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: ccslr@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

Director's Report

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 Geoff Stapleton's book titled Institutional Shareholders and Corporate Governance was reviewed favourably in The Economist. An article of Dr Stapleton'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 Boron'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 Boron'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 Thredgold, Managing Director of AMP Investments Australia Limited launched Dr Geoff Stapleton'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 Voss, 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 Osuna, Barcelona, Spain
- 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, South Korea
- The Honourable Justice Edmund Thomas, Court of Appeals 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 Greese, 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

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’*
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 & Medcalf in the area of commercial litigation and then practiced 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 practiced 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 practicing as a commercial solicitor with Finlays 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 specializing 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 (LLC 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 Walker, professional non-executive company director
- Karen Byrne, General Counsel, Australian Stock Exchange
- Professor Robert Baxt, Partner, Arthur Robinson & Hedderwick

Some Issues of Corporate Governance and Compliance
- Michael Rozenges QC, Commonwealth Director of Public Prosecutions (Corporate Misconduct and the Criminal Justice System).
- Alex Chervin 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 Guayot 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 & Hedderwick.

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 Cranwick and Mr Peter Hilland 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 Kluver, 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 Hollingsdale & 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 Hands, 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 Stapleton; 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 Stapleton)
- 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:

- Editor of the Collected Volume of the Papers Presented at the 1995 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 (ed), Gambotto v WCP Ltd: Its Implications for Corporate Regulation, Centre for Corporate Law and Securities Regulation, Melbourne, 1996.


Monograph


Government Report


Chapters in books


Journal articles


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


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.


Conference papers


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.


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.


Stapledon, G P and Lawrence, J J, "Corporate Governance in the Top 100". Paper presented at a seminar at Arthur Robinson & Heddericks, 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, "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


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 Borus — The Implications of Gambotto’s Case for Minority Shareholders
• Professor Deborah DeMott — A United States’ Perspective on Gambotto
• Michael Whincup — 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 advisors 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 leaders 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.
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 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.

* indicates taught in 1996
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 Ramsey, 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 Ramsey and Dr Geof Stapledon.

Funds received over the life of the project
$10,800 plus research infrastructure funds provided by The University of Melbourne of $9,358.

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 (i.e., 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 $5,500.

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 divest 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

  Supervisor: 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 Bolibo: 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.

  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).

  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

  Supervisor: Professor Ian Ramsay.

  Supervisor: 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 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.


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.