



**Annual Report  
2004**

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### Professor Ian Ramsay Director

2004 proved to be 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 conference and seminar program dealing with a range of topical matters relevant to academics and practitioners. Fourteen seminars and conferences were held in 2004. The Centre also hosts the corporate law judgment website. In 2004, the 3,000<sup>th</sup> judgment was added to the website.

### Research

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

In 2004, the following books were published by Centre members:

- Ali, P and Yano, K, *Eco-Finance: The Legal Design and Regulation of Market-Based Environmental Instruments*, Kluwer Law International (2004)
- Ali, P, Pearson, G and Fisher, S, *Commercial Law: Commentary and Materials*, 2nd edition, Lawbook Co (2004)
- Hanrahan P, Ramsay IM, Stapledon GP, Yeo V and Lee J, *Commercial Applications of Company Law in Singapore*, CCH Asia Pacific (2004)
- Hanrahan P, Ramsay IM and Stapledon GP, *Commercial Applications of Company Law*, 5th ed, CCH Australia (2004)
- Parker CE, Scott C, Lacey N and Braithwaite J (eds), *Regulating Law*, Oxford University Press (2004)

In addition, 2004 has seen a steady stream of articles published, or accepted for publication, in journals. These articles include:

- Crow J and Ramsay IM, 'Rebuilding confidence in financial reporting: An international perspective' (2004) 7 *Corporate Governance International* 39-47
- James P, Ramsay IM and Siva P, 'Insolvent trading - An empirical study' (2004) 12 *Insolvency Law Journal* 210-237
- Kurtz J, 'Developing countries and their engagements in the World Trade Organisation: An assessment of the Cancun Ministerial' (2004) 5 *Melbourne Journal of International Law* 280-297

- Kurtz J, 'The MFN standard and foreign investment: An uneasy fit?' (2004) 5 *Journal of World Investment and Trade* 861-886
- Lindsey TC, 'Legal infrastructure and governance reform in post-crisis Asia: The case of Indonesia' (2004) 18 *Asia-Pacific Economic Literature* 12-40
- Parker CE, 'A critical morality for lawyers: Four approaches to lawyers' ethics' (2004) 30 *Monash University Law Review* 49-74
- Parker CE, 'Law firms incorporated: How incorporation could and should make law firms more ethically responsible' (2004) 23 *University of Queensland Law Journal* 347-380
- Parker CE, 'Restorative justice in business regulation? The Australian Competition and Consumer Commission's use of enforceable undertakings' (2004) 67 *Modern Law Review* 209-246
- Ramsay, IM, 'Use of prospectuses by investors and professional advisers' (2004) 22 *Company and Securities Law Journal* 151-156
- Stapledon GP, 'The pay for performance dilemma' (2004) 13 *Griffith Law Review* 57-73
- Woodward SD and Marshall SD, 'The more the merrier? Stakeholders in not-for-profit companies' (2004) 10 *Third Sector Review* 101-128

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

Members of the Centre for Corporate Law continue to undertake major research projects which have been funded by competitive research grants. Two new grants were received in 2004. They were:

- The Governance Research Network (Chief Investigators: Dr Christine Parker and Professor Ian Ramsay)
- Corporate Governance and Institutional Investment in the Australian Financial Markets (Chief Investigators: Dr Paul Ali and Associate Professor Geof Stapledon)

Projects underway in 2004 funded by competitive grants included:

- Corporate Governance in the Australian Financial Markets (Chief Investigators: Dr Paul Ali and Associate Professor Geof Stapledon)
- Synthetic Securitisations and the Revolution in Credit Risk Management (Chief Investigator: Dr Paul Ali)

In addition, 2004 was the second year of funding for an Australian Research Council Discovery Project Grant titled “Partnerships at Work: The Interaction between Employment Systems, Corporate Governance and Ownership Structure”. The Chief Investigators for this grant are Professor Ian Ramsay and Professor Richard Mitchell, Director of the Centre for Employment and Labour Relations Law.

This large-scale case study examines the interaction between several key factors in the creation and sustainability of ‘Partnerships at Work’. These factors include particular employment systems, forms of corporate governance and ownership structures. The project proposes to discover how these various factors have interacted so as to give rise to — or fail to give rise to — ‘high performance’ partnership-style relations at work.

Another important aspect of the Centre’s research program is its research report and research paper series in corporate law and securities regulation. There were 6 further publications in 2004. These were:

- John McCombe, *Shareholder Meetings: Key Issues and Developments*
- Andrew Lumsden, *The Role and Responsibilities on Board Sub-Committees*
- Paul James, Ian Ramsay and Polvat Siva, *Insolvent Trading: An Empirical Study*
- Jeremy Cooper, *The Liability of Directors of Corporate Trustees and the Decision in Hanel v O’Neill*
- Christine Parker, Paul Ainsworth and Natalie Stepaneko, *The Impact of ACCC Enforcement Activity in Cartel Cases*
- Susan Woodward and Shelley Marshall, *A Better Framework: Reforming Not-for-Profit Regulation*

The research reports and research papers are available on the Centre’s website.

## Seminars and Conferences

In 2004 the Centre hosted or was involved in the organisation of 14 seminars and conferences. Frequently, 100 or more people register for the Centre’s seminars.

Particular thanks are due to Hellen Blue who plays a key role in organising the Centre’s seminars.

The seminars and conferences dealt with topics including: ‘Shareholder Meetings: Key Issues and Developments’, ‘The Policies and Powers of the ACCC’, ‘Directors’ Duties: Recent Developments and their Implications for Directors and Advisors’, ‘Continuous Disclosure’, ‘Financial Services Reform: Reflections on the New Regime’, ‘Malaysian Securities Regulation’, and ‘Reforming Not-for-Profit Regulation’.

A highlight of 2004 was the holding of a major corporate governance conference. Speakers at this conference included Professor Randall Thomas, Vanderbilt University Law School and Professor Steven Schwarcz, Duke University Law School.

Full details of the 2004 seminar and conference program are included in this report under the heading ‘Seminars.’

## **Links with peak organisations**

2004 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 and the Australian Institute of Company Directors. This includes 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**

2004 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 Stock Exchange and leading national law firms and distributed in partnership with LAWLEX. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2004, 88 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 Institute of Company Secretaries. We continue to receive very positive feedback on the Bulletin.

## **Centre for Corporate Law Website**

The website of the Centre for Corporate Law and Securities Regulation continues to be upgraded. It has proved to be an important research tool for academics and practitioners. Particular features of the website are:

- **Corporate Law Judgments.** This section of the website contains a comprehensive database of corporate law judgments delivered by courts of all Australian jurisdictions since September 1999. In 2004, the site added its 3,000<sup>th</sup> judgment to the database.
- **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.
- **Research papers.** This section of the website contains a range of topical research papers which deal with matters such as the Financial Services Reform Act, the Takeovers Panel, compulsory acquisition of shares, dual listed companies, and directors’ duties.
- **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; and
- Financial news.

In a review of the corporate law judgments website published in the Law Institute Journal in April 2003, the website is described as “a great alternative to AustLII for locating corporate law decisions”.

In the September 2003 issue of the Law Institute Journal, a review of the Centre for Corporate Law and Securities Regulation website stated that the website “has a fabulous list of national and international websites relevant to corporations law practice”.

## **Contributions to law reform**

Members of the Centre for Corporate Law make contributions to law reform in two 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 Institute of Company Directors and the Law Council of Australia. Secondly, research reports of the Centre for Corporate Law are relied upon by law reform bodies.

Other contributions to law reform are outlined below under the heading “Major policy research”.

## **Editorial positions**

Members of the Centre continued in 2004 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Journal of Corporate Law Studies* 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**

Members of the Centre for Corporate Law supervised in 2004 a large number of theses being undertaken by graduate students. Of the theses, 21 were PhD theses, 4 were SJD theses, and 3 were Master of Laws theses.

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

## **Major policy research**

### **(1) Australian Broadcasting Authority**

In 2004 Professor Ian Ramsay was appointed a consultant to the Australian Broadcasting Authority and prepared a report for the Authority titled *Reform of the Australian Broadcasting Authority's Enforcement Powers*.

### **(2) Parliament of Australia Standing Committee on Economics, Finance and Public Administration**

In 2004 Professor Ian Ramsay was appointed a consultant to the Parliament of Australia House of Representatives Standing Committee on Economics, Finance and Public Administration and prepared a report for the Committee relating to its Inquiry into the Australian Prudential Regulation Authority.

### **(3) Report on disclosure of fees and charges in superannuation and other managed investments**

In March 2004 the Parliamentary Joint Committee on Corporations and Financial Services published its report on the Corporations Amendment Regulations dealing with disclosure of fees in managed investments. The Committee's report draws upon the research of Professor Ian Ramsay, including Professor Ramsay's earlier report for the Australian Securities and Investments Commission titled *Disclosure of Fees and Charges in Managed Investments: Review of Current Australian Requirements and Options for Reform*.

In August 2003 the Australian Securities and Investments Commission released its *Good Practice Model of Fee Disclosure in Product Disclosure Statements of Investment Products*. In its media release ASIC noted that the development of its fee disclosure model was based on Professor Ian Ramsay's report for ASIC.

The report contains:

- an overview of approaches to disclosure of fees and charges in a number of international jurisdictions as well as in Australia; and
- options for improving the quality and comparability of fees and charges disclosure, particularly in Product Disclosure Statements and periodic statements.

Peter Kell, ASIC's Executive Director, Consumer Protection, described Professor Ramsay's report as "a significant contribution to the current debate about how to take forward the disclosure of investment fees and charges within the Financial Services Reform Act framework".

The report is available at <http://www.asic.gov.au>

In another development, in December 2003 the Senate and the House of Representatives enacted the Financial Services Reform Amendment Act 2003 to require dollar disclosure of fees in disclosure documents for managed investments. As noted in the Parliamentary debates and also in the earlier report of the Senate Economics Legislation Committee on the Bill, the legislation draws upon a recommendation in Professor Ramsay's report to ASIC.

#### **(4) Report on auditors' independence**

In June 2004 the Federal Parliament passed the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004. This Act enacts key recommendations contained in Professor Ian Ramsay's 2001 report to the Minister for Financial Services and Regulation titled *Independence of Australian Company Auditors: Review of Current Australian Requirements and Proposals for Reform*.

In relation to auditing, the key parts of the Act:

- Expand the role of the Financial Reporting Council to include public oversight of audit independence and audit standard setting in Australia. Auditing standards have the force of law on the same basis as accounting standards issued by the Australian Accounting Standards Board.
- Introduce into the Corporations Act a general requirement of auditor independence.
- Make audit partner rotation compulsory after 5 years.
- Amend the law to require disclosure in annual reports of fees for all categories of all non-audit services provided by an audit firm.
- Amend the law to require audit committees to certify that receipt of certain non-audit services did not compromise audit independence.
- Reform areas of auditor liability by allowing auditors to incorporate and seek agreement of the States to introduce proportionate liability.

Other developments relating to Professor Ramsay's report are:

- The Auditing and Assurance Standards Board has issued new guidance on auditor independence following recommendations in the report;
- The professional accounting bodies (CPA Australia and the Institute of Chartered Accountants) have updated their ethical rules on auditor independence following recommendations in the report;
- A number of prominent companies have disclosed in their annual reports that they have benchmarked their audit practices against the recommendations in the report (these companies include BHP Billiton, National Australia Bank, Westpac Banking Corporation and Macquarie Bank); and
- The report has been drawn upon in a number of international reports dealing with auditor independence or corporate governance (including reports published in the United Kingdom, the United States, South Africa and India).

### **Media coverage of Centre activities**

The research activities of Centre members received significant coverage in the media in 2004. Members of the Centre gave over 160 reported interviews to the media in 2004. Full details of the media coverage are included under the heading 'The Centre as a Public Resource'.

### **Visitors to the Centre**

Visitors to the Centre in 2004 included Professor Steven Schwarcz, Duke University; Professor Randall Thomas, Vanderbilt University; Professor Harry Glasbeek, York University; Dr N Balasubramanian, Indian Institute of Management, Bangalore; Professor Douglas Branson, University of Pittsburgh; Professor John Farrar, Bond University; Ms Sau Ngun Wong, Securities Commission of Malaysia; and Ms Karen Wheelwright, Deakin University.

In 2004 the Centre for Corporate Law hosted a visit by a Chinese delegation from the Legislative Affairs Commission of the Standing Committee of the National People's Congress. The purpose of the visit was to discuss corporate law and insolvency law developments. Those attending were Mr Wu Gaosheng, Director, Research Office, Legislative Affairs Commission, Standing Committee of the National People's Congress (NPCSC), Mr Huang Jianchu, Director, Economic Law Office, Legislative Affairs Commission, NPCSC, Mr Wang Bai, Division Chief, Economic Law Office, Legislative Affairs Commission, NPCSC, Ms Jia Hongmei, Division Chief, Research Office, Legislative Affairs Commission, NPCSC, Ms Meng Chen, Division Chief, General Office, Legislative Affairs Commission, NPCSC, Mr Wang Hongyu, Cadre, Research Office, Legislative Affairs Commission, NPCSC.

In addition, the Takeovers Panel held one of its meetings at the University of Melbourne Law School to discuss its operations and policies. The Takeovers Panel is the primary forum for resolving disputes about takeovers. Professor Ian Ramsay is a member of the Takeovers Panel.

## **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 including company restructurings, takeovers, schemes of arrangement and capital raising transactions.

## **Acknowledgments**

Many people deserve thanks for their contribution to the work of the Centre during 2004. In particular, they include the members of the Australian Advisory Board. Members of the International Advisory Board of the Centre have also provided valuable advice in relation to international developments and have been active in assisting 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;
- 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; and
- 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 comprised of leading Judges and corporate law academics. The members of the International Advisory Board are:

- Professor Theodor Baums, University of Osnabruck, Germany
- Professor Brian Cheffins, Faculty of Law, University of Cambridge, England
- 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
- Associate Professor Say Goo, Faculty of Law, University of Hong Kong
- Professor Hideki Kanda, Faculty of Law, The University of Tokyo
- Professor Jiang Ping, China University of Political Science and Law, China
- Professor Dan Prentice, Faculty of Law, Oxford University, England
- Professor Roberta Romano, Yale Law School, USA
- Professor Sang-Hyun Song, Dean, College of Law, Seoul National University, Korea
- Shane Tregillis, Assistant Managing Director, Securities and Futures Department, Financial Supervision Group, Monetary Authority of Singapore
- The Honourable E Norman Veasey, former Chief Justice, Supreme Court of Delaware, USA
- Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium

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, High Court of Australia (Chair)
- Professor Robert Baxt, Partner, Freehills
- Jeremy Blackshaw, Partner, Minter Ellison
- Tom Bostock, Partner, Mallesons Stephen Jaques
- Mark Burger, Partner, Phillips Fox
- Richard Cockburn, Director, Corporate Finance, Australian Securities and Investments Commission
- Stephen Creese, Vice-President and General Counsel, Rio Tinto Limited
- Quentin Digby, Partner, Freehills
- Tony Greenwood, Partner, Blake Dawson Waldron
- Michael Hoyle, Director, Macquarie Corporate Finance
- Alison Lansley, Partner, Mallesons Stephen Jaques
- Rodd Levy, Partner, Freehills
- The Hon Justice Philip Mandie, Supreme Court of Victoria
- Simon Morris, Partner, Corrs Chambers Westgarth
- Charles Rosedale, Partner, Clayton Utz
- Joseph Santamaria QC, Member of the Victorian Bar
- Ray Schoer, Director of IOOF Ltd, IIML Ltd and Australian Property Exchange Ltd, and former National Director of the Australian Stock Exchange
- Catherine Walter, Director of Australian Stock Exchange Limited and Orica Limited
- The Hon Justice Marilyn Warren, Chief Justice, Supreme Court of Victoria
- Jon Webster, Partner, Allens Arthur Robinson

The following academics were members of the Centre in 2004.

### **Dr Paul Ali**

Paul Ali joined the Faculty of Law, University of Melbourne, as a Senior Lecturer in 2002. His principal areas of interest are financial markets law, investment management law and secured transactions law. Paul's doctoral thesis was published in 1999 by Clarendon Press, Oxford under the title *Marshalling of Securities: Equity and the Priority- Ranking of Secured Debt*. A second book titled *The Law of Secured Finance: An International Survey of Security Interests over Personal Property* was published by Oxford University Press, Oxford in 2002. In 2003, Paul co-authored the book *Corporate Governance and Investment Fiduciaries* with Associate Professor Geof Stapledon and Martin Gold. Paul has also published several articles on derivatives, securitisations and structured financial products. Paul also co-authored in 2003 *Synthetic, Insurance and Hedge Fund Securitisations* with Jan Job de Vries Robbe. He was previously a senior associate in a leading Sydney law firm and has also worked in the securitisation group of a major United States bank.

### **Ms Helen Bird**

Helen Bird is a graduate in Law (Hons) and Commerce from the University of Queensland. After graduation, she completed her articles of clerkship and worked as a solicitor in the corporate, property and commercial litigation departments of Freehills. She joined The University of Melbourne in 1994 and teaches Contract Law, Corporate Law and Principles of Business Law. Her research interests are corporate governance, corporate regulation and enforcement, and legal theory. She is the co-author (with Susan Woodward and Sally Sievers) of *Corporations Law – In Principle* (LBC Information Services, 6th ed, 2003) which is accompanied by a Teachers' Manual.

### **Ms Hellen Blue**

Hellen Blue is a graduate in Law and Arts from the University of Western Australia. After graduation, she taught Business Law in Western Australia. She joined The University of Melbourne in 1998. She teaches Corporate Law in the Commerce Faculty. Hellen organises the seminar and conference program of the Centre for Corporate Law and Securities Regulation.

### **Associate Professor Pamela Hanrahan**

Pamela Hanrahan joined the academic staff of The University of Melbourne as a Senior Lecturer in February 1997, having previously practised corporate law and securities law as a Senior Associate with Arthur Robinsons & Hedderwicks in



Melbourne. She holds Honours degrees in Arts and Law from The University of Melbourne and a Master of Laws from Case Western Reserve University, Ohio USA, and is currently completing an SJD at The University of Melbourne.

She teaches Corporations Law at the undergraduate level in both the Law and Commerce faculties, and Regulation of Managed Investments as part of the Law School's graduate program. Her research interests include the law of managed funds, corporate and securities law and derivatives regulation. Pamela was Special Counsel with Allens Arthur Robinson from 2001-2004 and was on leave from the University during this time. She returned to the University in 2004 as Associate Professor.

### **Mr Jurgen Kurtz**

Jurgen Kurtz graduated in Law (Hons) and Arts from The University of Melbourne in 1993. He completed his articles of clerkship at Mallesons Stephen Jaques in 1994 and practised in corporate law until 1999. He was appointed a consultant in corporate law to Mallesons in 2000.

He teaches Corporations Law at the undergraduate level in both the Law and Commerce Faculties.

Jurgen's main research interest is in international efforts to liberalise domestic investment laws and the impact of those efforts on the regulation of transnational corporations.

Jurgen was on leave in 2004 undertaking Doctoral studies at the University of Michigan.

### **Associate Professor Timothy Lindsey**

Tim Lindsey is a graduate of The University of Melbourne Law School and has a doctorate in Indonesian Studies. He is Director of the University's Asian Law Centre. He teaches Insolvency Law and also Indonesian Law, Malaysian Law and Islamic and Traditional Customary Law. Particular subjects he teaches include Commercial Law in Asia, Resources Law and Policy in Indonesia and International Marketing and Franchising in Asia. He researches and teaches in Indonesian. His books include *Indonesia: Law and Society*, and *How Companies Work*. Tim is a member of the Board of the Department of Foreign Affairs and Trade's Australia-Indonesia Institute.

### **Dr Christine Parker**

Dr Parker is a Senior Lecturer at the University of Melbourne. In 1999, Oxford University Press published her first book *Just Lawyers: Regulation and Access to Justice*. In 2002, Cambridge University Press published Christine's second book titled *The Open Corporation: Self Regulation and Corporate Citizenship*. She has taught subjects dealing with ethics and professional conduct in the legal profession as well as company law and a new graduate subject dealing with corporate compliance issues. She is currently leading a major research project (in

collaboration with the Centre for Competition and Consumer Policy at the Australian National University and the Australian Competition and Consumer Commission) evaluating the compliance impact of ACCC enforcement activity.

### **Professor Ian Ramsay**

Ian Ramsay is the Harold Ford Professor of Commercial Law in the Law School at The University of Melbourne where he is Director of the Centre for Corporate Law and Securities Regulation. He has practised law with the firms Sullivan & Cromwell in New York and Mallesons Stephen Jaques in Sydney. Other positions Ian currently holds or has previously held include:

- Dean, Faculty of Law, The University of Melbourne (2002-2003)
- Member of the Takeovers Panel (which is the main forum for resolving takeover disputes) (2000 to date)
- Deputy Director of the Federal Government's Companies and Securities Advisory Committee where he wrote a number of reports which resulted in changes to the law including a report on directors' and officers' insurance (1991-1992)
- Head of the Federal Government's inquiry on auditor independence (2001)
- Member of the Corporations and Markets Advisory Committee (which is the Federal Government's main corporate law reform advisory body) (2002 to date)
- Member of the Federal Government's Implementation Consultative Committee for the Financial Services Reform Act (2001 to date)
- Member of the Executive Committee of the Business Law Section of the Law Council of Australia (1990-1999)
- Member of the National Law Committee of the Australian Institute of Company Directors (1995 to date) and the Corporations Law Committee of the Law Council of Australia (1995 to date)
- President of the Corporate Law Teachers Association (2000-2001)
- Member of the International Federation of Accountants taskforce on rebuilding confidence in financial reporting (2002-2003)
- Consultant to the Australian Securities and Investments Commission (ASIC) and author of the report for ASIC on disclosure of fees and charges in superannuation and other managed investments (2002)
- Member of the Federal Government's Companies Auditors and Liquidators Disciplinary Board (2004 to date)

- Consultant to the Australian Broadcasting Authority (ABA) and author of the report for the ABA on reform of the ABA's enforcement powers (2004)
- Member of the Australian Securities and Investments Commission's Corporate Governance Roundtable (1998-2002)
- Consultant to the Australian Law Reform Commission for its managed investments project (1992)
- Member of the Australian Law Reform Commission's Advisory Committee for its civil and administrative penalties project (2000-02)
- Consultant to the Victorian Government on corporate law reform (2000 and 2003)
- Consultant to the Parliament of Australia House of Representatives Standing Committee on Economics, Finance and Public Administration (2004)
- Distinguished Visiting Professor, Faculty of Law, The University of Toronto (1997)
- Distinguished Visiting Professor and Professorial Fellow, Faculty of Law, The University of Hong Kong (2001)

Ian has published extensively on corporate law issues both internationally and in Australia. His books include *Ford's Principles of Corporations Law* - which is Australia's leading corporate law book - (co-author, 11th edition, 2003); *Commercial Applications of Company Law in Singapore* (co-author, 2004); *Experts' Reports in Corporate Transactions* (co-author, 2003); *Commercial Applications of Company Law* (co-author, 5th edition, 2004); *Key Developments in Corporate Law and Trusts Law: Essays in Honour of Professor Harold Ford* (editor, 2002); *Commercial Applications of Company Law in New Zealand* (co-author, 2002); *Commercial Applications of Company Law in Malaysia* (co-author, 2002); *Company Directors' Liability for Insolvent Trading* (editor, 2000); *Securities Regulation in Australia and New Zealand* (co-editor, 1998); *The Corporate Law Economic Reform Program Act Explained* (co-author, 2000); *The New Corporations Law* (co-author, 1998); *Corporate Governance and the Duties of Company Directors* (editor, 1997); and *Education and the Law* (co-author, 1996).

### **Mrs Sally Sievers**

Sally Sievers (BA, LLB (Melb); LLM (Monash)) was previously a Senior Lecturer at the Faculty of Law at Monash University. Her main research interests are corporations law, especially directors' duties and non-profit associations. She is the author of *Associations and Clubs Law in Australia and New Zealand* (2nd ed, 1996) and co-author of *Corporations Law - In Principle* (6th ed, 2003). She is also the author of the chapter titled "Voluntary Associations" in *Halsbury's Laws of Australia*. Sally teaches Corporations Law in the LLB program and Corporate

Law to students undertaking the Bachelor of Commerce degree. Sally is also a Barrister and Solicitor of the Supreme Court of Victoria and a member of the Corporations Law Committee of the Law Council of Australia.

### **Associate Professor Geof Stapledon**

Dr 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 *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 journal specialising in Australasian corporate and securities law: the *Company and Securities Law Journal*.

Geof spent 1997 on secondment with the law firm Minter Ellison in Sydney, advising on the demutualisation of the AMP Society. He is Managing Director of the corporate governance and proxy voting firm, ISS Proxy Australia.

### **Ms Susan 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 the Australian Industry Development Corporation. At The University of Melbourne, Susan has taught Corporations Law in the law and commerce faculties for several years. Susan has co-authored (with Sievers and Bird) *Corporations Law – In Principle* (Lawbook Co, 6<sup>th</sup> ed, 2003) which is accompanied by a Teachers' Manual. Susan's main research interest is regulation of not-for-profit organisations and she (with Shelley Marshall) has published a major research report on this topic which includes recommendations for law reform.

### **Research Associates**

Ms Danielle Brennan-Williams

Ms Meredith Jones

Mr Jarrod Lennie

Ms Laura Little

Ms Shelley Marshall

Mr Anthony O'Donnell

A number of highly successful conferences and seminars were organised by the Centre during 2004. A list of previous seminars and conferences is contained in Appendix A.

**Shareholder Meetings: Key Issues and Developments** (9 November 2004 Melbourne, 18 November 2004 Sydney)

Speakers: Andrew Lumsden, Partner, Corrs Chambers Westgarth (Melbourne and Sydney), Stephen Mayne, Crikey.com.au (Melbourne and Sydney), John McCombe, Partner, Corrs Chambers Westgarth (Melbourne and Sydney), Mervyn Peacock, Chief Investment Officer and Director, AMP Capital Investments (Sydney), Kathryn Watt, Corporate Counsel, Vanguard Investments Australia Ltd (Melbourne)

**The Policies and Powers of the ACCC** (1 October 2004)

Speaker: Graeme Samuel, Chair, Australian Competition and Consumer Commission; commentator Associate Professor Pamela Hanrahan, Centre for Corporate Law and Securities Regulation, University of Melbourne

This seminar was co-hosted with the Securities Institute of Australia

**The Ideas, Practices and Regulatory Context of Employee Share Ownership Schemes in Australia** (27 August 2004)

Speaker: Jarrod Lenne, University of Melbourne

This seminar was co-hosted with the Centre for Employment and Labour Relations Law

**Directors' Duties: Recent Developments and their Implications for Directors and Advisors** (4 August 2004 Melbourne, 11 August 2004 Sydney)

Speakers: Alan Cameron, Company Director (Sydney), Rod Halstead, Partner, Clayton Utz (Sydney), John Harvey, Company Director (Melbourne), Andrew Lumsden, Partner, Corrs Chambers Westgarth (Melbourne and Sydney), Jan Redfern, Executive Director, Enforcement, ASIC (Melbourne and Sydney), Charles Rosedale, Partner, Clayton Utz (Melbourne)

**Continuous Disclosure** (25 May 2004 Melbourne, 8 June 2004 Sydney)

Speakers: Jane Couchman, General Counsel, Perpetual (Sydney), Quentin Digby, Partner, Freehills (Melbourne), Luise Elsing (Manager, Companies, Australian Stock Exchange (Sydney), Fiona Gardiner-Hill, Partner, Freehills (Sydney), James Gerraty, Manager of Companies, Australian Stock Exchange (Melbourne), Michaela Healey, Company Secretary, Orica Ltd (Melbourne), Jennifer

O'Donnell, Deputy Executive Director, Policy and Markets Regulation, Australian Securities and Investments Commission (Melbourne and Sydney)

**Directors' and Managers' Liability Under Occupational Health and Safety Laws - Do We Need a Stronger Regime of Individual Responsibility?**

(28 May 2004)

Speaker: Karen Wheelwright, School of Law, Deakin University

This seminar was co-hosted with the Centre for Employment and Labour Relations Law

**Financial Services Reform: Reflections on the New Regime** (10 May 2004)

Speakers: Gregg Drumm, Practice Leader-Products, Consumer, Business and Corporate Legal Group, ANZ Bank; Associate Professor Pamela Hanrahan, Centre for Corporate Law and Securities Regulation, University of Melbourne; Pamela McAlister, Deputy Executive Director - Financial Services Regulation, Australian Securities and Investments Commission

This seminar was co-hosted with the Securities Institute of Australia

**Corporate Crime: Wealth by Stealth** (7 May 2004)

Speaker: Professor Harry Glasbeek, Osgood Hall Law School, York University, Toronto

This seminar was co-hosted with the Centre for Employment and Labour Relations Law

**Malaysian Securities Regulation** (25 February 2004)

Speaker: Sau Ngan Wong, Head - Policy and Regulatory Review, Securities Commission of Malaysia

**Reforming Not-for-Profit Regulation** (19 February 2004)

Speaker: Sue Woodward, Centre for Corporate Law and Securities Regulation, University of Melbourne

**Corporate Governance Conference** (13 February 2004)

**Executive Remuneration:**

Speakers: Professor Randall Thomas, John Beasley Professor of Law and Business, Director, Law and Business Program, Vanderbilt University Law School- Plenary lecture on executive remuneration; Edward Wright, Managing Director, Equity Strategies Pty Ltd, Trends in the use of equity for executive incentive pay; Keryn Chalmers, Associate Professor, Department of Accounting and Finance, Monash University, The Determinants of CEO Compensation: Rent

Extraction or Labour Demand?, Dean Paatsch, Director of Governance Services, SIRIS, Shareholder voting on executive pay resolutions: 2002 to 2003

**Corporate Governance, Financial Integrity and Audit:**

Speakers: Professor Steven L Schwarcz, Professor of Law and Faculty Director, Duke Global Capital Markets Center, Duke University Law School-Enron and the use and abuse of special purpose entities in corporate structures; Andrew Lumsden, Partner, Corrs Chambers Westgarth, The changing role of the audit committee; John O'Grady, Partner, Ernst & Young, Challenges in moving towards International Accounting Standards

**Emerging Issues:**

Speakers: Michaela Healey, Company Secretary, Orica Limited, The growing role of the company secretary; Steve Gibbs, Chief Executive Officer, PSS / CSS, The emergence of institutional investors

## Links with Peak Organisations

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2004 academic members of the Centre were also members of:

- The Takeovers Panel (Professor Ian Ramsay)
- The Corporations and Markets Advisory Committee (Professor Ian Ramsay)
- The Corporations Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Pamela Hanrahan, Professor Ian Ramsay and Sally Sievers)
- The National Law Committee of the Australian Institute of Company Directors (Professor Ian Ramsay)
- The Companies Auditors and Liquidators Disciplinary Board (Professor Ian Ramsay)
- The Federal Government's Implementation Consultative Committee for the Financial Services Reform Act (Professor Ian Ramsay)
- The Executive Committee of the Corporate Law Teachers Association (Professor Ian Ramsay)
- The Legislation Review Board of the Australian Accounting Research Foundation (Associate Professor Geof Stapledon)



During 2004 academic members of the Centre occupied editorial positions with a number of corporate law and other publications:

- *Across the Board* (Member of the Editorial Board: Professor Ian Ramsay)
- *Australian Accounting Review* (Member of the Editorial Board: Professor Ian Ramsay)
- *Australian Corporations & Securities Law Reporter* (Consultant Editor: Professor Ian Ramsay)
- *Australia & New Zealand Journal of Law & Education* (Member of the Editorial Board: Professor Ian Ramsay)
- *Australian Journal of Asian Law* (Editor: Associate Professor Timothy Lindsey)
- *Company and Securities Law Journal* (Editor: Associate Professor Geof Stapledon; Member of the Editorial Board: Professor Ian Ramsay and Sally Sievers)
- *Corporate Law Bulletin* (Editor: Professor Ian Ramsay)
- *Doing Business in Asia* (Contributing Editor and Member of the Editorial Advisory Board: Associate Professor Tim Lindsey)
- *Employment Law in Asia* (Member of the Editorial Advisory Board: Associate Professor Tim Lindsey)
- *Governance* (Member of the Editorial Board: Associate Professor Geof Stapledon)
- *Governance, Risk and Compliance Newsfeed* (Editorial Advisor: Professor Ian Ramsay)
- *International Securities Regulation: Pacific Rim* (Consulting Editor: Professor Ian Ramsay)
- *Journal of Corporate Law Studies* (Member of the Editorial Board: Associate Professor Geof Stapledon)
- *Journal of Corporate Ownership and Control* (Member of the Editorial Board: Professor Ian Ramsay and Associate Professor Geof Stapledon)
- *Journal of Law and Financial Management* (Member of the Editorial Board: Professor Ian Ramsay)

- *Macquarie Journal of Business Law* (Member of the Editorial Board: Professor Ian Ramsay)
- *Melbourne University Law Review* (Faculty Advisor: Professor Ian Ramsay)
- *Singapore Academy of Law Journal* (Member of the International Editorial Board: Professor Ian Ramsay)

## Books

Ali, P and Yano, K, *Eco-Finance: The Legal Design and Regulation of Market-Based Environmental Instruments*, Kluwer Law International (2004)

Ali, P, Pearson, G and Fisher, S, *Commercial Law: Commentary and Materials*, 2nd edition, Lawbook Co (2004)

Hanrahan, P, Ramsay, IM, Stapledon, GP, Yeo, V and Lee, J, *Commercial Applications of Company Law in Singapore*, CCH Asia Pacific (2004)

Hanrahan, P, Ramsay, IM and Stapledon, GP, *Commercial Applications of Company Law*, 5th edition, CCH Australia (2004)

Parker, CE, Scott, C, Lacey, N and Braithwaite, J, (eds), *Regulating Law*, Oxford University Press (2004)

## Research Reports and Research Papers

McCombe, J, *Shareholder Meetings: Key Issues and Developments* (2004)

Andrew Lumsden, *The Role and Responsibilities of Directors on Board Sub-Committees* (2004)

Paul James, Ian Ramsay and Polat Siva, *Insolvent Trading: An Empirical Study* (2004)

Jeremy Cooper, *The Liability of Directors of Corporate Trustees and the Decision in Hanel v O'Neill* (2004)

Christine Parker, Paul Ainsworth and Natalie Stepaneko, *The Impact of ACCC Enforcement Activity in Cartel Cases* (2004)

Susan Woodward and Shelley Marshall, *A Better Framework: Reforming Not-For-Profit Regulation* (2004)

## Chapters in Books

Ali, P, 'Managed Futures Funds and Other Fiduciary Futures Products' in G N Gregoriou, V N Karavas, F S Lhabitant and F Rouah (eds), *Performance of Commodity Trading Advisors*, John Wiley & Sons (2004)

Ali, P, 'A Buy-Side Perspective of Hedge Funds: Regulating Hedge Fund Investments in the Developing Market for Hedge Funds in Australia' in G N Gregoriou, V N Karavas and F Rouah (eds), *Hedge Funds: Strategies, Risk Assessment, and Returns*, Beard Books (2004)

Braithwaite J and Parker CE, 'Conclusion', in CE Parker, C Scott, N Lacey and J Braithwaite (eds), *Regulating Law*, Oxford University Press (2004) 269-289

Lindsey TC, 'Indonesia: Devaluing Asian values, rewriting the rule of law' in R Peerenboom (ed), *Asian Discourses of Rule of Law*, Routledge (2004) 180-210

Parker CE, Scott C, Lacey N and Braithwaite J, 'Introduction' in CE Parker, C Scott, N Lacey and J Braithwaite (eds), *Regulating Law*, Oxford University Press (2004) 1-12

Parker CE, 'Is there a reliable way to evaluate organisational compliance programs?' in R Johnstone and R Sarre (eds), *Regulation: Enforcement and Compliance*, Australian Institute of Criminology (2004) 106-118

Sievers AS, 'Voluntary Associations' in *Halsbury's Laws of Australia*, Lexis Nexis Butterworths (2004)

## Journal Articles and Notes

Ali P, 'Charitable Trusts and Hedge Funds' (2004) 11 *Journal of International Trust and Corporate Planning* 187-197

Ali P, 'The Conundrum of Self-Referenced Credit-Linked Notes' (2004) 19 *Journal of International Banking Law and Regulation* 326-330

Ali P, 'The Legal Characterisation of Weather Derivatives' (2004) 7 *Journal of Alternative Investments* 75-79

Ali P, 'Securitization of Bank Loans - Part I: A Guide to Balance Sheet CDOs' (2004) 55 *The Law Monthly* 1030-1034

Ali P, 'Securitization of Bank Loans - Part II: A Guide to Synthetic CDOs' *The Law Monthly* 1149-1153

Ali P and Gold M, 'The Future of Hedge Fund Investing' (2004) *Journal of the Securities Institute of Australia* 13-16

Ali P and Gold M, 'Hedge Fund Investing: Looking Ahead' (2004) 10 *Derivatives Use, Trading and Regulation* 255-267

Ali P, 'Funds of Hedge Funds and Fiduciary Investors' (2004) 32 *Australian Business Law Review* 362-366

Ali P, 'Why Innovative Securitization is Far from Dead' (2004) *International Financial Law Review* 14

Crow J and Ramsay IM, 'Rebuilding confidence in financial reporting: An international perspective' (2004) 7 *Corporate Governance International* 39-47

James P, Ramsay IM and Siva P, 'Insolvent trading - An empirical study' (2004) 12 *Insolvency Law Journal* 210-237

James P, Ramsay IM and Siva P, 'Insolvent trading: Odds stacked against the directors' (2004) 4 *Insolvency Law Bulletin* 144-145

Kurtz J, 'Commentary to Professor Stephen D Krasner' (2004) 25 *Michigan Journal of International Law* 1103-1106

Kurtz J, 'Developing countries and their engagements in the World Trade Organisation: An assessment of the Cancun Ministerial' (2004) 5 *Melbourne Journal of International Law* 280-297

Kurtz J, 'The MFN standard and foreign investment: An uneasy fit?' (2004) 5 *Journal of World Investment and Trade* 861-886

Lindsey TC, 'Legal infrastructure and governance reform in post-crisis Asia: The case of Indonesia' (2004) 18 *Asia-Pacific Economic Literature* 12-40

Parker CE, 'A critical morality for lawyers: Four approaches to lawyers' ethics' (2004) 30 *Monash University Law Review* 49-74

Parker CE, 'Law firms incorporated: How incorporation could and should make law firms more ethically responsible' (2004) 23 *University of Queensland Law Journal* 347-380

Parker CE, 'Restorative justice in business regulation? The Australian Competition and Consumer Commission's use of enforceable undertakings' (2004) 67 *Modern Law Review* 209-246

Ramsay IM, 'Use of prospectuses by investors and professional advisers' (2004) 22 *Company and Securities Law Journal* 151-156

Stapledon GP, 'The pay for performance dilemma' (2004) 13 *Griffith Law Review* 57-73

Woodward SD and Marshall SD, 'The more the merrier? Stakeholders in not-for-profit companies' (2004) 10 *Third Sector Review* 101-128

## Conference Papers

Chalmers, K, Koh, P S and Stapledon, G P, 'The Determinants of CEO Compensation: Rent Extraction or Labour Demand?' Paper presented at the Annual Law and Business Conference, Vanderbilt University Law School, Nashville, Tennessee, USA, 26 March 2004

Lenne, J, Mitchell, R and Ramsay, IM, 'Employee Share Ownership Schemes in Australia'. Paper presented at the Australian Labour Law Association conference, Sydney, 24-25 September 2004

O'Donnell, A, Mitchell, R and Ramsay IM, 'Shareholder Value, Corporations Law and Labour Law - the Australian Experience'. Paper presented at the Australian Labour Law Association conference, Sydney, 24-25 September 2004

Ramsay, IM, 'Reviewing Director's Performance'. Paper presented at the Committee for Economic Development of Australia seminar, Melbourne, 26 November 2004

Ramsay, IM, 'The Importance of Good Corporate Governance in Rebuilding Confidence in Financial Reporting'. Paper presented at the Hong Kong Institute of Company Secretaries Corporate Governance Reform Conference, Hong Kong, 15-16 October 2004

Ramsay, IM, 'Financial Disclosure: the Role of Corporate Management and Governance'. Paper presented at the Australian Securities and Investments Commission Summer School, Brisbane, 24 February 2004

Stapledon, G P, 'Improving Corporate Governance: The Role of Institutional Investors'. Paper presented at the Australasian Investment Management Conference, Sydney, 17 September 2004

Stapledon, G P, 'Proxy Season 2003: Executive Remuneration'. Paper presented at the Securities Institute of Australia seminar on Shareholder Activism: Impact on Corporate Responsibility, Melbourne 19 August 2004

Stapledon, G P, 'Should Voting be Mandatory?' Paper presented at Vanderbilt University Law School, Nashville, Tennessee, USA, 29 March 2004

During 2004 the Centre published six research reports and research papers as part of its series in corporate law and securities regulation. These publications are available on the website of the Centre for Corporate Law and Securities Regulation.

### **Shareholder Meetings: Key Issues and Developments**

**John McCombe**

Over recent years shareholder activism has become an increasingly common feature of the corporate landscape. This paper outlines the principal legislative provisions regulating the calling of general meetings by members and others and associated legislative tools available to shareholders. It focuses on some related practical issues, including:

- the grounds for mounting a legal challenge to proposed resolutions;
- applications for extension of the statutory timetable to call and hold meetings under section 249D of the Corporations Act;
- the available avenues to terminate the calling and holding of meetings following the receipt of a section 249D request; and
- a possible approach to overcome the ease of reliance on the 100 member rule.

### **The Role and Responsibilities of Directors on Board Sub-Committees**

**Andrew Lumsden**

Public pressure for accountability and reform has seen its most powerful emanation in a new ‘enthusiasm’ for committees of the board comprised of independent directors as a panacea for all that ails corporate Australia. This paper examines the changing expectations for committees and suggests a number of practical measures that committee members can take to ensure they are satisfying their obligations and that boards should consider when establishing a committee.

### **Insolvent Trading – An Empirical Study**

**Paul James, Ian Ramsay and Polat Siva**

This research report documents the findings of an empirical study of judicial findings (of superior courts) relating to the duty to prevent insolvent trading. The duty to prevent insolvent trading is the most controversial of the duties imposed upon company directors. Those who support the duty argue that it provides appropriate protection for the unsecured creditors of companies. Those who oppose the duty argue that it has the effect of making directors unduly risk adverse which can result in directors too quickly putting companies into voluntary administration or liquidation for fear of personal liability (which may have a negative financial impact on unsecured creditors).

#### **Key findings of the study**

The key findings of the study are as follows:

- There has not been a large number of insolvent trading cases in Australia (our research revealed 103 cases in total). Although the insolvent trading provisions were introduced into company's legislation in 1961, we were unable to find any cases from the 1960s. In the 1970s there were ten cases and in the 1980s there were sixteen cases. There was a rapid increase to 62 cases during the 1990s. However, the number of cases decided has since slowed, with only 15 cases decided since the end of the 1990s.
- In the vast majority of the insolvent trading cases (75%), the defendant is found liable for insolvent trading.
- Where the defendant is found liable for insolvent trading, the amount of compensation the court orders the defendant to pay varies significantly. The largest amount of compensation a director was ordered to pay by a court was \$96.7 million. The smallest amount of compensation ordered in a case was \$517. The average amount of compensation ordered to be paid by courts was \$1.7 million although this amount is skewed by the large judgment referred to above. The median amount of compensation was \$110,600.
- In addition to ordering the defendant director to pay compensation where the director has engaged in insolvent trading, the court may also impose other orders including an order banning the director from managing companies for a specified period of time. It is rare for courts to impose such other orders (this was only done in seven cases). There were only two cases in which a management banning order was made. One of those cases involved 3 directors, with the length of the management banning orders against each of the directors involved in this case being 4, 7 and 10 years respectively. The period of the ban was twelve years in the second case.
- It is possible to bring criminal proceedings in relation to insolvent trading. 15% of the cases involved criminal proceedings.
- 91% of the companies alleged to be engaged in insolvent trading are private companies with only about 8% being public companies (and 1% being unknown).
- The type of business that companies alleged to be engaged in insolvent trading undertake varies widely. However, the most common business is construction (22% of all the cases) with the next two most common categories of business being retail trade (17%) and manufacturing (17%). These findings may have implications as to where ASIC should be devoting its remedial and enforcement resources.
- Insolvent trading actions are most commonly brought against executive directors. Excluding those cases where the type of director was unknown, 55% of the cases involved executive directors and 22% involved non-executive directors. A further 6% of cases involved people who were both a director and secretary. 4% of the cases were brought against the chairman of the companies.



- Most cases of insolvent trading against directors (60%) were brought by creditors of the companies. About 17% of the cases were brought by the corporate regulator with another 16% being brought by the liquidators of the companies.
- About 80% of the insolvent trading cases are brought in the state courts with about 20% being brought in the Federal Court. This trend is reversing given that the Federal Court has only had the jurisdiction to hear insolvent trading cases since the 1990s. In the period since 1991, 36% of the insolvent trading cases have been brought in the Federal Court.
- In relation to the cases brought in the state courts, 30% were brought in NSW, 22% in Western Australia, 18% in South Australia, 17% in Victoria and almost 10% in Queensland.
- There are defences available in a case involving insolvent trading. These defences are summarised above. In 63% of the insolvent trading cases, the defendants argued that a defence applied to them. However, in only about 11% of the cases in which a defence was argued was the director held not liable because a defence applied.
- In order for there to be insolvent trading, the company must incur a debt. In about 64% of the cases, the debt related to the purchase of goods or services by the company. In about another 8% of the cases the debt was a loan from a bank or another financier. In a small number of cases the debt related to unpaid taxation.

## **The Liability of Directors of Corporate Trustees and the Decision in Hanel v O'Neill**

**Jeremy Cooper**

Following the popularity of the trading trust in the 1970s, there was a general recognition that legislation was required to level the playing field in favour of trust creditors. Legislation (now reflected in Corporations Act 2001 (Cth), s 197) came into effect in 1986 imposing liability (jointly and severally with the corporation and other directors (if any), subject to s 197(2)) for debts and other trust obligations on directors of corporate trustees in certain circumstances.

The recent decision in Hanel v O'Neill has, however, brought into question the scope of that liability. The original basis on which the corporate veil was to be pierced in the case of corporate trustees seems to have been obscured during the legislative "simplification" and economic reform programs of the 1990s. A legislative clarification of the scope of that liability is now required.

## **The Impact of ACCC Enforcement Activity in Cartel Cases**

**Christine Parker, Paul Ainsworth and Natalie Stepaneko**

The Centre for Competition and Consumer Policy's (CCCP) Australian Competition and Consumer Commission (ACCC) Enforcement and Compliance Project uses qualitative and quantitative research methods to evaluate the impact of ACCC enforcement

strategies on compliance with the Trade Practices Act. This report provides a preliminary analysis of the compliance impact of ACCC enforcement activity in cartel cases.

Section one provides a brief introduction to the themes of the report and to the methodology used in conducting the empirical analyses reported.

Section two of the report examines four case studies of significant ACCC cartel enforcement action in detail using empirical evidence from interviews with ACCC staff, lawyers and business people involved in each case, and documentary reports of the case and its impact. The four cases are the Freight, Concrete, Transformers and Queensland Fire Protection cases. Each case was chosen because of its significant impact on industry compliance and on the reputation and effectiveness of the Commission, according to preliminary interviews with ACCC staff. The analysis shows that each case did have significant impacts, but also weaknesses.

In all four cases the ACCC followed the same pattern of investigation and enforcement, with relatively minor variations. These are the use of informers and leniency/immunity, the section 155 process for gathering evidence, negotiated settlements of enforcement action, the publicity associated with proceedings, and implementation of compliance programs as a remedy for misconduct.

Section three evaluates the strengths and weaknesses of each of the investigation and enforcement strategies used by the ACCC in the cartel cases in the chronological order in which each strategy is usually used.

Section four concludes that despite failures in the impact of both the ACCC's deterrent and moral messages, the data suggests that ACCC enforcement activity has significantly influenced a change in social norms in Australian business related to cartel behaviours through a mix of enforcement techniques that have begun to extend a web of control over market behaviour.

## **A Better Framework: Reforming Not-for-Profit Regulation** **Susan Woodward and Shelley Marshall**

The not-for-profit (NFP) sector plays a vital role in our society. In economic terms alone (ABS Nov 2002):

- Australians give \$2.8 billion annually to NFP organisations;
- NFPs contribute 4.7% of GDP and account for 6.8% of total employment; and
- in comparative terms, NFPs add more to GDP than the mining industry.

The regulatory framework that underpins the NFP sector is complex and riddled with inconsistencies. The report contends that this puts the underlying health of the sector at risk. Reforms are needed to ensure that the relevant laws and regulatory bodies are fair, consistent and clear in order to promote NFPs that are transparent, accountable and credible. If these fundamentals are 'right', then growth and innovation of this socially and economically significant sector are more likely to occur.

The report outlines the myriad of possible legal structures for NFPs – companies, associations, foundations, co-operatives, church auspice, aboriginal corporations, Royal Charter and more. It highlights the confusing mix of State and Federal regulation and regulators, and the implications of the lack of nationally consistent reporting obligations. The report contends that these factors provide significant impediments to accountability and could jeopardise donor confidence. Recommendations are put forward about how disclosure by NFPs should be directed to the special needs of NFP stakeholders. The key regulatory aim should be to help entrench a culture of relevant accountability.

While the views of business have been canvassed before any corporate law reforms have been implemented, the views of NFPs have been overlooked. To obtain the views of those involved in a wide range of NFPs, a detailed survey was sent to all of the 9,800 companies limited by guarantee on the public register maintained by ASIC (the Australian Securities and Investments Commission) as at 1 March 2002 (virtually all of which are NFPs). Over 1,700 completed replies were received. The data collected is documented and analysed in the report and gives, for the first time, a national snap shot of those NFPs that are registered as companies limited by guarantee.

### **National survey**

The survey sought a wide range of information about:

- the organisation's profile - size, principal activity, number of volunteers, member-serving vs public-serving, tax status;
- why a company structure had been chosen instead of, say, an incorporated association and whether or not this structure had met the organisation's needs;
- who were regarded as the organisation's key stakeholders and what reporting was made to them;
- the composition and experience of the Board of Directors – Board size, age, gender and skills, whether fees are paid to non-executive directors, how Board members are chosen, Board independence etc;
- the procedures and structures of the Board – what is seen as the organisational role of the Board, frequency and conduct of meetings etc; and
- whether the current regulatory framework is working – views on what information (if any) should be disclosed to the public, what is the attitude of NFPs to their dealings with ASIC, should there be a new specialist regulator for NFPs.

This report details the findings of the survey and explores any significant differences between the responses of NFPs based on, for example, their tax status, principal activity or member-serving vs public-serving.

The report makes several recommendations for reform and identifies some areas for further deliberation.

### **Key findings**

Respondents indicated that they chose a company structure because: it better suits national or multi-state organisations (34% of respondents); the scale of trading

activities (40%); a preference for dealing with ASIC rather than State regulators (31%); and public perception or status (52%) (such as the view that ‘serious’ or ‘more sophisticated’ NFPs use this structure rather than the incorporated associations’ regime). These responses highlight that the State and Territory based incorporated associations regime does not meet the needs of many NFPs, such as peak bodies or small but national organisations.

On public disclosure, a startling 9% of respondents thought that no information should be made available to the public, while only 39% agreed with fully audited accounts being disclosed (as is currently required by the Corporations Act), and just over half thought summary financial information should be enough.

Respondents clearly thought that the Corporations Act and the way it is implemented by ASIC is more appropriate to ‘for-profits’ than for them. The majority were in favour of a new regulator to oversee NFPs, as recommended by the Charity Definition Inquiry (2001), but were concerned to avoid duplication. Better regulation, rather than simply more regulation, is the key.

NFPs and their needs differ from ‘for-profits’ in several ways, for example:

- they rely heavily on volunteers;
- they enjoy exemption from income tax; and
- they have more stakeholders to consider (members, volunteers, grant makers etc - not just shareholders interested in ‘the bottom line’).

Nearly a third of NFPs reported difficulty recruiting directors and for some types of NFPs, the figure was significantly higher.

## **Recommendations**

The report concludes that the particular needs of the NFP sector have been overlooked in the company law reform process, and the dual State/Federal regime is causing problems. Increasingly, even very small NFPs operate on a national basis, and this is not facilitated by the existing State based incorporated associations’ regime. After a decade of a dual regime – companies governed by a national scheme and associations governed by varying State/Territory based legislation – the authors argue that it is time to combine the best elements of each of these with new ideas. The sector needs a national regulatory framework based on sound public policy, rather than disclosure requirements that vary vastly depending on jurisdiction and the nature of the legal structure adopted.

Arising out of the data, key recommendations for regulatory reform include:

- a single Commonwealth regulatory regime (this could be achieved by a referral of powers as recently occurred in the company law model);
- ASIC becoming the new regulator for all incorporated NFPs (companies and associations), at least until any new NFP regulator is introduced;
- the establishment of a specialist NFP unit within ASIC; and
- plain language guide and replaceable rules for NFP organisations.

The survey results also demonstrate a need for additional support services for NFPs. A new independent NFP advisory body should be established to meet this need. A range of

support services could be provided at low or no cost – for example, auditing, financial and taxation advice, legal advice, training for Board members, dispute resolution and mediation for stakeholders. This body could make a significant difference, particularly for small NFPs. Such an advisory body would be able to generate at least some of its funding from fees for service.

Recommendations are also made about minimum public disclosure requirements and the need for an NFP-specific accounting standard. Even member-serving organisations that do not receive direct government funding typically get income tax exemptions, and therefore have the benefit of public funds through tax foregone. The corresponding responsibility needs to be a minimum level of public disclosure. Additional disclosure requirements should apply to larger NFPs. At the moment there is duplication, and often the disclosure that is required does not meet the needs of NFP stakeholders.

However, the authors recognise that if important reforms are to take place, the sector itself will need to lobby for change, through individual NFPs, through peak organisations, and through bodies such as the newly established National Roundtable of Nonprofit Organisations. The report's main contention is that by getting the underlying regulatory framework 'right', accountability and confidence in the sector generally will be improved, and NFPs will have more time to concentrate on the important services that they provide to the community.

## Reviews of Books Authored by Centre for Corporate Law Members

### **The Open Corporation: Effective Self-Regulation and Democracy** (authored by Dr Christine Parker)

“In a lively and challenging work...Christine Parker seeks to explore the possibility of transforming the corporation from an object of external regulation to a subject capable of self-regulation...Her account of the potential of corporations for a practical form of social citizenship is elegantly written and finely argued.”

*Review published in the Griffith Law Review*

“The book is a product of exhaustive research and presents a rich exploration of the literature on regulation and related topics... If you are genuinely interested in moving the debate about corporate social responsibility from nihilism to potentially achievable aspiration, I recommend that you read this book.”

*Review published in the UNSW Law Journal*

“Christine Parker’s *The Open Corporation* is a first rate piece of academic scholarship of international stature. It is the product of deep research, yet wears its learning lightly. The text is accessible and the style readable, a real achievement given the matters discussed. Parker’s passion for her topic, and for the need to create responsible and accountable corporations in the interests of social justice and democracy is always evident.”

*Review published in the Australian Journal of Labour Law*

“The alternative to command and control [approach to compliance and regulation] must be grounded on the principle of self-regulation, says Parker, and she calls in support a growing body of academic writing, which she has organised and analysed in an impressively coherent manner, backed up by the conclusions of her own field research among compliance professionals in several countries.”

*Review published in the New Zealand Law Journal*

“Parker’s book offers a method for approaching the complex job of achieving better democratic control of corporate power. [The book is] readable, actively engaged with the reality of “self-regulation” as experienced in the field, and well informed on the theory, as well as being a good how-to for practitioners in companies and in regulatory agencies.”

*Review published in the Drawing Board: An Australian Review of Public Affairs*

“This is a well researched, scholarly, articulate book which deserves to be read and understood by corporate executives, citizens and political leaders.”

*Review published in Boss Magazine*

### **The Law of Secured Finance** (authored by Dr Paul Ali)

“Dr Paul Ali’s *The Law of Secured Finance* is a useful guide to an area of the law which has been more confused than many others by the interplay of statute and case law. Many will wish it had been available long ago, as texts in the area lacked such a clear structure.”

*Review published in the Journal of International Banking Law and Regulation*

### **Ford’s Principles of Corporations Law** (authored by Professor Harold Ford, Justice Robert Austin and Professor Ian Ramsay)

“Corporate governance and proper disclosure have been under the spotlight over the last 18 months or so, especially in light of the sweeping reforms proposed by the Ramsay Report...Covering the whole spectrum of company law including formation, legal capacity, share issues, directors’ duties, auditing, shareholder remedies and insolvency (and much, much more) this is an in depth guide for the professional, layman or student...Now in its 11<sup>th</sup> edition, Ford’s *Principles of Corporations Law* has been the “bible” of corporate lawyers and students alike for a generation.”

*Review published in Lawyers Weekly*

“It is not hard to see why Ford has remained one of the most popular texts on company law...One of the strengths of this book is the depth of the knowledge of the authors, so that related legal doctrines are woven seamlessly into the text, such as in the case of the explanation of directors’ duties in Ch 8, or the rules that apply where the company is a trustee.”

*Review published in the Australian Law Journal*

“I thoroughly recommend this book as a must for all legal libraries. Ford’s *Principles of Corporations Law* remains the pre-eminent text on Australian corporations law, preserving its reputation for scholarship and unique insight into this increasingly complex area of law.”

*Review published in Proctor, Journal of the Queensland Law Society*

“The authors achieve an impressive topical coverage and density of scholarship...It is an essential addition to the shelves of those with a commercial /corporate practice.”

*Review published in the Queensland Bar News*

“The book remains the pre-eminent resource for lawyers, accountants, government and business throughout Australia...The text is accessible and authoritative... this work retains all of the substance, style and scholarship that has made it an indispensable legal classic for students and practitioners alike.”

*Review published in the Victorian Bar News*

**Key Developments in Corporate Law and Trusts Law – Essays in Honour of Professor Harold Ford** (edited by Professor Ian Ramsay)

“This book is a wonderful idea. It is a collection of essays in honour of a person whose name is known to all corporate and insolvency lawyers...The book collects scholarship from authors of the highest quality, including 6 professors and 2 judges...Readers will find the book to be a stimulating read.”  
*Review published in the Insolvency Law Bulletin*

**Commercial Applications of Company Law in Malaysia** (authored by Pamela Hanrahan, Ian Ramsay, Geof Stapledon, Aman Narimin and Aisha Bidin)

“Lecturers will find this book a unique teaching aid...the publication of this comprehensive guide is timely, in light of the challenge of good corporate practice and compliance.”  
*Review published in the Star (Malaysia)*

**Experts’ Reports in Corporate Transactions** (authored by Laurie McDonald, Grant Moodie, Professor Ian Ramsay and Jon Webster)

“Experts have figured prominently in recent jurisprudence...the present work, as its title suggests, is concerned specifically with the role of the expert in the context of corporate transactions. The book is intended for those who prepare experts’ reports as well as others involved in corporate transactions where such reports are used. This will include company directors, and the reliance by directors on experts’ reports in the context of directors’ duties is specifically considered. As well as extensive legal analysis, the book includes a consideration of practical examples of experts’ reports that have not been the subject of litigation... [The book] will be highly useful to practitioners in the area.”  
*Review published in the New South Wales Law Society Journal*

“The book is useful and informative. It deals with the requirements of the regulatory authorities; who is an expert; what is meant by terms such as ‘fair and reasonable’; and like matters. It also analyses the concept of an independent expert. There is also a section on the liability of experts and a chapter on the reliance by directors on experts’ reports. The book would be quite useful to solicitors, accountants and merchant bankers involved in the corporate finance area.”  
*Review published in the Australian Law Journal*

**Corporations Law - In Principle** (authored by Susan Woodward, Helen Bird and Sally Sievers)

“The book is ideally suited for any student commencing their business studies...The language used in the book, the style and the ease of its use distinguish the book as a great teaching and learning resource.”  
*Review published in the Australian Journal of Corporate Law*



“[The book provides] invaluable learning aids for students otherwise potentially overwhelmed by the breadth of topics and depth of material covered in company law courses, whether in law schools or in business schools.”

*Review published in the Law Institute Journal*

### **Company Directors’ Liability for Insolvent Trading** (edited by Professor Ian Ramsay)

“[This book] is the most current and useful compendium of the law, practice and theory on the subject yet published, particularly for an Australian audience, although it will be of value to New Zealand and United Kingdom readers and in the context of scholarly debates. It serves several purposes. For liquidators, accountants and commercial legal practitioners, it is a very helpful way of coming to grips with the statutory provisions and case law. For those advising directors on their duties on how to manage a situation where they are concerned about a company’s financial position, it is a useful overview of how to approach the problem in practice and particularly in taking into account the role of voluntary administration and deeds of arrangement under Chapter 5.3A of the Corporations Law...The edition should prove very useful for practitioners in a number of fields, as well as those concerned with the scholarly debate.”

*Review published in Keeping Good Companies – Journal of the Institute of Chartered Secretaries*

“The University of Melbourne has provided us with a work of intellectual rigour...These 8 essays (including the editor’s own) form a multifaceted prism of scholarship and substance. An ASIC lawyer, a NZ barrister, a Sydney solicitor, Oxford dons Australian professors and a Colorado professor are a laser of learned minds...This book is for those who are concerned to know the history of the insolvent trading provision, what the Australian law now states, its theoretical base and the principles actually applied, what the laws of other places say and what our law should say...The book well displays the access of the authors to their subject.”

*Review published in the Journal of the Law Society of the Australian Capital Territory*

### **Corporate Governance and the Duties of Company Directors** (edited by Professor Ian Ramsay)

“The collection assembled by Professor Ian Ramsay is recommended reading for anyone who is interested in exploring issues [of corporate law] or in corporate governance more generally...It includes interesting and thought provoking material on issues which have become topical in the United Kingdom following the Law Commission’s consultative paper on company directors...The book is a worthwhile edition to the relevant literature.”

*Review published in the International Company and Commercial Law Review*

“This book is a collection of articles on general corporate governance issues and specific duties owed by company directors. For anyone seriously interested in the subject the book provides a useful introduction to current case law and detailed analysis of the principles in this area of the law.”

*Review published in the New South Wales Law Society Journal*

“The book will no doubt become a contemporary textbook in the study of corporate governance.”

*Review published in Australian CPA*

“This authoritative work discusses the duties of directors in Australia from a legal perspective. In his introduction the editor recognises that there are many definitions of corporate governance and explores why corporate governance has become an issue. In an original insight he demonstrates the breadth of corporate governance far more fully than most authorities, by identifying the various mechanisms that play a role in corporate governance.”

*Review published in Corporate Governance: An International Review*

“If you have always sought clarification as to just what constitutes “corporate governance” and succinct enlightenment as to the law defining directors’ duties, then Corporate Governance and the Duties of Company Directors is the book for you...The book holds appeal in that it attempts to define and present the ideology of corporate governance in more than one light, and illustrates its role in conflict minimisation within a corporate structure...The substantive law pertaining to directors’ duties is admirably presented.”

*Review published in the Law Institute Journal*

“This book provides timely perspectives on the various issues surrounding the role of directors and of corporate law in enhancing corporate governance a practice...The text provides a useful snapshot of the current thinking regarding director liability, regulatory costs and different policy approaches. More importantly, it provides an impressive introduction for newcomers to this area of the law, whilst also prompting a re-evaluation by those familiar with the many policy skirmishes occurring within the confines of the corporate governance debate.”

*Review published in the Company and Securities Law Journal*

**Securities Regulation in Australia and New Zealand** (edited by Professor Gordon Walker, Dr Brent Fisse and Professor Ian Ramsay)

“The text Securities Regulation in Australia and New Zealand contributes a number of important elements to the ongoing regulatory debate. Perhaps most importantly, the commingling of legal concepts with financial, economic and accounting concepts is to be broadly and extensively applauded...This review cannot do justice to the numerous, innovative conceptual filters presented in the text, suffice it to say that the traditional black letter approach to securities regulation will come under closer scrutiny in the future as these conceptual filters are applied in a more comprehensive manner...One of the recurrent themes in this

text is the powerful analytical insights to be derived from economic theory and empirical studies...It is commendable that Securities Regulation in Australia and New Zealand has admirably tackled the major, and many subsidiary, issues in the current securities regulation debate and proffers solutions which draw from many conflicting theoretical disciplines and perspectives. The depth of the legal analysis combined with a philosophical awareness and application of the various regulatory schools of thought makes this text an essential item in every security market participant's library...[The book] can justifiably claim to provide all participants in the securities markets with important, insightful perspectives and critiques on the existing regulatory framework."

*Review published in the Australian Business Law Review*

"This is an important book...It is highly recommended and will hold an important place in the scholarship on securities regulation in Australasia...There is something for everyone in this useful collection of materials. Students and teachers of law and commerce will find the insights into theory and practice invaluable...And for legal practitioners there is comprehensive, albeit selective coverage, of Securities Act developments."

*Review published in the Otago Law Review*

### **Education and the Law** (authored by Professor Ian Ramsay and Dr Ann Shorten)

"This is the most significant publishing event for perhaps two decades for those interested in the law and education in Australia...[The book] will quickly become the standard reference book."

*Review published in Proctor, Journal of the Queensland Law Society*

"Education and the Law is confirmation that the law relating to education is an established area of interest...[The book] is both timely and appropriate...It is a useful and much needed book. Both Professor Ramsay and Dr Shorten have researched and written in the area of education and the law for some years, and the erudite treatment of the vast body of information included in the book is praiseworthy...It is a book that would rightly take its place on the bookshelves of teachers, educational administrators, academics, and members of the legal profession with a roving eye on the emerging field of education law."

*Review published in the Australia and New Zealand Journal of Law and Education*

"Education and the Law is a comprehensive and well referenced text on all aspects of the law as it relates to education in Australia...Ramsay and Shorten have produced an excellent text, invaluable to both lawyer and the education administrator."

*Review published in Law Letter, Bulletin of the Law Society of Tasmania*

The Faculty of Law at The University of Melbourne has a very strong graduate program in corporate law and securities regulation. The 34 subjects offered are:

- Accounting for Commercial Lawyers\*
- Company Takeovers\*
- Comparative Companies Law in the Asia-Pacific Region\*
- Comparative Corporate Governance\*
- Corporate Governance and Directors' Duties \*
- Corporate Insolvency and Reconstruction
- Corporate Taxation\*
- Current issues in Corporate Law
- Derivatives Regulation
- Electronic Commerce Law\*
- Equity and Commerce
- Financial Sector Compliance Management
- Financial Sector Regulation
- International Financial System: Law and Practice\*
- International Financial Transactions: Law and Practice\*
- International Securities Regulation
- Law of Secured Finance\*
- Licensing Financial Service Providers\*
- Managed Investments Law
- Principles of Corporate Finance
- Principles of Corporate Insolvency
- Principles of Corporate Law
- Project Finance
- Regulation of Securities Offerings
- Securitisation\*
- Stamp Duties
- Superannuation Law\*
- Taxation of Business and Investment Income A \*
- Taxation of Business and Investment Income B
- Taxation of Consolidated Groups\*
- Taxation of Financial Instruments\*
- Taxation of Overseas Entities
- The Corporation as Criminal
- United States Securities Regulation

A list of all the Faculty of Law's graduate subjects offered in 2004 is contained in Appendix B.

At the undergraduate level, the following subjects are offered:

- Corporate Governance in the Modern Company\*
- Corporations Law\*
- 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; Professor Douglas Branson of the University of Pittsburgh School of Law; Professor Paul Mahoney of the University of Virginia School of Law; Professor Dale Oesterle of the University of Colorado School of Law; Professor Cally Jordan of the World Bank and the Asian Development Bank and Professor Steven Schwarcz, Duke University School of Law.

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\* indicates taught in 2004

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 Stock Exchange and leading national law firms. In 2002 LAWLEX commenced publishing the Bulletin.

By the end of 2004, 88 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 Policy Statements and Practice Notes), the Australian Stock 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 Internet, the address of which is:

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

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

<http://research.lawlex.com.au/cclsr>

## Competitive Research Grants Obtained

This section identifies the competitive research grants that funded research by members of the Centre in 2004. A list of competitive research grants obtained in 1996-2003 is contained in Appendix C.

### New Grants Obtained in 2004

#### The Governance Research Network (GovNet)

##### Type of Grant

Australian Research Council Research Network Grant

##### Funds Received

\$ 1,500,000

##### Chief Investigators

Professor Charles Sampford, Griffith University; Participants from the Centre for Corporate Law - Professor Ian Ramsay and Dr Christine Parker

This project brings together 50 scholars from 12 universities to undertake cross-disciplinary governance research.

##### Project Summary

Institutions and their governance are frequently part of our most pressing problems - not least in our national research priorities. Hence, institutions are invariably a key part of the solutions. GovNet unites three ARC Centres, two existing networks (RegNet, ANZSOG) and several other dynamic centres to create an interdisciplinary network of ethicists, lawyers, political scientists, economists and historians. It will tackle issues of institutional governance, from small firms to global institutions recognising both common governance issues and radically differing contexts.

Together with APSEG and government agencies, it will apply cross-disciplinary, theory-driven, evidence-based research to governance issues in the region.

## **Corporate Governance and Institutional Investment in the Australian Financial Markets**

### **Type of Grant**

Australian Research Council Discovery Grant

### **Funds Received**

\$130,000

### **Chief Investigator**

Dr Paul Ali and Associate Professor Geof Stapledon

### **Project Summary**

The financial markets play a vital role in Australian economic life. The majority of the assets of Australian superannuation funds and managed investment funds are financial products.

This project will provide a comprehensive account of the different types of complex financial products available in Australia and an assessment of the corporate governance practices at Australian companies and Australian institutional investors in relation to their use of complex financial products.

Through these outcomes, the project will contribute to a broader understanding of the Australian financial markets and the enhancement of corporate governance practices in Australia.

## **Grants Obtained Prior to 2004 and Funding Research in 2004**

### **Corporate Governance in the Australian Financial Markets**

#### **Type of Grant**

Melbourne University Research Grant

#### **Funds Received**

\$14,000

#### **Chief Investigators**

Dr Paul Ali and Dr Geof Stapledon



## **Project Summary**

The project examines the corporate governance aspects of transactions in the Australian financial markets, in particular the legal design of complex financial products, the efficacy of the new regime introduced by the Financial Services Reform Act 2001 (Cth) for the regulation of financial products, and the role of institutional investors in supervising the use of complex financial products by the companies in which they have invested.

## **Synthetic Securitisations and the Revolution in Credit Risk Management**

### **Type of Grant**

Melbourne University Early Career Researcher Grant

### **Funds Received**

\$8,750

### **Chief Investigator**

Dr Paul Ali

### **Project Summary**

This project focuses on recent innovations in securitisation, particularly in relation to the issuance of debt securities backed by derivatives. These so-called synthetic securitisations, in essence, segregate assets into their component risks and effect a transfer of certain risks independent of the assets to the investors in the debt securities. The key example is the synthetic CDO (Collateralised Debt Obligations) which involves the securitisation of the credit risk on bond or loan portfolios. The emerging class of managed arbitrage synthetic CDOs is also examined. In addition, the project investigates the securitisation of non-traditional assets.

## **Partnerships at Work: The Interaction between Employment Systems, Corporate Governance and Ownership Structure**

### **Type of Grant**

ARC Discovery Project Grant

### **Chief Researchers**

Professor Ian Ramsay and Professor Richard Mitchell

## **Funds Received**

\$640,500

## **Project Summary**

The project examines the interaction between several key factors in the creation and sustainability of 'Partnerships at Work'. These factors include particular employment systems, forms of corporate governance and ownership structures. The project proposes to discover how these various factors have interacted so as to give rise to — or fail to give rise to — 'high performance' partnership-style relations at work.

There is a widely held view that production systems based on hierarchical management control, confliction work relationships and low trust between management and labour (the Anglo-American model) have been less competitive than models based upon co-operative/high trust work relations (e.g. Germany and Japan). Governments in systems historically marked by 'confliction' employment systems are now supporting the development of more co-operative workplace relations systems between employers and employees. In Britain this has been based in the Blair government's 'Third Way' policy which actively seeks the promotion of a 'Partnership at Work' agenda. In Australia the Federal Government has also been pursuing a policy of 'co-operative' workplace relations based upon individual contracts, employee participation, more flexible working arrangements, performance appraisal, and various forms of profit sharing, including employee share ownership. More recently the Victorian Labor government has announced its 'Partners at Work' program designed 'to encourage Victorian workplaces to develop partnerships with employees, unions and other shareholders...to improve workplace performance'. As a result of this policy direction, the identification of those factors which support the development and sustainability of co-operative 'partnership-style' workplace systems is now one of the most important issues in contemporary employment relations.

At the same time, there is debate concerning whether there will be international convergence around the Anglo-American model of corporate governance and ownership structure. The emergence of corporate governance frameworks based around highly liquid capital markets, dispersed share-ownership, vulnerability to hostile takeover bids and the presence of large institutional investors anxious for quarterly improvements can entrench a narrow understanding of 'shareholder value' as the dominant objective of corporate management. On the other hand, systems of corporate governance characterised by relatively concentrated patterns of shareholding, with a dominant shareholder holding a majority or near majority stake, are said to more easily establish and sustain co-operative arrangements between all relevant stakeholders, including industry employees.

This project focuses on the interaction between these factors within a regulatory environment established by labour law and corporate law. What are the elements of 'co-operative' or 'partnership' employment systems? What are the integrating institutions or conventions - if any - that incorporate workers or their

representatives into managerial processes? How do company directors actually balance the interests of employees and shareholders within the framework of the obligations imposed by directors' duties? How flexible are those duties? What possible shortcomings might exist in the practical application of those duties? Is there congruence between types of corporate governance systems and types of employment system?

This section identifies the supervision of graduate students undertaken by members of the Centre in 2004.

### PhD Theses in Progress

- Alneyadi, M: The Law of Construction Contracts in the United Arab Emirates  
*Supervisor:* Associate Professor Tim Lindsey
- Bird, H: Conciliatory Enforcement of Australian Company Law: The Operation and Use of Enforceable Undertakings by ASIC, the Corporate Regulator  
*Supervisor:* Professor Ian Ramsay
- Butt, S: Indonesia's District Courts: Incompetence and Corruption  
*Supervisor:* Associate Professor Tim Lindsey
- Chellew, J: Derivatives Law: Improving the Corporations Act's Derivatives Definition  
*Supervisor:* Professor Malcolm Smith
- Colmenares, N: International Jurisdiction and Amnesty  
*Supervisor:* Associate Professor Tim Lindsey
- Darmono, B: Adat and Forestry Laws in a Plural System: A Study of Indonesian 'Legal Development'  
*Supervisor:* Associate Professor Tim Lindsey
- Harijanti, S: The Role and Function of the National Ombudsman Commission in Creating Good Governance in Indonesia  
*Supervisor:* Associate Professor Tim Lindsey
- Hassan, M H: The Syariah Court of Singapore – A Study of a Court of Law From the Civil and Islamic Perspective  
*Supervisor:* Associate Professor Tim Lindsey
- Hatami, P: Are Islamic Principles Sufficient for a Stable Economy? Implications

for Trade, Investment and Banking in Islamic Countries: Case Study of Iran and UAE

*Supervisor:* Associate Professor Tim Lindsey

- Indrayana, D: Constitutional Reform and Transition from Authoritarian Rule: the Indonesian Experience 1999 – 2002

*Supervisor:* Associate Professor Tim Lindsey

- Kreltshheim, D: Paper and Electrons, Property and Contract: New Payment Systems and the Law

*Supervisor:* Dr Paul Ali

- Nguyen, Q: ASEAN Free Trade Area: A Mechanism for Mutual Recognition and Enforcement of Judgments on Civil and Commercial Matters

*Supervisor:* Associate Professor Tim Lindsey

- Ntoko Ewang, F: Does the Capital Maintenance Doctrine Adequately Protect Corporate Stakeholders?

*Supervisor:* Professor Ian Ramsay

- Parker, D: Lifting the Veil and Corporate Personality

*Supervisor:* Professor Ian Ramsay

- Shi, C: Corporate Governance: Its Theoretical Development and Issues of Chinese Corporate Governance

*Supervisor:* Associate Professor Tim Lindsey

- Steiner, K: Western Human Rights and Asian Values – Are the Differences Real?

*Supervisor:* Associate Professor Tim Lindsey

- Stepniak, D: Electronic Media Coverage of Court Proceedings: Australian Experiences in the Light of Overseas Developments

*Supervisor:* Professor Ian Ramsay

- Wallace, M: Freedom and Fairness in Contract Law

*Supervisor:* Dr C Parker

- Wardrop, E: Going Public: Representation of the Public Interest in the Insolvency of a Privatised Essential Service

*Supervisor:* Associate Professor Tim Lindsey

- Welsh, M: Civil and Administrative Penalties and the Corporations Act

*Supervisor:* Professor Ian Ramsay

- Wynn-Pope, P: What are the Criteria for Determining When a Threat to or Violation of Human Security Should Justify an External Invasion?

*Supervisor:* Associate Professor Tim Lindsey

### **SJD Theses in Progress**

- Hanrahan, P: Officers' Accountability in Managed Investment Schemes

*Supervisor:* Professor Ian Ramsay

- Merrett, A: Assessments and Regulation of Market Power in Australia

*Supervisor:* Dr Geof Stapledon

- Sherman, T: The Introduction of the Consolidated Regime into the Income Tax Assessment Act 1997: An Analysis of the Effect on the Subsidiary Disposal Decision for a Corporate Group.

*Supervisor:* Dr Geof Stapledon

- Wilson, E: "That Fiery Hunt": Indigenous Subsistence Whaling and the Geo-Governance Regime of International Marine Resources Management

*Supervisor:* Associate Professor Tim Lindsey

### **Master of Laws in Progress**

- Date, J: Implications of Canon Law for Church Organisations Operating in Australia

*Supervisor:* Professor Ian Ramsay

- Graydon, C: Rethinking the Integration of East Timor's Traditional/Formal Legal Systems Project

*Supervisor:* Associate Professor Tim Lindsey

- Ip, E: Corporate Governance in Hong Kong

*Supervisor:* Dr Paul Ali

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 2004 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 Australian Institute of Company Directors and the Law Council of Australia.

### Requests for information

During 2004 members of the Centre provided information on Australian corporate law to a number of overseas academics, securities commissions and law reform commissions.

### Media

During the course of the year members of the Centre gave over 160 reported interviews to newspaper, radio and television journalists.

Some of the newspaper articles published in 2004 which reported on the research of the Centre are listed below.

The media section is divided into three parts:

- Media coverage of Centre research reports
- Media commentary on other research by Centre members
- Centre members' comments in the media on current issues

#### **(i) Media Coverage of Centre Research Reports**

"Insolvent Trading - An Empirical Study" by Paul James, Professor Ian Ramsay and Polvat Siva

- "Insolvent trading: directors seldom taken to court", *The Australian Financial Review*, 7 June 2004, page 7

"Reforming not-for-profit regulation" by Susan Woodward and Shelley Marshall

- Radio 2SER, 27 February 2004
- Letter to the editor, "ASIC is obvious regulator for charities", John Peacock, *Australian Financial Review*, 26 February 2004, page 68

- ABC Radio Melbourne, The Afternoon Program, 20 February 2004
- ABC Radio National, The Life Matters Program, 19 February 2004
- "Charity proceeds wasted on red tape", The Australian Financial Review, 19 February 2004, page 6
- "Non-profit tangle carries risks: report", The Age, Business section, 19 February 2004, page 1

"Managed Investments: An Industry Report" by Grant Moodie and Ian Ramsay

- "City Pacific sets cracking growth pace", The Courier Mail, 16 February 2004, page 17
- "Still problems with MIA: Ramsay", Investor Weekly, 26 January 2004, page 8
- "Fundamentally, the management danger's mutual", The Australian, 24 January 2004, page 42
- "Funds checks and balances in woeful state, study says", The Australian Financial Review, 19 January 2004, page 38

"Use of Prospectuses by Investors and Professional Advisers" by Ian Ramsay

- "Prospectus complaints", Money Magazine, February 2004, page 16

"Political Donations by Australian Companies" by Ian Ramsay, Geof Stapledon and Joel Vernon

- "Donations to WA parties halved", The West Australian, 7 January 2004, page 43

## **(ii) Media commentary on other research by Centre Members**

Professor Ian Ramsay's report on disclosure of fees and charges in managed investments prepared for the Australian Securities and Investment Commission

- "Still far to go for effective disclosure", The Australian Financial Review, 8 June 2004, page 63
- "Short deadline takes funds by surprise", The Australian Financial Review, 12 March 2004, page 3
- "Figuring out fee disclosure", The Australian Financial Review, 10 March 2004, page 34



- "A question of choice", The Sydney Morning Herald, Money Section, 4 February 2004, page 7; also in The Age, Money Section, 4 February 2004, page 7

Professor Ian Ramsay's report on auditors' independence prepared for the Minister for Financial Services and Regulation

- "Auditors cut back their costs for other services", The Australian, 16 March 2004, page 25
- "ALP plan to restrict auditors' work", The Australian Financial Review, 3 March 2004, page 5

### **(iii) Centre members' comments in the media on current issues**

James Hardie Industries Ltd signs head of agreement to compensate those injured by its asbestos products

- "Combet's big-picture win", The Australian Financial Review, 23 December 2004, page 6, interview with Professor Ian Ramsay
- ABC Radio National, The AM Program, 22 December 2004, interview with Professor Ian Ramsay

Former HIH CEO Ray Williams pleads guilty to three charges

- "Guilty plea the best insurance", The Australian, 18 December 2004, page 29, interview with Professor Ian Ramsay
- ABC TV, The 7.30 Report Program, 15 December 2004, interview with Professor Ian Ramsay
- SBS TV, The World News Tonight Program, 15 December 2004, interview with Professor Ian Ramsay

Possible bankruptcy of John Elliott

- ABC Radio National, The PM Program, 13 December 2004, interview with Professor Ian Ramsay

Investigation by regulators into the actions of James Hardie Industries Ltd

- "US turns up heat in Hardie scandal", The Australian, 11 December 2004, page 33, interview with Professor Ian Ramsay

Possible compensation settlement between James Hardie Industries Ltd and asbestos victims

- ABC TV, The 7.30 Report Program, 8 December 2004, interview with Professor Ian Ramsay

Possible provisional liquidation for the Medical Research and Compensation Foundation established by James Hardie Industries Ltd

- ABC Radio National, The PM Program, 2 December 2004, interview with Professor Ian Ramsay
- "Hardie victims face '10c payouts'", The Australian, 26 November 2004, page 2, interview with Professor Ian Ramsay

Skills needed by company directors

- "Skills best path to governance", The Australian Financial Review, 25 November 2004, page 9, interview with Professor Ian Ramsay

Backdated bonuses for executives of Aristocrat Leisure Ltd

- "Aristocrat's generosity extends well beyond its chief executive", The Sydney Morning Herald, 23 November 2004, page 19, interview with Professor Ian Ramsay
- "Aristocrat helps boss boost bet to \$3m", The Sydney Morning Herald, 20 November 2004, page 49, interview with Professor Ian Ramsay

ASIC guidelines on conflicts in financial services

- "Conflict guidelines hit AFSI community", The Australian Financial Review, 17 November 2004, page 39, interview with Professor Ian Ramsay

Proposals to broaden directors' duties following the actions of James Hardie Industries Ltd

- "Options canvassed for Hardie law changes", The Australian Financial Review, 12 November 2004, page 59, interview with Professor Ian Ramsay
- "Opposition to wider duties for directors", The Australian Financial Review, 9 November 2004, page 4, interview with Professor Ian Ramsay

Use of the Trade Practices Act by Australian Wool Innovation to stop a campaign against its sale of wool

- ABC Regional Radio (NSW), The Country Hour Program, 11 November 2004, interview with Associate Professor Pamela Hanrahan

Poison pill introduced by News Corporation following its re-incorporation in Delaware

- "Murdoch protects News Corp from bids with poison pill", The Independent (UK), 9 November 2004, page 38, interview with Professor Ian Ramsay
- "Murdoch's poison pill stymies Malone", The Australian Financial Review, 9 November 2004, page 11, interview with Associate Professor Geof Stapledon

Use of schemes of arrangement to obtain control of companies

- ABC TV, The Inside Business Program, 7 November 2004, interview with Professor Ian Ramsay

Commentary on the decision of the Takeovers Panel (of which Professor Ian Ramsay was a member) in the contested bid for Australian Leisure and Hospitality

- "Woolworths' \$1.2bn pub bid stumbles", The Australian Financial Review, 19 October 2004, page 1
- "Fast move may be too clever by half", The Daily Telegraph, 19 October 2004, page 27; also "If Corbett's got stock, he's got ALH - at a price", The Herald-Sun, 19 October 2004, page 31

Resignation of James Hardie Industries Ltd CEO

- ABC Radio National, The World Today Program, 22 October 2004, interview with Professor Ian Ramsay
- SKY TV, News Program, 22 October 2004, interview with Professor Ian Ramsay

Appointment of Professor Ian Ramsay to the Federal Government's Companies Auditors and Liquidators Disciplinary Board

- "Auditors' board gets more teeth", The Australian Financial Review, 15 October 2004, page 59

Corporate governance developments in 2004

- "Corporate governance: dead or alive", Risk Management, October 2004, page 11, interview with Professor Ian Ramsay; also in Lawyers Weekly, 8 October 2004, page 9

NSW Government Special Commission of Inquiry into the asbestos liabilities of James Hardie Industries Ltd and calls for law reform

- "Hunt on for Hardie chiefs' own assets", The Australian, 16 October 2004, page 4

- "Hardie directors must go", The Australian Financial Review, 1 October 2004, page 7, interview with Professor Ian Ramsay
- ABC TV, The Midday News and Business Program, 29 September 2004, interview with Professor Ian Ramsay
- "Hardie's boss does the titular shuffle", The Sydney Morning Herald, 29 September 2004, page 23, interview with Professor Ian Ramsay; also "Hardie boss sorry, but stays put", The Age, Business section, 29 September 2004, page 1, interview with Professor Ian Ramsay
- ABC Radio National, The PM Program, 28 September 2004, interview with Professor Ian Ramsay
- ABC Radio National, The Law Report Program, 28 September 2004, interview with Professor Ian Ramsay
- "How to pay victims still the crux of the issue", The Australian, 25 September 2004, page 7, interview with Professor Ian Ramsay
- "Time to go", The Courier Mail, 25 September 2004, page 75, interview with Professor Ian Ramsay; also "A hard fact of failing to face up early", The Adelaide Advertiser, 25 September 2004, page 69, interview with Professor Ian Ramsay
- "Hardie's trust for victims demands role in talks", The Australian, 24 September 2004, page 4, interview with Professor Ian Ramsay
- SKY TV, The Business Report Program, 23 September 2004, interview with Professor Ian Ramsay
- "BCA rejects corporate law reform call", The Australian Financial Review, 23 September 2004, page 6, interview with Professor Ian Ramsay
- "We'll pursue breaches", The Sydney Morning Herald, 23 September 2004, page 8, interview with Professor Ian Ramsay
- "Asbestos probe hopes lift Hardie shares", Reuters News, 22 September 2004, interview with Professor Ian Ramsay
- SBS TV, The World News Tonight Program, 21 September 2004, interview with Professor Ian Ramsay
- SKY TV, The Business Report Program, 21 September 2004, interview with Professor Ian Ramsay

- ABC Radio National, The PM Program, 21 September 2004, interview with Professor Ian Ramsay
- ABC Radio National, The World Today Program, 21 September 2004, interview with Professor Ian Ramsay
- "Australian commission finds company misled over asbestos liabilities", Agence France Press, 21 September 2004, interview with Professor Ian Ramsay
- "Peers pressure Carr to reject Hardie payout plan", The Australian, 31 August 2004, page 6, interview with Professor Ian Ramsay
- "Meredith in a spin: a corporate morality play", The Australian Financial Review, 21 August 2004, page 19, interview with Professor Ian Ramsay
- ABC TV, The 7.30 Report Program, 17 August 2004, interview with Professor Ian Ramsay
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- "Law inadequate to protect victims of negligence", The Australian Financial Review, 31 July 2004, page 21, interview with Professor Ian Ramsay
- "Urgent need for further reforms: Hulls", The Age, Business section, 31 July 2004, page 7, interview with Professor Ian Ramsay
- "States push for tougher liability laws", The Australian Financial Review, 30 July 2004, page 8, interview with Professor Ian Ramsay
- ABC TV, The Midday News and Business Program, 29 July 2004, interview with Professor Ian Ramsay
- ABC TV, The 7.30 Report Program, 28 July 2004, interview with Professor Ian Ramsay
- ABC TV, The Lateline Program, 28 July 2004, interview with Professor Ian Ramsay
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- ABC Radio National, The World Today Program, 20 July 2004, interview with Professor Ian Ramsay
- "National threat to asbestos giant", The Australian, 13 July 2004, page 4, interview with Professor Ian Ramsay

## Diversity and dissent in boardrooms

- "Diversity and dissent the key to better boardroom performance", The Age, Business section, 15 September 2004, page 7, interview with Professor Ian Ramsay

## First ASIC civil insider trading litigation

- "ASIC in civil law insider action", The Sydney Morning Herald, 25 August 2004, page 42, interview with Professor Ian Ramsay

## Performance appraisals of company directors

- "Now governance spotlight turns on boards of directors", The Australian Financial Review, 20 August 2004, page 17, interview with Professor Ian Ramsay

## Debate over the use of contracts with directors requiring directors to resign if they lose the confidence of other directors

- "Labor blasts big business", The Australian Financial Review, 31 July 2004, page 12, interview with Professor Ian Ramsay
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- ABC TV, The Inside Business Program, 25 July 2004, interview with Professor Ian Ramsay
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## Disclosure of ownership of 43% of the Gribbles Group Ltd

- "Gribbles bid", The Australian Financial Review, 20 July 2004, page 10, interview with Professor Ian Ramsay
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## Need for reform of Australia's insider trading laws

- "Vague laws and cunning schemes mean few are convicted", The West Australian, 10 July 2004, page 9, interview with Professor Ian Ramsay

#### Current regulatory issues for ASIC

- "Regulation: the enforcer", Business Review Weekly, 8 July 2004, page 30, interview with Professor Ian Ramsay

#### New financial services powers for ASIC

- "Corporate super cops", Business Review Weekly, 8 July 2004, page 32, interview with Associate Professor Pamela Hanrahan

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#### Enactment of the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

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- ABC Radio National, The AM Program, 26 June 2004, interview with Professor Ian Ramsay
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#### Business Council of Australia position paper on executive remuneration

- "BCA bites bullet on corporate pay", The Australian Financial Review, 25 June 2004, page 3, interview with Professor Ian Ramsay

#### Government proposal to reform merger laws

- "Leaders hail tribunal plan", The Australian, 24 June 2004, page 28, interview with Professor Ian Ramsay

#### Institutional investors and corporate governance

- "They'll be watching: corporate governance advisors come of age", Investor Weekly, 21 June 2004, page 17, interview with Professor Ian Ramsay

#### Government's proposals for improved disclosure of fees by superannuation funds

- ABC TV, The Inside Business Program, 20 June 2004, interview with Professor Ian Ramsay
- "Fee changes pave way for super choice", The Australian Financial Review, 17 June 2004, page 10, interview with Professor Ian Ramsay

#### Report of the Parliamentary Joint Committee on Corporations and Financial Services into the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill

- "Committee releases report on financial reporting and audit reform", Across the Board, 22 June 2004, page 2, comment on Professor Ian Ramsay's submission to the Committee
- "MPs say audit reforms too strict", The Australian Financial Review, 16 June 2004, page 3, interview with Professor Ian Ramsay

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- "Tightening the nuts and bolts on soft dollars", The Age, Business section, 12 June 2004, page 4, interview with Professor Ian Ramsay; also in The Sydney Morning Herald, 12 June 2004, page 47
- "Canberra stops short of soft dollar ban", The Australian Financial Review, 11 June 2004, page 6, interview with Professor Ian Ramsay
- "ASIC report on kick-backs spurs outrage", The West Australian, 11 June 2004, interview with Professor Ian Ramsay

#### Former Aristocrat Leisure Ltd CEO loses damages claim for \$12 million for unfair dismissal

- Sky TV, The Business Report Program, 9 June 2004, interview with Professor Ian Ramsay

#### Disciplinary proceedings by the professional accounting bodies

- "Complaints heat is on", Business Review Weekly, 24 June 2004, page 68, interview with Professor Ian Ramsay
- "CLERP 9 and a flawed trio", Business Review Weekly, 3 June 2004, page 46, interview with Professor Ian Ramsay



### Termination payments for senior executives

- "In the grip of golden parachutes", The Australian, Corporate Governance Supplement, 21 May 2004, page 8, interview with Professor Ian Ramsay
- "Parachutes lose golden edge", The Australian Financial Review, 6 February 2004, page 19, interview with Professor Ian Ramsay

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- "Australia: January 2005 IFRS deadline sticks", The Accountant, 30 April 2004, page 16, comment on Professor Ian Ramsay's submission to the committee
- "Hijacked by Canberra", CFO Magazine, May 2004, page 28, interview with Professor Ian Ramsay

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- "Where NAB went wrong", The Australian Financial Review, 8 May 2004, page 20, interview with Professor Ian Ramsay
- "Restoring pride in the nation's biggest bank", The Daily Telegraph, 8 May 2004, page 75, interview with Professor Ian Ramsay
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- "Lessons in comedy of errors", The Australian Financial Review, 7 May 2004, page 72, interview with Professor Ian Ramsay
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- ABC Radio 702 (Sydney), Radio 774 (Melbourne), Radio 666 (Canberra), Radio 891 (Adelaide), Radio 612 (Brisbane), Radio 720 (Perth), Various News Programs, 6 May 2004, interview with Professor Ian Ramsay
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- ABC Radio National, The PM Program, 20 April 2004, interview with Professor Ian Ramsay
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- "Taking advice: customers should get a clear choice", The Australian Financial Review, 13 April 2004, page 53, interview with Professor Ian Ramsay

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- "Up \$2bn and Bob's your uncle", The Sydney Morning Herald, 16 April 2004, page 17, interview with Professor Ian Ramsay

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- "Board spats go nastily public", The West Australian, 16 April 2004, page 39, interview with Professor Ian Ramsay

Release of Australian Securities and Investments Commission policy proposal paper on auditors and financial reporting obligations

- "Auditors told to do in executives", The Australian Financial Review, 6 April 2004, page 4, interview with Professor Ian Ramsay

Amendment of Australian Stock Exchange corporate governance guidelines

- "Danger in guidelines becoming rules", The Australian Financial Review, 2 April 2004, page 20, interview with Professor Ian Ramsay

- “Directors escape audit crackdown”, The Australian Financial Review, 1 April 2004, page 6, interview with Professor Ian Ramsay

#### Accountants as company directors

- “Writing on the wall”, Australian CPA, April 2004, page 22, interview with Professor Ian Ramsay

#### Federal Court's rejection of Trevor Kennedy's claim of legal professional privilege in relation to documents forming part of an ASIC investigation

- "Judge makes it harder to claim privilege", The Australian Financial Review, 27 March 2004, page 6, interview with Professor Ian Ramsay
- "Court ruling on Kennedy documents raises implications for strategic advice", The Age, Business section, 26 March 2004, page 1, interview with Professor Ian Ramsay
- ABC Radio National, The PM Program, 25 March 2004, interview with Professor Ian Ramsay

#### Australian Prudential Regulation Authority report on risk management problems at National Australia Bank

- "Beefed-up body flexes its muscle", The Australian Financial Review, 25 March 2004, page 53, interview with Professor Ian Ramsay
- ABC TV, The Lateline Program, 24 March 2004, interview with Professor Ian Ramsay
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#### Need to improve disclosure of fees in superannuation and other managed investments

- "It's on the table: fee disclosure debate has new focus", The Australian Financial Review, 31 March 2004, page 38, interview with Professor Ian Ramsay

- "Single line to unravel super fees", The Australian Financial Review, 23 March 2004, page 55, commentary on submission of Professor Ian Ramsay to the Parliamentary Committee on Corporations and Financial Services

Hearings of the Parliamentary Joint Committee on Corporations and Financial Services into the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003

- "Inquiry raises concerns over regulation powers and provisions for audit reform", Across the Board, 23 March 2004, page 2, commentary on the appearance of Professor Ian Ramsay before the Committee
- "CPA backs push for audit independence", The Australian Financial Review, 19 March 2004, page 6, commentary on the appearance of Professor Ian Ramsay before the Committee
- "Committee to meet in public", The Sydney Morning Herald, 6 March 2003, commentary on the appearance of Professor Ian Ramsay before the Committee; also in The Age, 6 March 2004

New Australian Prudential Regulation Authority consultation paper on "fit and proper" standards for individuals at regulated institutions

- "New rules would help nail miscreant financiers", The Age, Business section, 3 March 2004, page 3, interview with Professor Ian Ramsay

NSW government commission of inquiry into the asbestos liability of James Hardie Industries

- "Company trusts in spotlight", The Australian Financial Review, 2 March 2004, page 3, interview with Professor Ian Ramsay

Victorian government review of fundraising laws applying to charities

- "Legal review aimed at keeping fundraisers honest", The Australian Financial Review, 28 February 2004, page 4, interview with Susan Woodward

Investigation of breach of US auditor independence rules by National Australia Bank

- "Rude awakening", Business Review Weekly, 1 April 2004, page 69, interview with Professor Ian Ramsay
- ABC Radio National, The PM Program, 26 February 2004, interview with Professor Ian Ramsay

#### Increasing responsibilities of audit committees

- Across the Board, 24 February 2004, page 1, interview with Professor Ian Ramsay

#### Resignation of National Australia Bank CEO Frank Cicutto

- "Resignation a result of power shift", The Age, 3 February 2004, page 4, interview with Professor Ian Ramsay

#### Rene Rivkin directed by NSW Department of Corrective Services to attend periodic detention for breach of insider trading laws

- ABC Radio National, The PM Program, 29 January 2004, interview with Professor Ian Ramsay

#### National Australia Bank currency trading losses

- "Forex fiasco goes to heart of NAB culture", The West Australian, 24 January 2004, page 62, interview with Professor Ian Ramsay

## Seminars held in 1994-2003

### **Virtual Shareholder Meetings: Who Decides How Companies Make Decisions?** (19 November 2003)

Speaker: Professor Elizabeth Boros, Monash University

### **Shareholder Activism** (29 July 2003)

Speakers: Stephen Creese, General Counsel, Rio Tinto; Quentin Digby, Partner, Freehills; Associate Professor Geof Stapledon, The University of Melbourne

### **Ownership and Control of ASX Listed Companies** (3 June 2003)

Speaker: Dr Alan Dignam, University of London

### **Continuous Disclosure: The New Regime** (8 April 2003, Sydney and 10 April 2003, Melbourne)

Speakers: Richard Cockburn, Director, Corporate Finance, Australian Securities and Investments Commission; James Gerraty, Manager of Companies, Australian Stock Exchange; Penny Grau, Partner, Clayton Utz; Rod Halstead, Partner, Clayton Utz; Charles Macek, Chairman, IOOF and non-executive Director, Telstra and Wesfarmers; Charles Rosedale, Partner, Clayton Utz; Gai McGrath, General Counsel and Company Secretary, Perpetual Trustees

This seminar was co-hosted with The Securities Institute of Australia

### **Corporate Complicity in International Law** (9 April 2003)

Speaker: Professor Celia Wells, University of Cardiff

### **Corporate Governance Summit** (26-27 November 2002)

The Centre for Corporate Law and Securities Regulation supported this conference which was organised by The Australian Financial Review

Topics and speakers for this conference included:

- ‘The role of taxation changes in supporting Australia’s economic performance and good corporate governance’, Senator The Hon Helen Coonan, Minister for Revenue and Assistant Treasurer



- ‘Ensuring Sound Governance and Responding to Pressures for Board Composition and Structure Changes’, The Hon Nick Greiner AC, Former Premier and Treasurer of New South Wales, Company Director
- ‘Policing Corporate Activity: The ACCC and the Review of the Trade Practices Act’, Professor Allan Fels AO, Chairman, ACCC
- ‘The Role of the CFO’, Tom Pockett, CFO, Woolworths
- ‘Ensuring Sound Governance and Outcomes of The Ramsay Report: An Update of the Impact of the Report on Corporate Governance’, Professor Ian Ramsay, Director of the Centre for Corporate Law and Securities Regulation
- ‘The Pathway to IASB Standards in 2005’, Keith Alfredson, Chairman, Australian Accounting Standards Board
- Keynote Address, Senator The Hon Ian Campbell, Parliamentary Secretary to the Treasurer
- ‘The Role of the Financial Reporting Council and the Move to IASB Standards’, Jeffrey Lucy, Chairman, Financial Reporting Council
- ‘Continuous Disclosure Obligations’, Susan Bray, National Coordinator – Market Integrity, Australian Stock Exchange
- ‘The Role of ASIC in Corporate Governance’, Professor Berna Collier, Commissioner, Australian Securities and Investments Commission
- ‘Expensing Executive Options and Remuneration and Independence of the Board’, Ted Rofe, Chairman, Australian Shareholders Association

### **Cross Border M & A Regulation Conference** (23 October 2002)

Speakers: Dennis Garris, Chief of the Office of Mergers and Acquisitions, US Securities and Exchange Commission; Noel Hinton, Deputy Director General, London Takeovers Panel; Thorsten Behnke, Assistant Director, German Financial Supervisory Authority; Zhang Xin, Deputy Director General, China Securities Regulatory Commission; Luis Figueroa, Chilean Securities and Insurance Regulator; Peter Cameron, Chairman, Investment Banking, Credit Suisse First Boston Australia Ltd

This seminar was co-hosted with the Takeovers Panel and the Securities Institute of Australia

### **Enron - The Implications for Corporate Governance** (5 July 2002)

Speaker: Professor James Cox, Duke University, USA

This seminar was co-hosted with the School of Law at La Trobe University

### **Auditors and Audit Committees: Key Issues and Developments**

(12 June 2002, Sydney and 28 May 2002, Melbourne)

Speakers: Jillian Segal, Deputy Chair, Australian Securities and Investments Commission; Alison Lansley, Partner, Mallesons Stephen Jaques (Melbourne); Jan McCahey, Partner, PricewaterhouseCoopers (Melbourne); Jan Muysken, Partner, PricewaterhouseCoopers (Sydney); Tony Bancroft, Partner, Mallesons Stephen Jaques (Sydney); Professor Ian Ramsay, Director, Centre for Corporate Law and Securities Regulation, The University of Melbourne

### **Compulsory Acquisitions: Key Issues and Developments**

(6 June 2002, Melbourne and 4 June 2002, Sydney)

Speakers: Allan Bulman, Australian Securities and Investments Commission; George Durbridge, Counsel, Takeovers Panel; Ron White, Partner, Coudert Brothers (Sydney); Rob Catto; Paul Meadows, Partner, Allens Arthur Robinson (Melbourne)

### **When Corporate Law & Labour Law Collide: Lessons from the Ansett Administration** (23 May 2002)

Speakers: Leon Zwier, Partner, Arnold Bloch Leibler; Mr Mark Mentha, Partner, Korda Mentha & Colleagues; Ms Simone Bingham, Associate, Employment and Industrial Law Section, Maurice Blackburn Cashman; Mr Richard Watts, Industrial Officer, Australian Council of Trade Unions

This seminar was co-hosted with the Centre for Employment and Labour Relations Law, Faculty of Law, The University of Melbourne

### **Eliminating Road Blocks to a Deal** (18 April 2002, Sydney and 12 March 2002, Melbourne)

Speakers: Mr George Durbridge, Counsel, Takeovers Panel; Mr Bruce Dyer, Special Counsel, Blake Dawson Waldron (Melbourne); Mr Michael Hoyle, Director, Macquarie Bank Limited; Mr Ross Jones, Mergers Commissioner, ACCC; Mr John Kench, Partner, Blake Dawson Waldron (Sydney); Mr Michael O'Bryan, Barrister, Victorian Bar; Mr Damian Reichel, Partner, Blake Dawson Waldron (Sydney); Mr Bill Reid, Partner, Blake Dawson Waldron (Sydney)

### **Enron - The Consequences for Corporate Governance and Corporate Law Reform** (16 April 2002)

Speaker: Professor Robert Haft, Georgetown University Law School, USA

**The New Takeovers Panel: Key Issues and Developments** (16 October 2001, Sydney and 26 September 2001, Melbourne)

Speakers - Mr Richard Cockburn, Director, Corporate Finance, Australian Securities and Investments Commission; Mr Rodd Levy, Partner, Freehills

(Melbourne); Mr Justin Mannolini, Partner, Freehills (Sydney); Mr Simon McKeon, President, the Takeovers Panel and Executive Director of Macquarie Bank

**Market Misconduct and the Financial Services Reform Bill** (14 August 2001, Sydney and 25 July 2001, Melbourne)

Speakers - Mr Joe Longo, Special Counsel, Freehills; Mr Robert Pride, General Counsel, Deutsche Bank; Mr John Kluver, Executive Director, Companies and Securities Advisory Committee

**Dual Listed Companies: Structure and Legal Issues** (18 July 2001)

Speakers - Mr Cameron Rider, Partner, Allens Arthur Robinson; Mr Jon Webster, Partner, Allens Arthur Robinson; Mr Shane Tregillis, Executive Director, Policy and Markets Regulation, Australian Securities and Investments Commission

**Lock-ups and Break Fees in the United States** (6 July 2001)

Speaker - Professor David Skeel, University of Pennsylvania, USA

This seminar was co-hosted with the Takeovers Panel and the Corporate Law Teachers Association

**Penalties and Regulatory Enforcement** (14 June 2001)

Speaker - Professor Anthony Ogus, University of Manchester and Research Professor, University of Maastricht

This seminar was co-hosted with the Corporate Law Teachers Association and The University of Melbourne Faculty of Law

**The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads** (4 June 2001)

Speaker - Professor Cindy Schipani, University of Michigan, USA

This seminar was co-hosted with the Corporate Law Teachers Association and The University of Melbourne Faculty of Law

## **The Very Uncertain Prospect of Global Convergence in Corporate Governance** (3 May 2001)

Speaker - Professor Doug Branson, University of Pittsburgh, USA and Visiting Fellow, The University of Melbourne

This seminar was co-hosted with the Corporate Law Teachers Association

## **Key Developments in Corporate Law & Equity - A Celebration of the Scholarship of Emeritus Professor Harold Ford** (16 March 2001)

### *Welcome:*

Professor Ian Ramsay, Harold Ford Professor of Commercial Law, The University of Melbourne

### *International Perspectives on Corporate Law and Corporate Governance*

Comparative Corporate Governance and the Australian Experience: Professor Brian Cheffins, University of Cambridge

Shareholders as Principals - Their Powers in Relation to Directors: Professor Deborah DeMott, Duke University

Commentator: Professor John Farrar, Bond University and The University of Melbourne

### *Key Issues in Corporate Law*

The Role of Corporate Governance Practices in the Development of Legal Principles Relating to Directors: Justice Alex Chernov, Court of Appeal, Supreme Court of Victoria

Directors' Duty of Care and the New Business Judgment Rule in a 21st Century Environment: Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks  
Tending to Sick Companies: The Role & Responsibilities of Voluntary Administrators: Justice Robert Austin, Supreme Court of New South Wales

### *Key Issues in Equity and Trusts Law*

Reflections on Commercial Applications of the Trust: Professor Michael Bryan, The University of Melbourne

Equitable Compensation as a Remedy for Breach of Fiduciary Duty: Professor Elizabeth Boros, Monash University

Commentator: Justice Paul Finn, Federal Court of Australia

This one day conference was co-hosted by The University of Melbourne Law School and The University of Melbourne Law Society

## **2001 Australian Securities and Investments Commission Summer School** (18-23 February 2001)

The 2001 Australian Securities and Investments Commission Summer School was held at The University of Melbourne. It was planned with the support of the Centre for Corporate Law and Securities Regulation. The theme of the Summer School was 'Retail Financial Product Distribution: Challenges for Financial Service Firms, Consumers and Regulators in the 21st Century'. The Summer School brought together senior regulators from many countries including the United Kingdom, Canada, New Zealand, Hong Kong, Singapore, Malaysia, Thailand, Indonesia, Sri Lanka and Papua New Guinea.

Keynote speakers at the Summer School included:

Mr Seelan Singham, Partner, McKinsey and Company; Dr Günther Sattelhak, Senior Lawyer, Global Technology and Services Division, Deutsche Bank Head Office, Frankfurt; Professor Ann Harding, Professor of Applied Economics and Social Policy and inaugural Director of the National Centre for Social and Economic Modelling, University of Canberra; Ms Deirdre Hutton CBE, Chairman, National Consumer Council, United Kingdom; Mr Rick Eager, Vice-President, Financial Services Group, CSC Australia; Mr Graham Rich, Chief Executive Officer and Publisher, Morningstar; Ms Victoria Weekes, Director, Legal and Compliance, Salomon Smith Barney, Australia; Mr Brian McKenna, Director and Head of Private Client Group, Salomon Smith Barney, Australia; Mr Michael Hawker, Group Executive, Australian Business and Personal Banking, Westpac Banking Corporation; Mr Roger Murray, Executive Legal Counsel, AMP Financial Services; Mr Rob Coombe, Executive Vice-President, Head of Retail, BT Funds Management; Mr Robert King, Chief Executive Officer, Macquarie Bank, Financial Enrichment Pty Ltd; Mr Stuart Marks, Principal Lawyer, Macquarie Bank, eDivision; Mr Brian Thomas, Head of Retail Funds, Credit Suisse Asset Management; Mr Peter Kell, Co-director, Office of Consumer Protection, Australian Securities and Investments Commission; Ms Louise Sylvan, Chief Executive Officer, Australian Consumers Association.

## **Enforcement of Foreign Country Judgments and the Proposed Hague Convention** (5 February 2001)

Speaker - Linda Silberman, Professor of Law, New York University, USA

This seminar was co-hosted by The University of Melbourne Faculty of Law and the Institute for Comparative and International Law

**A Transactional Framework To Interpret Contract Law** (5 February 2001)

Speaker - Victor Goldberg, Professor of Law, Columbia University, USA

This seminar was co-hosted by The University of Melbourne Faculty of Law and the Institute for Comparative and International Law

**Directors' Duties: Recent Developments and their Implications for Directors and Advisers** (8 November 2000)

Speakers – Mr Tom Bostock, Partner, Mallesons Stephen Jaques, Mr Tony Greenwood, Partner, Blake Dawson Waldron, Mr John Kluver, Executive Director, Companies and Securities Advisory Committee

This seminar was co-hosted with the Australian Institute of Company Directors

**The Future of Corporate Regulation: Hughes and Wakim and the Referral of Powers** (3 November 2000)

Speakers - The Hon Joe Hockey, Minister for Financial Services and Regulation, Mr Ian Govey, General Manager, Civil Justice and Legal Services, Attorney-General's Department, Mr Alan Cameron AM, Chairman, ASIC, Mr Joseph Longo, National Director, Enforcement, ASIC, Professor Geoffrey Lindell, Faculty of Law, The University of Melbourne, Mr Dennis Rose AM, QC, Special Counsel, Blake Dawson Waldron, Canberra, Adjunct Professor of Law, University of Canberra, and formerly Chief General Counsel, Attorney-General's Department, Professor Cheryl Saunders AO, Director of the Centre for Comparative Constitutional Studies, Faculty of Law, The University of Melbourne, the Hon Justice R P Austin, Supreme Court of New South Wales, the Hon Justice G F K Santow OAM, Supreme Court of New South Wales, Associate Professor Michael Whincop, Faculty of Law, Griffith University and Director of the Program on Business Ethics, Regulation and White Collar Crime of Griffith University's Key Centre for Ethics, Law, Justice and Governance

This seminar was presented in association with the Corporate Law Teachers Association, the Australian Association of Constitutional Law and the Faculty of Law, University of Sydney

**E-Commerce and Financial Services** (16 October 2000)

Speakers – Mr Joe Longo, National Director, Enforcement, ASIC, Mr Malcolm Rodgers, Director, Regulatory Policy, ASIC, Ms Delia Rickard, Director, Office of Consumer Protection, ASIC, Mr Mark Sneddon, Partner, Clayton Utz, Mr Peter Mathews, Assistant Company Secretary, ANZ Banking Group Ltd, Mr Michael Irving, Chief Financial Controller, InvestorWeb, Ms Leanne Bailey, Business Analyst, Computershare

This seminar was co-hosted with the Australian Securities and Investments Commission

**Economic Law Reform in Developing Countries: The Case of Indonesian Company Law** (11 August 2000)

Speaker: Professor Paul Brietzke, Professor of Law, Valparaiso University Law School, USA

Presented by the Faculty of Law Asian Law Centre, Centre for Corporate Law and Securities Regulation and Institute for Comparative and International Law

**Insider Trading: Recent Developments and Practical Issues for Market Participants** (4 July 2000)

Speakers – Mr Michael Hoyle, Director, Macquarie Corporate Finance, Mr Stephen Kerr, Partner, Freehills, Mr Joseph Longo, National Director, Enforcement, Australian Securities and Investments Commission, Mr Alan Shaw, National Manager, Supervision, Australian Stock Exchange Limited

**Hughes and Wakim: The Challenges for Corporate Regulation** (22 June 2000)

Speakers - The Hon Michael E J Black AC, Chief Justice, Federal Court of Australia, Mr Alan Cameron AM, Chairman, Australian Securities and Investments Commission, Professor Robert Baxt, Partner, Arthur Robison & Hedderwicks, Professor Cheryl Saunders AO, Director, Centre for Comparative Constitutional Studies, The University of Melbourne

**The Corporate Law Economic Reform Program and Fundraising** (30 March 2000)

Speakers - Mr Jon Webster, Partner, Arthur Robison & Hedderwicks, Mr Michael Ziegelaar, Partner, Freehills, Ms Deborah Hambleton, National Listings Counsel, Australian Stock Exchange, Mr John Price, Principal Lawyer, Regulatory Policy Branch, Australian Securities and Investments Commission

**The Corporate Law and Economic Reform Program and Takeovers** (9 March 2000)

Speakers - Mr Rodd Levy, Partner, Freehills, Ms Alison Lansley, Partner, Mallesons Stephen Jaques, Mr Richard Cockburn, National Coordinator, Fundraising and Mergers and Acquisitions, Australian Securities and Investments Commission, Mr Simon McKeon, Executive Director, Macquarie Bank, President, Corporations and Securities Panel

## **Corporate Law Economic Reform Program Paper 6 and Securities** (9 September 1999)

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

## **Lawyers' Professional Negligence: Recent Developments** (23 August 1999)

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

## **Directors' and Officers' Liability Insurance: Practical and Legal Issues** (12 August 1999)

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

This seminar was co-hosted with the Australian Institute of Company Directors

## **Share Capital Changes: Practical Implications** (20 May 1999)

Speakers - Mr Quentin Digby, Partner, Freehill Hollingdale & Page; Mr Norman O'Bryan, Member of the Victorian Bar; Mr Timothy Neilson, Special Counsel, Blake Dawson Waldron; Mr Charles Rosedale, Partner, Clayton Utz

## **The Business Judgment Rule: Key Issues for Company Directors and Officers and Their Advisers** (4 May 1999)

Speaker - Professor Douglas Branson, Professor of Law, University of Pittsburgh; Visiting Fellow, Faculty of Law, The University of Melbourne

Commentators - Professor John Farrar, School of Law, Bond University; Professorial Associate, Faculty of Law, The University of Melbourne; Mr Ian Renard, Partner, Arthur Robinson & Hedderwicks; Director of AMP Limited, CSL Limited, Newcrest Mining Limited and Ericsson Australia Pty Ltd

This seminar was co-hosted with the Australian Institute of Company Directors

## **1999 Australian Securities and Investments Commission Summer School** (21-26 February 1999)

The 1999 Australian Securities and Investments Commission Summer School was held at The University of Melbourne. It was planned with the support of the



Centre for Corporate Law and Securities Regulation. The theme of the Summer School was 'Strengthening the Architecture of the Financial System: National, Regional and International Responses to Volatile Global Financial Markets'. The Summer School brought together senior regulators from many countries including Australia, China, the United Kingdom, the United States, Canada, Singapore, Hong Kong, New Zealand, Thailand, Indonesia, Korea, Malaysia, The Philippines, Fiji, India, Sri Lanka and Papua New Guinea

The keynote speakers at the Summer School included:

Mr Phillip Thorpe, Managing Director of the United Kingdom Financial Services Authority; Mr Anthony Neoh, Chief Advisor to the China Securities Regulatory Commission and Professor of Law at Peking University, Beijing; former Chairman of the Hong Kong Securities and Futures Commission and former Chairman of the Technical Committee of the International Organisation of Securities Commissions; Ms Felice Friedman, Assistant Director, Office of International Affairs, United States Securities and Exchange Commission; Mr Donald Mercer, Chairman of the Australian Information Economic Advisory Council and Director of the Australian Prudential Regulation Authority; former Chief Executive Officer of the ANZ Banking Group Limited; Dr John Edwards, Chief Economist of HSBC-Australia; Mr Alan Cameron, Chairman of the Australian Securities and Investments Commission and Chairman of the Joint Forum on Financial Conglomerates; Mr Shane Tregillis, National Director, Regulation, Australian Securities and Investments Commission; Professor Ian Ramsay, Harold Ford Professor of Commercial Law and Director of the Centre for Corporate Law and Securities Regulation, The University of Melbourne

### **Interpreting Ministerial Directions to Statutory Corporations: Can Responsible Government Determine Corporate Governance?** (21 October 1998)

Speaker - Mr Christos Mantziaris, Research School of Social Sciences, Australian National University

### **Long-Term Contracts and Competition Laws** (16 September 1998)

Speakers - Mr David Goddard, Partner, Chapman Tripp, New Zealand; Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks, Professorial Associate, The University of Melbourne; Associate Professor Joshua Gans, Melbourne Business School

### **A United States Perspective on the Business Judgment Rule** (13 July 1998)

Speaker - Professor Deborah DeMott, School of Law, Duke University, USA

This seminar was co-hosted with the Corporations Law Committee of the Law Council of Australia

**Patrick Stevedores v Maritime Union of Australia: The Labour Law, Corporate Law and Commercial Litigation Issues** (24 June 1998)

Speakers - Dr Graham Smith, Partner, Clayton Utz; Mr Andrew Lumsden, Partner, Corrs Chambers Westgarth; Professor Greg Reinhardt, Executive Director, Australian Institute of Judicial Administration

This seminar was co-hosted with the Centre for Employment and Labour Relations Law of The University of Melbourne

**1998 Australian Securities Commission Summer School** (22-27 February 1998)

The 1998 Australian Securities Commission Summer School was held at The University of Melbourne. It was planned with the support of the Centre for Corporate Law and Securities Regulation. The theme of the Summer School was Investors, Global Financial Markets and Regulation: Current Trends and Issues. The Summer School brought together senior regulators from many countries including Australia, the United States, Canada, the United Kingdom, Hong Kong, China, New Zealand, Singapore, Malaysia, Indonesia, Taiwan, The Philippines, Thailand, Sri Lanka and Papua New Guinea

Keynote speakers at the Summer School included:

Mr Barry Barbash, Director, Division of Investment Management, United States Securities and Exchange Commission; Dr Mohd Munir Abdul Majid, Chairman of the Securities Commission of Malaysia and Chairman of the Emerging Markets Committee of the International Organisation of Securities Commissions; Mr Edward Waitzer, Senior Partner, Stikeman, Elliott, Toronto; former Chairman of the Ontario Securities Commission, former Chairman of the Technical Committee of the International Organisation of Securities Commissions and former Vice-President of the Toronto Stock Exchange; Professor Ian Harper, Director of the Ian Potter Centre for International Finance, Melbourne Business School and member of the Wallis Committee of Inquiry into the Australian Financial System; Mr Alan Cameron, Chairman of the Australian Securities Commission and Chairman of the Joint Forum on Financial Conglomerates

**The Regulation of Managed Investments: Current Issues and Perspectives** (24 February 1998)

Speakers - Mr Edward Waitzer, Senior Partner, Stikeman, Elliott, Toronto; former Chairman of the Ontario Securities Commission and former Vice-President of the Toronto Stock Exchange; Mr Barry Barbash, Director of the Division of Investment Management, United States Securities and Exchange Commission; Mr Shane Tregillis, National Director, Regulation, Australian Securities Commission; Ms Pamela Hanrahan, Senior Lecturer and Member of the Centre for Corporate

Law and Securities Regulation, The University of Melbourne, Senior Associate,  
Arthur Robinson & Hedderwicks.

This seminar was co-hosted with the Australian Securities Commission

**Developments in Closely Held Firms in the United States** (13  
February 1998)

Speaker - Professor Robert Thompson, Washington University, USA

**The Corporate Law Economic Reform Program** (21 November 1997)

Keynote speakers included Mr Jim Murphy, First Assistant Secretary, Business Law Division, The Treasury; Ms Claire Grose, Chairperson, Corporations Law Committee, Business Law Section of the Law Council of Australia and Partner of Freehill Hollingdale & Page; Professor Robert Baxt, Chairman, Corporations Law Committee, Australian Institute of Company Directors and Partner of Arthur Robinson & Hedderwicks; Professor Bernard Black, Columbia University Law School, USA; Mr David Goddard, Partner, Chapman Tripp Sheffield Young, New Zealand

This one day conference was co-hosted with the Centre for Law and Economics, The Australian National University

**Do Independent Directors Matter?** (20 November 1997)

Speakers - Professor Bernard Black, Columbia University Law School, USA; Henry Bosch AO, Company Director; Jeffrey Lawrence, J P Morgan

This seminar was co-hosted with the Australian Institute of Company Directors

**Contemporary Developments in Corporate Insolvency Law (A Centenary Celebration of Salomon v Salomon & Co Ltd)** (18  
September 1997)

Speakers - The Rt Hon The Lord Cooke of Thorndon, Member of the House of Lords and Judicial Committee of the Privy Council; Professor Len Sealy, SJ Berwin Professor of Corporate Law, University of Cambridge; Professor Roy Goode, Norton Rose Professor of English Law, University of Oxford; Professor John Farrar, School of Law, Bond University and Professorial Associate, The University of Melbourne

This seminar was co-hosted with the Business Law Section of the Law Council of Australia and the 30th Australian Legal Convention

## **Directors' and Officers' Remuneration: Current Australian and United States Issues** (30 July 1997)

Speakers - Professor Charles Yablon, Cardozo Law School, New York, USA; Ms Elizabeth Alexander, Victorian State President of the Australian Institute of Company Directors and Partner of Price Waterhouse; Mr Alan Cameron, Chairman of the Australian Securities Commission; Mr Paul Jennings, Member of the Corporate Governance Committee of the Australian Investment Managers Association and Australian Shares Manager of National Mutual Funds Management; Mr John Egan, remuneration advisor to governments and the private sector

This seminar was co-hosted with The University of Melbourne Law School Foundation

## **Commercial Fiduciary Duties** (8 July 1997)

Speaker - Professor Gillian Hadfield, Faculty of Law, University of Toronto; Commentator: Professor Tony Duggan, Faculty of Law, Monash University

## **Electronic Commerce: Regulating in a World of Technological Change** (11 February 1997)

Speaker - Mr Steven Wallman, Commissioner, United States Securities and Exchange Commission; Commentators - Mr Shane Tregillis, National Director, Regulation, Australian Securities Commission and Associate Professor Mark Sneddon, Faculty of Law, The University of Melbourne

This seminar was co-hosted with the Australian Securities Commission

## **Corporate Law Teachers National Conference** (9-11 February 1997)

Thirty papers were presented at the Conference. The keynote speakers included:

Professor Ron Daniels, Dean, Faculty of Law, University of Toronto, Canada - **Beyond the Board of Directors: A Broader Look at the Corporate Governance Debate in Canada**

Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium - **Corporate Governance: Converging Patterns**

Professor Lynne Dallas, University of San Diego School of Law, USA - **The Dual Board and the Corporate Ombudsperson**

Professor Michele Havenga, Faculty of Law, University of South Africa - **Corporate Governance: Recent Developments in South Africa**

Professor Curtis Milhaupt, School of Law, Washington University in St Louis, USA - **The Market for Innovation in the United States and Japan: Venture Capital and the Comparative Corporate Governance Debate**

Professor Guanghua Yu, School of Law, University of Hong Kong - **Policy Implications of Comparative Corporate Governance Studies**

This conference was co-hosted with the Corporate Law Teachers Association

### **The Courts and Corporate Law** (31 October 1996)

Speakers - Justice Norman Veasey, Chief Justice, Supreme Court of Delaware; Justice David Malcolm, Chief Justice, Supreme Court of Western Australia; Justice Edmund Thomas, Court of Appeal of New Zealand; Andrew Rogers QC, former Chief Judge, Commercial Division, Supreme Court of New South Wales; 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; Michael Rozenes QC, Commonwealth Director of Public Prosecutions; Alex Chernov QC, Victorian Bar; Professor Ian Ramsay, Centre for Corporate Law and Securities Regulation, The University of Melbourne

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 Philip 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 co-hosted 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

### **Shareholders' Remedies: Australian and United States Developments** (20 June 1995)

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** (28 June 1995)

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** (10 May 1995)

Speaker - Professor Douglas Branson, University of Pittsburgh School of Law

### **Gambotto v WCP Limited** (5 April 1995)

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** (12 December 1994)

Speaker - Professor Phillip Blumberg, University of Connecticut School of Law

**The NRMA Case** (7 December 1994)

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** (17 November 1994)

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

## 2004 Faculty of Law Graduate Subjects

Accounting for Commercial Lawyers  
Administrative Law in Commonwealth Countries  
Advanced Alternative Dispute Resolution  
Advanced Construction Claims  
Advanced Construction Contracts  
Advanced Corporate Taxation  
Advanced Evidence  
Advanced Goods and Services Tax  
Advanced Litigation  
Advanced Restrictive Trade Practices  
Alternative Dispute Resolution  
Anti-Discrimination Law at Work  
Arms Control and Disarmament  
Asian Comparative Tax Law Systems  
Australian International Taxation  
Australian Tax Treaties and Transfer Pricing  
Avoidance and Management of Construction Disputes  
Banking and Debt Recovery in Asia  
Capital Gains Tax: Problems in Practice  
Citizenship Law in Context  
Commercial Dispute Resolution in Asia  
Commercial Law in Asia  
Company Takeovers  
Comparative Companies Law in the Asia Pacific Region  
Comparative Constitutional Law  
Comparative Corporate Governance  
Competition Law and Intellectual Property  
Constitution Making  
Construction Contracts  
Copyright Law  
Corporate Governance and the Duties of Directors  
Corporate Taxation  
Criminal Justice Administration: A Comparative Perspective  
Current Developments in Negligence Law  
Current Issues in Tax Avoidance  
Cybercrime  
Cybersecurity Law  
Designs Law and Practice  
Digital Broadcasting and Wireless Networks  
Electronic Commerce Law  
Electronic Democracy  
Employment Law  
Event Management Law  
Film and Television Law: Production, Financing and Distribution  
Foundations of Medical Law  
Fundamentals of the Civil Law  
Fundamentals of the Common Law



Goods and Services Tax Principles  
Human Rights Litigation and Advocacy  
Intellectual Property in the Digital Age  
International and Comparative Copyright Law  
International and Comparative Patent Law  
International Carriage of Goods  
International Commercial Arbitration  
International Construction Law  
International Criminal Law  
International Environmental Law  
The International Financial System: Law and Practice  
International Financial Transactions: Law and Practice  
International Human Rights Law  
International Humanitarian Law  
International Law and Children's Rights  
International Law and the Use of Force  
International Legal Internship  
International Legal Practice  
International Trade Law  
International Trade Remedies in the WTO  
Interpretation and Validity of Patents Specifications  
Islamic Law and Politics in Asia  
Labour Relations Law  
Law and Development  
Law of Peace Operations  
Law of Secured Finance  
Legal Reasoning  
Licensing Financial Services Providers  
Managing Clients  
Managing People in Legal Services  
Managing Resources and Processes  
Mediation Theory and Practice  
Medical Error, Quality and Liability  
Medical Litigation  
Mineral Exploration and Production Law  
National Security Law  
Native Title Law and Practice  
Patent Law  
Patent Practice  
Principles of International Law  
Principles of Public Law  
Privacy Law  
Professional Indemnity Insurance  
Project Finance  
Proof in Litigation  
Protecting Rights  
Public Law in Ireland  
Public Law of the Internet  
Recent Developments in Contract Remedies  
Refugee Law  
Regulation and the Law  
Regulation of Construction  
Remedies in Construction Disputes

Researching Labour Law  
Rights and Liabilities in Construction  
Securitisation  
Sport, Commerce and the Law  
Sports Labour Law  
Strategic Management in Legal Services  
Superannuation Law  
Tax and Development  
Taxation of Business and Investment Income A  
Taxation of Corporate Groups under Consolidation  
Trade, Human Rights and Developments  
Trade Mark Practice  
Trade Marks and Unfair Competition  
Unions and Industrial Action  
United States Corporate and International Taxation  
Water Resources Law  
World Trade Organisation: Dispute Settlement Procedures and Evolving Case Law

## Competitive Research Grants Obtained in 1996-2003

### Corporate Governance in the Australian Financial Markets

#### Type of Grant

Melbourne University Research Grant

#### Funds Received

\$14,000

#### Chief Investigators

Dr Paul Ali and Dr Geof Stapledon

#### Project Summary

The project examines the corporate governance aspects of transactions in the Australian financial markets, in particular the legal design of complex financial products, the efficacy of the new regime introduced by the Financial Services Reform Act 2001 (Cth) for the regulation of financial products, and the role of institutional investors in supervising the use of complex financial products by the companies in which they have invested.

## Synthetic Securitisations and the Revolution in Credit Risk Management

#### Type of Grant

Melbourne University Early Career Researcher Grant

#### Funds Received

\$8,750

#### Chief Investigator

Dr Paul Ali

#### Project Summary

This project focuses on recent innovations in securitisation, particularly in relation to the issuance of debt securities backed by derivatives. These so-called synthetic securitisations, in essence, segregate assets into their component risks and effect a transfer of certain risks independent of the assets to the investors in the debt

securities. The key example is the synthetic CDO (Collateralised Debt Obligations) which involves the securitisation of the credit risk on bond or loan portfolios. The emerging class of managed arbitrage synthetic CDOs is also examined. In addition, the project investigates the securitisation of non-traditional assets.

## **Partnerships at Work: The Interaction between Employment Systems, Corporate Governance and Ownership Structure**

### **Type of Grant**

Australian Research Council Discovery Project Grant

### **Chief Researchers**

Professor Ian Ramsay and Professor Richard Mitchell

### **Funds Received**

\$640,500

### **Project Summary**

The project examines the interaction between several key factors in the creation and sustainability of 'Partnerships at Work'. These factors include particular employment systems, forms of corporate governance and ownership structures. The project proposes to discover how these various factors have interacted so as to give rise to — or fail to give rise to — 'high performance' partnership-style relations at work.

There is a widely held view that production systems based on hierarchical management control, confliction work relationships and low trust between management and labour (the Anglo-American model) have been less competitive than models based upon co-operative/high trust work relations (e.g. Germany and Japan). Governments in systems historically marked by 'confliction' employment systems are now supporting the development of more co-operative workplace relations systems between employers and employees. In Britain this has been based in the Blair government's 'Third Way' policy which actively seeks the promotion of a 'Partnership at Work' agenda. In Australia the Federal Government has also been pursuing a policy of 'co-operative' workplace relations based upon individual contracts, employee participation, more flexible working arrangements, performance appraisal, and various forms of profit sharing, including employee share ownership. More recently the Victorian Labor government has announced its 'Partners at Work' program designed 'to encourage Victorian workplaces to develop partnerships with employees, unions and other shareholders...to improve workplace performance'. As a result of this policy direction, the identification of those factors which support the development and

sustainability of co-operative ‘partnership-style’ workplace systems is now one of the most important issues in contemporary employment relations.

At the same time, there is debate concerning whether there will be international convergence around the Anglo-American model of corporate governance and ownership structure. The emergence of corporate governance frameworks based around highly liquid capital markets, dispersed share-ownership, vulnerability to hostile takeover bids and the presence of large institutional investors anxious for quarterly improvements can entrench a narrow understanding of ‘shareholder value’ as the dominant objective of corporate management. On the other hand, systems of corporate governance characterised by relatively concentrated patterns of shareholding, with a dominant shareholder holding a majority or near majority stake, are said to more easily establish and sustain co-operative arrangements between all relevant stakeholders, including industry employees.

This project focuses on the interaction between these factors within a regulatory environment established by labour law and corporate law. What are the elements of ‘co-operative’ or ‘partnership’ employment systems? What are the integrating institutions or conventions - if any - that incorporate workers or their representatives into managerial processes? How do company directors actually balance the interests of employees and shareholders within the framework of the obligations imposed by directors’ duties? How flexible are those duties? What possible shortcomings might exist in the practical application of those duties? Is there a congruence between types of corporate governance systems and types of employment system?

## **Islamic Law in Contemporary Indonesia**

### **Type of Grant**

Australian Research Council Discovery Project Grant (formerly ARC Large Grants)

### **Chief Researchers**

Associate Professor Tim Lindsey and Barry Hooker (Australian National University)

### **Funds Received**

\$139,270

### **Project Summary**

This project aims to fill serious gaps in Asian and Western scholarship on Islamic law in contemporary Indonesia in the context of the tension between Islam and state, an issue highlighted by the Bali bomb and Jemaah Islamiyah trials. It aims to do so by working closely with leading Indonesian legal scholars and

institutions to develop an approach to researching Islamic law that embraces internal Islamic jurisprudence, both Middle Eastern and Southeast Asian, as well as leading Western scholarship on Islam and law.

It seeks a new syncretic approach to Islamic legal scholarship, to be constructed within the limited confines of an investigation into the practical operation of *syariah* in Indonesia in the last 50 years, with a particular focus on the last decade. This project aims to produce journal articles, briefing papers, teaching materials and a joint monograph by the Chief Investigators in English and Indonesian.

In the longer term, this project will contribute to increasing Australian understandings of Islamic law, culture and societies.

## **Accountability and Corporate Governance in Non-Profit Companies**

### **Type of Grant**

Australian Research Council Strategic Partnerships with Industry Grant

### **Chief Researchers**

Professor Ian Ramsay and Ms Susan Woodward

### **Industry Partner**

Philanthropy Australia Inc

### **Funds Received**

\$80,000 (over 3 years) with in-kind support contributed by Philanthropy Australia Inc

### **Project Summary**

Australians give \$2.8 billion annually to non-profit organisations. Official estimates suggest spending by these organisations represents almost 10% of Gross Domestic Product. Increasingly the importance of the sector is being recognised, but in Australia there has been limited research into non-profit companies. This collaborative project examines the appropriateness of existing corporate structures for non-profit organisations. It also evaluates the effectiveness of laws relating to directors' duties as a means of providing accountability and good governance to stakeholders (eg, members, grant givers and the public). The appropriateness of laws designed for companies with profit-making objectives is investigated.

## **Directorship in Entrepreneurial Firms and the Role of Public and Private Capital Markets**

### **Type of Grant**

Australian Research Council Large Grant

### **Chief Researchers**

Associate Professor Michael Whincop (Griffith University Law School), Professor Ian Ramsay and Dr Geof Stapledon (University of Melbourne Law School) and Professor R J Gilson (Stanford and Columbia Law Schools)

### **Funds Received**

\$127,393

### **Project Summary**

This project examines the purposes of boards of directors in entrepreneurial firms, the optimal corporate law to support these institutions, characteristics of the market for these director services, and the connection with public and private capital markets. It examines and challenges the applicability of corporate governance models developed for listed corporations to entrepreneurial firms. It tests hypotheses concerning the effect of venture capital and the investor's strategy for exiting the firm on the structure of entrepreneurial boards.

## **An Analysis of Factors Influencing the Share-back Decision**

### **Type of Grant**

University of Melbourne Faculty of Economics and Commerce Research Grant

### **Chief Researchers**

Dr Asjeet Lamba (Centre of Financial Studies, The University of Melbourne) and Professor Ian Ramsay

### **Funds Received**

\$7,000

### **Project Summary**

This project extends and expands upon a study conducted by the Chief Researchers titled 'Share Buy-backs in a Highly Regulated and Less Regulated

Market Environment' which documents the market's valuation of share buy-backs announced by ASX listed firms during 1989-98. In addition to updating and extending this study, this project provides evidence on (1) the long-run return behaviour of various share buy-back programs and (2) the relationship between firm-specific variables and the short-run and long-run return behaviour of share buy-backs. The results of the study should lead to a better understanding of the factors influencing the share buy-back decision of managers.

## **The Governance of Managed Investment Schemes**

### **Type of Grant**

Australian Research Council Large Grant

### **Chief Researchers**

Professor Ian Ramsay, Ms Pamela Hanrahan and Dr Geof Stapledon

### **Funds Received**

\$137,000

### **Project Summary**

As of 30 June 1998, the consolidated assets of managed investment schemes such as cash management, equity and property trusts in Australia exceeded \$100 billion. The Managed Investments Act 1998 (Cth) introduced a fundamentally new regime for the regulatory oversight and governance of managed investment schemes. This project examines and evaluates the effectiveness and efficiency of this new regime as a means of ensuring compliance with the requirements of the Managed Investments Act and for maximising investor protection.

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

### **Type of Grant**

Australian Research Council Strategic Partnership With Industry - Research and Training Grant

### **Chief Researchers**

Ms Helen Bird, Professor Ian Ramsay and Professor Arie Freiberg (Department of Criminology, The University of Melbourne)



## **Industry Partner**

The Australian Securities and Investments Commission

## **Funds Received**

\$90,000 with matching funds contributed by the Australian Securities and Investments Commission

## **Project Summary**

This project is the first comprehensive study of the operation of civil penalties and other sanctions for promoting compliance with legislation imposing duties on directors of Australian corporations. It involves an empirical study of enforcement and prosecution activities undertaken by the Australian corporate law regulator, the Australian Securities and Investments Commission (ASIC), from its inception in 1991 until 1998. The significance of the project is that it will be undertaken at a time when there is widespread community concern about corporate crime. The project will evaluate the effectiveness of enforcement of directors' duties by ASIC.

## **Southeast Asian Laws in Transition: 1945-1995**

### **Type of Grant**

Australian Research Council Large Grant

### **Chief Researcher**

Dr Timothy Lindsey

### **Funds Received**

\$128,000

### **Project Summary**

This research project has two aims. First, to access and analyse legal materials and original sources currently unavailable to researchers and practitioners in Asian Law. Second, to publish twelve volumes of materials and commentary (two theoretical and ten covering individual countries) providing resources for practising and academic lawyers for understanding:

- (1) legal and commercial developments in South-East Asia; and
- (2) the intra-regional influence of Japan and China on law and business in South-East Asia.

## **Reducing the Cost of Capital Raising: An Empirical Analysis of ASIC Modifications of the Fundraising Provisions of the Corporations Law**

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researcher**

Dr Geof Stapledon

### **Funds Received**

\$7,500

### **Project Summary**

The Australian Securities and Investments Commission (ASIC) has the power to modify the prospectus - and other fundraising - provisions of the Corporations Law on a case-by-case basis. The project involves an analysis of the use of this power by ASIC. The objective is to determine whether the statutory fundraising requirements could be reduced further than is being proposed under the Federal Government's Corporate Law Economic Reform Program, in order to minimise the cost of capital raising to Australian business.

## **The Costs of Corporate Litigation**

### **Type of Grant**

University of Melbourne Faculty of Economics and Commerce Research Grant

### **Chief Researchers**

Professor Ian Ramsay and Dr Asjeet Lamba (Department of Accounting and Finance, The University of Melbourne)

### **Funds Received**

\$8,900

### **Project Summary**

The project examines the costs associated with corporate litigation and possible sources of these costs by using event study methodology. In particular, the study provides evidence on (1) the costs of litigation involving companies and a

breakdown of these costs and (2) the rules on allocating legal costs between parties. The results of the study should lead to a better understanding of the market's reaction to corporate litigation events and to more informed dispute resolution.

## **Electronic Prospectuses: Devising an Appropriate Regulatory Regime**

### **Type of Grant**

Australian Research Council Strategic Partnership With Industry - Research and Training Grant

### **Chief Researchers**

Dr Elizabeth Boros and Professor Ian Ramsay

### **Industry Partner**

The Australian Securities and Investments Commission

### **Funds Received**

\$93,000 with matching funds contributed by the Australian Securities and Investments Commission

### **Project Summary**

In late 1996 the Australian Securities and Investments Commission (ASIC) stated that it would permit the distribution of prospectuses on the Internet. In 1995 almost \$5 billion in capital was raised by companies listed on the Australian Stock Exchange using prospectuses to raise capital. However ASIC still requires the existence of a paper prospectus. This project aims, in collaboration with ASIC, to devise a regulatory regime which will meet the three goals of (1) enabling market participants to fully exploit the capabilities of electronic commerce; (2) protecting investors; and (3) harmonising Australian law with international regulatory regimes.

## **Corporate Disclosure: An Analysis of the Role of Prospectuses in Capital Raising in Australia and New Zealand**

### **Type of Grant**

Australian Research Council Large Grant

### **Chief Researchers**

Professor Ian Ramsay and Mr Gordon Walker (University of Canterbury)

## **Funds Received**

\$65,000

## **Project Summary**

Public investment in the shares of Australian and New Zealand companies is undertaken by companies preparing and issuing prospectuses. Yet there are major concerns that the existing law regulating prospectuses does not adequately reflect an appropriate balance of the costs and benefits associated with prospectus regulation. The project will test the actual use made of prospectuses by investors and their advisers. It will also obtain evidence on why there is substantial non-compliance with the existing law regulating prospectuses.

## **The Impact of Institutional Investors on Capital Markets and Corporate Performance**

### **Type of Grant**

Australian Research Council Collaborative Grant

### **Chief Researchers**

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**

\$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.

## **Directors' Misconduct Decriminalised: Are the 'Civil' Sanctions in the Corporations Law Effective?**

### **Type of Grant**

Criminology Research Council Grant

### **Chief Researchers**

Ms Helen Bird, Dr George Gilligan and Professor Ian Ramsay

### **Funds Received**

\$20,395 plus research infrastructure funds provided by The University of Melbourne of \$4,000

### **Project Summary**

This project examines the effect of decriminalisation of misconduct by company directors in contravention of the Corporations Law. It involves an empirical study of prosecution and enforcement actions taken by the Australian Securities and Investments Commission before and since decriminalisation took effect in 1993.

## **Using Electronic Commerce to Authorise Electronic Transactions: Changes Required to the Legal and Regulatory Framework**

### **Type of Grant**

University of Melbourne Special Initiatives Grant

### **Chief Researcher**

Associate Professor Mark Sneddon

### **Funds Received**

\$15,000

### **Project Summary**

Many governments and businesses have proposed that paper-based transactions as diverse as sales contracts and issuing drivers' licences be replaced by electronic messages. Electronic signatures will be used to authenticate the sender's identity and make the person to whom that signature is certified to belong legally bound

by the message. The possible changes required to existing laws involve important policy choices. This project will (1) identify existing Australian laws that would require alteration and (2) provide a comparative analysis of the models for legal change proposed in Australia and overseas and their underpinning policy choices.

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

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researchers**

Professor Ian Ramsay and Dr Geof Stapledon

### **Funds Received**

\$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.

## **The Use and Operation of Management Banning Orders as Enforcement Tools Under the Corporations Law**

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researcher**

Ms Helen Bird

### **Funds Received**

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

## **Project Summary**

This project is the first phase of a comparative study of the use and operation of management banning orders by governments as sanctions for promoting compliance with legislation regulating corporations. It focuses on the Australian regulatory environment and involves an empirical study of management banning actions undertaken by the Australian Securities Commission during the years 1992 to 1997.

## **Compulsory Acquisition of Minority Shareholdings**

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researcher**

Dr Elizabeth Boros

### **Funds Received**

\$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.

## **The Legal Implications of the Relative Performance of Publicly Listed Australian Companies With and Without a Controlling Shareholder**

### **Type of Grant**

University of Melbourne Special Initiatives Grant

## **Chief Researcher**

Dr Geof Stapledon

### **Funds Received**

\$12,000

### **Project Summary**

Many publicly listed Australian companies have a single shareholder who/which has effective control of the company. The project will compare the past performance of such controlled companies with that of non-controlled listed companies. If the performance of the controlled companies is superior then there may well be a case for amending certain parts of the legislation governing takeovers so as to produce a legal framework more conducive to controlled companies.

## **Analysis of Victorian Legal Signature and Writing Requirements for Compatibility with the Proposed Electronic Commerce Framework Act**

### **Type of Grant**

State of Victoria Office of Multimedia Grant

### **Chief Researcher**

Associate Professor Mark Sneddon

### **Funds Received**

\$16,340

### **Project Summary**

This project will investigate the legislative need to facilitate electronic signatures and records with particular focus upon Victorian legislation.

## **Remedies for Directors' Improper Use of Position**

### **Type of Grant**

University of Melbourne Special Initiatives Grant

### **Chief Researcher**

Dr Elizabeth Boros



## **Funds Received**

\$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:

- (1) 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
- (2) seeks to identify the assumptions and policies underlying the results of the decided cases.

## **Women and Commerce**

### **Type of Grant**

University of Melbourne Special Initiatives Grant

### **Chief Researcher**

Dr Belinda Fehlberg

### **Funds Received**

\$8,000

### **Project Summary**

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

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