

CENTRE FOR
CORPORATE LAW
AND SECURITIES
REGULATION

Faculty of Law
The University of Melbourne

1996 Annual Report



CENTRE FOR CORPORATE LAW AND SECURITIES REGULATION

Faculty of Law
The University of Melbourne



1996 Annual Report

Contents

Director's Report	6
Purposes and Objectives of the Centre	8
International Advisory Board	9
Australian Advisory Board	10
Academic Members of the Centre	11
Seminars	14
Links with Peak Organisations	17
Editorial Positions	18
Research	19
Monograph Series in Corporate Law and Securities Regulation	23
Teaching	26
Competitive Research Grants Obtained	28
Supervision of Research	32
The Centre as a Public Resource	34



Contact Details

Ms Ann Graham
Administrator
Centre for Corporate Law and Securities Regulation
Law School (Baldwin Spencer Building)
The University of Melbourne
Parkville Vic 3052
AUSTRALIA

Telephone: +61 3 9344 5281
Facsimile: +61 3 9344 5285
Email: cclsr@law.unimelb.edu.au

Professor Ian Ramsay
Director
Centre for Corporate Law and Securities Regulation
Law School (Baldwin Spencer Building)
The University of Melbourne
Parkville Vic 3052
AUSTRALIA

Telephone: +61 3 9344 5332
Facsimile: +61 3 9344 5285
Email: i.ramsay@law.unimelb.edu.au

Centre website: <http://www.law.unimelb.edu.au/cclsr.html>

Director's Report



Professor Ian Ramsay

The Centre for Corporate Law and Securities Regulation was established in January 1996. I am pleased to report that the first year of operation of the Centre has seen many achievements. These achievements included the development of new corporate law subjects at both the undergraduate and graduate levels at The University of Melbourne and a very active research program. In 1996 the eight academic members of the Centre were responsible for the publication of four books, four chapters in books, seventeen journal articles and fourteen conference papers.

A particularly pleasing feature of the research undertaken by members of the Centre is its recognition internationally. For example, Dr Geof Stapledon's book titled *Institutional Shareholders and Corporate Governance* was reviewed favourably in *The Economist*. An article of Dr Stapledon's titled *The Structure of Share Ownership and Control: The Potential for Institutional Investor Activism* received one of three Honourable Mentions in the 1996 Monks Corporate Governance essay competition which is an international competition for research into corporate governance. Dr Elizabeth Boros's book titled *Minority Shareholders' Remedies*, which was published by Oxford University Press in late 1995, received very positive reviews in leading international journals in 1996 including the *Modern Law Review* and the *Cambridge Law Journal*. The review in the *Modern Law Review* referred to her book as an indispensable research tool while the review in the *Cambridge Law Journal* referred to the book as a "veritable *tour de force*". It is very pleasing to see the research efforts of members of the Centre acknowledged in such a positive way.

Another aspect of the Centre's research program is its monograph series in corporate law and securities regulation. The first four monographs were published in 1996. The monographs received favourable reviews in law journals and, in addition, proved to be an important source of revenue for the Centre. They have enhanced the research reputation of the Centre both in Australia and internationally.

The Centre held two book launches during 1996. The first was on 18 March when Mr Justice Hayne of the Court of Appeal of the Supreme Court of Victoria, who chairs the Advisory Board of the Centre, launched Dr Elizabeth Boros's book, Sue Woodward's co-authored book titled *Corporations Law Workbook*, and the first two monographs published by the Centre. On 6 August the Centre held its second book launch where Dr Andrew Threadgold, Managing Director of AMP Investments Australia Limited launched Dr Geof Stapledon's book which deals with institutional investors.

Another major achievement in 1996 was the conference and seminar program hosted by the Centre. Seven seminars were conducted during 1996. The highlight was the one-day conference held at The University of Melbourne on 31 October

1996 on the topic of The Courts and Corporate Law. This conference was co-hosted with the Australian Institute of Company Directors, the Australian Institute of Judicial Administration and the Business Law Section of the Law Council of Australia. The two keynote speakers were Justice Norman Veasey, Chief Justice of the Supreme Court of Delaware and Justice David Malcolm, Chief Justice of the Supreme Court of Western Australia. We were also fortunate to have Justice Edmund Thomas of the Court of Appeal of New Zealand and a number of other prominent speakers. The proceedings of the seminar will be published in 1997 as a Centre monograph.

The Centre has developed close links with peak organisations with an interest in corporate law. These organisations include the Law Council of Australia, the Commercial Law Association, the Australian Institute of Company Directors and the Law Institute of Victoria. Members of the Centre were active in 1996 in assisting these organisations in various ways including writing submissions on their behalf on matters of corporate law reform.

Many people deserve thanks for their contribution to the work of the Centre during 1996. They include the members of the Australian Advisory Board and, in particular, the Chair of the Australian Advisory Board, the Honourable Mr Justice Hayne. Towards the end of 1996 an International Advisory Board was established in order to facilitate and promote the Centre's international links. I am grateful to those who have agreed to join the International Advisory Board.

Particular thanks are due to Ann Graham, the Administrator of the Centre, who played a key role in many of the Centre's achievements during the past twelve months and also Liz Foster and Rebecca Dennett in the Development Office in the Faculty of Law at The University of Melbourne who played an important role in administering the seminar program of the Centre. The Dean of the Faculty of Law at The University of Melbourne, Professor Michael Crommelin, has been a strong supporter of both the formation of the Centre and the initiatives undertaken during its first year of operation. Finally, I express my appreciation to The University of Melbourne Law School Foundation which provided substantial financial support to the Centre during 1996.

Professor Ian Ramsay

Purposes and Objectives of the Centre

The objectives of the Centre and its members are to:

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

International Advisory Board

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

- Professor Theodor Baums, University of Osnabruck, Germany
- Professor John Coffee, School of Law, Columbia University, USA
- Professor Ronald Daniels, Dean, Faculty of Law, University of Toronto, Canada
- Professor Deborah DeMott, School of Law, Duke University, USA
- Professor Kenjiro Egashira, Faculty of Law, University of Tokyo, Japan
- Professor Jiang Ping, China University of Political Science and Law, China
- Professor Dan Prentice, Pembroke College, Oxford University, England
- Professor Roberta Romano, Yale Law School, USA
- Professor Sang-Hyun Song, Dean, College of Law, Seoul National University, Korea
- The Honourable Justice Edmund Thomas, Court of Appeal of New Zealand
- The Honourable Justice E Norman Veasey, Chief Justice, Supreme Court of Delaware, USA
- Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium.

Australian Advisory Board

The Centre has an Australian Advisory Board chaired by the Honourable Mr Justice Hayne and comprising leading members of the Australian legal and business communities. The members of the Australian Advisory Board are:

- The Hon. Mr Justice Hayne, Court of Appeal, Supreme Court of Victoria (Chair)
- Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks
- Tom Bostock, Partner, Mallesons Stephen Jaques
- Stephen Creese, Vice-President and General Counsel, CRA Limited
- Quentin Digby, Partner, Freehill Hollingdale & Page
- Tony Greenwood, Partner, Blake Dawson Waldron
- Michael Hoyle, Partner, Corrs Chambers Westgarth
- Richard Kneebone, Corporate Secretary, ICI Australia Ltd
- Alison Lansley, Partner, Mallesons Stephen Jaques
- Rod Lyle, Managing Partner, Clayton Utz
- Jim Lyons, Group Manager, Legal, BHP
- Michael O'Bryan, Partner, Minter Ellison
- Ian Renard, Partner, Arthur Robinson & Hedderwicks
- Ron Salter, Partner, Phillips Fox
- Joseph Santamaria QC, Member of the Victorian Bar
- Ray Schoer, Director, Australian Stock Exchange
- Shane Tregillis, National Director, Regulation, Australian Securities Commission
- Catherine Walter, Director of National Australia Bank Limited, Australian Stock Exchange Limited, Mercury Asset Management Limited, SGIO Insurance Limited and Victorian Workcover Authority.

Academic Members of the Centre

The following academics were members of the Centre in 1996:

Ms Helen Bird

Helen Bird is a graduate in Law (Hons) and Commerce from the University of Queensland. She is currently completing her SJD at The University of Melbourne. She teaches Corporate Law and Business Law. Her research interests are corporate governance, corporate regulation and legal theory. She is also a Barrister and Solicitor of the Supreme Court of Victoria.

Dr Elizabeth Boros

Elizabeth Boros is a graduate of The University of Adelaide (LLB (Hons)) and Cambridge University (LLM; PhD). She is a Barrister and Solicitor of the Supreme Courts of South Australia and Victoria, and a Solicitor of the Supreme Court of England and Wales.

Elizabeth completed a doctorate at the University of Cambridge in 1992. On returning to Australia she practised with Blake Dawson Waldron. A revised version of her doctoral thesis was published as a book titled *Minority Shareholders'*



*Left, front to back:
Dr Elizabeth Boros,
Professor Ian Ramsay,
Ms Ann Grabam,
Dr Geof Stapledon.
Right, front to back:
Ms Helen Bird,
Dr Belinda Feblberg,
Mr John Telfer, Mr Greg
Reinhardt — absent
Ms Sue Woodward.*

Remedies by Oxford University Press in 1995. She joined the academic staff of The University of Melbourne and the Centre for Corporate Law and Securities Regulation as a Senior Lecturer in 1996. She teaches Corporations Law and Equity in the LLB Program and Members' Remedies in the Graduate Program. Her main areas of research interest at present are directors' duties and shareholders' remedies. She is also a member of the Companies and Business Organisations Committee of the Commercial Law Section of the Law Institute of Victoria.

Dr Belinda Fehlberg

Belinda Fehlberg graduated from The University of Melbourne in 1991 (BA, LLB (Hons)). She completed her articles of clerkship at Arthur Robinson & Hedderwicks in the area of commercial litigation and then practised in the corporate law area. In 1992, she began her DPhil studies at the Centre for Socio-Legal Studies, University of Oxford. She was awarded her DPhil in 1995. Her DPhil thesis comprised a socio-legal, empirically-based study of spouses and partners who provide third party loan security for the business borrowings of their other spouse or partner. A revised version of the thesis will be published in 1997 by Oxford University Press.

In 1993 Belinda was appointed as a half-time Lecturer in the Faculty of Law, University of Warwick, where she taught Commercial Law and Company Law. At the end of 1994, Belinda took up an appointment as a lecturer in the Law School, The University of Melbourne. She currently teaches Corporations Law and Family Law. Her publications are mainly in the area of her thesis research, but she has a general interest in the areas of corporations law and family law, and especially in issues where these two areas overlap.

Professor Ian Ramsay

Ian Ramsay is the Harold Ford Professor of Commercial Law in the Faculty of Law at The University of Melbourne and Director of the Centre for Corporate Law and Securities Regulation. Ian has published extensively on corporate law issues both internationally and in Australia. He has practised law with the firm of Sullivan & Cromwell in New York and Mallesons Stephen Jaques in Sydney. Other positions Ian has held include:

- Deputy Director of the Federal Government's Companies and Securities Advisory Committee where he wrote a number of reports on directors' and officers' insurance, directors' duties and shareholder litigation
- Member of the Executive Committee of the Business Law Section of the Law Council of Australia
- Member of the Corporations Law Committee of the Australian Institute of Company Directors and the Companies Committee of the Law Council of Australia
- Consultant to the Australian Law Reform Commission for its collective investment schemes project.

Mr Greg Reinhardt

Greg Reinhardt joined the Faculty of Law in 1991 from the law firm of Minter Ellison where he was a partner. His research and teaching interests include the Law of Insolvency, Civil Procedure and Insurance Law. Greg is Editor of the *Insurance Law Bulletin*.

Dr Geof Stapledon

Geof Stapledon obtained undergraduate degrees in Economics and Law from the University of Adelaide before practising as a commercial solicitor with Finlaysons in Adelaide. He then spent three years at the University of Oxford, conducting doctoral research into the role of institutional investors in corporate governance in the UK and Australia. This research led to the publication in mid-1996 of Geof's book titled *Institutional Shareholders and Corporate Governance* (Oxford University Press). Geof joined the Faculty of Law at The University of Melbourne in 1995. Geof has a number of journal publications in the area of institutional investors and corporate governance, together with articles in the areas of directors' duties, shareholders' remedies, and auditors' liabilities. He is the Editor of the leading scholarly refereed journal specialising in Australasian corporate and securities law: the *Company and Securities Law Journal*.

Mr John Telfer

John Telfer is a Senior Lecturer in the Faculty of Law and a Barrister. He works mainly in the area of Taxation Law and also teaches Corporations Law. He undertakes research into Australian, international and south-east Asian taxation. This work includes the taxation of companies in various jurisdictions and how the business transactions of companies are taxed.

Ms Sue Woodward

Susan Woodward is a graduate of The University of Melbourne (LLB (Hons)) and is a Barrister and Solicitor of the Supreme Court of Victoria. Prior to joining The University of Melbourne, Susan practised in commercial law both in Australia and London. She also worked as in-house legal counsel for AIDC (Australian Industry Development Corporation). At the University, Susan has taught Corporations Law for several years. Most recently, Susan has co-authored the book *Corporations Law Workbook* (LBC Information Services, 3rd ed, 1996) which is accompanied by a Teachers' Manual.

Seminars

A number of highly successful conferences and seminars were organised by the Centre during 1996. Well over 100 people attended several of these seminars.

The Courts and Corporate Law (31 October 1996)

Keynote Addresses

- Justice Norman Veasey, Chief Justice, Supreme Court of Delaware (**The Defining Tension in Corporate Governance in America**).
- Justice David Malcolm, Chief Justice, Supreme Court of Western Australia (**Directors' Duties: The Governing Principles**).

The Nominee Director and the Corporate Group

- Justice Edmund Thomas, Court of Appeal of New Zealand (**The Role of Nominee Directors and the Liability of their Appointors**).

Commentator: The Hon. Andrew Rogers QC, former Chief Judge, Commercial Division, Supreme Court of New South Wales.

Perspectives on the Judiciary and Corporate Law

- Alan Cameron, Chairman, Australian Securities Commission
- Catherine Walter, professional non-executive company director
- Karen Byrne, General Counsel, Australian Stock Exchange
- Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks

Some Issues of Corporate Governance and Compliance

- Michael Rozenes QC, Commonwealth Director of Public Prosecutions (**Corporate Misconduct and the Criminal Justice System**).
- Alex Chernov QC, Victorian Bar (**The Role of Corporate Governance Practices in the Development of Legal Principles Relating to Directors**).
- Professor Ian Ramsay, Centre for Corporate Law and Securities Regulation, The University of Melbourne (**What Should be Our Objectives in Determining the Proper Role of Courts in Corporate Law?**).

This conference was co-hosted with the Australian Institute of Company Directors, the Australian Institute of Judicial Administration and the Business Law Section of the Law Council of Australia.

Corporate Strategies in the Single European Market (20 August 1996)

Speaker: Professor Gilles Guyot of the University of Lyon.

Derivatives Regulation in the United States: Problems and Issues (8 July 1996)

Speaker: Professor Roberta Romano of Yale University School of Law and School of Management; Commentator — Mr Shane Tregillis of the Australian Securities Commission.

Deregulation of Public Utilities (4 June 1996)

Speaker: Professor Michael Trebilcock of the University of Toronto Law School with a panel consisting of Professor Phillip Williams of the Melbourne Business School, Mr Jim Holmes, Executive Manager, Business Development of Powernet, Mr David Goddard a partner with the New Zealand firm of Chapman Tripp Sheffield Young, and Mr John Perham of the Privatisation and Industries Reform Division of the Victorian State Treasury Department. This public lecture was hosted by the Centre in conjunction with the Australian Law and Economics Association.

The CRA-RTZ Merger (7 May 1996)

Speakers: Mr Stephen Creese of CRA Limited and Mr Ian Renard and Mr Cameron Rider of Arthur Robinson & Hedderwicks.

Recent Developments in Legal Professional Privilege and the Privilege Against Self-Incrimination (21 March 1996)

Speakers: Associate Professor Sue McNicol of Monash University and Mr Peter Cranswick and Mr Peter Hiland of the Australian Securities Commission.

Corporate Governance: An International Perspective (12 February 1996)

Speaker: Professor Richard Buxbaum, University of California at Berkeley.

The successful 1996 seminar program built upon seminars organised by the Corporate Law Interest Group — the predecessor of the Centre — in 1995. The seminars organised by the Corporate Law Interest Group included:

Shareholders' Remedies: Australian and United States Developments

Speakers: Professor Deborah DeMott, Duke University School of Law; Mr John Kliver, Companies and Securities Advisory Committee; Dr Elizabeth Boros, Blake Dawson Waldron.

Daniels v AWA Limited

Speakers: Professor Robert Baxt, Arthur Robinson & Hedderwicks; The Hon Andrew Rogers QC, formerly Chief Judge, Commercial Division, Supreme Court of New South Wales; Mr W R M Irvine, Chairman of the Board of Directors, National Australia Bank.

Recent US Developments in Directors' Duty of Care in Corporate Transactions

Speaker: Professor Douglas Branson, University of Pittsburgh School of Law.

Gambotto v WCP Limited

Speakers: Quentin Digby, Freehill Hollingdale & Page; Geoff Hone, Blake Dawson Waldron; Ian Renard, Arthur Robinson & Hedderwicks; Ron White, Norton Smith & Co.

Corporate Groups: A United States Perspective on Current Legal Issues and Policies

Speaker: Professor Phillip Blumberg, University of Connecticut School of Law.

The NRMA Case

Speakers: George Durbridge, Australian Securities Commission; Frances Hanks, The University of Melbourne; Norman O'Bryan, Barrister; Jon Webster, Arthur Robinson & Hedderwicks.

Recent Developments in Closely Held Firms in the United States: Limited Liability Companies and Limited Liability Partnerships

Speaker: Professor Larry Ribstein, George Mason University School of Law, Washington, DC.

Links with Peak Organisations

The Centre has developed links with peak organisations with an interest in corporate law. During 1996 corporate law academics were members of:

- The Companies and Business Organisations Committee, Commercial Law Section, Law Institute of Victoria (Dr Elizabeth Boros)
- The Executive Committee of the Business Law Section of the Law Council of Australia (Professor Ian Ramsay)
- The Companies Committee of the Business Law Section of the Law Council of Australia (Professor Ian Ramsay)
- The Corporations Law Committee of the Australian Institute of Company Directors (Professor Ian Ramsay)
- The Executive Committee of the Corporate Law Teachers Association (Professor Ian Ramsay)
- The Victorian Committee of the Commercial Law Association of Australia (Dr Geof Stapledon).

Academic staff members have been Course Directors for the Corporate Secretaries Course administered by the Chartered Institute of Corporate Secretaries.

Editorial Positions

Members of the Centre occupy editorial positions with a number of corporate law and other publications:

- *The Company and Securities Law Journal* (Editor: Dr Geof Stapledon; Member of the Editorial Board: Professor Ian Ramsay)
- *The Commercial Law Quarterly* (Member of the Publications Committee: Professor Ian Ramsay)
- *The Newsletter of the Business Law Section of the Law Council of Australia* (Editor: Professor Ian Ramsay)
- *The Australian Accounting Review* (Member of the Editorial Board: Professor Ian Ramsay)
- *Company, Financial and Insolvency Law Review* (Member of the Editorial Board: Dr Geof Stapledon)
- *Insurance Law Bulletin* (Editor: Greg Reinhardt)
- *Australia & New Zealand Journal of Law & Education* (Member of the Editorial Board: Professor Ian Ramsay).

Other editorial work undertaken during 1996 included:

- Consulting Editor for the book *International Securities Regulation: Pacific Rim*, Oceana Publications, New York, 1996 (Professor Ian Ramsay)
- Editor of the Collected Volume of the Papers Presented at the 1996 Corporate Law Workshop, Business Law Section, Law Council of Australia (Professor Ian Ramsay).

Research

Academic members of the Centre conducted a very active research program in 1996.

Books

Ramsay, I M and Shorten, A, *Education and the Law*, Butterworths, Sydney, 1996.

Ramsay, I M (ed), *Gambotto v WCP Ltd: Its Implications for Corporate Regulation*, Centre for Corporate Law and Securities Regulation, Melbourne, 1996.

Stapledon, G P, *Institutional Shareholders and Corporate Governance*, Oxford University Press, Oxford, 1996.

Woodward, S and Griffiths, L, *Corporations Law Workbook and Teachers Manual*, LBC Information Services, Sydney, 1996.

Monograph

Ramsay, I M and Ford, H A J, *Guide to the First Corporate Law Simplification Act*, Butterworths, Sydney, 1996.

Government Report

Reinhardt, G J and Palmer, A J, *Review of the Evidence Act 1958*, Report Prepared for the Scrutiny of Acts and Regulations Committee, Parliament of Victoria, 1996.

Chapters in books

Boros, E, "The Implications of Gambotto for Minority Shareholders" in I Ramsay (ed), *Gambotto v WCP Ltd: Its Implications for Corporate Regulation*, Centre for Corporate Law and Securities Regulation, Melbourne, 1996, 82-88.

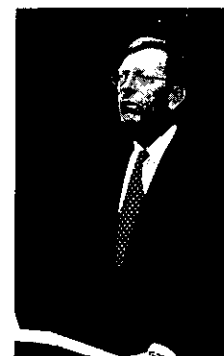
Ramsay, I M, *Updates to Ford's Principles of Corporations Law*, 2 volume loose-leaf book updated four times per annum, Butterworths, Sydney, 1996.

Ramsay, I M, "Key Aspects of the Decision of the High Court in *Gambotto v WCP Ltd*" in I Ramsay (ed), *Gambotto v WCP Ltd: Its Implications for Corporate Regulation*, Centre for Corporate Law and Securities Regulation, Melbourne, 1996, 1-12.

Reinhardt, G J, "Pleas of Guilty or Not Guilty" in J A Riordan (ed), *Laws of Australia: Criminal Procedure*, LBC Information Services, Sydney, 1996, 55-82.



Dr Elizabeth Boros at the launch of her book titled *Minority Shareholders' Remedies*.



The Honourable Mr Justice Ken Hayne, Chair of the Australian Advisory Board of the Centre launching Dr Elizabeth Boros's book titled *Minority Shareholders' Remedies*, Ms Sue Woodward's co-authored book titled *Corporations Law workbook and the first two monographs published by the Centre*.

Journal articles

Bird, H L, "The Problematic Nature of Civil Penalties in the Corporations Law" (1996) 14 *Company and Securities Law Journal* 405-427.

Fehlberg, B, "The Husband, the Bank, the Wife and Her Signature — The Sequel" (1996) 59 *Modern Law Review* 675-694.

Fehlberg, B, "Surety Wives and Australian Law: *Akins v National Australia Bank*" (1996) 11 *Banking and Finance Law Review* 423-439.

Ramsay, I M and Harris, T, "Measuring the Effects of Legal Change Using Share Price Data: An Analysis of the Impact of the Mabo Decision" (1996) 9 *Corporate and Business Law Journal* 113-137.

Ramsay, I M, "Law and Economics as an Approach to Corporate Law Research: A Comment" (1996) 3 *Canberra Law Review* 48-53.

Ramsay, I M, "Why is There so Little Empirical Corporate Law Research? A Comment" (1996) 3 *Canberra Law Review* 110-112.

Reinhardt, G J, "The Availability of Tracing to the Insolvency Administrator" (1996) 4 *Insolvency Law Journal* 74-84.

Reinhardt, G J, "Indemnity Insurance Policies" (1996) 70(2) *Law Institute Journal* 64-65.

Reinhardt, G J, "Liability of Guarantors" (1996) 70(6) *Law Institute Journal* 72-74.

Reinhardt, G J, "Unfair Preferences" (1996) 70(11) *Law Institute Journal* 60-62.

Reinhardt, G J, "Compensation and Professional Indemnity in Health Care" (1996) 4 *Torts Law Journal* 173-181.

Stapledon, G P, "Regulation of Corporate Governance: Will it Improve Corporate Performance?" (1996) 6 *Australian Accounting Review* 11-15.

Stapledon, G P, "Disincentives to Activism by Institutional Investors in Listed Australian Companies" (1996) 18 *Sydney Law Review* 152-192.

Stapledon, G P and Lawrence, J J, "Board Composition and Structure in the Top 100" (1996) 12(9) *Company Director* 8-10.

Stapledon, G P and Lawrence, J J, "Corporate Management: Corporate Governance in the Top 100" (1996) 48 *Australian Company Secretary* 360-361.

Telfer, J, "Postscript on Aspects of Whether or not Income is 'Received' in Malaysia and Singapore" (1996) 2 *Asia-Pacific Taxation Bulletin* 124-126.

Telfer, J and Broughan P, "Terminal Affliction — Three Common Types of Financial Arrangements may be Casualties of Proposed Legislation" (1996) 31 *Taxation in Australia* 251-256.

Conference papers

Bird, H L, "What's in a Publicly Listed Share? An Evaluation of the Conflict Between the Contractual and Proprietary Models of Share Entitlements Following *Gambotto v WCP Ltd*". Paper presented at the 6th National Corporate Law Teachers Conference, Bond University, 4-6 February 1996.

Boros, E, "Compulsory Acquisition of Minority Shareholdings". Paper presented as a Visiting Lecturer at Monash University, Faculty of Law, LLM subject on Takeovers, July 1996.

Fehlberg, B, "Money and Marriage: Sexually Transmitted Debt". Paper presented at the 5th Australian Family Research Conference, Brisbane, 27-29 November 1996.

Ramsay, I M, "What Should be our Objectives in Determining the Proper Role of Courts in Corporate Law?" Paper presented at the conference The Courts and Corporate Law hosted by the Australian Institute of Company Directors, the Australian Institute of Judicial Administration, the Business Law Section of the Law Council of Australia and the Centre for Corporate Law and Securities Regulation, Melbourne, 31 October 1996. This paper was also presented at a conference hosted by the Law Society of Western Australia, Perth, 7 November 1996.

Ramsay, I M, "Dealing with Minority Shareholders". Paper presented at the IIR Conference on Mergers and Acquisitions, Sydney, 22 April 1996.

Reinhardt, G J, "Jurisdiction, Service and Enforcement Issues". Paper presented at the Leo Cussen Institute Commercial Litigation Seminar, Melbourne, 21 May 1996.

Stapledon, G P, "The Fiduciary and Other Obligations of Trustees, Investment Managers and Directors of Australian Institutional Shareholders". Paper presented at the 1996 Corporate Law Workshop of the Business Law Section of the Law Council of Australia, Adelaide, 13 October 1996.

Stapledon, G P, "The Structure of Share Ownership and Control in Listed Australian Companies". Paper presented at The University of Melbourne Department of Accounting and Finance Research Seminar Program, Melbourne, 13 September 1996.

Stapledon, G P and Lawrence, J J, "Corporate Governance in the Top 100". Paper presented at a seminar at Arthur Robinson & Hedderwicks, Solicitors, Melbourne, 10 July 1996.

Stapledon, G P and Lawrence, J J, "Corporate Governance in the Top 100. Paper presented at a seminar at the Australian Securities Commission, Melbourne, 11 June 1996.

Stapledon, G P and Lawrence, J J, "Corporate Governance in the Top 100". Paper presented at the Inaugural Conference of the Australian Law and Economics Association, The University of Melbourne, 1 June 1996.

Stapledon, G P, Lawrence, J J and Paatsch, D, "Independence and Interlocks in Australian Boards of Directors". Paper presented at the Annual Conference of Major Superannuation Funds, Brisbane, 12 March 1996.

Stapledon, G P, "Disincentives to Activism by Institutional Investors in Listed Australian Companies". Paper presented at the 6th National Corporate Law Teachers Conference, Bond University, 4-6 February 1996.

Published student research

Chesterman, S, "Gender Ltd: Why Aren't More Women on the Boards of Australia's Top 100 Listed Companies?" (1996) 14 *Company and Securities Law Journal* 352-361.

Farrer, J, "The Application of the Corporations Law to 'Off the Plan' Strata Title Units" (1996) 14 *Company and Securities Law Journal* 464-470.

Lawrence, J J, "The Regulation of Derivatives and the LEPOs Litigation" (1996) 14 *Company and Securities Law Journal* 90-100.

Lawrence, J J, "The Coleman v Myers Fiduciary Relationship: An Australian Resurgence?" (1996) 14 *Company and Securities Law Journal* 428-439.

Monograph Series in Corporate Law and Securities Regulation

During 1996 the Centre published four monographs as part of its monograph series in corporate law and securities regulation. These were:

Professor I M Ramsay (editor), *Gambotto v WCP Ltd: Its Implications for Corporate Regulation*

The judgment of the High Court of Australia in *Gambotto v WCP Ltd* is one of the most important decisions relating to:

- the rights of minority shareholders;
- squeeze-outs of minority shareholders;
- capital reconstructions;
- disclosure obligations to shareholders;
- amendment of company articles; and
- takeovers.

Nine corporate law authorities evaluate the significant implications of the judgment.

- Professor Ian Ramsay — Key Aspects of *Gambotto*
- Damien Grave — Compulsory Share Acquisitions: Practical and Policy Considerations
- Professor Paul Redmond — Disclosure Obligations in Corporate Squeezeouts
- Quentin Digby — The Implications of *Gambotto* for Non-Takeover Aspects of Compulsory Acquisitions
- Ian Renard — The Implications of *Gambotto* for Takeovers
- Dr Elizabeth Boros — The Implications of *Gambotto's* Case for Minority Shareholders
- Professor Deborah DeMott — A United States' Perspective on *Gambotto*
- Michael Whincop — An Economic Analysis of *Gambotto*
- Saul Fridman — When Should Compulsory Acquisition of Shares be Permitted and, if so, What Ought the Rules be?

Phillip Lipton, *The Authority of Officers and Agents to Act for a Company: Legal Principles*

One of the most important practical issues for companies and their advisers is the legal authority of agents and officers to act for a company. Many court judgments have recently added to the law in this area. Mr Lipton reviews both the statutory and judicial principles relating to corporate authority. The final chapter of the book provides practical advice to lenders in order to ensure that contacts by companies have been properly authorised.

Geof Stapledon and Jeffrey Lawrence, *Corporate Governance in the Top 100: An Empirical Study of the Top 100 Companies' Boards of Directors*

The Australian Stock Exchange Listing Rule 4.10.3, which became effective on 30 June 1996, requires each listed company to include in its annual report a statement of the main corporate governance practices that the company had in place during the reporting period. The indicative list of corporate governance matters set out in Appendix 4A of the Listing Rules includes various items pertaining to board composition and structure.

In recent years, a number of bodies including Britain's Cadbury Committee, the American Law Institute, the Working Group chaired by Henry Bosch AO, and the Australian Investment Managers' Association have made recommendations regarding best practice in the area of board composition and structure.

This Report analyses the rationales for these recommendations, and presents the results of a study of board composition and structure in the Top 100 listed Australian companies as at mid-1995. The Report includes an array of data on board composition and structure in the Top 100, including information on:

- independence of directors
- proportion of women directors
- separation of roles of chairperson and chief executive
- incidence and composition of audit, remuneration and nomination committees
- multiple directorships.

Megan Richardson (editor), *Deregulation of Public Utilities: Current Issues and Perspectives*

Many countries are grappling with the complex issues arising from the deregulation of public utilities such as gas, electricity, water and telecommunications. This book deals with both the legal and economic aspects of the deregulation of public utilities. Chapters include the competition law framework for deregulation of public utilities; asset valuation and access to essential facilities under the Trade Practices Act; an economic analysis of the prices that public utilities should charge;

a comparison of regulatory approaches and economic outcomes to deregulation of public utilities in Australia and New Zealand; and the experience with the deregulation of the Ontario Natural Gas and Electricity Industries.

Contributors include leading lawyers and economists such as Professor Michael Trebilcock of the University of Toronto; Professor Henry Ergas of the University of Auckland; Professor Philip Williams of the Melbourne Business School; David Goddard, World Bank Consultant on deregulation; and John Derham, Deputy Secretary and Director of the Privatisations and Industries Reform Division in the Victorian Treasury.



Centre Book Launch
Left to right: Professor Ian Ramsay, Professor Michael Crommelin, Dean, Faculty of Law, The University of Melbourne, Dr Elizabeth Boros, the Honourable Mr Justice Ken Hayne, Ms Sue Woodward.

Teaching

The Faculty of Law has a very strong graduate program in corporate law and securities regulation. Students enrolled in either the Master of Laws Degree or the Graduate Diploma in Corporations and Securities Law may choose from 17 subjects. These subjects are:

- Commercial Applications of Equity
- Company Takeovers*
- Corporate Governance and the Duties of Directors*
- The Corporation as Criminal*
- Current Issues in Corporate Insolvency
- Current Issues in Corporate Law
- Derivatives Regulation*
- Equity Finance
- International Securities Regulation*
- Members' Remedies*
- The Reconstruction of Companies
- Regulation of Collective Investments
- Regulation of Securities Offerings
- Regulatory Environment for Corporations*
- Restructuring Government Business Enterprises
- Securities for Corporate Lending*
- Superannuation Law*

At the undergraduate level, the following subjects are offered:

- Corporations Law*
- Corporate Governance in the Modern Company*
- Insolvency Law*
- Takeovers and Securities Regulation*

In addition, the Faculty is responsible for teaching the subject Corporate Law in the Faculty of Economics and Commerce.

A feature of the graduate program in corporate law is the use of international corporate lawyers. These have included Professor Roberta Karmel who is a former Commissioner of the United States Securities and Exchange Commission, Professor Deborah DeMott of

* indicates taught in 1996

Duke University School of Law and Professor Douglas Branson of the University of Pittsburgh School of Law.

There were three major achievements in 1996 in relation to teaching. The first was the introduction of new subjects into the Graduate Program. New subjects offered for the first time in 1996 in the Graduate Program were: The Corporation as Criminal, Derivatives Regulation, International Securities Regulation, The Regulatory Environment for Corporations and Superannuation Law. In addition, 1996 saw the approval of two new subjects to be taught for the first time in 1997. These are The Regulation of Collective Investments and Restructuring Government Business Enterprises.

The nine corporate law subjects offered in the Graduate Program in 1996 received very positive evaluations from students. For example, the two subjects Company Takeovers and The Corporation as Criminal each received a rating of 4.6 out of 5 in relation to how well the subject was taught. Superannuation Law received a rating of 4.4 out of 5.

A second initiative in 1996 was the introduction of a new undergraduate subject titled Corporate Governance in the Modern Company. The subject deals with a number of topical issues relating to corporate governance including the structure and functions of the board of directors, directors' and officers' remuneration, institutional investors and international perspectives on corporate governance. The subject was well-received by students receiving an assessment in relation to how well the subject was taught of 4.7 out of 5, one of the highest assessments received of any law school subject taught in 1996.

The third achievement in 1996 was the major restructuring of the subject Corporate Law which is taught in the Faculty of Economics and Commerce. 1996 was the first time that members of the Centre were responsible for teaching this subject. It had a student enrolment of approximately 550 students. The subject received a very positive student rating of 4.5 out of 5 in relation to how well the subject was taught.

Competitive Research Grants Obtained

This section identifies the competitive research grants obtained by members of the Centre in 1996.

Australian Research Council Collaborative Grant

Project title

The Impact of Institutional Investors on Capital Markets and Corporate Performance.

Chief Investigators

Professor Ian Ramsay, Dr Geof Stapledon and Professor Kevin Davis (Department of Accounting and Finance, The University of Melbourne).

Industry Partner

The Australian Investment Managers' Association (which represents approximately the 60 largest institutional investors in Australia).

Funds received over the life of the project

\$72,452 with matching funds contributed by the Australian Investment Managers' Association.

Project summary

Institutional investors are significant investors in Australian companies. The impact of institutional investment upon capital markets and upon corporate performance are important matters that have been widely researched overseas, but have received little attention in Australia. One reason for the lack of Australian research is the lack of information about institutional shareholdings in Australian companies. The project will provide this information, largely through the Australian Investment Managers' Association, by identifying the fund managers which control the registered shareholdings disclosed by companies. The information will then be utilised in several studies of the impact of institutional investors on the capital markets and corporate performance.

Australian Research Council Small Grant

Project title

The Role of Institutional Investors in Corporate Governance and the Influence of Corporate Law on this Role.

Chief Investigators

Professor Ian Ramsay and Dr Geof Stapledon.

Funds received over the life of the project

\$19,800 plus research infrastructure funds provided by The University of Melbourne of \$4,954.

Project summary

There is a lack of evidence and information on the role of institutional investors in corporate ownership and control. The project provides this evidence by way of detailed interviews with Australian institutional investors on a range of matters relating to their activities and views on corporate governance and investment policy. The project also identifies possible barriers, including legal barriers, to institutional investor activism (ie, why institutional investors may not actively monitor the management of companies in which they invest) and the views of institutional investors are sought in relation to whether these possible barriers do actually inhibit institutional investor activism.

Australian Research Council Small Grant

Project title

The Use and Operation of the Enforcement Regime Attracted by Contraventions of Directors' Duties in Australian Corporations Law.

Chief Investigator

Ms Helen Bird.

Funds received over the life of the project

\$7,000 plus research infrastructure funds provided by The University of Melbourne of \$3,500.

Project summary

This project is the first of two phases of a comparative study of the mechanisms by which governments enforce compliance with legislation regulating corporate law. The first phase focuses on the Australian regulatory environment, analysing the use and operation of the

regime of enforcement mechanisms applying to contraventions of directors' duties in the Corporations Law. The project aims to identify and examine the factors influencing the operation of this enforcement regime using insights gained from theoretical and empirical analysis. It will also indicate areas requiring law reform.

Australian Research Council Small Grant

Project title

Compulsory Acquisition of Minority Shareholdings.

Chief Investigator

Dr Elizabeth Boros.

Funds received over the life of the project

\$7,000 plus research infrastructure funds provided by The University of Melbourne of \$3,500.

Project summary

Debate regarding the landmark decision in *Gambotto v WCP Ltd* has culminated in a law reform proposal by the Companies and Securities Advisory Committee ('CASAC') proposing expansion of the range of situations in which a majority shareholder can compulsorily acquire all outstanding shares in a company. This project will conduct detailed interviews with takeover offerors in order to ascertain the relative importance to them of the various benefits of 100 per cent ownership. It will then seek to determine whether the most significant of those advantages can be achieved by means other than expropriation of minority shareholdings and, if so, to suggest alternative directions for law reform to that proposed by CASAC.

University of Melbourne Special Initiatives Grant

Project title

Remedies for Directors' Improper Use of Position.

Chief Investigator

Dr Elizabeth Boros.

Funds received over the life of the project

\$12,000.

Project summary

This project focuses on the situation where directors divert a business opportunity away from the company of which they are a director either to themselves or to another company of which they are also a director. Specifically, it:

- examines the means by which courts determine the amounts which are recoverable from directors in equitable proceedings and in proceedings brought under statutory provisions; and
- seeks to identify the assumptions and policies underlying the results of the decided cases.

University of Melbourne Special Initiatives Grant

Project title

Women and Commerce.

Chief Investigator

Dr Belinda Fehlberg.

Funds received over the life of the project

\$8,000.

Project summary

Commercial law (including corporations law) has historically been dominated by men. This project will analyse legal and other materials (for example government reports) to consider:

- how United Kingdom and Australian law depicts women in commercial (including corporate) transactions; and
- to what extent the law in this area reflects the practical role of women and the concerns of women.

Supervision of Research

This section identifies the supervision of graduate and undergraduate students undertaken by members of the Centre in 1996.

Doctorates

- Dhammika Amukotuwa: The Role which the "Investor Protection" Objective Plays in the Exercise of the Discretionary Powers of the ASC Under Part 7.12 of the Corporations Law.

Supervisors: Professor Ian Ramsay and Professor Cheryl Saunders (Centre for Comparative Constitutional Studies).

- Helen Bird: Women in the Boardroom: The Impact of Corporate Law Upon Female Participation in Corporate Leadership.

Supervisor: Professor Ian Ramsay.

- Vivien Goldwasser: The Regulation of Stock Market Manipulation.

Supervisor: Professor Ian Ramsay.

Master of Laws

- Harold Bolitho: Australia-Japan Cross Border Insolvency.

Supervisor: Mr Greg Reinhardt.

- Kenneth Bull: Do Nation States Retain the Capability to Control Capital Flows Arising from New Technology and to What Extent are National Borders Redundant in Relation to the Regulation of Electronic Commerce?

Supervisor: Professor Ian Ramsay.

- Niall Coburn: Insolvent Trading Under the Corporations Law.

Supervisor: Mr Greg Reinhardt.

- Mathew Connock: Section 459G Time Limits — Analysis, Operation, Advice and Reform.

Supervisor: Mr Ian Renard (Member of the Australian Advisory Board).

- Peter MacMillan: The Past, Present and Future of the Passing-On Requirement in Merger Authorisations Under the Australian Trade Practices Act 1974.

Supervisor: Dr Geof Stapledon.

- Bruce Taylor: The Regulation and Enforceability of Issues of Debt Securities Issued by Trustees in Australian Securitisation Programs.

Supervisor: Professor Ian Ramsay.

- Susan Taylor: Convertible Securities: Their Impact on Takeovers Law.

Supervisor: Mr Ian Renard (Member of the Australian Advisory Board).

Undergraduate Research Projects

- Jonathan Farrer: Mandatory Disclosure of the Dividend Decision: A Law and Economics Analysis of Australia's Dividend Provisions.

Supervisor: Professor Ian Ramsay.

- Kwan Yeoh: The International Supervisory Mechanism of Limited Companies: An Analysis of the Chinese Company Law and a Projection on its Development.

Supervisors: Dr Geof Stapledon and Ms Sarah Biddulph (Asian Law Centre).

The Centre as a Public Resource

The Centre makes its knowledge and expertise available as a public resource in a number of ways including providing interviews and information to the media, responding to requests for information, and writing submissions on matters of law reform.

Submissions

During 1996 members of the Centre were responsible for drafting the following submissions:

- The Proposed Statutory Derivative Action. Drafted by Dr Elizabeth Boros and Geof Green for the Law Institute of Victoria and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- The Proposed Statutory Derivative Action. Drafted by Professor Ian Ramsay for the Companies Committee of the Business Law Section of the Law Council of Australia and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- Members' Rights: Class Rights and Inspection of Books. Drafted by Professor Ian Ramsay for the Corporations Law Committee of the Australian Institute of Company Directors and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- The Interrelationship Between Civil Remedies, Civil Penalties and the Oppression Remedy. Drafted by Dr Elizabeth Boros for the Law Institute of Victoria and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- Company Officers and Related Party Transactions. Drafted by Dr Elizabeth Boros and Peter Willcocks for the Law Institute of Victoria and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- Corporate Authority and Section 162 of the Corporations Law. Drafted by Sue Woodward and submitted to the Attorney-General's Corporations Law Simplification Task Force.
- Collective Action by Institutional Investors. Drafted by Dr Geof Stapledon and submitted to the Australian Securities Commission.

Media

During the course of the year members of the Centre gave a number of interviews to newspaper journalists and radio journalists. In addition, the monograph written by Dr Geof Stapledon and Jeff Lawrence titled *Corporate Governance in the Top 100: An Empirical Study of the Top 100 Companies' Boards of Directors* received extensive media coverage. This included articles in *The Age*, *The Australian Financial Review* and the *Herald-Sun*.