

Annual Report 2017



*Centre for Corporate Law
and Securities Regulation*

MELBOURNE LAW SCHOOL

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Professor Ian Ramsay

2017 was a very successful year for the Centre for Corporate Law and Securities Regulation. Members of the Centre continued to undertake important research projects and the Centre conducted an active seminar program dealing with a range of topical matters relevant to academics and practitioners. A list of members and associates is included under the heading '**Academic Members and Associates of the Centre**'.

Research

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

In 2017, the following books and book chapters were published by Centre members:

- **Anderson H**, 'Sidestepping Labour Law through the Corporate Form' in J Howe, A Chapman and I Landau (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, Federation Press, Australia (2017) 178-191
- **Anderson H**, 'Corporate Law and the Phoenix Company' in R Tomasic (ed), *Routledge Handbook of Corporate Law*, Routledge, United Kingdom (2017) 114-127
- Hanrahan P, **Ramsay I**, and Stapledon G, *Commercial Applications of Company Law*, Oxford University Press, Australia (18th ed, 2017)
- **Howe J**, Chapman A and Landau I, 'The Evolving Project of Labour Law in Australia' in J Howe, A Chapman and I Landau (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, Federation Press, Australia (2017) 1-21
- **Howe J**, Chapman A and Landau I (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, Federation Press, Australia (2017)
- **O'Connell A**, 'Australia' in M Littlewood and C Elliffe (eds), *Capital Gains Taxation: A Comparative Analysis of Key Issues*, Edward Elgar Publishing Ltd, United Kingdom (2017) 113-140

In addition, Centre members published 39 journal articles, research notes and research reports in 2017.

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

Grants

Members of the Centre were successful in obtaining the following new grant in 2017:

- Financial Exclusion, Poor Insurer Practices and Consumer Protection (Australian Research Council Discovery Grant)

In 2017, members of the Centre continued to undertake research funded by grants obtained in earlier years:

- An Analysis of Penalties under ASIC Administered Legislation
- Australian Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress
- Director's Conflicts: Multiple Directorships and Corporate Opportunities
- Financial Regulation in Asia – A New Model for Regional Cooperation
- Financial System Regulation – Is Australia's 'Twin Peaks' Approach a Model for China and Asia?
- The Legal and Social Dimensions of Financial Hardship in Australia: Implications for Legal, Regulatory and Policy Frameworks
- Phoenix Activity: Regulating Fraudulent Use of the Corporate Form
- Remuneration of Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends

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

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

Seminars and conferences

In 2017 the Centre hosted or participated in the organisation of 18 seminars and conferences, with a total estimated number of registrants for these events of 1,120.

A continuing initiative for the Centre in 2017 was the annual Harold Ford Memorial Lecture. The speaker was the Hon Justice Geoffrey Nettle of the High Court of Australia, who spoke on the topic 'The changing position and duties of company directors'.

Other seminars dealt with topics including corporate misconduct, financial regulation, insolvency law, FinTech, and corporate social responsibility.

Full details of the 2017 seminars are included in this report under the heading '**Seminars and Conferences**'.

Links with peak organisations

2017 saw the further development of links with peak organisations both in Australia and overseas. Members of the Centre continue to play an active role with organisations such

as the Law Council of Australia. This includes participation in writing submissions regarding law reform proposals on behalf of several of these peak organisations. Further details are included in this report under the heading ‘**Links with Peak Organisations**’.

Corporate Law Bulletin

2017 saw the continued development of the Corporate Law Bulletin. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms and distributed in partnership with SAI Global. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2017, 244 issues of the Bulletin had been published.

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

Centre for Corporate Law and Securities Regulation Website

The website of the Centre for Corporate Law and Securities Regulation continues to be an important research tool for academics and practitioners.

Particular features of the website are:

- **Corporate Law Bulletin:** This section of the website contains an archive of previous issues of the Corporate Law Bulletin published by the Centre for Corporate Law and Securities Regulation;
- **Research papers:** This section of the website contains a range of topical research papers;
- **Links to other sites of interest:** This section of the website contains links to many other sites divided by category. The categories include:
 - World securities commissions (links to approximately 60 securities commissions);
 - World stock exchanges (links to approximately 110 stock exchanges);
 - Asia-Pacific corporate law and securities regulation sites (links are provided, on a country by country basis, to sites such as stock exchanges, securities commissions, corporate law legislation and corporate law judgments for each of these countries);
 - Governmental and regulatory bodies;

- Corporate governance (links to a range of organisations which are involved in corporate governance issues);
- Professional and interest bodies;
- Corporate social responsibility;
- Financial news; and
- **History of Australian corporate law** (this section of the website provides information regarding the history of Australian corporate law including links to historical documents).

Contributions to law reform and policy focussed research

Members of the Centre for Corporate Law and Securities Regulation make contributions to law reform in several ways. First by drafting submissions on matters dealing with corporate law reform either in a personal capacity or on behalf of organisations such as the Law Council of Australia. Second, research reports of the Centre for Corporate Law and Securities Regulation are relied upon by law reform bodies.

Dispute resolution in the financial system: In 2016-2017 Professor Ramsay chaired the independent panel appointed by the Australian Government to review the financial system's external dispute resolution and complaints framework. The panel published two issues papers, an interim report and two final reports: *Review of the Financial System External Dispute Resolution and Complaints Framework: Final Report* (April 2017, 246 pages) and *Review of the Financial System External Dispute Resolution and Complaints Framework: Supplementary Final Report* (September 2017, 204 pages). The panel made 11 recommendations in its final report. All of these recommendations were accepted by the government as announced by the Commonwealth Treasurer, the Hon Scott Morrison MP, in the 2017 budget speech. A Bill to implement the recommendations was introduced into Parliament in September 2017: *Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017* (Cth).

Equity crowdfunding in ASEAN: In 2016 Professor Ramsay was appointed by the Association of Southeast Asian Countries (ASEAN) as the consultant for the project on facilitating equity crowdfunding in ASEAN. In August 2017, ASEAN published Professor Ramsay's co-authored report: *Facilitating Equity Crowdfunding in the ASEAN Region* (155 pages). The report is a detailed discussion of equity crowdfunding including the legal issues associated with this type of funding. The report provides a series of recommendations for member states of ASEAN which have not yet introduced equity crowdfunding on the key issues they should consider in designing a regulatory framework for equity crowdfunding. Prior to publication of the report, a two-day roundtable meeting on equity crowdfunding was held in May 2017 in Kuala Lumpur to consider and discuss the findings and recommendations in the draft report. Representatives from all ASEAN countries were present to hear Professor Ramsay present the findings of his research.

ASIC enforcement review taskforce: In 2016-2017 Professor Ramsay was appointed by the Australian Government to be a member of the Australian Securities and Investments Commission Enforcement Review Taskforce. During the review, the Taskforce published 8 consultation papers (on matters including the level of penalties for corporate and financial sector misconduct, ASIC's power to ban individuals working in the financial sector, ASIC's licencing powers, search warrant powers, and industry codes in the financial sector) and a final report.

Editorial positions

Members of the Centre continued in 2017 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Australian Business Law Review*, the *Australian Tax Review* and the *Corporate Law Bulletin*.

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

Supervision of graduate students' research

During 2017, members of the Centre for Corporate Law and Securities Regulation supervised 13 PhD theses being undertaken by graduate students.

Further details are included in this report under the heading '**Supervision of Graduate Students' Research**'.

Media coverage of Centre activities

The research activities of Centre members received significant coverage in the media in 2017. Members of the Centre gave 22 reported interviews to the media in 2017. Further details of the media coverage are included in this report under the heading '**The Centre as a Public Resource**'.

Visitors to the Centre

Visitors to the Centre in 2017 included:

- Professor Douglas Arner, University of Hong Kong, Hong Kong
- Associate Professor Joanne Bauer, Columbia University, USA
- Professor Liz Campbell, Durham University, United Kingdom
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands
- Professor Anthony Duggan, University of Toronto, Canada
- Dr Liran Haim, Senior Deputy at the Israeli Ministry of Justice
- Professor Joan Loughrey, School of Law, University of Leeds, United Kingdom
- Professor David McLauchlan, Victoria University of Wellington, New Zealand
- Professor Bryan Mercurio, Chinese University of Hong Kong, Hong Kong
- Professor Christopher Nicholls, Faculty of Law, Western University, Canada
- Professor Jessica Schmidt, University of Bayreuth, Germany
- Mr Timothy Spangler, University of California, USA

- Dr Joseph Spooner, London School of Economics and Political Science, United Kingdom
- Associate Professor Wan Wai Yee, Singapore Management University, Singapore
- Professor Karen Yeung, King's College London, United Kingdom

Consultancies and pro bono work

Members of the Centre are active in providing their expertise to those outside of the University of Melbourne, both in relation to pro bono matters and also significant corporate transactions.

Acknowledgments

Many people deserve thanks for their contribution to the work of the Centre during 2017. In particular, they include the academic members of the Centre, the research fellows and research assistants, and the members of the Australian and International Advisory Boards who have provided valuable advice in relation to particular matters and who have continued to assist the work of the Centre.

Purposes and Objectives of the Centre

The objectives of the Centre and its members are to:

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

International Advisory Board

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

- Professor Theodor Baums, JW Goethe University, Frankfurt, Germany
- Professor Brian Cheffins, Faculty of Law, University of Cambridge, England
- Professor John Coffee, School of Law, Columbia University, USA
- Professor Ronald Daniels, President, John Hopkins University, USA (former Provost and Professor of Law, University of Pennsylvania, USA and former Dean, Faculty of Law, University of Toronto, Canada)
- Professor Deborah DeMott, School of Law, Duke University, USA
- Professor Say Goo, Faculty of Law, University of Hong Kong
- Professor Hideki Kanda, Faculty of Law, University of Tokyo, Japan
- Associate Professor CK Low, Chinese University of Hong Kong
- Professor Jennifer Payne, University of Oxford, United Kingdom
- Professor Roberta Romano, Yale Law School, USA
- The Honourable E Norman Veasey, Former Chief Justice, Supreme Court of Delaware, USA
- Professor Susan Watson, University of Auckland, New Zealand
- 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 Justice Kenneth Hayne AC and comprising leading members of the Australian legal and business communities. The members of the Australian Advisory Board are:

- The Hon Mr Kenneth Hayne AC, Former Justice of the High Court of Australia (Chair)
- Elspeth Arnold, Partner, Ashurst Australia
- Robert Baxt AO, Partner, Herbert Smith Freehills
- Jeremy Blackshaw, Partner, Minter Ellison
- Priscilla Bryans, Partner, Herbert Smith Freehills
- Mark Burger, Partner, DLA Piper
- Rodd Levy, Partner, Herbert Smith Freehills
- Simon Morris, Partner, Corrs Chambers Westgarth
- Joseph Muraca, Partner, King & Wood Mallesons
- Diana Nicholson, Partner, King & Wood Mallesons
- Wendy Rae, Partner, Allens
- Shane Tregillis, Financial Service Ombudsman
- Andrew Walker, Partner, Clayton Utz
- Catherine Walter, Company Director
- The Hon Justice Marilyn Warren, AC, Chief Justice, Supreme Court of Victoria
- Jon Webster, Partner, Allens

Academic Members and Associates of the Centre

Academic members

Members of the Centre in 2017 were:

Associate Professor Paul Ali
Professor Helen Anderson
Dr George Gilligan
Associate Professor Andrew Godwin
Professor John Howe
Associate Professor Cally Jordan
Dr Rosemary Langford
Professor Timothy Lindsey
Professor Ann O'Connell
Professor Ian Ramsay (Director)
Dr Julian Sempill
Associate Professor Stacey Steele

Associates of the Centre

Associates of the Centre in 2017 were:

Professor Pamela Hanrahan, University of New South Wales
Dr Geof Stapledon, BHP Billiton
Susan Woodward, Justice Connect

Research fellows

Research fellows in 2017 were:

Evgenia Bourova
Jasper Hedges
Lucinda O'Brien
Miranda Webster

Full details of academic members and associates of the Centre are available on the [Centre's website](#).

Seminars and Conferences

The Centre for Corporate Law and Securities Regulation hosted or participated in organising a number of highly successful conferences and seminars during 2017.

Managing the Risks of Corporate Fraud: The Evidence from Hong Kong and Singapore

(11 December 2017)

Speaker: Associate Professor Wan Wai Yee, Singapore Management University, Singapore

- 16 registrations

The Misuse of Corporate Vehicles: Concealing (and Revealing) Beneficial Ownership

(23 November 2017)

Speaker: Professor Liz Campbell, Durham University, United Kingdom

- 23 registrations

Some Personal Reflections on International Financial Institutions and Working Within Them

(22 November 2017)

Speaker: John Taylor, International Advisor and Member of the Development Board of the Centre for Commercial Law Studies, Queen Mary University of London, United Kingdom

- 14 registrations

The Commonwealth Bank, AUSTRAC and Materiality: Implications for Continuous Disclosure

(15 November 2017)

Speaker: Professor Ann O'Connell

- 56 registrations

Corporate Misconduct: Does the Buck Stop With You?

(17 October 2017)

Speaker: Professor Pamela Hanrahan, University of New South Wales

- 46 registrations

Recent PPSA Reform Initiatives in Canada

(7 September 2017)

Speaker: Professor Anthony Duggan, Hon Frank H. Iacobucci Chair, Faculty of Law, University of Toronto, Canada

- 22 registrations

Insolvency Law Reform in Asia Seminar and Workshop

(4 September 2017)

Hosts: Allens Linklaters Melbourne, Asian Law Centre and the Centre for Corporate Law and Securities Regulation, Melbourne Law School. The topics and main speakers were:

- Singapore's bid to become a debt restructuring hub (David Kidd, Partner, Linklaters, Associate Professor Meng Seng Wee, National University of Singapore, Associate

Professor Andrew Godwin, Melbourne Law School, Craig Parker, S&P Global Ratings)

- How technologies and innovation are driving Chinese insolvency law developments: new Supreme People's Court bankruptcy information platform (Associate Professor Jin Chun, Doshisha University, Kyoto, Japan)
- Insolvent trading revisited: empirical research in Australia and proposals for reform in Singapore and Japan (Associate Professor Stacey Steele)

Financial Regulation in the Trump Administration: Initiatives and Challenges

(16 August 2017)

Speaker: Timothy Spangler, Partner, Dechert LLP

- 58 registrations

Harold Ford Lecture: The Changing Position and Duties of Company Directors

(26 June 2017)

Speaker: The Hon Justice Geoffrey Nettle, High Court of Australia

- 446 registrations

Potential Introduction of Corporate Whistleblowing Bounties: What are the Implications?

(23 June 2017)

The topics and main speakers were:

- Opening address by the Hon Kelly O'Dwyer, MP, Minister for Revenue and Financial Services
 - Whistleblowing bounties: Regulatory issues and perspectives (Associate Professor Janet Austin, University of New Brunswick, Canada, Heidi Franken, Chief of the Office of the Whistleblower, Ontario Securities Commission, John Price, Commissioner, ASIC, Greg Golding, King & Wood Mallesons)
 - The impact of whistleblowing bounties on prosecutions (Sarah McNaughton SC, Commonwealth Director of Public Prosecutions, Norman O'Bryan AM SC, Barrister)
- 140 registrations

What Good is a NAP for Developing Countries? An Assessment of Achievements and Prospects for National Action Plans on Business and Human Rights in the Global South

(16 June 2017)

Speaker: Associate Professor Joanne Bauer, Columbia University, USA

- 27 registrations

FinTech, RegTech and the Reconceptualisation of Financial Regulation

(24 May 2017)

Speaker: Professor Douglas Arner, University of Hong Kong, Hong Kong

- 50 registrations

The Parameters of Business Judgment

(3 May 2017)

Speaker: Professor Joan Loughrey, University of Leeds, United Kingdom

- 74 registrations

The Case against Excluding Tobacco from International Investment Agreements and the Search for Better Policy Options

(24 April 2017)

Speaker: Professor Bryan Mercurio, Chinese University of Hong Kong, Hong Kong

- 20 registrations

Algorithmic Regulation

(11 April 2017)

Speaker: Professor Karen Yeung, King's College London, United Kingdom

- 40 registrations

Electronic Payments Fraud

(6 April 2017)

Speaker: Dr Liran Haim, Senior Deputy at the Israeli Ministry of Justice

- 73 registrations

Before the Revolution in Corporate Law: The Brief Wondrous Life of the Yale Law School/Harvard Business School Combined Law-Business Program

Speaker: Professor Christopher Nicholls, Western University, Canada

(22 February 2017)

- 9 registrations

Value Creation in a Sustainable Manner

(12 January 2017)

Speaker: Professor Mervyn King SC, Chairman of the International Integrated Reporting Council, Chairman Emeritus of the Global Reporting Initiative and member of the Private Sector Advisory Group to the World Bank on Corporate Governance

Full details of the seminars and conferences in 2017 are available on the [Centre's website](#).

Links with Peak Organisations

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2017, academic members of the Centre were members of:

- Australasian Law Teachers' Association Executive Committee (Professor Helen Anderson)
- Australian Tax Office, General Anti-Avoidance Panel (Professor Ann O'Connell)
- Australian Tax Office, Public Advice and Guidance Panel (Professor Ann O'Connell)
- Corporations Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Cally Jordan and Professor Ian Ramsay)
- Corporate Law Teachers Association, Executive Committee (Professor Helen Anderson)

- Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia (Professor Helen Anderson)
- International Financial Experts Panel of the P.R.I.M.E. Finance Foundation, The Hague (Associate Professor Cally Jordan)
- Panel of Foreign Arbitrators, Shanghai International Arbitration Centre (Associate Professor Andrew Godwin)
- Taxation Committee, Business Law Section of the Law Council of Australia (Professor Ann O’Connell)

Editorial Positions

During 2017 academic members of the Centre occupied editorial positions with a number of corporate law and other publications:

- *Australian Accounting Review* (Member of the Editorial Board: Professor Ian Ramsay)
- *Australian Business Law Review* (Section Editor: Associate Professor Paul Ali)
- *Australian Journal of Asian Law* (Editor: Professor Timothy Lindsey)
- *Australian Tax Review* (Member of the Advisory Board: Professor Ann O’Connell)
- *Capital Markets Law Journal* (Member of the Editorial Board: Associate Professor Paul Ali)
- *The Company Lawyer* (Consulting Editor: Dr George Gilligan)
- *Company and Securities Law Journal* (Editor: Associate Professor Paul Ali; Section Editor: Dr Rosemary Langford; Member of the Editorial Board: Professor Ian Ramsay)
- *Corporate Law Bulletin* (Editor: Professor Ian Ramsay)
- *Doing Business in Asia* (Contributing Editor and Member of the Editorial Advisory Board: Professor Tim Lindsey)
- *Governance, Risk and Compliance Newsfeed* (Editorial Advisor: Professor Ian Ramsay)
- *International Journal of Disclosure and Governance* (Member of the Executive Editorial Committee: Dr George Gilligan)
- *International Journal of Law & Education* (Member of the Editorial Board: Professor Ian Ramsay)

- *International Securities Regulation: Pacific Rim* (Consulting Editor: Professor Ian Ramsay)
- *Journal of Financial Crime* (Member of the Editorial Advisory Board: Dr George Gilligan)
- *Journal of Money Laundering Control* (Member of the Editorial Advisory Board: Dr George Gilligan)
- *Journal of Sustainable Finance and Investment* (Associate Editor: Associate Professor Paul Ali)
- *Macquarie Law Journal* (Member of the Editorial Board: Professor Ian Ramsay)
- *Singapore Academy of Law Journal* (Member of the International Editorial Board: Professor Ian Ramsay)
- *SSRN eJournal, Fiduciary Law* (Member of the Editorial Advisory Board: Dr Rosemary Langford)

Research

Books

Hanrahan P, Ramsay I and Stapledon G, *Commercial Applications of Company Law*, Oxford University Press, Australia (18th ed, 2017)

Howe J, Chapman A and Landau I (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, Federation Press, Australia (2017)

Chapters in books

Anderson H, 'Sidestepping Labour Law through the Corporate Form' in J Howe, A Chapman and I Landau (eds), *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, Federation Press, Australia (2017) 178-191

Anderson H, 'Corporate Law and the Phoenix Company' in R Tomasic (ed), *Routledge Handbook of Corporate Law*, Routledge, United Kingdom (2017) 114-127

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Lindsey T, 'Islamic Courts or Courts for Muslims? Shari'a and the State in Indonesia, Malaysia and Singapore' in C Antons (ed), *Routledge Handbook of Asian Law*, Routledge, United Kingdom (2017) 341-361

O'Connell A, 'Australia' in M Littlewood and C Elliffe (eds), *Capital Gains Taxation: A Comparative Analysis of Key Issues*, Edward Elgar Publishing Ltd, United Kingdom (2017) 113-140

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Ali P, Bourova E and Ramsay I, 'Financial Assistance Behind the Scenes: Insights from Financial Counsellors' (2017) 52(3) *Australian Journal of Social Issues* 241-261

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Bromberg L, Gilligan G and Ramsay I, 'Financial Market Manipulation and Insider Trading: An International Study of Enforcement Approaches' (2017) 8 *Journal of Business Law* 652-679

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Chen V, Godwin A and Ramsay I, 'An ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution' (2017) 12(1) *Asian Journal of Comparative Law* 167-196

Gilligan G, Godwin A, Hedges J and Ramsay I, 'Penalties Regimes to Counter Corporate and Financial Wrongdoing in Australia - Views of Governance Professionals' (2017) 11(1) *Law and Financial Markets Review* 4-12

Godwin A, 'Effective Company Disclosure in the Digital Age' (2017) 35(5) *Company and Securities Law Journal* 345-346

Godwin A, 'Australia's Trek towards Twin Peaks - Comparisons with South Africa' (2017) 11(4) *Law and Financial Markets Review* 183-193

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Godwin A, Ramsay I and Webster M, 'International Commercial Courts: The Singapore Experience' (2017) 18(2) *Melbourne Journal of International Law* 219-259

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Hardy T and Howe J, 'Creating Ripples, Making Waves? Assessing the General Deterrence Effects of Enforcement Activities of the Fair Work Ombudsman' (2017) 39(4) *Sydney Law Review* 471-500

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[Research reports and research papers](#)

Anderson H, Ramsay I, Welsh M and Hedges J, *Phoenix Activity: Recommendations on Detection, Disruption and Enforcement*, Melbourne Law School and Monash Business School, Australia (2017)

Kourabas S and Ramsay I, *Facilitating Equity Crowdfunding in the ASEAN Region*, Association of Southeast Asian Nations (2017)

Ramsay I, Abramson J and Kirkland A, *Review of the Financial System External Dispute Resolution and Complaints Framework: Final Report*, Commonwealth of Australia (2017)

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[Online columns and blog posts](#)

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Bromberg L, Gilligan G and Ramsay I, 'The extent and intensity of insider trading enforcement – an international comparison', *New York University Law School Compliance and Enforcement Blog*, 9 March 2017

Anderson H, Hedges J and Welsh M, 'Here's what must be done to detect, disrupt and deter phoenix activity in Australia', *The Conversation*, 24 February 2017

Godwin A, Kourabas S and Ramsay I, 'Twin peaks and financial regulation: The challenges of increasing regulatory overlap and expanding responsibilities', *Oxford Business Law Blog*, 24 January 2017

Seibert K and O'Connell A, 'Explainer: What are the Limits to Charities Advancing Political Causes', *The Conversation*, 20 January 2017

Teaching

Melbourne Law School has a very strong master's program in corporate law and banking & finance law. The subjects offered in 2017 were:

- Accounting for Commercial Lawyers
- Australian Consumer Law
- Banking and Secured Finance
- Commercial Applications of Equity
- Commercial Law: Issues and Policies
- Company Takeovers
- Comparative Corporate Tax
- Contract Interpretation
- Corporate Governance and Directors' Duties
- Corporate Tax A (Shareholders, Debt and Equity)
- Corporate Tax B
- Debt Capital Markets
- Financial Services Law
- Hedge Funds and Private Equity Funds
- International Financial System: Law and Practice
- International Financial Transactions: Law and Practice
- Liability Insurance Law
- Project Finance
- Regulatory Policy and Practice
- Taxation of Business and Investment Income

A feature of the master's program in corporate law is the use of international lecturers. These included in 2017:

- Professor Douglas Arner, University of Hong Kong, Hong Kong (International Financial System: Law and Practice)
- Professor Peter Harris, University of Cambridge, United Kingdom (Comparative Corporate Tax)
- Professor David McLauchlan, Victoria University of Wellington, New Zealand, (Contract Interpretation)
- Mr Timothy Spangler, University of California, United States (Hedge Funds and Private Equity Funds)
- Mr William Swadling, University of Oxford, United Kingdom (Commercial Applications of Equity)
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands (Debt Capital Markets)

- Prof Sarah Worthington, University of Cambridge, United Kingdom (Commercial Law: Issues and Policies)
- Prof Karen Yeung, King’s College London, United Kingdom (Regulatory Policy and Practice)

Corporate Law Bulletin

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

By the end of 2017, 244 issues of the Bulletin had been published.

The monthly Bulletin includes the following:

- details of significant corporate law and corporate governance developments (both statutory amendments and recent court judgments); and
- significant announcements made by the Australian Securities and Investments Commission (for example new ASIC Regulatory Guides), the Australian Securities Exchange and the Takeovers Panel.

Readers of this Annual Report who are interested in seeing previous issues of the monthly Bulletin can access them through the archive site on the Centre’s website, the address of which is:

<http://law.unimelb.edu.au/centres/cclsr/resources/corporate-law-bulletin>

Subscriptions to the Bulletin can be obtained from SAI Global at its website:

<http://www.saiglobal.com>

Competitive Research Grants

This section identifies the competitive research grants that were obtained by members of the Centre in 2017, or that were obtained earlier than 2017 but continued to fund research in 2017. A complete list of all research grants obtained is available on the [Centre’s website](#) as well as [publications resulting from the major research grants](#).

New Grants Obtained in 2017

Financial Exclusion, Poor Insurer Practices and Consumer Protection

Type of grant

Australian Council Discovery Grant

Funds allocated

\$358,916

Chief Investigators

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

Project summary

This project is Australia's first large-scale empirical study examining financial exclusion and lack of access to general insurance, as well as poor insurer practices in selling insurance and handling claims. Through surveys, focus groups and interviews, the project also aims to evaluate the effectiveness of the legal protections for consumers of general insurance. The expected project outcomes include law and policy reform proposals to improve the effectiveness of these protections and maximise access to general insurance, particularly for socioeconomically disadvantaged consumers. This should have benefits such as an increased uptake of general insurance and improved community resilience to natural disasters and other unforeseen events.

Grants Obtained Earlier than 2017 but Continuing to Fund Research in 2017**Harmful Financial Products: Analysis of Their Impact and Regulation****Type of grant**

Australian Council Linkage Grant

Funds allocated

\$620,000

Chief Investigators

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

Partner Organisations

Consumer Action Law Centre, Financial Counselling Australia, Good Shepherd Australia New Zealand, Mallee Family Care Inc, Western Community Legal Centre

Project summary

This project will investigate financial products that have the potential to harm disadvantaged and vulnerable consumers. Working in partnership with five leading non-profit organisations, and adopting empirical research techniques (including surveys, interviews and focus groups), it will explore the extent to which these products perpetuate financial hardship, poor health and social disadvantage. In doing so, it will make a significant, original contribution to consumer law scholarship and studies of financial exclusion, while also providing practical

assistance to policymakers, regulators and the partner organisations. The project will assess the need for law reform, and, if appropriate, will make detailed law reform recommendations.

Comparative Insolvency Law in the Asia-Pacific

Type of grant

Melbourne Law School International Collaboration Fund

Funds allocated

\$9,735

Chief Investigators

Associate Professor Stacey Steele (Melbourne Law School) and Associate Professor Jin Chun (Doshisha University, Japan)

Project summary

This project will focus on Chinese Insolvency Law, building on a long-standing collaboration between Associate Professor Jin Chun and Associate Professor Stacey Steele. It will facilitate further collaboration, allowing Associate Professor Chun and Associate Professor Steele to conduct further research into Asian Insolvency Law.

Integrity in Sport: Comparative Approaches to Match-Fixing in Australia, Japan and Korea

Type of grant

Melbourne Law School Asia Research Collaboration Funding Scheme

Funds allocated

\$9,000

Chief Investigators

Associate Professor Stacey Steele and Mr Hayden Opie (Melbourne Law School) and Dr Kee Young Yuen (Dongguk University, Republic of Korea) and Dr Young Ryuel Chung (Korea University)

Project summary

This project by the Asian Law Centre and Sports Law Program at Melbourne Law School takes the form of a multi-contributor book which examines approaches to combatting match-fixing in Australia, Japan and South Korea. The book is part of the Asian Law Centre and Sports Law Program's efforts to engage with Asian academics, regulators and law enforcement bodies to achieve a greater understanding of match-fixing and the current

level of legal response in these key Asian sporting nations. It builds on the papers presented at the Sports Law and Integrity Workshop in February 2015.

Director's Conflicts: Multiple Directorships and Corporate Opportunities

Type of grant

University of Melbourne Early Career Researcher Grant

Funds allocated

\$19,320

Chief Investigator

Dr Rosemary Langford

Project summary

Directors' conflicts of interest constitute a fundamentally important governance issue both nationally and internationally. As the complexity of commercial transactions and of commercial life in general increases, the application of the conflicts duty has necessarily become more complicated. At the same time there is a constant tension between ensuring accountability and encouraging high quality candidates. Two particular contexts in which the application of the conflicts duty to directors is problematic and uncertain concern multiple directorships (where directors sit on the board of more than one company) and the pursuit in personal capacity of corporate opportunities (opportunities which arise as a result of a director's position or which are relevant to the company's business). Questions persist as to the wisdom of allowing directors to sit on the boards of multiple companies, particularly when those companies compete with each other. Questions also remain as to how removed an opportunity must be from a director's position and the company's line of business before it can be freely pursued. These issues transcend international boundaries and face regulators in many jurisdictions.

This project, which forms part of a broader comparative research agenda on directors' duties, has as its focus the duty of directors to avoid conflicts of interest. The project involves empirical analysis of the frequency of directors holding more than one directorship in both Australia and England. It then seeks to provide guidance in relation to regulation of such multiple directorships and also in relation to the pursuit of corporate opportunities by directors – when can directors take up opportunities arising from their position or relevant to the company's line of business? The ultimate aim of the project is to propose solutions to the conundrums posed by these issues in order to provide clarity and certainty, which are vital in the corporate arena. The results of the project will be of significant interest to academics, practitioners, directors and regulators both in Australia and England, but also in other common law jurisdictions such as Hong Kong, Singapore and Canada where these issues arise.

An Analysis of Penalties under ASIC Administered Legislation

Type of grant

Centre for International Finance and Regulation

Funds allocated

\$389,084

Chief Investigators

Professor Ian Ramsay, Dr George Gilligan and Associate Professor Andrew Godwin (Melbourne Law School)

Project Summary

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

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

Type of Grant

Australian Research Council Linkage Grant

Funds Received

\$425,465

Chief Investigators

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

Partner Organisations

Consumer Action Law Centre, Financial Counselling Australia Incorporated, Good Shepherd Youth & Family Service

Project Summary

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

Phoenix Activity: Regulating Fraudulent Use of the Corporate Form

Type of Grant

Australian Research Council Discovery Grant

Funds Received

\$403,000

Chief Investigators

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

Project Summary

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

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

Type of Grant

Australian Research Council Discovery Grant

Funds Received

\$396,000

Chief Investigators

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

Project Summary

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

Financial Regulation in Asia – A New Model for Regional Cooperation

Type of Grant

Melbourne School of Government Research Cluster Grant

Funds Received

\$213,917

Chief Investigators

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

External Collaborators

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

Project Summary

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

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

Type of Grant

Centre for International Finance and Regulation Grant

Funds Received

\$57,548

Chief Investigators

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

Project Summary

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

Remuneration of Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends

Type of grant

NUS Law - MLS Research Partnerships

Funds received

\$20,000

Chief Investigators

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

Project summary

This research partnership will investigate legal and policy trends in the remuneration of corporate insolvency practitioners in Australia and Singapore. Both jurisdictions have common origins in their respective corporations laws, and both have recently undertaken reviews of the regulation of practitioners in recognition of the significant role they play in the resolution of corporate insolvencies. The research will focus on models of remuneration frameworks and the outcomes that could be achieved through reform.

Supervision of Graduate Students' Research

This section identifies the supervision of graduate students undertaken by members of the Centre in 2017.

PhD theses in progress

- Armson, Emma: 'The Australian Takeovers Panel: An effective forum for dispute resolution?'
Supervisors: Associate Professor Paul Ali and Professor Ian Ramsay
- Busch, Matthew: 'Indonesia as a weak state: authority and competition in post-Suharto Indonesia'
Supervisor: Professor Tim Lindsey
- Dewi, Apsari, 'International Crime Cooperation in Extradition between Indonesia and Australia'
Supervisors: Professor Tim Lindsey and Professor Jeremy Gans
- Khatarina, Josi: 'Assessing Central Government Performance in a Decentralized Natural Resource Management Setting: A Case Study of Environmental Governance of the Palm Oil Industry in Indonesia'
Supervisor: Professor Tim Lindsey
- Landau, Ingrid: 'From rights to risks: transnational labour regulation and the emerging business of human rights due diligence'
Supervisors: Professor John Howe and Professor John Tobin
- Legg, Michael: 'Public and private enforcement of securities laws in Australia'
Supervisors: Professor Helen Anderson and Professor Ian Ramsay
- Mulyani, Lilis: 'Reforming legal personhood in Indonesian land law: Towards equitable land rights'
Supervisor: Professor Tim Lindsey
- Newman, Andrew: 'Temporary migrant labour schemes in the Australian and Canadian agricultural sectors from a rights based perspective'
Supervisor: Professor John Howe

- Sjarief, Rifqi: ‘Socio-legal study of criminal sentencing in Indonesia: Case study of decisions in selected courts’
Supervisor: Professor Tim Lindsay
- Rulliadi, Dudi: ‘Indonesian public-private partnerships (PPPs): A legal study on private sector participation in infrastructure development in the post ‘new-order’ era’
Supervisor: Professor Tim Lindsay
- Tranfaglia, Maria Azzurra, ‘Precarious work and the quest for “good” flexibility: A comparative study of agency work and its regulation in Italy and Australia ’
Supervisors: Professor John Howe and Anthony Forsyth
- Triana, Windy, ‘Schooling judges: The education of religious court judges in Indonesia’
Supervisors: Professor Tim Lindsey and Associate Professor Farrah Ahmed
- Widiatedja, I Gusti Ngurah Parikesit (Pary), ‘The relationship between trade and investment agreements and the national interest: A case study of tourism in Indonesia’
Supervisors: Professor Tim Lindsey and Dr Jenny Beard

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

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

Requests for information

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

Media

During the course of 2017 members of the Centre gave 22 reported interviews to newspaper, radio and television journalists. A list of these interviews is available on the [Centre's website](#).