**CORPORATE LAW ELECTRONIC BULLETIN**   
**Bulletin No 23, July 1999**

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Faculty of Law, The University of Melbourne

with the support of

The Australian Securities and Investments Commission,   
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1. CENTRE FOR CORPORATE LAW SEMINARS

(A) DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE: PRACTICAL AND LEGAL ISSUES

Speakers: Mr Ross Castle, Director, Aon Financial Services Australia Limited; Mr Fred Hawke, Special Counsel, Clayton Utz; Ms Rachel Symes, Manager, Executive Protection Department, Chubb Insurance

Date: Thursday 12 August 1999

See Item 7 in the Bulletin for further details

(B) LAWYERS’ PROFESSIONAL NEGLIGENCE: RECENT DEVELOPMENTS

Speakers: Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks; Mr Norman O’Bryan, Member of the Victorian Bar; Professor Michael Tilbury, Edward Jenks Professor of Law, The University of Melbourne

Date: Monday 23 August 1999

See Item 7 In the Bulletin for further details

(C) CLERP 6 AND SECURITIES

Speakers: Ms Pamela Hanrahan, Senior Lecturer in Law, The University of Melbourne; Ms Alison Lansley, Partner, Mallesons Stephen Jaques; Mr Alan Shaw, National Manager – Market Integrity, Australian Stock Exchange

Date: Thursday 9 September 1999

See Item 7 in the Bulletin for further details

2. RECENT CORPORATE LAW AND RELATED DEVELOPMENTS

(A) ELECTRONIC TRANSACTIONS BILL 1999

The Electronic Transactions Bill was introduced into Federal Parliament this month. The Bill facilitates the development of electronic commerce in Australia by broadly removing existing legal impediments that may prevent a person using electronic communications to satisfy obligations under Commonwealth law. The Bill generally gives business and the community the option of using electronic communications when dealing with Government agencies.

The Bill is based on the recommendations of the Electronic Commerce Expert Group, which reported to the Attorney-General in March 1998. The Expert Group was established by the Attorney-General to consider the legal issues raised by electronic commerce and the appropriate form of regulation, consistent with international developments, to deal with those issues. The Expert Group recommended that the Commonwealth should enact legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce of 1996, with some modifications.

The Bill is based on two principles: functional equivalence (also known as media neutrality) and technology neutrality. The term functional equivalence means that transactions conducted using paper documents and transactions conducted using electronic communications should be treated equally by the law and not given an advantage or disadvantage against each other. Technology neutrality means that the law should not discriminate between different forms of technology – for example, by specifying technical requirements for the use of electronic communications that are based upon an understanding of the operation of a particular form of electronic communication technology.

The Bill establishes the basic rule that a transaction is not invalid because it took place by means of an electronic communication. It contains specific provisions which state that a requirement or permission under a law of the Commonwealth for a person to provide information in writing, to sign a document, to produce a document or to retain information or a document can be satisfied by an electronic communication, subject to certain minimum criteria being satisfied. The Bill also sets out rules, which apply in the absence of any contrary agreement, to determine the time and place of dispatch and receipt of electronic communications and the attribution of electronic communications. The Bill also contains provisions that specify certain exemptions or allow for exemptions to be made by regulation from the application of the Bill. It is important to note that the provisions in the Bill do not remove any legal obligations that may be imposed upon a person by other Commonwealth laws. The sole purpose of the Bill is to enable people to use electronic communications in the course of satisfying their legal obligations.

The Bill has a two-step implementation process. Prior to 1 July 2001 the Bill will only apply to laws of the Commonwealth specified in the regulations. After that date the Bill will apply to all laws of the Commonwealth unless they have been specifically excluded from the application of the Bill.

(B) A STANDARD FOR COMPANY ADMINISTRATORS’ REPORTS – BY DAVID J KERR OF LORD & BROWN, CHARTERED ACCOUNTANTS

The purpose of voluntary administration is to maximise the chances of the company, or as much of its business as possible, continuing or if this is not possible, to provide a better return than an immediate winding up of the company. The voluntary administration provisions of the Corporations Law have been the subject of review and reports by the Legal Committee of the Companies and Securities Advisory Committee and the Australian Securities Commission (as it was then known).

As part of the voluntary administration process, the insolvency practitioner (‘the administrator’) is required to report to creditors on the company’s business, property, affairs and financial circumstances. The administrator must provide creditors with an opinion and reasons for those opinions on whether it would be in the creditors’ interests for the company to execute a deed of company arrangement; or for the administration to end; or for the company to be wound up. The administrator’s reporting duty was the subject of some debate in both the CASAC Report and the ASC Report.

The ASC Report at Suggestion 1 said:

‘The prescription of a detailed check list of matters to be addressed in the s 439A(4)(a) report would be of assistance in providing information to creditors’.

The ASC Report was critical of the basis on which deeds of company arrangement were proposed to creditors by some administrators. The report referred to the practice of recommending the proposed deed by a statement that the winding up would provide little or no return and therefore anything is better than nothing. The report criticised the reported assessment, or lack of assessment, of the ability of the company to comply with the deed contained in some administrators’ reports. Further, the report suggested more detailed information was required to be disclosed to creditors where the deed proposed the repayment of creditor claims from future trading profits.

The New South Wales and the Australian Capital Territory Division of the Insolvency Practitioners Association of Australia has recently issued a discussion paper on Reports by Administrators pursuant to Section 439A(4) of the Law.

Copies of the discussion paper can be obtained from:

Mr David Kerr   
IPAA Best Practice Guidelines Project   
C/- Lord & Brown   
Private Box N613   
Grosvenor Place PO   
Sydney NSW 1220   
Telephone: (02) 9251 6700   
Facsimile: (02) 9251 6744

(C) GOVERNMENT UNVEILS MEASURES TO PROTECT EMPLOYEE ENTITLEMENTS

On 22 July 1999 the Minister for Financial Services and Regulation, the Hon Joe Hockey, announced the Government will act to protect employee entitlements after recent high-profile company failures.

The Minister said that two measures were endorsed by the Ministerial Council for Corporations. The measures are:

(1) To introduce a new offence to stop directors from entering into arrangements or transactions that avoid payment of employee entitlements.

(2) To strengthen the existing prohibitions against insolvent trading so that directors would be breaking the law if they give a financial benefit to a related party - including an associated company - which leads to the company’s insolvency.

The Minister said further consideration would be given to the option of enabling the court, in certain circumstances, to make a company within a group pay outstanding employee entitlements of another company in that same group.

3. RECENT ASIC DEVELOPMENTS

(A) ASIC RELEASES EFT CODE OF CONDUCT DISCUSSION PAPER

On 26 July 1999 a Working Group convened by ASIC released a Discussion Paper which calls for the Electronic Funds Transfer (EFT) Code of Conduct to be expanded to cover all forms of electronic banking. At present the Code only covers ATM and EFTPOS transactions. The Discussion Paper was prepared with the assistance of Associate Professor Mark Sneddon of The University of Melbourne and canvasses a number of options which will need to be considered in expanding the Code.

The Working Group has not yet settled on a preferred model. However, a draft Code in three Parts is put forward for discussion purposes.

Part A covers transactions which involve transferring funds to, from or between accounts at remote institutions by remote access through electronic equipment. It would pick up, for instance, ATM, EFTPOS, telephone and internet banking and some transactions involving stored value products. Among the issues considered in Part A are:

(a) how to allocate liability for unauthorised transactions;

(b)the possibility of requiring, where possible, disclosure of fees applicable to a transaction at the time of the transaction so that consumers are more aware of when they are charged a fee and can therefore take action to reduce their banking costs; and

(c)revised privacy principles which incorporate the National Privacy Principles and raise the option of including EFT specific privacy rules.

Part B covers stored value products where their use doesn’t involve access to, or the transfer of funds to or from, accounts at account institutions. This Part of the Code is entirely new. Among the options canvassed in it are:

(a) providing a right to redeem stored electronic value;

(b) allowing issuers of stored value products to impose security requirements on access codes; and

(c)requiring the refund of lost or stolen electronic value where systems make this possible.

Finally, Part C covers a range of matters including permitting a Code subscriber and a user to agree to provide by electronic communication any information which the Code requires to be provided. At the same time it gives a user the right to receive a backup paper copy of most communications upon request within six months of the electronic communication.

The EFT Code is a voluntary Code. At present all financial institutions in Australia offering ATM and EFTPOS facilities are a party to it. Membership of the expanded Code will also be open to non-financial institutions offering products and services covered by the Code.

The Working Group requests submissions on all aspects of the Discussion Paper. The closing date for submissions is Monday 6 September. Copies of the Discussion Paper can be obtained either by calling ASIC’s Infoline on 1300 300 630 or by downloading it from ASIC’s web site at "www.asic.gov.au".

Submissions on the Discussion Paper can be made to "eft@asic.gov.au".

For further information contact:   
Delia Rickard   
Director, Office of Consumer Protection   
Tel: (02) 6250 3801

(B) ASIC ISSUES CLERP BILL POLICY PROPOSALS ON FUNDRAISING

On 22 July 1999 ASIC issued three policy proposal papers on administrative fundraising issues arising under the Corporate Law Economic Reform Program Bill 1998 (Cth). The policy proposal papers will provide the basis for six weeks of public consultation during which ASIC will meet with industry and consumer representatives to discuss elements of the potential administration of the fundraising policy framework.

The three policy proposal papers are:

- Fundraising: Profile statements - Paper No. 1

- Fundraising: Disclosure document lodgement- Paper No. 2

- Fundraising: Discretionary powers- Paper No. 3

After ASIC has considered all of the feedback, its position on the three subjects will be set out in ASIC policy (but not necessarily in distinct policy statements), which will be part of administrative arrangements designed to facilitate an orderly transition to the new law.

Public comment is open for six weeks, with written submissions due by Friday 3 September 1999. The period for public comment is relatively short because the Bill could become law in the last quarter of this year or early next year. If it becomes clear during the period for public comment that the Bill will not become law during the last quarter of this year, ASIC will extend the public comment period.

Comments should be sent to The Project Manager, CLERP Bill Fundraising Project, at the address set out in each Policy Proposal Paper.

Copies of the policy proposal papers can be obtained from the ASIC Infoline on 1300 300 630 and from the Policy and Practice page of the ASIC website at "www.asic.gov.au".

(C) ASIC TIGHTENS CONSUMER PROTECTION FOR MORTGAGE INVESTMENT SCHEMES

The growth in the size of the mortgage investment scheme sector and problems experienced by investors in some of these schemes has resulted in ASIC clarifying its regulation under the new Managed Investments Act.

On 20 July 1999 ASIC released a new policy outlining the new regulatory structure these schemes will operate under in order to ensure consumer protection for people who have invested in Mortgage Investment Schemes. The new policy, scheduled to begin by 1 November 1999, will see ASIC taking a closer and more direct role in the regulation of this industry under the managed investment provisions of the law.

ASIC released draft proposals on 19 February 1999 for public comment. ASIC has also consulted directly with State and Territory Ministers and Law Societies about the policy.

ASIC Chairman Alan Cameron said these investments were traditionally supervised by Law Bodies and other professional organisations, such as finance broker associations. "However, many legal practitioners and, in some states, finance brokers, are now operating large commercial mortgage practices with substantial funds under their management," Mr Cameron said. "The commercial nature of these operations, combined with the recent enactment of the Managed Investments legislation and serious concerns by investors regarding some industry failures means ASIC will take a strong regulatory role in this area. Under the new policy the starting point for regulation for schemes will be compliance with the Managed Investment provisions of the Corporations Law."

Mr Cameron said ASIC recognised that some relief will be required from the Law to allow schemes to operate efficiently, but without compromising investor protection.

This limited relief will allow:

- the registration of a single "umbrella scheme" rather than a scheme for each mortgage; and

- the use of a two part prospectus.

ASIC will also allow more substantial relief from the Law for some smaller schemes where:

- ASIC is satisfied that the same consumer protection outcomes contained in the Corporations Law can be delivered under an industry based compliance regime administered and supervised by a recognised industry supervisory body (ISB) and;

- the total amount lent by a mortgage practice is less than $5 million.

ISB’s will need to lodge their interest in being considered as an ISB with ASIC by 1 November 1999.

For further information contact:

Malcolm Rodgers

Director, Regulatory Policy

Tel: (02) 9911 2680

(D) ASIC SETS OUT STANDARDS FOR ALTERNATIVE DISPUTE RESOLUTION

On 8 July 1999, in a move that aims to promote consumer confidence, ASIC released its policy guidelines for alternative dispute resolution (ADR) schemes that handle consumer complaints in the finance industry.

The guidelines cover basic consumer issues such as:

(a) the independence of schemes;

(b) wide coverage so that most consumer complaints can be heard by schemes;

(c) low cost access to schemes by consumers;

(d) effective reporting by schemes of complaints trends and problems;

(e) adequate public promotion of schemes; and

(f) regular independent reviews of how each scheme is operating.

The policy statement will apply to any scheme operating in the financial system that seeks or requires ASIC’s approval. It is written for broad application across ASIC’s consumer protection responsibilities, which include banking, life and general insurance and investment advisory services.

The policy statement is available on the ASIC website "www.asic.gov.au", from the ASIC Infoline on 1300300630.

(E) ASIC PROVIDES INNOVATIVE INTERNET RELIEF

On 2 July 1999 ASIC granted innovative relief to internet hosts who wish to display third party prospectuses on their websites. The relief allows internet hosts to act as service providers and distribute electronic prospectuses through the internet. ASIC has also adopted a no-action position in relation to the application of the licensing provisions of the Corporations Law to the Internet hosts.

Fundraising relief

The fundraising relief in ASIC Class Order 99/0790 contains three exemptions.

(1) The first exemption applies to issuers of electronic prospectuses and intermediaries who distribute electronic prospectuses on-line. It applies where paper prospectuses are lodged with ASIC after 1 September 1999. From that date, this exemption will replace ASIC’s existing electronic prospectuses Class Order 96/1578. The first exemption refines Class Order 96/1578 but provides issuers with substantially the same relief as is currently available.

(2) The second exemption of new Class Order 99/0790 applies to people who establish an Internet website to host issuers’ electronic prospectuses. Key features of the second exemption relief are that only electronic prospectuses which the Internet host reasonably considers comply with the first exemption of Class Order 99/0790 (or if the relevant paper prospectus was lodged with ASIC before 1 September 1999, Class Order 96/1578) may be displayed on the website.

Another key feature is that the website must not contain any promotional material in relation to investment in any securities the subject of an electronic prospectus displayed on the website or any opinion or advice in relation to investment in those securities, whether directly or implicitly.

(3) The third exemption of new Class Order 99/0790 applies to persons who provide a print-out of an electronic prospectus to another person.

Policy Statement 107 (electronic prospectuses) and Policy Statement 141 (Internet offers of securities) will be updated in light of this new Class Order.

Licensing issues

By publishing electronic prospectuses on a website dedicated to providing that service it is possible that the Internet host is conducting an investment advice business because they are carrying on a business of publishing securities reports; and the Internet host arguably requires a licence under Chapter 7 of the Corporations Law.

However, ASIC considers that there is no net regulatory benefit in requiring a person to be licensed as an investment adviser if they are acting purely as a service provider distributing electronic prospectuses via the Internet. As a result ASIC will not take any enforcement action against a person in relation to their operation of a website dedicated to the publication of electronic prospectuses without holding an investment adviser’s licence provided that the person:

(a) does not accept any financial reward for providing access to any electronic prospectus through the website which is attributable in whole or in part to the level of subscription in the securities the subject of that prospectus. However, ASIC does not object to the person charging fees based on volumes of data or numbers of hits;

(b) does not promote by any method (whether via the website or otherwise), investment in any securities to which the electronic prospectus accessible through the website relates or provide any opinion or advice in relation to investment in those securities, whether directly or implicitly. (For example, it is not acceptable for the person to advertise that a particular issuer’s current electronic prospectus is available on the website. However, advertising that current electronic prospectuses (without reference to specific prospectuses) can be downloaded from the website is permissible);

(c) does not promote by any method (whether via the website or otherwise), the website as being a means by which investment in particular securities may be promoted or by which opinions or advice in relation to investment in securities may be given;

(d) does not make any representations about the commercial prospects of any issuer whose securities are the subject of an electronic prospectus accessible through the website;

(e) does not publish any notice on the website except as permitted by Class Order 99/0790, without complying with the Corporations Law;

(f) does not assume any responsibility for determining the information to be contained in the paper counterpart of any electronic prospectus accessible through the website or the sequence in which that information is presented;

(g) includes a prominently displayed warning on the website to the effect that:

(i) the information contained on the website is not suitable to be acted upon as investment advice; and

(ii) it may be advisable to obtain investment advice before making any investment

decisions relying on the information provided.

Policy Statement 118 ( investment advisory services: media, computer software and Internet advice) will be updated soon to detail ASIC’s no-action approach to licensing issues affecting Internet hosts of electronic prospectuses.

Copies of Class Order 99/0790 can be obtained by calling ASIC’s Infoline on 1300 300 630.

(F) SURVEILLANCE OF COMPANY FINANCIAL REPORTS

On 1 July 1999 ASIC expressed some concerns about the way companies were complying with their disclosure obligations after it surveyed the financial reports of 111 listed companies.

The surveillance was carried out on reports with balance dates from 1 July 1998 to 31 December 1998. ASIC carried out the surveillance program to identify problems and areas where the accounting profession and business community need to improve their future reporting methods.

The major problems identified by this surveillance activity were:

- Amortisation of intangible assets

- Abnormal items

- Directors’ and officers’ emoluments.

While almost all companies surveyed complied with the new requirements for disclosure of directors’ and officers’ emoluments some non-compliances were noted, mainly in relation to the valuation of options granted to directors and officers.

There were a number of cases where the value of options granted to directors and officers were not included in emoluments. It is ASIC’s view that all options issued to directors and officers have some value even if they are not "in the money". That is the case even if they are considered to be "performance based".

ASIC expects companies to make a genuine attempt to value options. This will not necessarily require the use of a complex valuation model. For example, many options which are "in the money" have a readily determinable value.

Another problem with financial reports encountered by ASIC was the adoption by some companies of reserve accounting which did not appear to comply with accounting standards. One company took foreign exchanges losses to a foreign currency translation reserve, even though the relevant accounting standard required them to be recorded as expenses in the profit and loss statement. In one instance a company had recorded a large debit reserve described as an Asset Reallocation Reserve. Another company took unrealised gains on non-current inventories to a reserve and then recorded the same gains as operating profit when the assets were realised.

ASIC was pleased to note that there was improved disclosure and compliance by companies with the accounting standard concerning financial instrument disclosures compared to the last review of financial statements of listed companies.

On the whole the accounting and business community were positive about the surveillance activity and ASIC intends to continue this during the new financial year when it will focus on:

- The amortisation of intangibles;

- Environmental reporting requirements of the Law;

- Provisions for future maintenance and other provisions for future costs which do not meet the definition of "liabilities" contained in accounting standards;

- Asset valuations, in particular the disclosure of the current value of interests in land and buildings which will first apply for many entities for years ending 30 June 1999;

- Revenue recognition;

- The disclosure of directors’ and officers’ emoluments; and

- The disclosure and nature of movements in share capital and reserves.

The review may also be extended to include unlisted companies.

For further information contact:   
Jan McCahey   
ASIC Chief Accountant   
National Office, Melbourne   
Tel: (03) 9280 3265

(G) PILOT PROJECT FOCUSSES ON LISTED COMPANY DIRECTOR DISCLOSURE OF INTERESTS IN SHARES

On 1 July 1999 ASIC launched pilot projects in Victoria and South Australia monitoring disclosure by directors of listed companies of interests in the listed company’s shares.

The Law requires directors of listed companies to disclose a change in their share interests within 14 days of the changes occurring. The disclosure must be made to the Australian Stock Exchange. This obligation does not apply to directors of proprietary and public companies which are not listed on the Exchange.

ASIC’s Victorian and South Australian Regional Offices will run the surveillance pilot project over two months and will be supported by ASX.

ASIC turned its attention to this issue after an ASIC survey undertaken last month of 38 randomly selected Melbourne based listed companies showed that during the past 12 months 35% of directors failed to disclose their interests within the 14 day reporting period. Of that group, almost two-thirds of directors had lodged their notifications more than a week late.

More significantly, in reviewing companies from the random sample where there had been no notifications or no recent notifications of directors’ interests ASIC had found seven directors in breach of the requirement. These directors had direct or indirect shareholding interests in their companies and were in breach of their disclosure obligations for periods ranging from 21 months to three years.

(H) ASIC LAUNCHES E-REGISTERS TRIAL

ASIC has launched a trial of an interactive website service that allows ASIC clients to view their company details and make changes to them. The trial has been developed with the support of Business Entry Point (BEP) initiative in the Commonwealth Department of Employment, Workplace Relations and Small Business.

The ASIC eRegisters trial follows the successful launch of the Commission’s Electronic Company Registrations (ECR) service. The eRegisters service will also allow ASIC clients to lodge an annual return and pay any fees owing.

The eRegisters trial will be run as an open-ended trial and is available on ASIC’s homepage "www.asic.gov.au" and the BEP homepage "www.business.gov.au".

4. RECENT ASX DEVELOPMENTS

(A) NSX TO COLLABORATE WITH ASX

On 15 July 1999 the Stock Exchange of Newcastle (NSX) announced that it expects to begin operation of its new, fully electronic stock market in the last quarter of 1999. The NSX market, which is subject to final regulatory approval, will be capable of trading most Australian securities.

When trading begins on the Newcastle exchange, it will take place on an automated trading facility called NETS, which is being developed for NSX by the Australian Stock Exchange (ASX). NETS will be based on ASX’s Stock Exchange Automated Trading System (SEATS). The two exchanges have also agreed that ASX will provide electronic clearing and settlement facilities for NSX trades through ASX’s CHESS settlement system.

NSX believes its alternative equity market will fill gaps in the range of capital-raising facilities offered by existing equity markets of Australia. NSX is particularly focussed on medium sized regional enterprises, high-tech and start up operations.

(B) BLOOMBERG AND ASX BUILD GLOBAL ORDER ROUTING NETWORK

ASX and Bloomberg Financial Markets Commodities News have unveiled plans for a global order routing interface designed to enhance the ease and speed with which international market practitioners can access the market. In practical terms, participants in ASX’s markets will begin to see Bloomberg information screens with the functionality of a SEATS screen (Stock Exchange Automated Trading System). The SEATS-equivalent "Enquiry" and "Trading" functionality will be authorised to users at ASX brokers’ sites around the world.

In the proposal, Bloomberg would maintain an electronic gateway into the Australian market and support fully-automated order-routing from overseas into Australian brokers and on into the Australian market. Customers at Bloomberg’s 114,000 desktop terminals worldwide will be able to key orders directly into ASX’s SEATS system, nominating an Australian broker to take responsibility for the trade in the Australian market.

All arrangements are expected to be finalised by September 1999.

5. RECENT CORPORATE LAW DECISIONS

By Professor Ian Ramsay, Centre for Corporate Law and Securities Regulation

(A) DIRECTOR HELD PERSONALLY LIABLE FOR INSOLVENT TRADING

Tourprint International Pty Ltd (in liq) v Bott [1999] NSWSC 581, No 1684 of 1997, Supreme Court of New South Wales, Austin J, 15 June 1999.

Austin J commences his judgment with the following words:

"This case is a cautionary tale for company directors, especially in the small business sector. The defendant, Geoffrey Bott, joined the board of directors of the plaintiff company less than a year before it went into voluntary administration. He received no remuneration as a director. For at least a substantial part of that period, the company was hopelessly insolvent. For the reasons I shall give, the consequence for the defendant is that he is liable to the company’s liquidator under the insolvent trading provisions of the Corporations Law in a sum in excess of $500,000, plus interest".

The plaintiff company Tourprint International Pty Ltd ("Tourprint") undertook the business of print-broking which involved the company obtaining printing orders from customers and then placing the work with selected printers. In 1993 Mr Bott became a director of the company and one of two directors and two shareholders. An administrator was appointed to Tourprint in December 1993 with substantial amounts owing to creditors. The company subsequently went into liquidation. The company and its liquidator sought to make Mr Bott liable for certain of its debts under ss 588G and 588M of the Corporations Law whereby a director of a company may be personally liable for debts incurred while the company was insolvent and the director either was aware that there were reasonable grounds for suspecting that the company was insolvent or a reasonable person in a like position to the director in a company in the company’s position would be so aware.

Austin J found that Mr Bott did not ask either the other director nor Tourprint’s accountant for any financial information prior to his appointment to the board. Second, Austin J found that Mr Bott did not seek balance sheets, profit and loss statements or creditor ledgers from the other director, the company’s accountant or the company’s bookkeeper, and did not otherwise seek to inform himself of the financial health of the company during much of 1993 prior to the appointment of an administrator.

In relation to whether Mr Bott had breached s 588G, Austin J held that there were reasonable grounds for Mr Bott to suspect that Tourprint was insolvent. These grounds included the state of the company’s financial records, the growing deficiency of creditors over debtors, and the absence of any significant assets other than trade debtors and cash. According to Austin J, anyone aware of the facts disclosed by that information would have realised that the company was "hopelessly insolvent" during the relevant time.

Austin J held that a reasonable person in the position held by Mr Bott in Tourprint’s circumstances would have been aware throughout the relevant period that there were reasonable grounds for suspecting insolvency, even if Mr Bott was not aware. A reasonable person in Mr Bott’s circumstances would have "pressed forcefully for financial information about the company before taking up an appointment to the board, and then for regularly updated financial information so that a proper assessment of the company’s financial position could regularly be made".

Mr Bott relied on two defences in s 588H, these being:

- that at the time the debt was incurred the person had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent if it incurred the debt; or

- that because of illness or for some other good reason, the person did not take part in the management of the company.

Austin J held that Mr Bott could not rely on these defences. In particular, there were no reasonable grounds to expect that Tourprint was solvent at the relevant times and for Mr Bott to successfully utilise this defence would be for him to hide behind his ignorance.

(B) APPOINTMENT OF PROVISIONAL LIQUIDATOR TO BERMUDA COMPANY

Re New Insurance Corporation Holdings Ltd [1999] NSWSC 536, No 2387 of 1999, Supreme Court of New South Wales, Young J, 3 June 1999.

This case concerned applications for the appointment of a provisional liquidator to two companies incorporated in Bermuda. One of these companies was duly registered in Australia as a foreign corporation while the second was not. Young J noted that in recent years, an increasing difficulty has been corporations in financial difficulties which have assets in more than one country. In this regard, he stated that courts in Australia should aim to facilitate as much as possible the control of assets throughout the world and utilise s 581 of the Corporations Law which provides that Australian courts are to act in aid of the courts of other countries in relation to external administration matters.

Young J referred to the English Chancery Division judgment in Re Dallhold Estates (UK) Pty Ltd [1992] BCLC 621 where the court considered a section similar to s 581 of the Corporations Law and said that the court whose assistance was sought should "give the assistance required – unless there is some compelling reason why this should not be done". Young J was of the view that Australian courts should apply the same principle as applied in the English case.

An issue was whether the two companies incorporated in Bermuda were "Part 5.7 bodies" in relation to which the court could make an order appointing a provisional liquidator. A Part 5.7 body is defined in s 9 of the Corporations Law as a registrable body registered under Part 5B.2 or a body carrying on business in the jurisdiction. One of the two companies was clearly a Part 5.7 body as it was registered in Australia as a foreign corporation. With respect to the second company, the issue was whether it carried on business in New South Wales. The evidence before the court was that this second company had invested up to $US98 million in Australia, had issued letters of credit to Australians and held insurance policies over risks in Australia. Young J held that this amounted to carrying on business in New South Wales such that the company was a Part 5.7 body.

Additional evidence before the court suggested that the Australian assets of the company may be in jeopardy and it was therefore proper for a provisional liquidator to be appointed to both companies.

(C) TRANSFER OF PROCEEDINGS FOLLOWING RE WAKIM

Welltina Pty Ltd v Mamone [1999] FCA 905, No V3139 of 1999, Federal Court of Australia, Finkelstein J, 30 June 1999.

The applicant, Welltina Pty Ltd had commenced proceedings under s 549G of the Corporations Law for an order that a statutory demand served on it by the respondents be set aside. The proceedings were instituted before the High Court handed down its decision in Re Wakim which held that the State legislation which conferred jurisdiction on the Federal Court to hear and determine matters under the Corporations Law was invalid (see the discussion of Re Wakim in Bulletin No 22, June 1999).

The respondents relied on Re Wakim and requested an order that the proceedings be dismissed and that costs be awarded in their favour. Finkelstein J held that the facts did not give rise to a federal claim and therefore the Federal Court did not have jurisdiction to entertain the claim. However, he was not prepared to dismiss the application. Rather, he noted that the Attorney-General for the State of Victoria has announced that the Victorian Parliament will soon enact legislation that will permit the transfer of proceedings to the Supreme Court of Victoria, those proceedings being those which have been commenced in the Federal Court in reliance upon legislation that the High Court declared invalid.

His Honour held that the preferable course to adopt was to stay the application before him until such time as the foreshadowed legislation is enacted so as to enable steps to be taken to have the matter transferred to the Supreme Court of Victoria. This had the advantage of not requiring the applicant to commence a fresh application in the Supreme Court and would save the parties incurring additional legal expenses. His Honour was not prepared to grant the respondents’ request for a costs order given that the need to transfer the proceeding had arisen through no fault of the applicant.

(D) RELIEF FROM REQUIREMENT TO LODGE ACCOUNTS

D G Brims and Sons Pty Ltd v Australian Securities and Investments Commission [1999] AATA 454, No Q296 of 1998, Administrative Appeals Tribunal, K L Beddoe (Senior Member), 25 June 1999.

The applicant company sought relief from the requirement contained in s 317B of the Corporations Law (now s 319) to lodge financial statements for the financial year ending 30 June 1997 with the Australian Securities and Investments Commission. The applicant had applied to ASIC for an exemption but the application had been rejected. The applicant sought review of that decision in the Administrative Appeals Tribunal.

The applicant sought the exemption from the requirement to lodge the financial statement pursuant to s 313 (now s 340) on the basis that the requirement would be inappropriate to the circumstances of the company or impose unreasonable burdens on the company.

The evidence before the tribunal was that the applicant produces approximately 1 per cent of all particle board manufactured in Australia. All of the particle board produced by the applicant is used to make veneered particle board in its own factory and the applicant supplies 20 per cent of all the veneered particle board sold in the Australian market. The dominant particle board manufacturers have the ability, through the prices they charge for the supply of particle board to the manufacturers of veneered particle board who compete with the applicant, to influence the price of veneered particle board in the veneered particle board market. The nature and capacity of the applicant’s operations are known to others in the industry. Access to the applicant’s accounts via public lodgment of those accounts with ASIC would enable other particle board manufacturers not only to measure the vulnerability of the applicant to price reductions but also to measure the results of any such price reductions and their impact on the applicant’s profitability on a year by year basis.

The tribunal held that it was appropriate for the applicant to be granted relief from the requirement to lodge the annual financial statements. The factors leading to this conclusion were:

- the disclosure of the financial statements for the year ended 30 June 1997 by lodgment with ASIC could provide the applicant’s competitors with commercial information about the applicant so as to unfairly prejudice the applicant in a competitive industry

- because of a restructuring of the company which had occurred, lodgment of financial statements would not be required for the financial year ended 30 June 1998 and future years;

- the applicant has no loans from any bank or financial institution and while it does have trade creditors, those creditors are paid on a timely basis in accordance with the terms of trade;

- the applicant’s shares are held by a small number of family members.

The tribunal held that compliance with the requirement to lodge accounts in accordance with the Corporations Law was inappropriate to the circumstances of the company because the public interest in the lodgment of accounts was outweighed by the potential for the company to be subjected to price competition from major competitors with the inherent potential to make the company no longer financially viable.

(E) FIDUCIARY DUTY OWED BY DIRECTOR TO SHAREHOLDER

Brunninghausen v Glavanics [1999] NSWCA 199, No 40111 of 1996 and No 40049 of 1997, New South Wales Court of Appeal, Priestley JA, Handley JA and Stein JA, 23 June 1999.

The appellant was the sole effective director and majority shareholder in a company in which the respondent was the other director and shareholder. The business of the company was importing ski equipment. The relationship between the two men, who were brothers-in-law, was originally cordial but became strained and lacked any trust. The respondent’s retention of his directorship was a formality which brought him no information or insight into the affairs of the company and there were no meetings of its directors or shareholders. The respondent did not receive accounts for the company for any period after 31 March 1983.

As a result of family pressure, the two men began negotiations in late 1987 to resolve their differences. While these negotiations were proceeding, the appellant received an offer from a third party to buy the assets of the company and he had extensive negotiations to this end without informing the respondent. The respondent agreed to sell his shares to the appellant for a price well below the equivalent price paid by the third party for the assets. The trial judge held that a fiduciary duty was owed by the appellant as a director to the respondent as a shareholder, and that the appellant’s failure to disclose the existence of the other negotiations was a breach of that duty. The trial judge ordered an inquiry to be conducted before himself to determine the amount of compensation to be paid and in a second judgment peremptorily awarded $300,000 compensation to the respondent.

In the Court of Appeal the main judgment was delivered by Handley JA with concurring judgments by Priestley JA and Stein JA. The court dismissed the appeal from the first judgment. However, the court allowed the appeal from the second judgment as no inquiry as provided for in the judgment had been held to determine the amount of compensation and the appellant had been denied the opportunity to call evidence and to answer the respondent’s statement of issues.

The main issue before the court was whether a director may owe a fiduciary duty to a shareholder. Handley JA noted that the general principle established for well over a 100 years is that a director’s fiduciary duties in relation to the affairs of the company are owed to the company. It is reinforced by the rule in Foss v Harbottle (1843) 2 Hare 461 which denies shareholders standing to sue directors and others for wrongs done to the company. The court noted that if fiduciary duties owed by directors to their companies are also owed to their shareholders, directors would be liable to harassing actions brought by minority shareholders. Since in that event each shareholder would have a personal right, directors would also be exposed to a multiplicity of actions. There are therefore good reasons behind the established rule that in general a director’s fiduciary duties are owed only to the company.

However, Handley JA noted that in certain circumstances a director may owe a fiduciary duty to a shareholder. In particular, Handley JA drew attention to the judgment of Dixon J of the High Court of Australia in Richard Brady Franks Ltd v Price (1937) 58 CLR 112 at 143 where he stated that directors in issuing shares have a fiduciary duty not only to the company but also to its shareholders. Handley JA also referred to other judgments which he stated established that directors proposing resolutions for adoption by a general meeting owe a duty to the shareholders to advise and disclose material facts.

Turning to the facts before him, which involved the sale of shares between a director and shareholder, Handley JA noted that Mahoney JA in Glandon Pty Ltd v Strata Consolidated Pty Ltd (1993) 11 ACSR 543 at 547 had stated that a director purchasing the shares of a shareholder is in a position of advantage and that advantage is something which may, in appropriate circumstances, give rise to a fiduciary obligation. In the case before him, Handley JA noted that the respondent "was almost totally powerless" and had no legal right as a shareholder to inspect the company’s books of account or financial record and had no real guide to the value of his shares. At the same time, his continuing directorship "was an empty shell" and any attempt to insist on his right as a director may have led to his removal. The appellant, as the sole effective director, occupied a position of advantage in relation to the respondent and his negotiations for the sale of the business gave him the capacity to affect the interests of the respondent in a significant way given the vulnerability of the respondent. In these circumstances, Handley JA held that the appellant owed a fiduciary duty to the respondent.

More generally, Handley JA stated that "a fiduciary duty owed by directors to the shareholders where there are negotiations for a takeover or an acquisition of the company’s undertaking would require the directors to loyally promote the joint interests of all shareholders. A conflict could only arise if they sought to prefer their personal interest to the joint interest. That is the very conduct which would be proscribed by the duty. In my judgment [earlier judgments] should not stand in the way of the recognition of such a duty at this time".

6. RECENT CORPORATE LAW JOURNAL ARTICLES

V Goldwasser, ‘CLERP 6 – Implications and Ramifications for the Regulation of Australian Financial Markets’ (1999) 17 Company and Securities Law Journal 206

On 3 March 1999 the CLERP Consultation Paper implementing and building on CLERP Policy Paper No 6 was released for comment. A range of important initiatives for reform is contained in the consultation paper. The article addresses three of the key aspects of the reform agenda. In particular, harmonised regulation of all "functionally similar" financial products and markets as a central pillar of the Government’s strategy is examined. Also significant is the proposal to introduce a civil penalty regime for the market misconduct provisions of the Corporations Law. However, the regime is intended to operate in the context of the current law (essentially criminal law provisions). The introduction of an over-arching anti-fraud provision is also to be considered. It is argued that these initiatives create the potential for numerous difficulties, raise serious concerns and should not be implemented at this time.

L Semaan, M Freeman and M Adams, ‘Is Insider Trading a Necessary Evil for Efficient Markets? An International Comparative Analysis’ (1999) 17 Company and Securities Law Journal 220

Securities markets regulations have two main objectives – to promote market efficiency and market fairness. This article demonstrates that the insider trading regulations in Australia and overseas have been fuelled by excessive reaction by politicians and regulators to the notion of fairness at the expense of efficiency. In Australia, this has caused the insider trading regulations to be too encompassing compared to the regulations in six other securities markets examined in detail. For example, given the facts, the recent committal to trial of a J B Were broker on insider trading charges is less likely to have occurred in the six other regimes. Also, Australia’s continuous disclosure regulations are deliberately intertwined with the insider trading regulations, which is not the case for the six competing regimes examined. The intention of this article is to challenge regulators, law reformers and academics to reflect objectively on current insider regulations with a review to reform.

A Colla, ‘The Takeover Disclosure Regime Proposed in the CLERP Bill: A Change for the Better?’ (1999) 17 Company and Securities Law Journal 247

This article examines the reforms to takeover disclosure proposed in the Corporate Law Economic Reform Program Bill 1998. The article commences by summarising the current takeover disclosure regime and discusses recent common law developments on takeover disclosure. The article then discusses the takeover disclosure provisions in the CLERP Bill. The proposed regime embraces a philosophy that bidders and targets should be required to disclose only a limited number of specific matters and bidders and targets should be responsible for determining the remaining matters to be disclosed. In this regard, the CLERP Bill is endeavouring to align takeover disclosure with the more general disclosure requirements that apply to the securities offerings for which a prospectus is required. The article draws on the history of the current general disclosure test for prospectuses to assess the effectiveness of the proposed changes to takeover disclosure.

J Farrer, ‘Note – Joint Takeover Bids: Sidestepping the Twenty Per Cent Rule? A Note on ASIC v Yandal Gold Pty Ltd’ (1999) 17 Company and Securities Law Journal 268

C Schega, ‘Note – Favourable Corporations Law Changes for Financial Markets Participants’ (1999) 17 Company and Securities Law Journal 274

P Agardy, ‘Applications by Insolvency Practitioners to the Court for Directions’ (1999) 7 Insolvency Law Journal 60

C Hammond, ‘The Relationship of Administrators to Company Employees: Issues Arising under Part 5.3A of the Corporations Law’ (1999) 7 Insolvency Law Journal 74

A Keay, ‘Deregistration: The New End of the Road for Companies in Liquidation’ (1999) 7 Insolvency Law Journal 87

C Mailander, ‘Financial Innovation, Domestic Regulation and the International Market Place: Lessons on Meeting Globalisation’s Challenge Drawn from the International Bond Market’ (1998) 31 George Washington Journal of International Law and Economics 341

P Omar, ‘Company Law, Insolvency and Commercial Courts in France: Reform Proposals’ (1999) 10 International Company and Commercial Law Review 124

A Ellis, ‘Securitization Vehicles, Fiduciary Duties, and Bondholders’ Rights’ (1999) 24 Journal of Corporation Law 295

T Blackwell, ‘The Revolution Is Here: The Promise of a Unified Business Entity Code’ (1999) 24 Journal of Corporation Law 333

W Gibson, ‘Are Swap Agreements Securities or Futures? The Inadequacies of Applying the Traditional Regulatory Approach to OTC Derivatives Transactions’ (1999) 24 Journal of Corporation Law 379

R Garms, ‘Shareholder Buy-Law Amendments and the Poison Pill: The Market for Corporate Control and Economic Efficiency’ (1999) 24 Journal of Corporation Law 433

R Justice, ‘The Duty of Corporate Directors to Pay Dividends’ (1999) 87 Kentucky Law Journal 231

S Steele, ‘The New Law on Bankruptcy in Indonesia: Towards a Modern Corporate Bankruptcy Regime?’ (1999) 23 Melbourne University Law Review 144

J Hass, ‘Small Issue Public Offerings Conducted Over the Internet: Are They "Suitable" for the Retail Investor?’ (1998) 72 Southern California Law Review 67

G Yu, ‘Towards a Market Economy: Security Devices in China’ (1999) 8 Pacific Rim Law and Policy Journal 1

S Watson, ‘The Application of "Commonsense": Liability of Auditors in New Zealand’ (1999) Journal of Business Law 286

C Williams, ‘The Securities and Exchange Commission and Corporate Social Transparency’ (1999) 112 Harvard Law Review 1197

The Company Lawyer, Vol 20, No 4, April 1999. Articles include:

- Company Law Reviews in Australia and the United Kingdom

- Taking Deferred Consideration on Corporate Sales: A New Conflict?

- The Law Commission and Economic Methodology: Values, Efficiency and Directors’ Duties

- Williams v Natural Life and Health Foods: Negligent Misstatement, Company Directors and the House of Lords

- Creasey v Breachwood Motors: A Right Decision with the Wrong Reasons

- Singapore: Share Buy-Back Schemes and Other Recent Reforms to Company Law

Connecticut Journal of International Law, Vol 13, No 2, 1999. Special issue on The Law of Corporate Groups. Articles include:

- J Antunes, ‘The Liability of Polycorporate Enterprises’

- D DeMott, ‘The Mechanisms of Control’

- E Gouvin, ‘Cross-Border Bank Branching Under the NAFTA: Public Choice and the Law of Corporate Groups’

- D Prentice, ‘Some Aspects of the Law Relating to Corporate Groups in the United Kingdom’

- I Ramsay, ‘Allocating Liability in Corporate Groups: An Australian Perspective’

- R Thompson, ‘Piercing the Veil Within Corporate Groups: Corporate Shareholders as Mere Investors’

C Anderson, ‘Finding the Background of Part 5.3A of the Corporations Law’ (1999) 10 Australian Journal of Corporate Law 107

F Carrigan, ‘Globalisation and Legal Transnationalisation’ (1999) 10 Australian Journal of Corporate Law 122

M Freeman and M Adams, ‘Australian Insiders’ Views on Insider Trading’ (1999) 10 Australian Journal of Corporate Law 148

J Mayanja, ‘Reforming Australia’s Takeover Defence Laws’ (1999) 10 Australian Journal of Corporate Law 162

L Mabry, ‘Multinational Corporations and US Technology Policy: Rethinking the Concept of Corporate Nationality’ (1999) 87 Georgetown Law Journal 563

K Robson, ‘Share Buy-Backs and Treasury Stock’ (1999) 73 Australian Law Journal 446

Corporate Governance Bulletin, Volume 17, No 1, January- March 1999. Articles include:

- Proposal to Invest Social Security Reserves in Equity Sparks Governance Debate

- Number of Binding Shareholder Proposals Increases

- Audit Committees are Slated for Major Revamp.

O Sirodoeva-Paxson, ‘Judicial Removal of Directors: Denial of Directors’ Licence to Steal or Shareholders’ Freedom to Vote?’ (1999) 50 Hastings Law Journal 97

J Armour, ‘Corporate Personality and Assumption of Responsibility’ (1999) Lloyd’s Maritime and Commercial Law Quarterly 246

E Sibbitt, ‘A Brave New World for M & A of Financial Institutions in Japan: Big Bank Financial Deregulation and the New Environment for Corporate Combinations of Financial Institutions’ (1998) 19 University of Pennsylvania Journal of International Economic Law 965

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7. CENTRE FOR CORPORATE LAW SEMINARS

(A) DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE: PRACTICAL AND LEGAL ISSUES (co-hosted with the Australian Institute of Company Directors)

Speakers: Mr Ross Castle, Director, Aon Financial Services Australia Limited; Mr Fred Hawke, Special Counsel, Clayton Utz; Ms Rachel Symes, Manager, Executive Protection Department, Chubb Insurance

Date: Thursday 12 August 1999

Time: 5.30-7.00 pm. Refreshments will be served afterwards.

Venue: Clayton Utz, Level 18, 333 Collins Street, Melbourne

Admission: $60

Seminar Topic:

An important issue for company directors and officers is the availability and terms of the liability insurance available to them. There are many practical problems that need to be addressed when negotiating directors’ and officers’ liability insurance and recent court decisions have affected the terms of policies.

This seminar brings together well-known speakers who will focus upon the practical issues which need to be addressed in negotiating directors’ and officers’ liability insurance as well as the legal framework which impacts upon these negotiations.

Speaker Details:

Ross Castle:Ross is Director of Aon Financial Services Australia Limited, which is a member of the worldwide insurance broking organisation, Aon Group, Inc. He has 16 years experience in international insurance broking, 14 of which have been devoted exclusively to the broking and placement of specialised classes of insurance such as directors’ and officers’ liability, professional indemnity, and superannuation trustees’ liability. Ross has negotiated, placed and managed some of the largest D & O programs purchased by Australian organisations.

Fred Hawke:Fred is Special Counsel, Insurance with Clayton Utz. He has extensive experience in all aspects of the insurance market. Until recently he was General Counsel for the American International Group in Australia. He is an Associate of the Australian Insurance Institute, a member of the Australian Insurance Law Association and winner of the 1998 AILA prize. He is General Editor of the Insurance Law Journal, a member of the Journal Advisory Council of the Australian Insurance Institute and the author of a number of papers and articles on topics of insurance law and claims management. He is also a Visiting Fellow in the Faculty of Law Graduate Program at The University of Melbourne.

Rachel Symes:Rachel is Manager Southern Region for Chubb Insurance in their Executive Protection Department. For the last 8 years she has specialised in directors’ and officers’ liability insurance, trustees’ liability insurance and employment practices liability insurance for a range of clients from large publicly listed companies to private companies and non-profit bodies.

(B) LAWYERS’ PROFESSIONAL NEGLIGENCE: RECENT DEVELOPMENTS

Speakers: Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks; Mr Norman O’Bryan, Member of the Victorian Bar; Professor Michael Tilbury, Edward Jenks Professor of Law, The University of Melbourne

Date: Monday 23 August 1999

Time: 5.30-7.00 pm. Refreshments will be served afterwards.

Venue: Arthur Robinson & Hedderwicks, Level 34 Conference Room, 530 Collins Street, Melbourne

Admission: $60

Seminar Topic:

1999 has seen several extremely important developments regarding the professional negligence of lawyers. In May, in a decision described in the Australian Financial Review as "a landmark decision with sweeping ramifications for lawyers throughout Australia" two major law firms and a Queen’s Counsel were found liable for more than $20 million in damages over negligent advice on the failed NRMA float. The court held that the law firms and barrister concerned had breached their duty of care to NRMA in failing to warn it of certain possible legal developments at the time work was underway on the proposed NRMA demutualisation.

In the recent judgment of the High Court in Astley v Austrust Ltd the court considered an appeal from a firm of solicitors which had been successfully sued for breach of contract and for negligence in carrying out a retainer to provide legal advice. The trial judge had held that the solicitors were negligent in failing to advise their client when assuming the position of trustee of an existing trading trust that the client would be personally liable in dealings with third parties unless it limited its liability to the extent of the trust assets. In a judgment which has been widely viewed as controversial, the High Court held that while the client was guilty of contributory negligence, the client was entitled to recover for the whole of the damage that it suffered, because the client sued the solicitors in both contract and tort, and damages awarded pursuant to a claim in contract cannot be reduced by reason of conduct that constitutes contributory negligence.

In another important development, the Australian Competition and Consumer Commission this year settled proceedings against a partner of a law firm on the basis that he had aided, abetted and counselled the client to breach the Trade Practices Act and was directly or indirectly knowingly concerned in or a party to the contravention by the client of the Act. The ACCC announced in a press release that its action "serves as a warning to all professionals, including members of the legal profession, of the obligations imposed on them by the Act, and the potential consequences of non-compliance with the Act".

Seminar Details:

Professor Robert Baxt: is a Partner with Arthur Robinson & Hedderwicks and was previously Chairman of the Trade Practices Commission. He is a Professorial Fellow of The University of Melbourne. Bob is heavily involved in matters relating to the Trade Practices Act and also specialises in areas of corporate law and is the Chairman of the Corporations Law Committee of the Australian Institute of Company Directors. Bob will discuss the ACCC proceedings whereby the Federal Court declared, by consent, that a partner of a law firm had aided, abetted, counselled or procured a client to breach section 47 of the Trade Practices Act.

Norman O’Bryan: is a Barrister practising at the Victorian Bar. He was previously a Partner with Minter Ellison. His practice at the Victorian Bar has a particular focus upon commercial and corporate transactions. Norman acted for the plaintiffs in the NRMA case and will address the ramifications of this case for professional negligence of lawyers.

Professor Michael Tilbury: is the Edward Jenks Professor of Law and Deputy Dean in the Faculty of Law at The University of Melbourne. He has particular expertise in the law of remedies and is the author of the leading two volume treatise "Civil Remedies" published by Butterworths. He is the Academic Secretary of the Victorian Attorney-General’s Law Reform Advisory Council and a part-time Commissioner of the New South Wales Law Reform Commission. In his talk, Michael will address the implications of the High Court judgment in Astley v Austrust Ltd.

(C) CLERP 6 AND SECURITIES

Speakers: Ms Pamela Hanrahan, Senior Lecturer in Law, The University of Melbourne; Ms Alison Lansley, Partner, Mallesons Stephen Jaques; Mr Alan Shaw, National Manager – Market Integrity, Australian Stock Exchange

Date: Thursday 9 September 1999

Time: 5.30-7.00 pm. Refreshments will be served afterwards.

Venue: Mallesons Stephen Jaques, Level 28, Rialto Building, 525 Collins Street, Melbourne

Admission: $60

Seminar Topic:

CLERP 6 – Financial Markets and Investment Products, released in 1997, was followed up by a Discussion Paper in March 1999 which outlines the Government’s preferred position on implementing these extensive reforms to regulation of the Australian financial sector. CLERP 6 proposes a new legislative framework covering:

(i) Licensing of financial product markets

(ii) Licensing of financial services providers

(iii) Conduct of and disclosure by financial services providers

(iv) Financial product disclosure

that seeks to integrate regulation across a range of financial products and services including securities, superannuation, investment linked life insurance, futures and derivatives, and banking products. Among other things the CLERP 6 proposals will replace much of the existing regulation contained in the Corporations Law.

This important seminar looks at the potential impact of the CLERP 6 proposals on securities issuers, intermediaries and markets.

Speaker Details:

Pamela Hanrahan:is Senior Lecturer in Law at The University of Melbourne and a member of the Centre for Corporate Law and Securities Regulation. She is also Special Counsel with Arthur Robinson & Hedderwicks, where she practises in the area of managed funds. She is the author of a number of leading works on corporations law and securities law, including the recent "Managed Investments Law" and the forthcoming sixth edition of "Securities Industry Law".

Alison Lansley: is a Partner in the Melbourne office of Mallesons Stephen Jaques where she specialises in advising large corporations and government instrumentalities. Alison advises on: takeovers, prospectuses and large-scale corporate reconstructions and contractual matters such as: sales and purchases of businesses and private and government companies; and companies and securities law generally. Alison is also extensively involved in all aspects of the securities markets in Australia, including as a former member of the National Listing Committee of the Australian Stock Exchange.

Alan Shaw: is National Manager, Market Integrity at Australian Stock Exchange Limited. In that role he has been responsible for many of the ASX’s submissions on CLERP, including "CLERP 6" and "Implementing CLERP 6".He has been with ASX since July 1991 in a variety of roles including: Manager, Policy Development, Supervision; Manager of the Listing Rules Simplification Project; Manager, Companies for Melbourne and Hobart; and National Companies Counsel. He is co-author of a chapter titled "The Role of the Australian Stock Exchange" in "Securities Regulation in Australia and New Zealand", and the author of articles on a principles-based model for the Corporations Law.

REGISTRATION DETAILS

Send registration form and payment details by Monday 9 August for the Directors’ and Officers’ Liability Seminar; Thursday 19 August for the Lawyers’ Professional Negligence Seminar; and Tuesday 7 September for the CLERP 6 and Securities Seminar to: Mary Wildemast, Faculty of Law, The University of Melbourne, Parkville Vic 3052, fax: 9344 9983, tel: 9344 6194**,** email: "m.wildemast@law.unimelb.edu.au".

REGISTRATION FORM

Seminar attending (please indicate):

Directors’ and Officers’ Liability Insurance: Practical and Legal Issues

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Lawyers’ Professional Negligence: Recent Developments

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CLERP 6 and Securities

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I will be accompanied by (Name & Title)

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