 5 years. Simon is highly experienced in dealing with distressed businesses, undertaking safe harbour and restructuring engagements acting as liquidator and preparing solvency reports.

## Key Industry Experience

- Retail
- Construction Services and Sub-Contractors
- Energy
- IT
- Manufacturing
- Transport
- Property
- Financial Services
- Quarry and Landfill Operations
- Hotel Accommodation and Function Centres
- Caravan Parks
- Government

## Qualifications, Professional Affiliations

- Registered Liquidator
- Fellow, Institute of Chartered Accountants in Australia
- Justice of Peace
- Bachelor of Business, University of Technology, Sydney
- Master of Law and Legal Practice, University of Technology, Sydney
- Member of Australian Restructuring Insolvency & Turnaround Association
- Graduate of Australian Institute of Company Directors
- Associate Member of The Law Society of NSW

## Areas of Specialisation & Expertise

- Receiver, liquidator and administrator of failed companies or groups of companies.
- Safe Harbour adviser.
- Realisation of real property on behalf of financiers, statutory authorities.
- Assessment of financial viability of businesses Including analysis of profitability, business liquidity and strength of forecasting.
- Capacity to successfully negotiate superior outcomes with stakeholders.
- Successful management of larger corporate administrations.
- Managing businesses in closure management.
- Insolvent trading and preference payments recoveries.
- Expert witness reports which include solvency reports.

## Key Project Highlights

### Enova Energy (Enova)

Enova was a green electricity retailer which was severely affected by the unexpected and substantial increase in pricing to wholesale energy, the suspension of the National Energy Market by the energy regulator in June 2022, and coal and gas supply issues pertaining to the United Nations' imposed sanctions on Russia.

The Board sought advice prior to and leading up to the appointment of Administrators which occurred in mid-2022. The company had traded profitably up until the appointment but with the impending increases to the Load Following Hedge set to commence in FY22, the business was forecasting significant losses during FY23 and a cash flow crunch that would have caused the insolvency of the business.

Upon the appointment of Administrator, the Retailer of Last Resort (ROLR) event was triggered, and the regulator took steps to remove the customer base from Enova, transferring them to one of the large operators that had been classified as a ROLR operator.

As Administrators, the following was undertaken:

- Advertised the business for sale and negotiated a Deed of Company Arrangement with the eventual purchaser which enabled additional funds to be provided through a DOCA.
- The purchaser made an offer to purchase the customer data from the company. The company assisted the buyer with reaching out to previous customers of Enova to move their electricity contracts away from the ROLR provider to the purchaser.

The company avoided liquidation and the business assets and entities were sold through the DOCA to the new buyer.

### Metigy Group of Entities (Metigy)

Metigy was established to harness advances in artificial technology into a tool that allowed small to medium enterprises to effectively develop and deploy a successful digital marketing strategy at an affordable price point. The company never reached a cashflow positive position despite having raised circa \$20m in capital from various investors which was used to cover operating and other expenses, and also misapplied by the director to spend on personal properties purchased using these proceeds.

Once appointed as Administrators, the following was undertaken:

- Immediate shut down of operations and commenced an investigation into the affairs of the company.
- Identified certain unreasonable director related transactions that occurred in the company prior to administration appointment.
- Investigations are underway with the regulator, ASIC and other departments.
- A settlement of surplus proceeds from funds illegally taken from the business between the director's trustee in bankruptcy, investors and ourselves resulting in a return to priority creditors. This process was supported by funding provided by the Department of Attorney General.
- Investigations continue into the affairs of the company with potential causes of action against advisers and other parties being pursued.

### Custom Bus Australia Pty Ltd – Manufacturing

Simon was appointed joint Voluntary Administrator of Custom Bus Australia, a manufacturer focused on building high quality bus bodies for the Australian transport industry with a turnover of circa \$50 million.

The business was traded on in a limited capacity for eight weeks before a sale of the business was achieved.

A significant variety of creditors totaling \$13.8 million had to be managed. These included:

- Employees and unions
- Suppliers with security over stock
- Debt factoring creditors
- Secured creditors
- Unsecured creditors

The business was sold as an asset sale and continues to trade.

As Liquidator, Simon was involved in voidable transaction recoveries and insolvent trading proceedings, and the matter continues.



## Cubic Interiors Group (Cubic)

Cubic was a large interior design sub-contractor that fell into liquidation as a result of COVID, surging costs and unprofitable contracts in late 2021. The Group specialised in large office fit-outs for commercial high rise buildings. They had contracts on the Ribbon Hotel, QQT, Circular Quay Tower and Campbelltown Hospital. The business was severely impacted by COVID and the related issues stemming from the lockdowns.

Once appointed as Liquidator, the following steps were undertaken:

- Immediate shut down of the sites
- Negotiated a pay-out of entitlements with the unions to ensure employees were paid promptly
- Worked with FEG to deal with the remaining employees and sold assets to maximise return to creditors.
- Sale of remaining assets including stock
- Collection of debtors and retentions

As liquidator, Simon pursued the director for insolvent trading and sought funding from the Department of Attorney General to assist in those investigations. This resulted in a substantial and quick settlement resulting in a distribution to priority creditors. Continued proceedings with regards to preference payments continue with the assistance of a private funder.

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## Signpedia Pty Limited (Signpedia)

Signpedia operated deaf services to the community around Australia and its revenue primarily relied on funding through the National Disability Insurance Scheme. Signpedia had circa 140 employees and over 400 patients in care.

Leading up to our appointment as Administrators, Signpedia had been provided negligent accounting advice with respect to state payroll taxes and as a result of an audit undertaken was issued a revised amount to amount well in excess of \$1m. This caused an immediate cash flow issue and the company appointed Simon and his partner as administrators.

A restructure was undertaken during the administration period, which included the termination of the accountant and bookkeeper, shutdown of unneeded premises, small staff changes and a reconstruction of the financial accounts. Signpedia also lacked any strong financial skills and governance oversight within the business and did not have a business manager overseeing those operations. These were rectified to set the business up for success.

A Deed of Company Arrangement was put to creditors and the creditors overwhelmingly supported the proposal. Signpedia continues to trade under DOCA.

## Foodora Australia Pty Ltd – Transport and Logistics

Simon was appointed joint voluntary administrator of Foodora. The company was a food delivery service for restaurants operating in Sydney, Brisbane and Melbourne, the company announced its intention to cease operations due to a global restructure of the Delivery Hero business.

However due to the company facing two sets of proceedings the directors could not confirm the solvency of the company. As such, they appointed Simon as Administrator.

The two sets of proceedings involved the Fair Work Ombudsman in relation to work and employment practices and the second case involved the Transport Workers Union regarding an unfair dismissal claim.

The entity was facing issues from various government departments such as the ATO and Revenue NSW which alleged that the riders were classified as employees rather than subcontractors thereby creating a significant unpaid liability with regard to PAYG, payroll tax and potentially outstanding employee entitlements.

The parent company had also issued a letter of comfort just prior to the announcement that it was exiting the Australian market and as Administrators, we have been investigating our rights with regard to calling on this letter of comfort for the purposes of these potential contingent liabilities.

A Deed of Company Arrangement was put forward to creditors which was supported by creditors. A distribution to employees was made and the business ceased to trade.

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## Bubs Group of Companies – Retail

Simon was appointed joint voluntary administrator of the group of baby products retail stores. The company operated eight stores in NSW and QLD and had fallen into financial difficulty due to increasing competition and shrinking margins. The business had been operating for 17 years. Simon and his team conducted an orderly winding down program though out the administration period generating sales of at least three times the normal turnover. The company was placed into liquidation shortly thereafter.

## Napoleon Perdis Cosmetics Pty Ltd – Retail

Napoleon Perdis is a large, iconic Australian cosmetics company. When the company was placed into Voluntary Administration, it was trading 55 stores, as well as an online store and in excess of 500 resellers. The company had been operating in excess of 25 years.

During the Voluntary Administration process, the following was undertaken:

- Assessment of viability of ongoing trading of 55 stores with 28 stores being closed. The balance of the 27 stores continued to trade during the Voluntary Administration process.
- Very extensive investigations were carried out in relation to potential voidable transactions, loan accounts with related and international parties and investigations into secured creditor claims.
- A detailed review of the company's financial position culminating in a sale of business campaign that involved marketing and negotiations, with 41 interested parties in the purchase of the business. A number of these parties were international.
- The preparation, review and investigation of a very complex DOCA proposal including the analysis of the return under the DOCA vs liquidation.
- Deed of Company Arrangement was put forward and supported by creditors.

The business continues to trade.

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# Safe Harbour Projects - Key Engagements

## Engagement - Pharma Business

The business operated in the pharmaceutical industry. The business had experienced significant losses in part of the business and the business had recently been hit by the impact of Covid. Simon acted as safe harbour adviser during the restructure. Management identified one part of the business that could take advantage of the Covid impact by selling in stock and in demand Covid products by substantially increasing its production. It ultimately improved and stabilised the business and enabled the business to have enough runway funding to carry out its restructure plan. The business ultimately exited safe harbour 18 months later and was sold for a significantly improved EBITDA multiple than when it first entered into safe harbour when its business may have only achieved asset liquidation value.

## Engagement - Online alcohol platform

The business operated an alcoholic technology platform that supplied alcoholic beverages to pubs, restaurants and other alcohol sellers. The business had invested very heavily in the platform and had raised significant capital to build size and customer base. Funding had slowed significantly due to economic conditions and concern around ongoing solvency causing the business to enter into safe harbour and appoint Simon as the safe harbour adviser. During the process significant management changes, cost reduction programs and seeking additional funding was explored and undertaken. The business was able to produce sufficient funding to undertake the restructure. Ultimately, the decision by management was to appoint an administrator and complete the restructure via a Deed of Company Arrangement.

## Engagement - IT Consulting Business

The business operated a government IT consulting business. It had suffered cashflow issues because of reduced contract work coming from Government post Covid. They had a large tax debt and undertook significant restructuring during the safe harbour process which included head count reduction and identifying potentially interested parties to purchase the business. The outcome resulted in the sale of the business. The company was placed into voluntary administration and the company entered in a Deed of Company Arrangement avoiding liquidation.

## Engagement - Architectural Firm

The business operated as a national architectural firm. The business had been experiencing large losses due to a significant slowdown in work caused by the slowdown and impact of a struggling construction industry. Simon was engaged as safe harbour adviser and continues to act in that role advising the board. Since his appointment the business has stopped the losses and continued to undertake restructure steps enabling the business to right size itself and achieve a return to paying shareholders in dividends.

Key restructure steps included reduction of headcount, including senior principals, improved accounting and focus on performance, greater and closer analysis of the pipeline of work and the hire of an operations person to assist in ensuring projects were profitable and performed as efficiently as possible.

## Engagement - NDIS Provider

The business operated a large disability business which relied heavily on its revenue through the NDIS scheme. The business had experienced a large loss, and it was on the recommendation of its auditor that the company sought the protection of safe harbour whilst they undertook restructuring steps. The senior management which included the CEO and CFO were replaced and a much more stringent forecasting and financial governance structure was implemented. A new CEO commenced and the losses were reduced enabling the business to step out of safe harbour.

Simon was engaged during that period as safe harbour adviser and assisted in ensuring the business continued to focus on revenue and cost initiatives.

PROJECT 1

PROJECT 2

PROJECT 3

PROJECT 4

PROJECT 5

## Other Industry Experience and Advisory Roles

### Financial Services – Babcock and Brown Limited

Simon was appointed joint administrator of the second largest investment bank in Australia in March 2009. This appointment was a result of the directors being unable to renegotiate \$600m of noteholder funds following the demise of its major investment activities in the subsidiary companies which led to billions of dollars being lost.

During the course of the Administration, significant investigations were undertaken with regard to voidable transactions, breach of director duties and illegal dividends. A funding proposal was tabled to creditors and following liquidation, individual funding from over 1000 note holders enabled a public examination of the directors and former auditor. This allowed a litigation funder to fund further actions relating to illegal dividends and fund an action in the USA for resolution of disputed trust monies. Ultimately, the note holders who funded the action received 10 times their investment.

### B and V Holdings Pty Ltd – Trucking Company

Simon was appointed joint administrator over the company following a protracted period of attempting to sell the business and deal with a winding up application issued against it by the Australian Taxation Office.

The business was sold prior to the appointment of administrators and as part of the sale, a portion of the proceeds were to be provided upon acceptance of a Deed of Company Arrangement.

Subsequent to our appointment, detailed investigations were conducted including a business valuation of the business sold, voidable transactions investigation, court appearance to deal with the adjourned winding up proceedings and report to creditors outlining our recommendation.

Creditors voted to place the company into liquidation we commenced action against the purchaser of the assets of the business and preference actions against the ATO and OSR.

### Financial Services – Gippsland Secured Investments

Simon was the second appointee over the assets of Gippsland Secured Investments. This receivership involved taking control of a large loan portfolio made up of primarily regional lending customers on high leverage to ratio funding agreements. The note holders were primarily local retired investees. During the course of the receivership, a loan portfolio was put up for sale and a return to note holders are expected to be at least 85c in a dollar. Simon was involved in the initial appointment, note holder meetings and assisting in the final stages of the sale of the loan portfolio.

### Supplier Review of Large Construction Business

Simon was engaged by a large, listed property company in 2022 to undertake a supplier review of a large global building and construction company. The client was ready to engage with the construction company to build a commercial high rise building in Melbourne.

Simon's role was to undertake an assessment of the financial position of the company and its sub-contractors to determine and highlight any key areas of concern that may exist within its business that may cause issues during the build. The construction market was experiencing significant cost pressure and a number of builders had collapsed in the months leading up to the completion of this review.

The engagement covered:

- Working capital review
- Sub-contractor risk issues
- Financial accounts review; and
- An outline of key areas to focus on during the course of the build.

The outcome was the client moved to sign the building contract with the construction company and construction commenced.

## Australian National Preventative Health Association

Simon was the engagement partner which led the closure cost estimate of a major agency within the Federal Government Health portfolio. As part of the review, it had to structure an estimate of costs and the necessary funds required to ensure a successful and smooth closure.

## Information Technology – Systems Advisers Group

Simon was appointed administrator of IT business which provided software solutions to large corporates. The business had incurred significant losses and under a pre-planned restructure, the business was right-sized and the parent company was able to provide funding to enable the survival of the business.

## Property – Goulburn St Property Receivership

Simon was appointed Receiver and Manager over two commercial properties in Sydney by a major bank following a customer's failure to meet their monthly repayments over a five-month period. The customer was a non-English speaking company director, and the bank constituted a major creditor. While the properties loan to value ratio (LVR) was around 50%, due to the cancellation of the insurance policies over the properties and a history of poor compliance with bank and tax office liabilities, the director struggled to obtain refinancing to discharge the bank's debt. It was looking like the director's properties would be sold to repay the bank's debt.

During the first round of communication with the director, he appeared to be argumentative and unwilling to comply with any requests. It was soon found to be because of the language barrier and a staff member fluent in Chinese was brought onto the matter to assist with communication.

Simon engaged the director with a solution which resulted in a positive outcome for all stakeholders by introducing him to one of the trusted private funders. Within the next two months, all compliance including insurance issues were resolved and final negotiations on the terms of settlement were close to an end. Settlement took place in week seven which resulted in the bank's debt being completely paid out, a competitive rate offered to the director from the private funder and being able to keep the properties to avoid an unfortunate sale.

## Construction – Dyldam Developments Pty Ltd (Dyldam)

Simon was appointed as joint voluntary administrator of Dyldam in January 2022.

Dyldam was a company established in 1987 and was known to engage in the building of apartments in Western Sydney. The company ceased to trade in September 2020 and was the key entity in a large group of entities that were part of the broader Dyldam Group. There was a shareholder dispute and numerous creditor claims and debtor disputes which existed in the business. There were also several winding up notices that were resolved during our appointment in early 2022. Significant investigations were undertaken to understand the complex and broader nature of the Dyldam Group and how this entity operated within the Group.

As joint voluntary administrator, Simon undertook:

- Investigations into the affairs of the company.
- Dealt with many creditors during the process.
- Received and assessed a Deed of Company Arrangement (DOCA) for the purposes of determining whether to recommend for the benefit of creditors.
- The creditors voted on the DOCA and approved the terms of the DOCA.

## Deceased Estate - Victoria

Simon was appointed statutory receiver by the Victorian Supreme Court over the estate of mother and father killed in an accident where the sons could not agree on dealing with the estate.

Numerous additional applications to the court were required to deal with the Asset realisations in excess of \$20 million were achieved and included the sales of real property, shares (listed and unlisted) and personal affects.

A distribution to the beneficiaries was completed in accordance with the court's directions.

## Real Group Hotel Accommodation

Simon has acted as administrator and then Liquidator of a Hotel accommodation Group. This followed the appointment of receivers and managers from the lending financier. The bank was paid in full following the sale of two hotel properties and the one remaining hotel based at Parramatta was traded whilst it was being marketed. The property was sold for twice the valuation and resulted in a huge capital gain and surplus funds for the benefit of creditors.

The appointment was over several companies that had complex inter-company relationships and ultimately it was determined that a pooling of the liquidations was required.

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## Logistics and Transport - Quality Estate Distributors

Simon was appointed administrator of a wine wholesaler and distributor in November 2018. The company supplied and distributed wines to clients in New South Wales, Victoria, the Australian Capital Territory and Queensland. The appointment was a result of the ATO conducting an audit of the Company and its lodgements in line with its reporting obligations, which uncovered underreported amounts due in relation to Wine Equalisation Tax and over-claimed amounts in relation to GST lodgements of more than \$500,000. As part of its repayment attempts, the Company entered a payment plan which was defaulted upon.

As a result of the default under the ATO payment plan, the director appointed Simon as Administrator of the Company, who continued to trade the business of the company while assisting the director in formulating an appropriate Deed Of Company Arrangement (DOCA) proposal to creditors, with the main components of the proposal being the contribution of any equity realised in the sale of personal property, the contribution of stock of the company and the contributions from profits over eighteen months. Creditors resolved to accept the proposal put forward by the director, appointing Simon as Deed Administrator and control of the company was returned to the director in January 2019.

The contributions under the (DOCA) have been met at present and are ongoing. The (DOCA) has resulted in all employees being paid in full and an interim dividend paid to unsecured creditors. The company continues to trade as a result of the recent restructure and a further dividend is expected to be paid to unsecured creditors in the next twelve months.

## Hotel Accommodation - Hilton Hotel Gold Coast Restructure

Simon was appointed as Administrator and then as Deed Administrator over the Hilton Hotel group of companies. The companies were placed into Administration owing approximately \$150m to the major financier and at least \$20m to unsecured creditors. The site had yet to commence development and its builder, Raptis Group Limited had been placed into Administration leaving the site without a licensed builder. The major financier and Multiplex assisted the Administrators during the course of the Administration and as part of the Deed of Company Arrangement, contracts were signed to reorganise the affairs of the companies which included a new finance facility, a cents in the dollar distribution to all unsecured creditors, related parties forgoing their right to participate in a DOCA and Multiplex being contracted to build the site. The development was completed following the restructure of the companies.

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## Function Centres Project Blue

Simon was engaged to undertake a review of a large function centre business by a commercial bank as a result of large statutory debts that have arisen and significant over-commitment of funds on personal projects causing potential short-term liquidity issues. The review involved a review of the cash flow forecasts, analysis of key creditor and statutory creditors and outline of key non-core projects sitting within the business.

The report allowed more visibility for the bank and was instrumental in the customer and the bank reaching an agreement on a go forward strategy. Six months after the review the customer successfully refinanced with the same bank.

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## Australian Securities and Investments Commission (ASIC)

Simon is on the ASIC panel of Reviewing Liquidators and is often engaged from time to time by ASIC to assist them in dealing with insolvency matters that require a replacement liquidator due to the previous liquidator having handed back or lost his liquidator's registration. This often involves several investigations into the matters and applications for funding under the Assetless Administration funds. To date, Simon has acted on at least four separate liquidators' registration and over 30 insolvency matters. Simon has been involved in several Assetless Administration funding investigations which included the banning of directors, investigating phoenix activity, fraudulent transactions and shadow directors.

## **Department of Social Services – Aged Care Review**

Simon was the engagement partner who led a team to undertake the review of approximately 70 aged care providers who were submitting funding proposals to the Federal Government. The engagement involved an analysis of a pre-completed application form which outlined the basis for the funding, how the project would be undertaken and the locality of the operations.

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## **Quarry and Landfill Operations Project Bentley**

Simon was engaged to undertake the investigating accountant's report phases 2 and 3 on Project Bentley which has significant quarry and landfill operations in VIC and NSW on behalf of the bank. The reports involved a detailed analysis of its working capital, profitability on each landfill site, estimated position for the bank on enforcement and the forecast and historical cash flows for the businesses.

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## **Australian Disability Enterprises**

Simon was the engagement partner which led the financial viability review of 11 disability enterprises across the country. The engagement involved a 10-day turnaround which analysed the financial position of each office, the ability to undertake initiatives to minimise losses and explored the opportunity to undertake mergers of offices.