Annual Report 2014
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Director’s Report

Professor Ian Ramsay

Director

2014 proved to be a very successful year for the Centre for Corporate Law and Securities Regulation. Members of the Centre continued to undertake important research projects and the Centre conducted an active conference and seminar program dealing with a range of topical matters relevant to academics and practitioners.

Research

Members of the Centre for Corporate Law continue to maintain a very active research program.

In 2014, the following books were published by Centre members:


In addition, 2014 saw many articles published, or accepted for publication, in journals.

Full details of the publications of members of the Centre are included in this report under the heading ‘Research’.

Members of the Centre for Corporate Law were successful in obtaining two new grants in 2014:

- An Analysis of Penalties under ASIC Administered Legislation, Centre for International Finance and Regulation
- Predatory Conduct, Consumer Rental Goods and Indigenous Consumers, Melbourne Law School Indigenous Research Grant

In addition, research continued on grants obtained earlier than 2014 but which continued to fund research in 2014:

- Safeguarding the Financial Well-Being of Australians by Improving Financial Literacy: Implications for Consumer Protection Laws
• Australian Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress
• Phoenix Activity: Regulating Fraudulent Use of the Corporate Form
• The Legal and Social Dimensions of Financial Hardship in Australia: Implications for Legal, Regulatory and Policy Frameworks
• Financial Regulation in Asia – A New Model for Regional Cooperation
• Financial Literacy and Innovation in Superannuation Product Disclosure: Improving the Retirement Savings of Australians
• Assessing the Governance of Institutional Investors when Investing in Complex Financial Products
• Financial Products and Short-form Disclosure Documents – Challenges and Trends
• Evaluating the Impact of Securities Loans on Shareholder Rights and the Governance of Listed Companies
• Success and Failure in Stock Exchange Consolidations: Implications for Markets and their Regulation
• Financial System Regulation – Is Australia’s ‘Twin Peaks’ Approach a Model for China and Asia?
• A Comparative Analysis of the Reform of Personal Property Security Law in Australia and the United Kingdom
• Disciplining Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends

Further details of research grants are included in this report under the heading ‘Competitive Research Grants’.

Another important aspect of the Centre’s research program is its research report and research paper series in corporate law and securities regulation. The research reports and research papers are available on the [Centre's website](#).

**Seminars and conferences**

In 2014 the Centre hosted or participated in the organisation of 15 seminars and conferences.

A continuing initiative for the Centre in 2014 was an invitation from the Supreme Court of Victoria for the Centre to co-host with the Court the sixth Supreme Court Commercial Law Conference. The conference was very successful with over 100 people attending.

Other seminars dealt with topics including financial regulation in Asia, the role of statute in commercial law, directors’ duties, shadow banking, consumer bankruptcy, innovation in payment markets, private equity and hedge funds, good process and quality control in economic regulation, and development finance.

Full details of the 2014 seminars are included in this report under the heading ‘Seminars and Conferences’.
Links with peak organisations

2014 saw the further development of links with peak organisations both in Australia and overseas. Members of the Centre continue to play an active role with organisations such as the Law Council of Australia and the Corporate Law Teachers Association. This includes participation in writing submissions regarding law reform proposals on behalf of several of these peak organisations. Further details are included in this report under the heading ‘Links with Peak Organisations’.

Corporate Law Bulletin

2014 saw the continued development of the Corporate Law Bulletin. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms and distributed in partnership with SAI Global. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2014, 208 issues of the Bulletin had been published.

The Bulletin has been supported and promoted by organisations such as the Corporate Lawyers Association, the Commercial Law Association, the Law Council of Australia, the Australian Institute of Company Directors, and the Governance Institute of Australia. We continue to receive very positive feedback on the Bulletin.

Centre for Corporate Law Website

The website of the Centre for Corporate Law and Securities Regulation continues to be upgraded. It has proved to be an important research tool for academics and practitioners. Particular features of the website are:

- **Corporate Law Bulletin**: This section of the website contains an archive of previous issues of the Corporate Law Bulletin published by the Centre for Corporate Law;

- **Research papers**: This section of the website contains a range of topical research papers;

- **Links to other sites of interest**: This section of the website contains links to many other sites divided by category. The categories include:
  - World securities commissions (links to approximately 60 securities commissions);
  - World stock exchanges (links to approximately 110 stock exchanges);
  - Asia-Pacific corporate law and securities regulation sites (links are provided, on a country by country basis, to sites such as stock exchanges, securities
commissions, corporate law legislation and corporate law judgments for each of these countries);

- Governmental and regulatory bodies;

- Corporate governance (links to a range of organisations which are involved in corporate governance issues);

- Professional and interest bodies;

- Corporate social responsibility;

- Financial news; and

- **History of Australian corporate law** (this section of the website provides information regarding the history of Australian corporate law including links to historical documents).

A review of the Centre for Corporate Law and Securities Regulation website in the Law Institute Journal stated that the website “has a fabulous list of national and international websites relevant to corporations law practice”.

**Contributions to law reform**

Members of the Centre for Corporate Law make contributions to law reform in three ways. First by drafting submissions on matters dealing with corporate law reform either in a personal capacity or on behalf of organisations such as the Law Council of Australia. Second, research reports of the Centre for Corporate Law are relied upon by law reform bodies. Third, in 2014 Professor Ian Ramsay was a member of the Corporations and Markets Advisory Committee which is the Federal Government’s main corporate law reform advisory body.

**Editorial positions**

Members of the Centre continued in 2014 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Journal of Corporate Law Studies* and the *Corporate Law Bulletin*.

A full list of editorial positions held by members of the Centre is included in this report under the heading ‘Editorial Positions’.

**Supervision of graduate students’ research**

During 2014, members of the Centre for Corporate Law supervised 9 PhD theses being undertaken by graduate students.

Further details are included in this report under the heading ‘Supervision of Graduate Students’ Research’.
Media coverage of Centre activities

The research activities of Centre members received significant coverage in the media in 2014. Members of the Centre gave approximately 80 reported interviews to the media in 2014. Further details of the media coverage are included in this report under the heading ‘The Centre as a Public Resource’.

Visitors to the Centre

Visitors to the Centre in 2014 included:

- Professor Douglas Arner, University of Hong Kong, Hong Kong
- Ms Freya Carlton, Department of Foreign Affairs and Trade
- Dr Liran Haim, University of Haifa and Bar-Ilan University, Israel
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands
- Mr Timothy Spangler, Kaye Scholer, United States
- Professor Thomas Telfer, Western University, Canada
- Mr Santos Vatoko, General Manager, Vanuatu National Provident Fund

Consultancies and pro bono work

Members of the Centre are active in providing their expertise to those outside of the University of Melbourne, both in relation to pro bono matters and also significant corporate transactions including company restructurings, takeovers, schemes of arrangement and capital raising transactions.

Acknowledgments

Many people deserve thanks for their contribution to the work of the Centre during 2014. In particular, they include the members of the Australian and International Advisory Boards who have provided valuable advice in relation to particular matters and who have continued to assist the work of the Centre.
Purposes and Objectives of the Centre

The objectives of the Centre and its members are to:

- undertake and promote research on corporate law and securities regulation;
- provide advice to the Law School on the teaching of corporate law and securities regulation subjects within the Melbourne Law School at the University of Melbourne and develop and promote innovative curriculum, teaching methods and teaching materials in this field;
- host seminars and conferences to disseminate the results of research undertaken under the auspices of the Centre or in other programs associated with the Centre;
- develop and promote links with academics in other Australian universities and in other countries who specialise in corporate law and securities regulation;
- establish and promote links with similar bodies, internationally and nationally, and provide a focal point in Australia for scholars in corporate law and securities regulation;
- promote close links with peak organisations involved in corporate law and securities regulation;
- promote close links with those members of the legal profession who work in corporate law and securities regulation; and
- attract students of the highest calibre to the Law School’s programs and provide opportunities for their involvement in corporate law research projects.

International Advisory Board

The Centre has an International Advisory Board comprised of leading Judges and corporate law academics. The members of the International Advisory Board are:

- Professor Theodor Baums, JW Goethe University, Frankfurt, Germany
- Professor Brian Cheffins, Faculty of Law, University of Cambridge, England
- Professor John Coffee, School of Law, Columbia University, USA
- Professor Ronald Daniels, President, John Hopkins University, USA (former Provost and Professor of Law, University of Pennsylvania, USA and former Dean, Faculty of Law, University of Toronto, Canada)
- Professor Deborah DeMott, School of Law, Duke University, USA
The Centre has an Australian Advisory Board chaired by the Honourable Justice Kenneth Hayne AC and comprising leading members of the Australian legal and business communities. The members of the Australian Advisory Board are:

- The Hon Justice Kenneth Hayne, AC, High Court of Australia (Chair)
- Professor Robert Baxt, AO, Partner, Herbert Smith Freehills
- Jeremy Blackshaw, Partner, Minter Ellison
- Mark Burger, Partner, DLA Piper
- Tony Greenwood, Consultant, Ashurst Australia
- Michael Hoyle, Director, Macquarie Corporate Finance
- Rodd Levy, Partner, Herbert Smith Freehills
- Simon Morris, Partner, Corrs Chambers Westgarth
- Joseph Muraca, Partner, King & Wood Mallesons
- Shane Tregillis, Financial Service Ombudsman
- Andrew Walker, Partner, Clayton Utz
- Catherine Walter, Company Director
- The Hon Justice Marilyn Warren, AC, Chief Justice, Supreme Court of Victoria
• Jon Webster, Partner, Allens

Academic Members and Associates of the Centre

Academic members

Members of the Centre in 2014 were:

Associate Professor Paul Ali
Associate Professor Helen Anderson
Hellen Blue
Dr George Gilligan
Andrew Godwin
Associate Professor Pamela Hanrahan
Associate Professor John Howe
Associate Professor Cally Jordan
Professor Timothy Lindsey
Professor Ann O’Connell
Professor Ian Ramsay (Director)
Stacy Steele

Associates of the Centre

Associates of the Centre in 2014 were:

Dr Rosemary Langford
Sally Sievers
Dr Geof Stapledon
Susan Woodward

Research fellows and research assistants

Research fellows and research assistants in 2014 were:

Dr Malcolm Anderson
Evgenia Bourova
Vivien Chen
Martin Clark
Victor Lei
Robert McDonald
Cosima McRae
Lucinda O’Brien
Cate Read
Ben Saunders
Hannah Withers
Full details of academic members and associates of the Centre are available on the Centre's website.

**Seminars and Conferences**

The Centre for Corporate Law hosted or participated in organising a number of highly successful conferences and seminars during 2014.

- **Good Process and Quality Control in Economic Regulation: The Case of Competition Policy** (2 December 2014)
  *Speaker: Professor William Kovacic, George Washington University*

- **Financial Regulation in Asia – Workshop** (1 December 2014)
  *Speakers: Professor Kevin Davis, Professor Andrew Walter, Andrew Godwin, Professor Ian Ramsay, Professor Douglas Arner, Dr Michael Taylor*

- **Diagnostic of a Successful Business Human Rights Campaign** (25 November 2014)
  *Speaker: Chris Jochnick, Oxfam America*

- **Book Launch: Directors’ Duties: Principles and Application by Dr Rosemary Langford** (5 November 2014)
  *Speaker: Justice Marcia Neave AO, Court of Appeal, Supreme Court of Victoria*

- **The Role of Statute in Commercial Law** (23 October 2014)
  *Speakers: Professor Elise Bant, Associate Professor Jeannie Paterson and Dr Rosemary Langford*

- **The Supreme Court of Victoria Commercial Law Conference: Current Issues in Commercial Law** (9 October 2014)
  *Speakers: The Hon Justice Marilyn Warren, Chief Justice, Supreme Court of Victoria; Professor Carolyn Evans, Dean, Melbourne Law School; Neil Young QC; The Hon Associate Justice Mark Derham; The Hon Justice John Digby; Jon Webster, Partner, Allens Linklaters; Professor Ian Ramsay; Paul Anastasiou QC; Professor Elise Bant; Philip Crutchfield QC; The Hon Justice James Elliott*

- **Harold Ford Memorial Lecture: Directors' Duties and a Company's Creditors** (19 August 2014)
  *Speaker: Justice Kenneth Hayne AC, High Court of Australia*

- **Private Equity and Hedge Funds after the Global Financial Crisis**
  *Melbourne (17 July 2014) Sydney (22 July 2014)*
  *Speaker: Mr Timothy Spangler, UCLA School of Law*

- **Repeat Bankruptcies and Recent Developments in Canadian Consumer Bankruptcy Law** (14 July 2014)
Speaker: Associate Professor Thomas G W Telfer, Faculty of Law, Western University, Canada

  Speaker: Professor Bryan Mercurio, Chinese University of Hong Kong

- **Shadow Banking: Challenges and Approaches** (23 May 2014)
  Speaker: Professor Douglas Arner, University of Hong Kong

- **Stored-Value Cards - Innovations in Payment Markets** (29 April 2014)
  Speaker: Dr Liran Haim, University of Haifa and Bar-Ilan University

- **Are Nudges Legitimate Regulatory Policy Instruments?** (24 April 2014)
  Speaker: Professor Karen Yeung, King’s College London

- **Development Finance - A Facilitated Conversation** (18 March 2014)
  Speaker: Jan Job de Vries Robbe, Manager, Legal Affairs at the Netherlands Development Bank FMO

- **Consumer Bankruptcy Practice in the United States** (7 March 2014)
  Speaker: Ms Sari Kurland, President, Consumer Bankruptcy Section Maryland State Bar Association

Full details of the seminars and conferences in 2014 are available on the Centre's website.

## Links with Peak Organisations

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2014, academic members of the Centre were members of:

- Australian Restructuring Insolvency and Turnaround Association (Associate Professor Helen Anderson)

- Capital Markets Advisory Group of the Securities Commission of Malaysia (Professor Ian Ramsay)

- Corporations and Markets Advisory Committee (Professor Ian Ramsay)

- Corporations Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Pamela Hanrahan, Associate Professor Cally Jordan and Professor Ian Ramsay)

- Executive Committee of the Corporate Law Teachers Association (Associate Professor Helen Anderson and Professor Ian Ramsay)

- General Executive and Editorial Committee and also Treasurer of the Australasian Law Teachers Association (Associate Professor Helen Anderson)
• Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia (Associate Professor Helen Anderson)

• International Financial Experts Panel of the P.R.I.M.E. Finance Foundation, The Hague (Associate Professor Cally Jordan)

Editorial Positions

During 2014 academic members of the Centre occupied editorial positions with a number of corporate law and other publications:

• **Australian Accounting Review** (Member of the Editorial Board: Professor Ian Ramsay)

• **Australian Business Law Review** (Section Editor: Associate Professor Paul Ali)

• **Australian Journal of Asian Law** (Editor: Professor Timothy Lindsey)

• **Capital Markets Law Journal** (Member of the Editorial Board: Associate Professor Paul Ali)

• **The Company Lawyer** (Consulting Editor: Dr George Gilligan)

• **Company and Securities Law Journal** (Editor: Associate Professor Paul Ali; Section Editor: Dr Rosemary Langford; Member of the Editorial Board: Professor Ian Ramsay)

• **Corporate Law Bulletin** (Editor: Professor Ian Ramsay)

• **Doing Business in Asia** (Contributing Editor and Member of the Editorial Advisory Board: Professor Tim Lindsey)

• **Governance, Risk and Compliance Newsfeed** (Editorial Advisor: Professor Ian Ramsay)

• **International Journal of Disclosure and Governance** (Member of the Executive Editorial Committee: Dr George Gilligan)

• **International Journal of Law & Education** (Member of the Editorial Board: Professor Ian Ramsay)

• **International Securities Regulation: Pacific Rim** (Consulting Editor: Professor Ian Ramsay)

• **Journal of Financial Crime** (Member of the Editorial Advisory Board: Dr George Gilligan)
• *Journal of Law and Financial Management* (Member of the Editorial Board: Professor Ian Ramsay)

• *Journal of Money Laundering Control* (Member of the Editorial Advisory Board: Dr George Gilligan)

• *Journal of Sustainable Finance and Investment* (Associate Editor: Associate Professor Paul Ali)

• *Macquarie Law Journal* (Member of the Editorial Board: Professor Ian Ramsay)

• *Northern Ireland Legal Quarterly* (Member of the Editorial Advisory Board: Dr George Gilligan)

• *Singapore Academy of Law Journal* (Member of the International Editorial Board: Professor Ian Ramsay)

• *University of Western Sydney Law Review* (Member of the Editorial Advisory Board: Professor Ian Ramsay)

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**Research**

**Books**


**Chapters in books**


Fukui, K and Steele, S, ‘Internationalising Legal Education in Japan as Discourse and
Practice’ in J Breaden, S Steele and C Stevens (eds), *Internationalising Japan*, Routledge, United Kingdom (2014) 32-52


Howe, J, ‘Regulatory Facilitation of Voice’ in A Bogg and T Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World*, Oxford University Press, United Kingdom (2014) 381-399


**Research reports and research papers**


Journal articles and notes


Steele, S, ‘The Collapse of Lehman Brothers and Derivative Disputes: The Relevance of Bankruptcy Cultures to Roles for Courts and Attitudes of Judges’ (2014) 30 Law in Context 51-84

Reviews of Books Written or Edited by Centre for Corporate Law Members

Books written or edited by Centre for Corporate Law members have been reviewed in a number of journals. Extracts from these reviews are available on the Centre's website.
Teaching

Melbourne Law School has a very strong master’s program in corporate and finance law. The subjects offered in 2014 were:

- Accounting for Commercial Lawyers
- Advanced Payment Devices: Law and Practice
- Australian Consumer Law
- Charity and Not-for-Profit Law: Current Issues
- Commercial Law: Issues and Policies
- Company Takeovers
- Comparative Corporate Tax
- Contract Interpretation
- Corporate Governance and Directors’ Duties
- Corporate Insolvency and Reconstruction
- Corporate Tax A (Shareholders, Debt and Equity)
- Debt Capital Markets
- Economic Regulators
- Equity and Commerce
- Financial Services Law
- Global Financial Order: IMF and World Bank
- Hedge Funds and Private Equity Funds
- International Financial System: Law and Practice
- International Financial Transactions: Law and Practice
- Project Finance
- Regulation of Securities Offerings
- Sports Law: Entities and Governance
- Superannuation Law
- Taxation of Business and Investment Income
- Taxation of Mergers and Acquisitions

A feature of the master’s program in corporate law is the use of international lecturers. These included in 2014:

- Professor Douglas Arner, University of Hong Kong, Hong Kong (International Financial System: Law and Practice)
- Dr Liran Haim, University of Haifa and Bar-Ilan University, Israel (Advanced Payment Devices: Law and Practice)
- Dr Peter Harris, University of Cambridge, United Kingdom (Comparative Corporate Tax)
- Professor William Kovacic, George Washington University, United States (Economic Regulators)
• Professor Ben McFarlane, University College London, United Kingdom (Commercial Law: Issues and Policies)

• Professor David McLauchlan, Victoria University of Wellington, New Zealand, (Contract Interpretation)

• Mr Ceda Ogada, International Monetary Fund, Washington DC, United States (Global Financial Order: IMF and World Bank)

• Mr Timothy Spangler, Kaye Scholer, United States (Hedge Funds and Private Equity Funds)

• Mr William Swadling University of Oxford, United Kingdom (Equity and Commerce)

• Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands (Debt Capital Markets)

Corporate Law Bulletin

In 1997 the Centre for Corporate Law and Securities Regulation commenced publishing the Corporate Law Bulletin. It has been established with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms. In 2002 SAI Global (previously known as LAWLEX) commenced publishing the Bulletin.

By the end of 2014, 208 issues of the Bulletin had been published.

The monthly Bulletin includes the following:

• details of significant corporate law and corporate governance developments (both statutory amendments and recent court judgments); and

• significant announcements made by the Australian Securities and Investments Commission (for example new ASIC Regulatory Guides), the Australian Securities Exchange and the Takeovers Panel.

Readers of this Annual Report who are interested in seeing some previous issues of the monthly Bulletin can access them through the archive site on the Centre’s website, the address of which is: http://www.law.unimelb.edu.au/cclsr/centre-activities/corporate-law-bulletin

Subscriptions to the Bulletin can be obtained from SAI Global at its website: http://www.saiglobal.com
Competitive Research Grants

This section identifies the competitive research grants that were obtained by members of the Centre in 2014, or that were obtained earlier than 2014 but continued to fund research in 2014. A complete list of all research grants obtained is available on the Centre's website.

New Grants Obtained in 2014

An Analysis of Penalties under ASIC Administered Legislation

Type of grant
Centre for International Finance and Regulation

Funds allocated
$389,084

Chief Investigators
Professor Ian Ramsay, Dr George Gilligan, Associate Professor Paul Ali and Mr Andrew Godwin (Melbourne Law School)

Project Summary

A significant policy debate is unfolding regarding the penalties imposed by courts and other bodies under legislation administered by key economic regulators such as ASIC. The ASIC Penalties Project will conduct a holistic review of such penalties over a 10 year period from 2005 to 2014, to assess whether adequate penalties are available to ASIC and set at an appropriate level. The project will also consider whether the penalties are effectively administered and how ASIC’s penalties regime could be improved. By combining available documentary evidence with surveys and semi-structured interviews, the ASIC Penalties Project will build a penalties database and develop a series of research papers that analyse the theoretical and policy based rationales for the imposition of penalties. These initiatives can inform not only policy development and operational practice regarding ASIC, but also can be informative for other Australian regulators, regulated communities, the judiciary, law enforcement agencies, industry, media, academe and the broader public.

Predatory Conduct, Consumer Rental Goods and Indigenous Consumers

Type of Grant
Melbourne Law School Indigenous Research Grant

Funds Received
$5,000
Chief Investigators

Dr Mark McMillan, Associate Professor Paul Ali, Ms Cosima McRae and Professor Ian Ramsay

Project Summary

There is strong evidence that consumer rental companies target Indigenous communities across Australia and engage in highly predatory conduct. The Australian Securities and Investments Commission is involved in ongoing regulatory enforcement across Australia to reign in companies found to act unconscionably and cause irreparable harm to Indigenous consumers. While regulatory action is welcome, peak consumer legal and Indigenous organisations have expressed concern that the harm to Indigenous consumers is ongoing and that more action, from a range of state and federal agencies and organisations, is required to stamp out predatory practices and ameliorate the harm caused to consumers. To effectively reduce harm, it is clear that the problem requires multiple organisations with different expertise to collaboratively and holistically develop effective consumer protection laws and complementary policies. The research team will conduct innovative and much needed research to investigate the legal and social factors contributing to the harm to Indigenous consumers.

Grants Obtained Earlier than 2014 but Continuing to Fund Research in 2014

Safeguarding the Financial Well-Being of Australians by Improving Financial Literacy: Implications for Consumer Protection Laws

Type of Grant

Australian Research Council Discovery Grant

Funds Received

$276,000

Chief Investigators

Professor Ian Ramsay and Associate Professor Paul Ali (Melbourne Law School)

Project Summary

The project will contribute to a broader understanding of the role of financial literacy and consumer behaviour in Australia, and its relationship with Australia's financial services and consumer protection laws. The project aims are consistent with contributing to the Australian Financial Literacy Strategy goals of ‘increasing economic participation and social inclusion, driving competition and market efficiency in the financial services sector, and potentially reducing regulatory intervention.’ The project is the first in-depth
study of the relationship between financial literacy and Australia’s financial services and consumer protection laws.

**Australian Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress**

**Type of Grant**

Australian Research Council Linkage Grant

**Funds Received**

$425,465

**Chief Investigators**

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School), Dr Kathy Landvogt (Good Shepherd Youth & Family Service), Mr Gerard Brody (Consumer Action Law Centre) and Ms Fiona Guthrie (Financial Counselling Australia Incorporated)

**Project Summary**

Australian households are experiencing rising levels of financial stress, manifested most visibly in personal debt default, negotiated compromises with creditors, and bankruptcy. No longer confined to lower income Australians, financial stress is an increasing problem for middle income Australians as well. This project entails an in-depth study of the relationship between financial stress and Australian personal insolvency laws in order to evaluate the effectiveness of these laws in practice. Surveys of financial counsellors, consumer solicitors, consumer advocates and their clients will reveal how Australians respond to financial stress within the legal framework, allowing for a detailed evaluation of that framework.

**Phoenix Activity: Regulating Fraudulent Use of the Corporate Form**

**Type of Grant**

Australian Research Council Discovery Grant

**Funds Received**

$403,000

**Chief Investigators**

Associate Professor Helen Anderson, Professor Ann O’Connell and Professor Ian Ramsay (Melbourne Law School) and Dr Michelle Welsh (Monash University)
**Project Summary**

Fraudulent phoenix activity is of great concern to Australian policymakers. It occurs where there is the deliberate liquidation of a company to avoid paying debts but the business continues through another company, and in corporate groups through the liquidation of undercapitalised subsidiaries and transfer of business to other companies in the group. This behaviour causes huge losses in taxation revenue and large financial losses for employees and unsecured creditors. To strengthen Australia’s economic fabric, this project aims to determine the optimal method of dealing with fraudulent phoenix activity through a thorough examination of all of its aspects in Australia and by a comparative analysis of international responses.

**The Legal and Social Dimensions of Financial Hardship in Australia: Implications for Legal, Regulatory and Policy Frameworks**

**Type of Grant**

Australian Research Council Discovery Grant

**Funds Received**

$396,000

**Chief Investigators**

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School)

**Project Summary**

Financial hardship – the reduced ability to meet monetary obligations because of loss of employment, illness or disaster – is an increasing problem for both low-income and middle-income Australians. This project is the first in-depth study of the practical operation of Australia’s financial hardship laws, which are designed to protect Australians suffering financial hardship. Surveys and interviews will be undertaken of persons suffering financial hardship, those who advise them and staff of financial dispute resolution schemes. The project outcomes will include improvements to dispute resolution involving financial hardship and consumer advisory services, and potential law reform proposals.

**Financial Regulation in Asia – A New Model for Regional Cooperation**

**Type of Grant**

Melbourne School of Government Research Cluster Grant

**Funds Received**

$213,917
Chief Investigators

Mr Andrew Godwin (Melbourne Law School), Professor Andrew Mitchell (Melbourne Law School), Professor Ian Ramsay (Melbourne Law School), Professor Kevin Davis (Faculty of Business and Economics, University of Melbourne), Dr Jikon Lai (Faculty of Arts, University of Melbourne), and Professor Andrew Walter (Faculty of Arts, University of Melbourne)

External Collaborators

Professor Douglas Arner (Faculty of Law, University of Hong Kong), Mr Datuk Seri Panglima Andrew Sheng (Fung Global Institute), Professor Wataru Takahashi (Faculty of Economics, Osaka University), and Professor Ken Waller (Faculty of Finance & Economics, Australian APEC Study Centre, RMIT)

Project Summary

This project will study the development of Asian financial regulations from a variety of perspectives such as finance, law, politics and international relations. The study will focus on the unique circumstances present in Asia as well as identifying the risks and the value that regional cooperation and integration can play in the development of international regulatory rules.

Financial Literacy and Innovation in Superannuation Product Disclosure: Improving the Retirement Savings of Australians

Type of Grant

Centre for International Finance and Regulation Grant

Funds Received

$39,953

Chief Investigators

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School) and Dr Chander Shekhar (Faculty of Business and Economics, University of Melbourne)

Project Summary

Superannuation is the central pillar of Australia’s unique retirement savings system. Current estimates predict that only 35% of Australians will be adequately provided for in retirement. Factors including an aging population, increased life-expectancies and higher costs of living and the inadequacy of many superannuation balances suggest strongly the need for working Australians to actively manage their superannuation investments from earlier in their working lives. This project responds to these issues by focussing on the
potential for regulatory innovations in superannuation consumer information to change consumer behaviour. Specifically, the study surveys 25-35 year old superannuation consumers to understand the interaction with superannuation information. Drawing on behavioural economics the study will provide regulators, the superannuation industry and consumer bodies with key insights about how superannuation information can assist consumers in their retirement savings planning. The project will offer new insights about current behaviours and attitudes with the potential to improve retirement savings outcomes.

Assessing the Governance of Institutional Investors when Investing in Complex Financial Products

Type of Grant
Centre for International Finance and Regulation Grant

Funds Received
$19,744

Chief Investigators
Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School)

Project Summary
Institutional investment in Australia is both highly innovative and complex. The global financial crisis and the large losses that have flowed from investments in complex financial products have focused attention on the sellers of those products. However, less attention has been paid to the institutional investors who invest in complex financial products and the role of the external parties that provide investment-related services to institutional investors. This project will be the first in-depth study of the legal structure of Australian institutional investment, in the context of investments in complex financial products, the legal relationships between the participants in the selection of those investments and the legal duties that arise out of those relationships. This project will also examine the legal protections available to institutional investors and their own investors, when investing in complex financial products, and whether regulatory reform is required.

Financial Products and Short-form Disclosure Documents – Challenges and Trends

Type of Grant
Centre for International Finance and Regulation Grant

Funds Received
$28,139
Chief Investigators

Mr Andrew Godwin and Professor Ian Ramsay (Melbourne Law School)

Project Summary

Recent years have seen a global trend towards the adoption of uniform rules governing disclosure in relation to retail financial products. This trend has been reflected in the adoption of plain language techniques, the move towards short-form disclosure documents, and efforts to increase the quality of financial advice and financial literacy on the part of retail investors.

This project will analyse the challenges and trends in relation to short-form disclosure documents from a comparative perspective. The research will consider the effectiveness of short-form disclosure documents, particularly in terms of increasing risk awareness, the interface between short-form disclosure documents and other measures (e.g. plain language techniques and investor education) and whether there is a case for global or regional harmonisation. Developments in the following markets will be examined for this purpose: Australia, New Zealand, the United Kingdom, Hong Kong and Singapore.

Evaluating the Impact of Securities Loans on Shareholder Rights and the Governance of Listed Companies

Type of Grant

Centre for International Finance and Regulation Grant

Funds Received

$9,887

Chief Investigators

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School)

Project Summary

Securities loans are a common feature of the Australian and global financial markets, and describe dealings under which a trader or investor sources securities temporarily from institutional investors, such as a superannuation fund. This practice has generated considerable controversy in the midst of the global financial crisis due to the prominent role deployed by securities loans in facilitating short selling. In addition to this, securities loans carry broad implications for the governance of companies. Securities loans make possible vote buying, by enabling the voting rights attaching to shares to be separated from the economic ownership represented by those shares. This project will be the first in-depth Australian study of the corporate governance implications of securities loans.
The project will also examine the implications for shareholder rights and consider whether regulatory reform is required to protect shareholders.

**Success and Failure in Stock Exchange Consolations: Implications for Markets and their Regulation**

**Type of Grant**

Centre for International Finance and Regulation Grant

**Funds Received**

$89,971

**Chief Investigators**

Professor Cally Jordan (Melbourne Law School) and Professor Stephane Rousseau (University of Montreal)

**Project Summary**

Stock exchanges engaged in a frenzy of consolidation efforts recently, some successful, others not. In 2011 alone, several high profile mergers, Singapore and Sydney, NYSE Euronext and Deutsche Borse, London and Toronto, met with regulatory, political and industry opposition. In one sense, the exchanges are only catching up with the technological realities of international markets. Traditional market institutions have been undergoing change and restructuring for decades. Consolidation began at national levels in response to competitive pressures, and then spread to the creation of regional and supra-regional institutions in an effort to achieve strategic and operational advantages. This project examines the process of stock exchange consolidations, and the alternatives, from a regulatory and market perspective and examines the reasons for success or failure. There are lessons to be learned from both the successes and the failures, with implications for the future direction of regulatory change and the market institutions themselves.

**Financial System Regulation – Is Australia’s ‘Twin Peaks’ Approach a Model for China and Asia?**

**Type of Grant**

Centre for International Finance and Regulation Grant

**Funds Received**

$57,548
Chief Investigators

Mr Andrew Godwin and Professor Ian Ramsay (Melbourne Law School) and Professor Li Guo (Peking University Law School)

Project Summary

The Global Financial Crisis and its fallout have tested the integrity and resilience of regulatory frameworks in respect of financial services and have led to significant reforms to those frameworks around the world. As financial institutions and the financial markets in China become more integrated and sophisticated, it is likely that China will need to reconsider its approach to financial regulation and review developments in other markets. Inevitably, its attention will turn to the models and reforms introduced in markets such as the United Kingdom and the United States. In this research project, the chief investigators propose to consider the extent to which Australia's ‘twin peaks’ approach to financial services regulation provides a model for reform in China. Although the primary focus is on China, the findings will also consider the extent to which the ‘twin peaks’ model is relevant to other emerging markets in Asia.

A Comparative Analysis of the Reform of Personal Property Security Law in Australia and the United Kingdom

Type of Grant

Oxford University Law School – Melbourne Law School Research Partnerships Grant

Funds Received

$17,500 and £10,000

Chief Investigators

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School) and Professor Louise Gullifer (University of Oxford)

Project Summary

The law of personal property security deals broadly with the issue of how lenders and other providers of corporate and consumer credit can protect their claims against borrowers by taking security over the personal property held by borrowers. Personal property securities reduce the risks associated with providing credit and should therefore contribute to the increased availability of credit. Balanced against this, however, are the legal complexities confronted by lenders when taking security over personal property. This area of law has been the subject of several proposals for reform in both the UK and Australia. This project aims to assess the divergent approaches towards the regulation of personal property securities in the two jurisdictions, with a view to seeing what benefits an Australian Personal Property Securities Act 2009 - type reform could have for the UK and also what pitfalls are likely in any such reform process. This assessment will involve a comparative analysis of selected corporate and consumer financing transactions, an empirical survey of possible
difficulties in respect of small-to-medium enterprise financing in the UK and an empirical survey of how the Australian reforms are operating in practice.

**Disciplining Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends**

**Type of grant**

NUS Law - MLS Research Partnerships

**Funds received**

$20,000

**Chief Investigators**

Professor Ian Ramsay and Ms Stacey Steele (Melbourne Law School) and Assistant Professor Meng Seng Wee (National University of Singapore Law)

**Project summary**

This research partnership will investigate legal and policy trends in disciplining corporate insolvency practitioners in Australia and Singapore. Both jurisdictions have common origins in their respective corporations laws, and both have recently undertaken reviews of the regulation of practitioners in recognition of the significant role they play in the resolution of corporate insolvencies. The research will focus on models of disciplinary frameworks and the outcomes that could be achieved through reform; the effect that the introduction of clear and robust qualification standards, disciplinary procedures and disqualification standards could have on the profession; and the role of various institutions in discipline.

**Supervision of Graduate Students’ Research**

This section identifies the supervision of graduate students undertaken by members of the Centre in 2014.

**PhD theses in progress**

- Armson, Emma: ‘The Australian Takeovers Panel: An effective forum for dispute resolution?’
  *Supervisor:* Associate Professor Paul Ali and Professor Ian Ramsay
- Bini, Marco: ‘Duty to act in the interests of a public entity’
  *Supervisor:* Professor Ian Ramsay and Associate Professor Beth Gaze
- Chan, Faye: ‘Law and the ethnic Chinese in Indonesia: State regulation of Peranakan women, 1930 – 2004’
  *Supervisor:* Professor Tim Lindsey
- Dewi, Apsari, ‘Barriers in international legal cooperation in criminal matters between Indonesia and Australia’
  *Supervisor:* Professor Tim Lindsey and Professor Jeremy Gans
The Centre makes its knowledge and expertise available as a public resource in a number of ways including providing interviews and information to the media, responding to requests for information, and writing submissions on matters of law reform.

Submissions

Members of the Centre participated in preparing a number of submissions relating to corporate law reform either in a personal capacity or on behalf of organisations such as the Law Council of Australia.

Requests for information

Members of the Centre have provided information on Australian corporate law to a number of overseas academics, securities commissions and law reform commissions.

Media

During the course of the year members of the Centre gave approximately 80 reported interviews to newspaper, radio and television journalists. A list of these interviews is available on the Centre's website.