

Which courts deliver most corporate law judgments? A research note

Ian Ramsay* and Are Watne**

* Harold Ford Professor of Commercial Law and Director of the Centre for Corporate Law and Securities Regulation, the University of Melbourne

** Research Assistant, Centre for Corporate Law and Securities Regulation, the University of Melbourne

Introduction

This research note outlines the results of research undertaken by the authors indicating which courts deliver most corporate law judgments. The authors examined which courts delivered corporate law judgment for two periods: June 2007 to June 2008 (see Table 1) and December 2004 to December 2005 (see Table 2). The courts examined were the state Supreme Courts, the Federal Court of Australia and the High Court of Australia. Statistics for the Administrative Appeals Tribunal are also presented.¹

The source for the research is the corporate law judgments website of the Centre for Corporate Law and Securities Regulation at the University of Melbourne which is at:

<http://cclsr.law.unimelb.edu.au/>

The structure of the research note is as follows. In the first section we provide a brief overview of the jurisdiction of Australian courts in corporate law matters. This is followed by discussion of the research findings relating to which courts deliver most corporate law judgments and the number of hearing days relating to those judgments. Possible explanations for the differences in the numbers of judgments delivered are then explored. The research note then discusses the advantages in allowing plaintiffs to choose their court. The note concludes with discussion of whether courts compete for corporate law litigation and the possible incentive for judges to compete for such litigation.

The jurisdiction of Australian courts in corporate law matters

The jurisdiction of courts to deal with matters arising under the Corporations Act is determined by Part 9.6A of the Act. In relation to civil matters, s 1337B provides that jurisdiction is conferred on the Federal Court of Australia and also on the Supreme Courts of the states and territories with respect to civil matters arising under the Corporations Act. Jurisdiction is also conferred on the Family Court and the lower courts of the states and territories in relation to civil matters other than superior court matters: ss 1337C and 1337E.

The effect of these provisions is that plaintiffs in civil corporate law matters are generally free to choose between the Federal Court and a state or territory Supreme

¹ The Administrative Appeals Tribunal is not a court. However, because it does deal with some corporate law matters, data on the number of decisions it delivers is included in the tables.

Court when commencing litigation. This freedom will be restricted where the parties to a dispute have previously chosen a particular jurisdiction to settle disputes (for example, the parties have selected a particular state court to have any disputes litigated through a choice of forum clause in a governing document).

Part 9.6A of the Corporations Act also provides for the transfer of proceedings with respect to civil matters. In brief, where a proceeding is commenced in the Federal Court or the Supreme Court of a state or territory, this court may transfer the proceeding to another court that has jurisdiction if it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding to be transferred to that court. There are similar provisions allowing transfers that apply to the Family Court and the lower courts of the states and territories.

A court may transfer a proceeding on the application of a party at any stage of the proceeding or of the court's own motion: s 1337M.

In deciding whether to transfer a proceeding, a court must have regard to:

- the principal place of business of any body corporate concerned in the proceeding;
- the place or places where the events that are the subject of the proceeding took place; and
- the other courts that have jurisdiction to deal with the proceeding: s 1337L.

In relation to criminal matters, jurisdiction is conferred on the courts of criminal jurisdiction of the states and territories to deal with offences under the Corporations Act: Part 9.6B Division 2 of the Corporations Act. The Federal Court has no criminal jurisdiction to deal with contraventions of the Corporations Act but it can impose civil penalties in proceedings over which it has jurisdiction as these are treated in the Corporations Act as part of the civil law.²

Comparison of courts' activity in delivering corporate law judgments

The research findings are contained in Tables 1 and 2. The following points can be made in relation to the research:

1. There is little change in the number of corporate law judgments when 2005 is compared to 2007-2008 (708 judgments in 2007-08 and 773 judgments in 2005). There has been a reduction of about 8.5% since 2005.
2. There is a high degree of stability in terms of which courts deliver judgments when the two years are compared. There has been an increase for the Federal Court (from 27% in 2005 to 31.6% in 2007-2008) and a decline for the New South Wales Supreme Court (from 45% in 2005 to 42.4% in 2007-2008) – but essentially the courts are delivering approximately the same proportion of judgments now that they were about 3 years ago.
3. The dominance of the New South Wales Supreme Court among the state and territory Supreme Courts is notable (42.4% of the total 708 corporate law judgments delivered in 2007-2008 and 62.6% of the 479 judgments delivered by the state and

² HAJ Ford, RP Austin and IM Ramsay, *Ford's Principles of Corporations Law*, looseleaf edition [3.330].

territory Supreme Courts in 2007-2008). The combined total of the judgments for all of the other states (excluding the Federal Court) does not come close to the total of the judgments delivered by the New South Wales Supreme Court.

4. The New South Wales Supreme Court and the Federal Court delivered 74% of all corporate law judgments in 2007-2008.

In relation to the Federal Court judgments, it is notable how the Federal Court has reemerged strongly after the High Court decision in *Re Wakim* (1999) 31 ACSR 99;17 ACLC 1,055, where the High Court struck down the cross vesting legislation under which the Federal Court was given the power to hear matters arising under the state Corporations Acts. The decision held that the Constitution prevents the Federal Court from exercising jurisdiction under the Corporations Acts of a state and therefore cross-vesting legislation cannot validly give the Federal Court jurisdiction to determine matters under state law. The effect of this judgment was to eliminate virtually all of the Federal Court's jurisdiction to hear matters arising under the state Corporations Acts. Statistics on the effect of *Re Wakim* were tabled in Federal Parliament on 30 May 2000 by the then Attorney-General, the Hon Daryl Williams. The High Court handed down its decision in *Re Wakim* on 17 June 1999. In the 24 months up to June 1999, 1,500 Corporations Law cases were filed in the Federal Court, an average of 62 cases each month. In the period from July 1999 to March 2000, only six Corporations Law cases were filed in the Federal Court on average, less than one case a month. So the Federal Court has clearly come back strongly since the states referred their powers in relation to corporate law to the Commonwealth in 2001 and the Corporations Act was enacted in that year, allowing the Federal Court to once again hear corporate law matters.

In relation to the Federal Court corporate law judgments for the period 2007-2008, the tables indicate:

1. Three jurisdictions dominate in terms of Federal Court corporate law judgments (New South Wales, Victoria and Western Australia) - a total of 81.7% of all Federal Court corporate law judgments for the past 12 months (it was 86.6% in 2005).
2. New South Wales has 42% of all Federal Court judgments for the period but it has only 94 Federal Court judgments compared to 300 Supreme Court judgments for the same period (ie, of the total of 394 New South Wales judgments for both courts, 23.9% are Federal Court).
3. Victoria has 56 Federal Court judgments compared to 60 Supreme Court judgments during the same period (ie, of the total of 116 Victorian judgments, 48.3% are Federal Court).
4. Western Australia has 33 Federal Court judgments compared to 30 Supreme Court judgments (ie, of the total of 63 Western Australia judgments, 52.3% are Federal Court).

This means that the two states where the Federal Court has had the most impact in recent years in terms of hearing corporate law matters that could have gone to the Supreme Court are Victoria and Western Australia (on the basis that about 50% of judgments in these jurisdictions are being delivered by the Federal Court).

Hearing days for corporate law judgments

Table 1 includes data on both the number of judgments delivered by the courts and also the number of hearing days relating to these judgments. It can be seen that there is broad consistency between the number of judgments and the number of hearing days although the Supreme Court of Victoria has a higher percentage of hearing days (12.8%) than judgments (8.5%) as does the Federal Court (34.5% of hearing days and 31.6% of judgments). Other courts generally have a lower percentage of hearing days than judgments.

It was noted above that the New South Wales Supreme Court and the Federal Court dominate corporate law judgments, delivering 74% of all corporate law judgments in 2007-2008. In this same period, the two courts had 74.5% of the total number of hearing days for all corporate law judgments.

For the period 2007-2008, there were 708 judgments and 1378 hearing days. This means that each judgment required, on average, 1.9 hearing days.

Possible explanations for the differences in the numbers of judgments delivered

There are a number of possible explanations for the differences between the courts in the number of judgments delivered and the number of hearing days for those judgments. One possible explanation is that there are more companies registered in those states which have the courts delivering the most judgments. Yet Table 3, which contains the number of companies registered in each state as of June 2008, does not support this explanation. It can be seen from Table 3 that as at June 2008, 33.3% of all companies were registered in New South Wales and 31.3% of all companies were registered in Victoria. Yet for the period June 2007 to June 2008, the New South Wales Supreme Court and the Federal Court (Sydney registry) delivered a total of 394 judgments (or 55.6% of all judgments for that period) while the Victorian Supreme Court and the Federal Court (Melbourne Registry) delivered a total of 116 judgments (or 16.4% of all judgments for that period).

There is a significant difference between the registration of all companies and where the top 150 Australian Securities Exchange (ASX) listed companies and trusts (measured by market capitalisation) are registered. Table 4 indicates that for 2006, 55% of the top 150 companies and trusts were registered in New South Wales and 24% were registered in Victoria. Table 4 also indicates how the top 150 has changed between 1990 and 2006 in terms of the state of registration. This data might provide a possible explanation for some of the differences between the courts in terms of the numbers of judgments delivered because it might be expected that the top 150 companies, because of their size and the extent of their operations, are more involved in litigation than smaller companies. However, this would require further analysis of the judgments to ascertain who are the plaintiffs and defendants.

There are other possible explanations for the differences between the courts in terms of the numbers of judgments delivered. We do not analyse these reasons but only put them forward for further consideration. First, it might be that when the national law firms are drafting documents for their corporate clients, they tend to insert New South Wales jurisdiction clauses in these documents. Second, legal practitioners might

prefer to litigate in courts where they perceive the judges to have more expertise. The New South Wales Chief Justice was quoted in the *Australian Financial Review* on 16 December 2005 as saying:

“I have no doubt in my mind that numerous practitioners choose the Supreme Court of NSW to litigate corporation matters because of the high quality of the judges... The breadth of experience brought to the court by [these] justices... has enhanced the court in numerous ways, including in their detailed knowledge of the practical application of corporations law.”³

Third, practitioners might prefer to litigate in courts that are seen to be more efficient in terms of such things as how soon a dispute can be heard and how quickly judgments can be delivered. In a speech delivered on 17 June 2008, the Commonwealth Attorney General, the Hon Robert McClelland MP, referred to the “Fast Track List” recently introduced in the Victorian Registry of the Federal Court which “is intended to streamline civil court procedures, making case management more efficient and cost effective”.⁴ The Attorney General stated that the new procedures had achieved “impressive results” with matters on the list taking an average of 115 days from the date of filing to finalisation.⁵

A fourth possible explanation is that in some states there is a tendency to litigate disputes while in other states there is a tendency to resolve disputes without recourse to the courts, such as by mediation. The *Australian Financial Review* of 7 July 2006 contained the following comments:

“According to figures from the state bar associations, there are 1602 barristers on the roll in Victoria compared with 2121 in NSW. Some silks blame Melbourne’s genteel nature for the drop-off in work. ‘It seems to be more popular to pursue litigation to the bitter end in Sydney and not settle...’ one said. ‘Secondly, Sydney is more of a deal city, so deals that come unstuck are more likely to be litigated there. Thirdly, you have more of a mediation culture [in Melbourne]. There’s a much greater emphasis in a Melbourne courtroom on directing the parties to go to mediation.’”⁶

Advantages in allowing plaintiffs to choose their court

As noted above, in Australia, plaintiffs in civil corporate law matters are generally free to choose between the Federal Court and a state or territory Supreme Court when commencing litigation. However, the corporate law to be applied will be same whatever court is chosen as the Corporations Act applies in all states and territories.

³ “NSW dominates corporate cases”, *The Australian Financial Review*, 16 December 2005, page 47. This article commented on research published by the Centre for Corporate Law and Securities Regulation in December 2005 indicating which courts delivered most corporate law judgments for that year.

⁴ The Hon Robert McClelland MP, Attorney-General, Speech delivered to the Australian Financial Review Legal Conference, 17 June 2008, para 48.

⁵ *Ibid*, para 49.

⁶ “Melbourne bar loses star appeal”, *Australian Financial Review*, 7 July 2006, page 1.

This represents a significant difference between Australia and the United States where corporate law is a combination of state and federal law with the states having jurisdiction over matters such as the rules relating to company incorporation and internal governance (such as directors' duties) and the federal government having jurisdiction over key securities regulation matters through legislation such as the Securities Act of 1933 and the Securities Exchange Act of 1934 and the federal government having responsibility for the Securities and Exchange Commission. The corporate laws of the individual states are not uniform and a company can choose the corporate law that will apply to it by incorporating in that particular state. The state of incorporation does not need to be the state in which the company conducts its business or in which it has its corporate headquarters.

What are the advantages in allowing plaintiffs to choose what court to commence litigation in? First, it can allow plaintiffs access to courts of higher quality in terms of the judges who hear matters or the efficiency of the court in handling matters it hears. For example, following the decision of the High Court of Australia in *Re Wakim* referred to above, one of us wrote:

“...commentators have found it regrettable that the Federal Court, which had built up over the course of the past 10 years considerable expertise in corporate law matters (and often was quicker in terms of being able to hear such matters than a number of the state Supreme Courts), is now effectively precluded from hearing these matters. Finally, some commentators have also found it regrettable that the situation which had successfully worked for the previous 10 years of allowing litigants in matters arising under the state Corporations Acts to have a choice of courts (the Federal Court or the relevant state Supreme Court) no longer exists.”⁷

Second, allowing plaintiffs access to more than one court to commence litigation also offers the advantage of allowing courts to specialise and develop additional expertise – for example, in corporate law matters, as some courts can potentially attract more of this type of litigation.

Third, there is also the prospect of a superior business environment where courts develop their expertise in corporate law matters and business can be assured of more consistent and higher quality judgments which are delivered in a timely fashion and without the imposition of excessive costs on the parties to the litigation.

Do courts compete for corporate law litigation and what might be the incentives to compete?

The fact that in Australia plaintiffs can typically choose among courts in relation to civil corporate law matters does not mean that Australian courts compete for corporate law litigation. We examine below the motivations judges might have to compete for corporate law litigation.

⁷ Ian Ramsay, “Challenges to Australia’s corporate law” (2000) *Journal of the Securities Institute of Australia* (No 3) 26.

Some hint of competition between the New South Wales Supreme Court and the other court might be seen in the comments of the Chief Justice of the New South Wales Supreme Court, quoted above, that numerous practitioners choose the Supreme Court of New South Wales to litigate corporate matters because of the high quality of the judges. There might also be a hint of competition in a column in the *Australian Financial Review* written by two judges of the New South Wales Supreme Court and published on 26 July 1999 following the decision of the High Court in *Re Wakim*. As noted above, the result of this decision was that the Federal Court lost its jurisdiction to hear corporate law matters until this was restored in 2001 when the states referred their powers in relation to corporate law to the Commonwealth. Where would corporate law litigation that plaintiffs might have otherwise commenced in the Federal Court go? The two judges wrote:

“Anticipating *Wakim*, a substantial majority of the Corporations Law cases in NSW have come to be litigated in the Supreme Court of NSW rather than the Federal Court. As a result of the High Court decision and subsequent legislation, the Federal Court has given an estimate indicating that only about 50 matters are involved. Many of them are routine winding-up matters which are handled by the Registrar. On the basis of this estimate, the volume of work is well within the resources of this court.

There is no lack of expertise in the Equity Division of this court to deal with complex corporate matters. The Federal Courts (State Jurisdiction) Act and new court rules to support it are now operative. The NSW Supreme Court is already handling Federal Court cases under the new arrangements with no difficulty.

Corporations Law cases are allocated to the specialist Corporations List administered by ourselves. This list allows proceedings to be case-managed to prepare them for hearing. Short matters are heard and determined in the list when they are ready. There is no backlog. Longer matters are given expedition as they require. Appeals are also expedited where appropriate.

A Corporations Law Users Group has been established in NSW as a forum between judges, ASIC and other users to enhance and maintain the efficiency of the arrangements for dealing with Corporations Law matters in this court.”⁸

The two judges concluded by stating:

“Media reporting after the decision in *Wakim* has suggested that the country's corporate community and courts have been caught unawares and uncertainty will reign. Far from it, NSW has already accommodated the new work, and other States will follow.”⁹

The suggestion that courts compete for litigation is not new. It has been argued that competition between courts played an important role in the development of the

⁸ GFK Santow and R Austin, “No doubts in *Wakim* wake”, *The Australian Financial Review*, 26 July 1999, page 20.

⁹ *Ibid.*

common law in England.¹⁰ According to Professor Klerman, for most of English legal history, there were several courts with overlapping jurisdiction. An important feature of the operation of the courts at this time was that judges received a fee for each case they heard and therefore judges had an incentive to hear more cases. Because plaintiffs chose which court they would commence litigation in, judges competed by making the law more favourable to plaintiffs. They did this by expanding their jurisdiction to give plaintiffs more choice, and making their procedures less costly, quicker and more effective.¹¹

It has also been argued by Professors Eisenberg and Miller, with reference to the United States, that New York and other states compete for litigation (and forum selection clauses in contracts) by offering improved judicial services to major commercial parties.¹²

Perhaps the best known example of competition among courts is courts dealing with corporate law matters in the United States. It is argued that a significant reason why the state of Delaware has had such success in attracting the incorporation of major companies is because of the quality of its judiciary. According to Professor Kamar:

“The advantage of Delaware’s courts is twofold. First, they are experienced in deciding corporate matters. Over the years, Delaware courts have adapted to this task in a way that is difficult for other courts to emulate. Delaware judges possess experience as a group that would take time to amass. Moreover, they continuously hone their superior skills through hearing cases. Frequent exposure to corporate disputes is a key element in the quality of corporate adjudicators. Not only does it keep judges current, but it also enables them to compare cases they hear and distinguish the meritorious from the frivolous. Even if other states were to recruit experienced corporate jurists to their courts, those courts would subsequently lose their initial advantage if few cases were filed in them.

Second, over the years, Delaware courts have earned a unique reputation for quality adjudication. This reputation is particularly meaningful since the quality of courts can be ascertained only through the use of their services. Even if a rival state recruited judges proficient in corporate law - a difficult task in itself, when that state’s judiciary has no prior reputation - the market would react slowly to this new recruitment.

The significance of the judicial advantage is not merely theoretical. It is demonstrated by the fact that the bulk of suits pursuant to Delaware corporate law are filed in the Delaware Court of Chancery, although they could be

¹⁰ Daniel Klerman, “Jurisdictional competition and the evolution of the common law”, University of Southern California Center in Law, Economics and Organization, Research Paper No C07-04, 2007, available on the Social Science Research Network at www.ssrn.com

¹¹ Ibid.

¹² Theodore Eisenberg and Geoffrey Miller, “The market for contracts”, New York University School of Law Center for Law and Economics, Working Paper No 06-45, 2007, available on the Social Science Research Network at www.ssrn.com

brought in federal or other state courts. A likely explanation is that plaintiffs consider Delaware's judiciary to be better than those of other states."¹³

Other commentators support this assessment of the Delaware courts in relation to corporate law matters.¹⁴ Professor Fisch writes that the Delaware courts:

"... offer Delaware corporations a variety of benefits, including flexibility, responsiveness, insulation from undue political influence, and transparency. These benefits increase Delaware's ability to adjust its corporate law to changes in the business world."¹⁵

A stark contrast between the courts of New York and Delaware is given by Professors Eisenberg and Miller:

"Because of their location in the nation's most important commercial city, state and federal courts in Manhattan enjoy a natural advantage over other courts as preferred forums for the adjudication of business disputes. Even so New York has labored under certain deficits as compared with Delaware as regards the project of establishing its courts as national leaders in their respective fields. Delaware Chancery Court judges are appointed for lengthy terms (twelve years) from a list submitted by a judicial advisory council. They tend to be persons with experience in business law matters and good reputations among other lawyers and judges in the small world of the Delaware bar. New York trial court judges, on the other hand, have been selected in back room deals by politicians whose interests are not necessarily consonant with identifying persons with extensive business law experience or sensitivity to the needs of international finance. And while most New York state court judges are public servants of sterling character and outstanding reputations, this is not true for all."¹⁶

Eisenberg and Miller document how New York addressed these and related problems with its court system in the 1990s, which resulted in the establishment of a permanent Commercial Division of the Supreme Court in 1995. The judges appointed to this Division are appointed for terms of 14 years and because they are appointed by the Chief Judge, this allows for business law experience to be a consideration in appointment.¹⁷ The Chief Judge was quoted as saying that the judges in the Commercial Division are contributing to a "growing body of commercial law once

¹³ Ehud Kamar, "A regulatory competition theory of indeterminacy in corporate law" (1998) 98 *Columbia Law Review* 1908 at 1925-27 (footnotes omitted). The Delaware Chancery Court is widely regarded as a specialist corporate law court and approximately 75 percent of its cases are corporate cases: Curtis Alva, "Delaware and the market for corporate charters: history and agency" (1990) 15 *Delaware Journal of Corporate Law* 885.

¹⁴ See, for example, Bernard Black, "Is corporate law trivial? A political and economic analysis" (1990) 84 *Northwestern University Law Review* 542; Alva, above note 12.

¹⁵ Jill Fisch, "The peculiar role of the Delaware courts in the competition for corporate charters" (2000) 68 *University of Cincinnati Law Review* 1061.

¹⁶ Eisenberg and Miller, above note 12, page 40.

¹⁷ *Ibid*, pages 41-43.

again being generated by New York State courts”¹⁸ and it is asserted that the court has “helped stem the flight of litigation from New York’s courts”.¹⁹

Of course, allowing plaintiffs to choose among courts to commence litigation does not mean that these courts compete for litigation. Judges need some incentive to compete. In the case of the common law in England, judges had an incentive in the form of a fee for each case they heard and this continued until 1799, when statutory reforms took fees away from judges.²⁰

In the absence of being paid a fee for each case they hear, what incentives might judges have in relation to the number and type of corporate law matters they hear? First, some judges might prefer to hear cases that involve cutting edge matters. For example, judges might prefer to hear matters that involve interesting and important issues to do with directors’ duties or the powers of regulators rather than cases concerning the validity of statutory demands for winding up companies. It is the judgments resulting from this type of litigation that will be read by other judges, commented upon in the scholarly literature, debated at conferences, and sometimes reported in the media.

For some judges, it might be very important to have this type of cutting edge litigation in their court partly because some matters that were generally considered interesting and important litigation are no longer heard by the courts. An example is the regulation of takeovers. As a result of changes introduced by the Corporate Law Economic Reform Program Act 1999, the Takeovers Panel, rather than the courts, is now the main body which determines disputes concerning a takeover while the takeover bid is in progress. Under s 659B, the parties to a takeover may not commence court proceedings in relation to a takeover bid, or proposed takeover bid, while the takeover is underway. Only ASIC or another public authority or public official can commence court proceedings before a takeover bid concludes. Consequently, the Takeovers Panel is now “the main forum for resolving disputes about a takeover bid until the bid period has ended”: s 659AA.

Second, some judges might prefer to hear case brought by regulators, at least where those cases involve significant matters. Third, some judges might prefer more complex matters than straight forward matters. On the other hand, these matters can require much more work for the judge and can be frustrating. For example, Justice Sackville who heard the so-called “C7” litigation (which was a dispute over pay-TV rights between Telstra, News Limited and the Seven Network) has stated that this case should never have come to court and that it was a waste of public resources “bordering on the scandalous” to occupy the court for 120 hearing days.²¹ Justice Sackville also identifies another drawback of this type of litigation from the judge’s perspective:

¹⁸ Chief Judge Kaye, quoted in Eisenberg and Miller, above note 12, page 43.

¹⁹ The Council on Judicial Administration, *Report on the Chief Judge's Court Restructuring Plan*, 52 Record 929, 948 (1997), quoted in Eisenberg and Miller, above note 12, page 43.

²⁰ Klerman, above note 10, page 3.

²¹ “C-7 ‘mega-litigation’ takes its toll as Judge Sackville retires”, *The Australian*, 12 April 2008.

“You are not moving from subject to subject, you are not going to a new set of issues, a new set of challenges and you are not getting the feeling of completing something and moving on to the next thing.”²²

The C7 litigation was not a corporate law matter. However, there can be very complex corporate law matters involving many hearing days that would raise the issue mentioned by Justice Sackville. However, as noted above, for the period June 2007 – June 2008, each corporate law judgment required, on average, only 1.9 hearing days.

Fourth, some judges might prefer to maximise the total number of corporate law matters in their state or federal court as this will allow them more choice over the specific corporate law matters they hear. Fifth, some judges might prefer to work in a court that has a strong flow of corporate law matters if they believe that corporate law litigation is more prestigious than some other types of litigation.

Conclusion

This research note has documented which courts deliver most corporate law judgments. The New South Wales Supreme Court and the Federal Court dominate corporate law judgments, delivering 74% of all corporate law judgments in 2007-2008. In this same period, these two courts had 74.5% of the total number of hearing days for all corporate law judgments. The two states where the Federal Court has had the most impact in recent years in terms of hearing corporate law matters that could have gone to the Supreme Court are Victoria and Western Australia (on the basis that about 50% of judgments in these jurisdictions are being delivered by the Federal Court).

In relation to hearing days, for the period 2007-2008, there were 708 judgments and 1378 hearing days. This means that each judgment required, on average, 1.9 hearing days.

Possible explanations for the differences in the numbers of judgments delivered were explored. In addition, because in Australia plaintiffs in civil corporate law matters are generally free to choose between the Federal Court and a state or territory Supreme Court when commencing litigation, the advantages of allowing plaintiffs to do this were discussed. The note concluded with discussion of whether courts compete for corporate law litigation and what might be the incentives to compete.

²² Ibid.

Table 1**Corporate law judgments handed down per court, June 2007 – June 2008**

Court	Fed Court	High Court	AAT	SC NSW	SC Vic	SC Qld	SC SA	SC WA	SC Tas	SC ACT	SC NT	Total
Judgments	224	3	2	300	60	56	33	30	0	0	0	708
	31.6%	0.4%	0.3%	42.4%	8.5%	7.9%	4.7%	4.2%	0%	0%	0%	
Hearing days	476	6	5	551	176	74	55	35	N/A	N/A	N/A	1378
	34.5%	0.4%	0.4%	40%	12.8%	5.4%	4%	2.5%	N/A	N/A	N/A	

Federal Court judgments handed down by registry, June 2007 – June 2008

Registry	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Total
Judgments	94	56	19	15	33	2	4	1	224
	42%	25%	8.5%	6.7%	14.7%	0.9%	1.8%	0.4%	
Hearing days	203	119	20	34	88	6	5	1	
	42.6%	25%	4.2%	7.1%	18.5%	1.3%	1.1%	0.2%	

Table 2**Corporate law judgments handed down per court, December 2004 - December 2005**

Court	Fed Court	High Court	AAT	SC NSW	SC Vic	SC Qld	SC SA	SC WA	SC Tas	SC ACT	SC NT	Total
Judgments	210	8	9	348	59	58	45	32	2	2	0	773
	27.1%	1.0%	1.2%	45.0%	7.6%	7.5%	5.8%	4.1%	0.3%	0.3%	0%	

Federal Court judgments handed down by registry, December 2004 – December 2005

Registry	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Total
Judgments	91	57	12	11	34	0	3	2	210
	43.3%	27.1%	5.7%	5.2%	16.2%	0%	1.4%	0.9%	

Table 3**Total number of companies registered in Australia – as at June 2008**

NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
548670	514890	283861	90580	152604	17499	8533	29168	1645805
33.3%	31.3%	17.2%	5.5%	9.2%	1.1%	0.5%	1.8%	

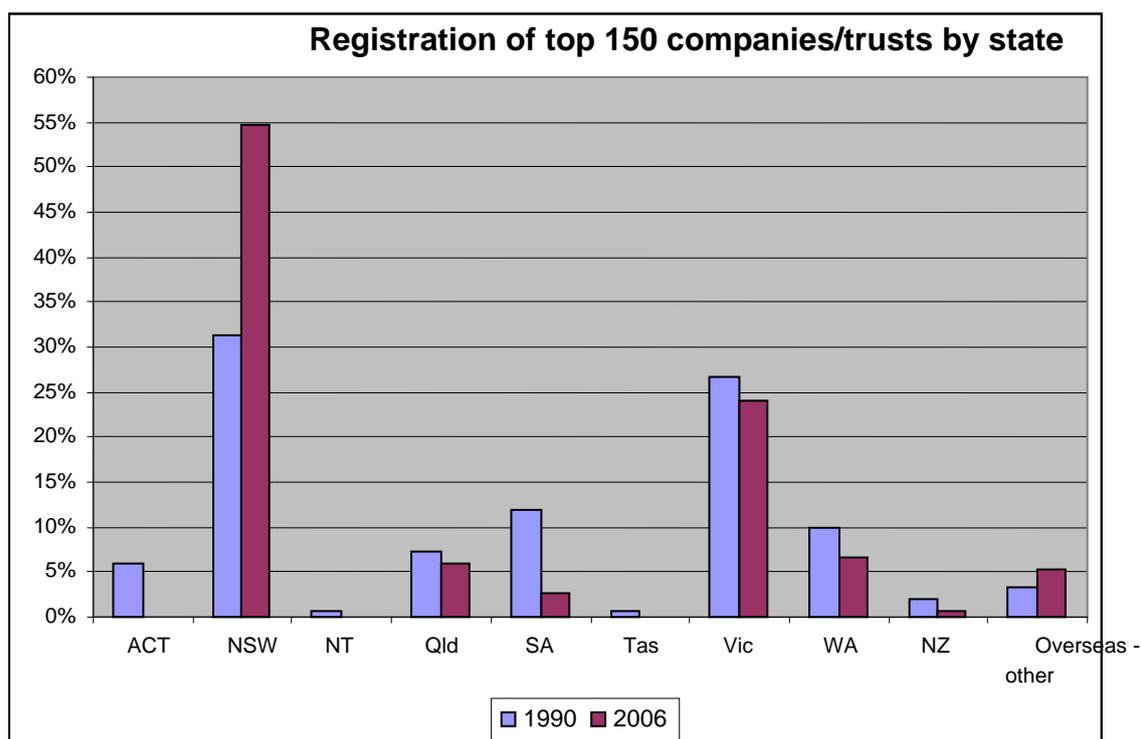
Source: Australian Securities and Investments Commission website

Table 4

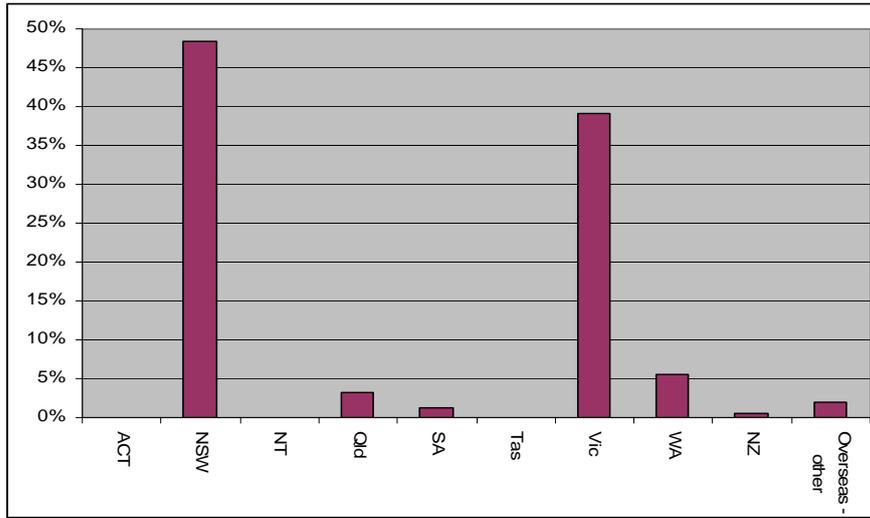
Top 150 listed companies/trusts on the ASX by market capitalisation

Table 1: Registration of the top 150 companies/trusts by state

	1990 (23 Feb)	%	2006 (23 Feb)	%
ACT	9	6%	0	0%
NSW	47	31%	82	55%
NT	1	1%	0	0%
Qld	11	7%	9	6%
SA	18	12%	4	3%
Tas	1	1%	0	0%
Vic	40	27%	36	24%
WA	15	10%	10	7%
NZ	3	2%	1	1%
Overseas - other	5	3%	8	5%
TOTAL	150	100%	150	100%



Share of total market cap of top 150 companies/trusts in 2006



Source for Table 4 and the two graphs: Nicholas Lew and Ian Ramsay, Centre for Corporate Law and Securities Regulation