Centre for Corporate Law and Securities Regulation
Faculty of Law
The University of Melbourne

Annual Report 1998
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Cover: Cloisters surrounding the Law Quadrangle, The University of Melbourne.

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Director’s Report

1998 was the third year of operation of the Centre for Corporate Law and Securities Regulation. The year saw many achievements including an active research program conducted by members of the Centre, the hosting of major seminars, the strengthening of links with peak organisations both in Australia and internationally, and the development of the Corporate Law Electronic Bulletin.

Research
In 1998 the twelve academics who were members of the Centre were responsible for the publication of 5 books, 54 book chapters and journal articles, and 3 research reports and government reports. An important aspect of the Centre’s research program is its monograph series in corporate law and securities regulation. 1998 saw the publication of 4 further monographs. Pamela Hanzahkan, who is a Senior Lecturer in Law at The University of Melbourne, a member of the Centre for Corporate Law and Securities Regulation and Special Counsel at Arthur Robinson & Heddervicks, authored a monograph titled Managed Investments Law. This monograph was jointly published by the Centre for Corporate Law and CCH Australia Limited. It has proved to be a very topical and important publication as the law governing managed investment schemes was totally re-written on 1 July 1998 with the commencement of the Managed Investments Act 1998.

The second monograph was written by Donna Croker and is titled Prospectus Liability Under the Corporations Law. This has also proved to be a topical publication as recent court judgments such as the Full Federal Court judgment in Francis v NOAH Holdings Ltd and the increased emphasis given to the need for due diligence under the Corporations Law, have focused attention upon the liability that can apply to those engaged in capital raising for companies.

The third monograph, co-authored by the Director of the Centre and Dr Geof Stapledon, is titled Corporate Groups in Australia. It presents the results of an empirical study of the group structures in Australia’s top 500 listed companies. It includes findings on the incidence of subsidiaries across the top 500 companies, and the size and industry groups of those listed companies with subsidiaries. The monograph also provides an overview of the regulatory approaches that have been adopted in Australia in relation to corporate groups.

The fourth monograph is titled Institutional Investors’ Views on Corporate Governance and was co-authored by the Director of the Centre, Dr Geof Stapledon and Mr Kenneth Fong. It outlines the results of a study of the views of institutional investors on corporate-governance issues. These issues include voting by institutional investors, views on the structure and composition of boards of directors, director and executive remuneration, and barriers to institutional investor activism. Institutional Investors now hold approximately 50 per cent of the shares of companies listed on the Australian Stock Exchange and therefore have the potential to be key players in corporate governance.

I am pleased to report that the publications of members of the Centre continue to be well received both in Australia and overseas. Dr Belinda Felberg’s book published by Oxford University Press titled, Sexually Transmitted Debt: Scenty Experience and English Law (1997) was awarded the 1998 Oxford University Press – Socio Legal Studies Association Prize. Dr Geof Stapledon’s book titled, Institutional Shareholders and Corporate Governance continued to receive favourable reviews in 1998 including a review in the Michigan Law Review.

The monographs published by the Centre continue to receive positive reviews. The monograph titled Corporate Governance and the Duties of Company Directors (1997) was reviewed in the Law Institute Journal in 1998 where the reviewer stated that “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…Thoughtful consideration has been extended to the issue of corporate governance within the book, including invaluable commentary and summarisation…The substantive law pertaining to directors’ duties is also well presented”. A review in the journal Australian Accountant stated that “the book will no doubt become a contemporary textbook in the study of corporate governance” while a review in the Company and Securities Law Journal stated that the book provides “valuable perspectives on the various issues surrounding the roles of directors and of corporate law in enhancing corporate governance practices”.

A particularly pleasing part of the Centre’s research was the success of members of the Centre in obtaining competitive research grants. In 1998 members of the Centre obtained an Australian Research Council Strategic Partnership With Industry (Research and Training) Grant for a project titled “Use and Operation of the Enforcement Regime Attributed by Contraventions of Directors’ Duties in the Australian Corporations Law”. The research team for this project is the Director of the Centre, Ms Helen Bird and Professor Arie Feenberg of the Department of Criminology at The University of Melbourne. Dr Timothy Lindsey obtained an Australian Research Council Large Grant for a project titled “South-East Asian Laws in Transition: 1945–1995”. Dr Geof Stapledon obtained an Australian Research Council Small Grant for a project titled, “Reducing the Cost of Capital Raising: An Empirical Analysis of the Australian Securities and Investments Commission Modifications of the Fundraising Provisions of the Corporations Law”. A number of major research grants obtained in 1997 continued to provide funding for projects in 1998. A full list of competitive research grants obtained by members of the Centre is included in this Annual Report.

Seminars
In 1998 the Centre hosted or was involved in the organisation of seven seminars and conferences. The seminars dealt with topics including “The Regulation of Managed Investments: Current Issues and Perspectives”, “Patrick Stevedores v Maritime Union of Australia: The Labour Law, Corporate Law and Commercial Litigation Issues”, “A United States Perspective on the Business Judgment Rule”, and “Long-Term Contracts and Competition Law”.

A feature of 1998 was the invitation from the Australian Securities and Investments Commission for the Centre to assist with the planning and running of its 1998 Summer School. The Summer School was held at The University of Melbourne with the theme “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.

Links with peak organisations
The Centre continued in 1998 to develop links with peak organisations both in Australia and overseas. Members of the Centre play an active role with organisations such as the Law Council of Australia, the Australian Institute of Company Directors and the Law Institute of Victoria. In 1998 the Centre provided assistance to the Companies and Securities Advisory Committee in relation to its research project on corporate groups.

The Australian Institute of Company Directors featured a research project of the Centre in its cover story in the March 1998 issue of Company Director.

Corporate Law Electronic Bulletin
1998 saw the continued development of the Corporate Law Electronic Bulletin which was established in 1997. The monthly ebulletin is published with the support of the Australian Securities and Investments Commission, the Australian Stock Exchange and leading national law firms in Australia. There are now approximately 1400
subscribers to the Bulletin with a much wider readership as the Bulletin is distributed widely within companies, regulators, law firms and government departments. 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 Chartered Institute of Company Secretaries. We continue to receive very positive feedback on the Bulletin. A particularly pleasing feature is the increasing number of international subscribers to the Bulletin.

Editorial positions

Members of the Centre continued in 1998 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Australian Business Law Review*, and the *International Corporate Law Bulletin*. The Centre was asked in 1998 to play a prominent editorial role in relation to the Business Organisations chapters of *Laws of Australia* (a major encyclopedia of Australian law).

New initiatives

1998 was a year in which new initiatives in the areas of electronic commerce and managed funds were implemented. This was achieved primarily through the work of Mark Sanderson who joined the Centre in 1997 and who has been a senior government adviser on matters dealing with electronic commerce and Pamela Harran who also joined the Centre in 1997 as a specialist in the area of managed funds. The Centre’s work in these two important areas will continue in 1999.

In addition, it is envisaged that towards the middle of 1999 the Centre and the Australian Securities and Investments Commission will jointly publish an Issues Paper which deals with the regulation of electronic prospectuses as part of the collaborative work undertaken by Dr Elizabeth Boon and the Director of the Centre pursuant to their Australian Research Council Grant.

In 1999 the Centre intends to pursue a number of strategic initiatives in the area of Asian law. 1999 represents an appropriate time to pursue these initiatives given the major regulatory changes that are unfolding in the region. The University of Melbourne is fortunate in having several notable experts in Asian law and, towards the end of 1998, it was very pleasing that Professor Malcolm Smith and Dr Timothy Lindsey became members of the Centre for Corporate Law and Securities Regulation.

Professor Smith is well-known for his work in relation to Japanese corporate law and banking law. He holds the Foundation Chair in Asian Law at The University of Melbourne and has taught at The University of Tokyo. Dr Lindsey teaches in the area of insolvency law and has a special focus on Indonesia. 1998 saw the publication of Dr Lindsey’s book titled *Indonesia: Law and Society*. He also co-authored a book in 1992 titled *How Companies Work*.

Dr Lindsey was successful in 1998 in obtaining a major competitive research grant from the Australian Research Council for the project “South-East Asian Laws In Transition: 1945–1995”. 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:

- legal and commercial developments in south-east Asia; and
- the intra-regional influence of Japan and China on law and business in south-east Asia.

1998 saw a number of joint projects between members of the Centre for Corporate Law and Asian law specialists at The University of Melbourne. In particular, the subject taught for the first time in 1998 in our Graduate Program titled “Comparative Companies Law In the Asia-Pacific Region” was very successful and over-subscribed by students. The subject was co-taught by Professor Malcolm Smith and Ms Cally Jordan of the Asian Development Bank.

In 1999 Dr Lindsey will be organising a major conference on Indonesian bankruptcy reform hosted by the Indonesian Government, AusAID, the World Bank and the International Monetary Fund.

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. During 1998 the Centre provided pro bono assistance to the Intellectual Disability Rights Service and the Mirinbank Nations Aboriginal Corporation. In 1998 Sue Woodward was appointed a director of the Schizophrenia Australia Foundation and provided advice to the Foundation on corporate law matters.

Members of the Centre have also provided their expertise in relation to significant corporate transactions. Early in 1998 Dr Geoff Stapledon completed a twelve month full-time consultancy in relation to the demutualisation and restructuring of the Australian Mutual Provident Society. Members of the Centre have also provided advice in relation to the Managed Investments Act 1998, the Company Law Review Act 1998, the ITR investments restructuring, the acquisition of ANI industries by Smorgon Steel, the Farrow Finance/Pyramid Building Society litigation, and a range of other matters.

Acknowledgments

Many people deserve thanks for their contribution to the work of the Centre during 1998. They include the members of the Australian Advisory Board and, in particular, the Chair of the Australian Advisory Board, the Hon Mt Justice Hayne.

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. For example, Professor Deborah DeMott of Duke University Law School, a member of the International Advisory Board, taught in the Graduate Program at The University of Melbourne Law School in 1998 and also presented a public seminar on behalf of the Centre. I am pleased to report that Professor Brian Cheffins of the University of Cambridge joined the International Advisory Board in 1998.

Particular thanks are due to Ann Graham, the Administrator of the Centre, who has played a key role in many of the Centre’s achievements during 1998. The Dean of the Faculty of Law at The University of Melbourne, Professor Michael Crommelin, has been a strong supporter of the initiatives undertaken by the Centre. Finally, I express my appreciation to The University of Melbourne Law School Foundation which provided substantial financial support to the Centre during 1998.

Professor Ian Ramsay
Purposes and Objectives of the Centre

The objectives of the Centre and its members are to:

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

International Advisory Board

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

- Professor Theodor Baums, University of Osnabruck, Germany
- Professor 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
- Professor Jiang Ping, China University of Political Science and Law, China
- Professor Dan Prentice, Pembroke College, Oxford University, England
- Professor Roberta Romano, Yale Law School, USA
- Professor Sang-Hyun Song, Dean, College of Law, Seoul National University, Korea
- The Honourable Justice Edmund Thomas, Court of Appeal of New Zealand
- The Honourable Justice E Norman Veasey, Chief Justice, Supreme Court of Delaware, USA
- Professor Fidy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium
Australian Advisory Board

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

- The Hon Mr Justice Hayne, High Court of Australia (Chair)
- Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks
- Tom Bostock, Partner, Mallesons Stephen Jaques
- Stephen Creese, Vice-President and General Counsel, Rio Tinto Limited
- Quentin Digby, Partner, Freehill Hollingdale & Page
- Tony Greenwood, Partner, Blake Dawson Waldron
- Michael Hoyle, Director, Macquarie Corporate Finance
- Richard Kneebone, Corporate Secretary, Orica Limited
- Allison Lansley, Partner, Mallesons Stephen Jaques
- Rod Lyle, Managing Partner, Clayton Utz
- Jim Lyons, Group Manager, Legal, BHP
- Michael O’Byran, Partner, Minter Ellison
- Ron Salter, Partner, Phillips Fox
- Joseph Santamaria QC, Member of the Victorian Bar
- Ray Schoes, Director, Australian Stock Exchange
- Carl Thompson, Partner, Cots Chambers Westgarth
- Shane Trigilia, National Director, Regulation, Australian Securities and Investments Commission
- Catherine Walter, Director of National Australia Bank Limited, Australian Stock Exchange Limited, Mercury Asset Management Limited, SGI Insurance Limited and Victorian Workcover Authority

Academic Members of the Centre

The following academics were members of the Centre in 1998:

Ms Helen Bird

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

Dr Elizabeth Boros

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

Elizabeth completed a doctorate at the University of Cambridge in 1992. On returning to Australia she practised with Blake Dawson Waldron. A revised version of her doctoral thesis was published as a book titled Minority Shareholders’ Remedies by Oxford University Press in 1995. She joined the academic staff of The University of Melbourne and the Centre for Corporate Law and Securities Regulation as a Senior Lecturer in 1996. She teaches Corporations Law and Equity in the LLB Program and Members’ Remedies in the Graduate Program. Her main areas of research interest at present are electronic prospectuses, directors’ duties and shareholders’ remedies.

Dr Belinda Fehlberg

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

In 1993 Belinda was appointed as a half-time Lecturer in the Faculty of Law, University of Warwick, where she taught Commercial Law and Company Law. At the end of 1994, Belinda took up an appointment as a lecturer in the Law School, The University of Melbourne and was promoted to senior lecturer in 1997. She currently teaches Corporations Law and Family Law. Her publications are mainly in the area of her thesis research, but she has a general interest in the areas of corporations law and family law, and especially in issues where these two areas overlap.
Ms Pamela Hanrahan
Pamela Hanrahan joined the academic staff of The University of Melbourne as a Senior Lecturer in February 1997, having previously practiced corporate law and securities law as a Senior Associate with Arthur Robinson & Heddericks 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 is Special Counsel with Arthur Robinson & Heddericks.

Dr Timothy Lindsey
Dr Lindsey is a graduate of The University of Melbourne Law School and has a doctorate in Indonesian Studies. 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 Indonesian 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.

Professor Ian Ramsay
Ian Ramsay is the Harold Ford Professor of Commercial Law in the Faculty of Law at The University of Melbourne and Director of the Centre for Corporate Law and Securities Regulation. He has practiced law with the law firms Sullivan & Cromwell in New York and Mallesons Stephen Jaques in Sydney. Other positions Ian has held include:
- Deputy Director of the Federal Government's Companies and Securities Advisory Committee where he wrote a number of reports on directors' and officers' insurance, directors' duties and shareholder litigation
- Member of the Executive Committee of the Business Law Section of the Law Council of Australia
- Member of the Corporations Law Committee of the Australian Institute of Company Directors and the Corporations Law Committee of the Law Council of Australia
- Consultant to the Australian Law Reform Commission for its managed investments project
- Distinguished Visiting Professor, The University of Toronto.
Ian has published extensively on corporate law issues both internationally and in Australia. His recent books include Securities Regulation in Australia and New Zealand (co-author, 1998); Corporate Governance and the Duties of Company Directors (editor, 1997); Ford's Principles of Corporations Law (co-author, 1997); and Education and the Law (co-author, 1996).

Professor Malcolm Smith
Professor Smith joined The University of Melbourne Faculty of Law from the University of British Columbia, Canada, where he was Founding Director of the Japanese Legal Studies Program. He is a graduate of The University of Melbourne Law School and Harvard Law School, and specialises in Japanese Law. He holds the Foundation Chair in Asian Law at The University of Melbourne. He researches and teaches in Japanese and has particular research interests in Japanese corporate, banking and financial law.
Professor Smith is a member of the board of the Australia-Japan Foundation, the Executive Board of the Australian Centre for International Commercial Arbitration, the International Trade Law and Business Committee of the Law Council of Australia, the International Legal Services Advisory Council and the Australian International Legal Exchange Committee established by the Commonwealth Attorney-General.

Mr Greg Reinhardt
Greg Reinhardt joined the Faculty of Law in 1991 from the law firm Minter Ellison where he was a partner. His research and teaching interests include the Law of Insolvency, Civil Procedure and Insurance Law. Greg is Editor of the Insurance Law Bulletin. In 1997 Greg was appointed Executive Director of the Australian Institute of Judicial Administration which is affiliated with the Faculty of Law at The University of Melbourne.

Associate Professor Mark Sneddon
Mark Sneddon (BSc (Comp Sci), LLB (Hons) (Melb); LLM (Melb)) is Associate Professor of Law working in Banking, Media and Electronic Communications Law. Mark teaches postgraduate courses in Electronic Banking and Payments Law, Broadcasting and Telecommunications Law and International Bank Obligations and Trade Finance and is Director of Studies for the postgraduate Diploma in Banking and Finance. He has written and lectured widely in the field of electronic banking and electronic commerce payment systems and in banking law generally.

Prior to commencing his university career, Mark practised full-time as a commercial lawyer, worked on law reform issues for the Victorian Parliament and was Associate to Chief Justice Sir Gerard Brennan of the High Court of Australia. He has acted as an adviser to the State of Victoria on electronic commerce and was a member of the Federal Attorney-General's Expert Group on Electronic Commerce. Mark's current research is into the law of electronic transactions, investigating electronic commerce, digital signatures and electronic banking and payments issues (including stored value cards, Internet banking, secure Internet payment systems and digital cash).

Professor Malcolm Smith and Dr Timothy Lindsey joined the Centre in 1998.
Dr Geoff Stapledon

Dr Geoff Stapledon obtained undergraduate degrees in Economics and Law from the University of Adelaide before practising as a commercial solicitor with Finlayson 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 Geoff’s book *Institutional Shareholders and Corporate Governance* (Oxford University Press). Geoff joined the Faculty of Law at The University of Melbourne in 1995. Geoff has a number of current 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 specializing in Australian corporate and securities law: *The Company and Securities Law Journal*.

Geoff spent 1997 on secondment with the law firm Minter Ellison in Sydney, advising on the demutualisation of the AMP Society. He remains a Consultant to Minter Ellison.

**Mr John Telfer**

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

**Mr 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 for several years. Susan has co-authored the book *Corporations Law Workbook* (LLC Information Services, 3rd ed, 1996) which is accompanied by a Teachers’ Manual. The fourth edition of this book will be published in 1999.

**Centre Research Officers**

**Mr Kenneth Fong**

Kenneth Fong holds a BA from RMIT and an LLB (Hons) from Bond University. Prior to joining the Centre, he was a consultant to the Australian Securities and Investments Commission. Currently he is undertaking research into corporate governance, the regulation of electronic prospectuses, and corporate disclosure. Kenneth is also co-editor of the Centre’s monthly email Corporate Law Bulletin.

**Dr George Gilligan**

Dr George Gilligan is a criminologist who holds a PhD from the University of Cambridge and Masters degrees from both the University of Cambridge and La Trobe University. He has taught at the Universities of Cambridge, Exeter, La Trobe, Melbourne and Middlessex. His research interests focus on the regulation of financial markets, white collar crime and organised crime, and he has published extensively in these areas. During 1998 George worked on a Centre project examining the use of civil penalties by the Australian Securities and Investments Commission. In late 1998, George was appointed Logan Research Fellow in the Department of Business Law and Taxation at Monash University.

**Seminars**

A number of highly successful conferences and seminars were organised by the Centre during 1998.

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

Speaker: Dr Christos Mantziaris, Research School of Social Sciences, Australian National University

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

Speakers: Mr David Goodard, Partner, Chapman Tripp, New Zealand; Professor Robert Sax, Partner, Arthur Robinson & Heddervicks, 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 DeSottis, School of Law, Duke University, USA

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


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.


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 Barshar, Director, Division of Investment Management, United States Securities and Exchange Commission
- Dr Mohd Muniit 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 Witter, Senior Partner, Stikeman, Elliott, Toronto; former Chairman of the Ontario Securities Commission and former Vice-President of the Toronto Stock Exchange; Mr Barry Biebach, Director of the Division of Investment Management, United States Securities and Exchange Commission; Mr Shane Tregillus, 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 & Hedderwick.
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.

Previous seminars of the Centre have included:

The Corporate Law Economic Reform Program

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 Freethill Hollingsdale & Page; Professor Robert Baxt, Chairman, Corporations Law Committee, Australian Institute of Company Directors and Partner of Arthur Robinson & Hedderwick; Professor Bernard Black, Columbia University Law School, USA; Mr David Goddard, Partner, Chapman Tripp Steffle 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?

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)

Speakers – The Rt Hon Lord Cockie of Thordom, Member of the House of Lords and Judicial Committee of the Privy Council; Professor Len Sealy, Sir 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

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 Senior 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

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

Speaker – Mr Steven Wallman, Commissioner, United States Securities and Exchange Commission; Commentators – Mr Shane Tregillus, 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

Thirty papers were presented at the Conference. Keynote speakers included:
Professor Ron Daniel, 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 Ombudsman
Professor MicheleHAVenga, 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

Speakers – Justice Norman Vesan, 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 & Hedderwick; Michael Rozents ZC, 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

Speaker – Professor Gilles Guay of the University of Lyon

Derivatives Regulation in the United States: Problems and Issues

Speaker – Professor Roberta Romano of Yale University School of Law and School of Management; Commentator – Mr Shane Tregillus of the Australian Securities Commission
Deregulation of Public Utilities
Speaker – Professor Michael Trebilcock of the University of Toronto Law School
with a panel consisting of Professor Phillip Williams of the Melbourne Business
School, Mr Jim Holmes, Executive Manager, Business Development of
Powernet, Mr David Goddard a partner with the New Zealand firm of Chapman
Tripp Sheffield Young, and Mr John Perham of the Privatisation and Industries
Reform Division of the Victorian State Treasury Department. This public
lecture was co-hosted with the Australian Law and Economics Association

The CRA-RTZ Merger
Speakers – Mr Stephen Creese of CRA Limited and Mr Ian Renaud and Mr
Cameron Riles of Arthur Robinson & Heddewicks

Recent Developments in Legal Professional Privilege and the Privilege
Against Self-Incrimination
Speakers – Associate Professor Sue McNicol of Monash University and Mr Peter
Cranwick and Mr Peter Hiland of the Australian Securities Commission

Corporate Governance: An International Perspective
Speaker – Professor Richard Buxbaum, University of California at Berkeley

Shareholders’ Remedies: Australian and United States Developments
Speakers – Professor Deborah DeMott, Duke University School of Law; Mr John
Riever, Companies and Securities Advisory Committee; Dr Elizabeth Boros,
Blake Dawson Waldron

Daniels v AWA Limited
Speakers – Professor Robert Baxt, Arthur Robinson & Heddewicks; The Hon
Andrew Rogers QC, former Chief Judge, Commercial Division, Supreme Court
of New South Wales; Mr W R M Irvine, Chairman of the Board of Directors,
National Australia Bank

Recent US Developments in Directors’ Duty of Care in Corporate
Transactions
Speaker – Professor Douglas Branson, University of Pittsburgh School of Law

Gambotto v WCP Limited
Speakers – Quentin Digby, Freehill Hollingsdale & Page; Geof Hone, Blake
Dawson Waldron; Ian Renaud, Arthur Robinson & Heddewicks; Ron White,
Norton Smith & Co

Corporate Groups: A United States Perspective on Current Legal Issues
and Policies
Speaker – Professor Phillip Blumberg, University of Connecticut School of Law

The NRMA Case
Speakers – George Durbridge, Australian Securities Commission; Francis Banks,
The University of Melbourne; Norman O’Byrne, Batchelor; Jon Webster, Arthur
Robinson & Heddewicks

Recent Developments in Closely Held Firms in the United States: Limited
Liability Companies and Limited Liability Partnerships
Speaker – Professor Larry Ribstein, George Mason University School of Law,
Washington, DC

Links with Peak Organisations
The Centre has developed links with peak organisations with an interest in corporate
and securities law. During 1998 academic members of the Centre were also members
of:
• The Executive Committee of the Business Law Section of the Law Council of
  Australia (Professor Ian Ramsay)
• The Corporations Law Committee of the Business Law Section of the Law
  Council of Australia (Professor Ian Ramsay)
• The Corporations Law Committee of the Australian Institute of Company
  Directors (Professor Ian Ramsay)
• The Executive Committee of the Corporate Law Teachers Association (Professor
  Ian Ramsay)
• The Victorian Committee of the Commercial Law Association of Australia
  (Dr Geoff Stapledon).
• The Banking, Finance and Consumer Credit Committee of the Business Law
  Section of the Law Council of Australia (Associate Professor Mark Sneddon)
• The International Trade Committee of the Law Council of Australia (Associate
  Professor Mark Sneddon)
• The Federal Attorney-General’s Expert Group on Electronic Commerce
  (Associate Professor Mark Sneddon)
• The Victorian Government’s Electronic Business Framework Group (Associate
  Professor Mark Sneddon)

Dr Elizabeth Boros was also an invited participant at meetings of The Companies and
Business Organisations Committee of the Law Institute of Victoria.

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

Baldwin Spencer Building, The University of Melbourne
Location of the Centre for Corporate Law and Securities Regulation.
Editorial Positions

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

- **Company and Securities Law Journal** (Editor: Dr Geof Stapledon; Member of the Editorial Board: Professor Ian Ramsay)
- **Commercial Law Quarterly** (Member of the Publications Committee: Professor Ian Ramsay)
- **Newsletter of the Business Law Section of the Law Council of Australia** (Co-editor: Professor Ian Ramsay)
- **Australian Accounting Review** (Member of the Editorial Board: Professor Ian Ramsay)
- **International Corporate Law Bulletin** (Consultant Editor: Professor Ian Ramsay)
- **Business Organisations Title of Laws of Australia** (Title Editor: Professor Ian Ramsay)
- **Corporate Law Electronic Bulletin** (Editors: Dr Elizabeth Boros and Professor Ian Ramsay)
- **Company, Financial and Insolvency Law Review** (Member of the Editorial Board: Dr Geof Stapledon)
- **Insurance Law Bulletin** (Editor: Greg Reinhardt)
- **Australian Business Law Review** (Banking and Finance Section Editor: Associate Professor Mark Sneddon)
- **Australia & New Zealand Journal of Law & Education** (Member of the Editorial Board: Professor Ian Ramsay).

Other editorial work undertaken during 1998 included:

- Editor of the Collected Volume of the Papers Presented at the 1998 Corporate Law Workshop, Business Law Section, Law Council of Australia (Professor Ian Ramsay)

Research

Academic members of the Centre conducted a very active research program in 1998. Publications of members of the Centre are listed below. A complete list of the Faculty of Law's 1998 publications is contained in Appendix B.

Books


Government Report


Research Monographs


Chapters in Books

Journal Articles


Stapledon, G P. "Austin, R P and Taylor, M. Corporate Governance and the Company Secretary" (1998) 50 Australian Company Secretary 202-204.


Conference Papers


Monograph Series in Corporate Law and Securities Regulation

During 1998 the Centre published four monographs as part of its monograph series in corporate law and securities regulation. These were:

- **Pamela Hanrahan, Managed Investments Law**
  Managed investment schemes such as public unit trusts, agricultural schemes, serviced strata developments and other investment schemes represent a very substantial part of the Australian economy, with assets under management now totalling over $100 billion.
  The law governing managed investment schemes was totally rewritten on 1 July 1998, with the commencement of the Managed Investments Act 1998. This book is a comprehensive analysis of the new provisions by leading academic and practitioner Pamela Hanrahan.

- **Managed Investments Law**
  Managed Investments Law provides expert commentary on the key legislative provisions and ASIC policy statements, covering:
  - Scope of regulation
  - Establishing a registered scheme
  - Administering and altering schemes
  - Role and duties of the responsible entity
  - Compliance monitoring
  - Duties and liabilities of officers and compliance committee members
  - Members' rights
  - Role and powers of ASIC
  - Deregistration and termination

- **Donna Croker, Prospectus Liability Under the Corporations Law**
  In 1997 over $23 billion in capital was raised by companies listed on the Australian Stock Exchange. Recent court judgments such as the Full Federal Court judgment on Fraser v NSMA Holdings Ltd and the increased emphasis given to the need for due diligence under the Corporations Law, have focused attention upon the liability that can apply to those engaged in capital raising for companies.
  Those potentially liable include the company, its directors, auditors, bankers, solicitors, underwriters, stockbrokers and those who authorised or caused the issue of the prospectus. This book analyses the liability provisions of the Corporations Law as they apply to those involved in capital raising. It also analyses the defences to liability.

- **Ian Ramsay and Geof Stapledon, Corporate Groups in Australia**
  The recent Australian waterfront dispute highlighted the significance of the corporate group. A key aspect of the dispute was the restructuring of the Patrick group of companies. In one of the judgments resulting from the waterfront dispute, Justice North of the Federal Court stated that the change in the Patrick group structure made it easier to dismiss its workforce.
  The general issue of use of corporate structures to avoid employee and creditor rights has recently been referred to the Parliamentary Joint Committee on Corporations and Securities.
This Research Report presents the results of an empirical study of the group structures in Australia's Top 500 listed companies in 1997. It includes findings on the incidence of subsidiaries across the Top 500 companies, and the size and industry groups of those listed companies with subsidiaries. It also provides a breakdown according to whether the subsidiaries were wholly or partly owned, and the country of origin of the subsidiaries.

The Report also gives an overview of the regulatory approaches that have been adopted in Australia in relation to corporate groups. These approaches include:

- statutory prohibition of certain cross shareholdings in corporate groups;
- lifting of the corporate veil by courts;
- imposition of statutory directors' duties on "shadow directors";
- recognition by the courts of the possibility of a parent company being vicariously liable for wrongs committed by its nominee directors on a subsidiary company's board;
- acknowledgment by the courts and Parliament of the need for a degree of flexibility in the content of directors' duties in a group context;
- use of the oppression provision to remedy abuses in corporate groups;
- increased statutory regulation of financial benefits flowing from public companies to their related parties (including other companies in the corporate group);
- encouragement by the regulator of the use of cross-guarantees; and
- introduction of specific laws dealing with insolvent trading in corporate groups.

Ian Ramsay, Geof Stapledon and Kenneth Fong, Institutional Investors' Views on Corporate Governance

Institutional investors hold approximately 50% of the shares of companies listed on the Australian Stock Exchange. Institutional investors are now key players in corporate governance. As highlighted in the media, institutions have intervened to shake up boards of underperforming companies. They have also promoted best practice guidelines covering the structure and composition of boards of directors, executive remuneration and other matters.

This Research Report outlines the results of a study of the views of institutional investors on corporate governance issues. These issues include voting by institutional investors (including circumstances when institutions vote against management and their views on confidential voting and compulsory voting); monitoring of corporate governance practices by companies in which the institutions invest; liaison with other institutions over corporate governance matters; views on the structure and composition of boards of directors (including independent directors and separating the roles of chairman and CEO); use of board committees; director and executive remuneration; and barriers to institutional investor activism (including legal barriers such as the takeover provisions of the Corporations Law and economic barriers).

Previous monographs of the Centre are:

- Ian Ramsay (editor), Corporate Governance and the Duties of Company Directors (1997)
- Ian Ramsay (editor), Gambotto v WCF Ltd: Its Implications for Corporate Regulation (1996)
- Phillip Lipton, The Authority of Officers and Agents to Act for a Company: Legal Principles (1996)
- Geof Stapledon and Jeffrey Lawrence, Corporate Governance in the Top 100: An Empirical Study of the Top 100 Companies' Boards of Directors (1996)
- Megan Richardson (editor), Deregulation of Public Utilities: Current Issues and Perspectives (1996)
Reviews of Centre for Corporate Law Monographs

Monographs published by the Centre for Corporate Law and Securities Regulation have received positive reviews. Some extracts from those reviews are noted below.

"A first-class review of the issues arising from deregulation of services with monopoly elements and provides a good fusion of the theory and its practical applications."


"This book will no doubt become a contemporary textbook in the study of corporate governance."

Review of Corporate Governance and the Duties of Company Directors published in Australian Accountant

"This book provides timely perspectives on the various issues surrounding the role of directors and of corporate law in enhancing corporate governance practices...It 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 of Corporate Governance and the Duties of Company Directors published in the Company and Securities Law Journal

"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 also demonstrates the breadth of corporate governance far more fully than most authorities, by identifying the various mechanisms that play a role in corporate governance – viz. directors’ legal duties, the structure of the board, auditor, institutional investors, the threat of takeover, disclosure of corporate information, the capital markets, the labour market for managers and executive remuneration, directors’ shareholdings, ownership concentration, corporate financial policy, shareholder voting and litigation, and intervention by regulators."

Review of Corporate Governance and the Duties of Company Directors published in Corporate Governance: An International Review

"If you have always sought clarification as to just what constitute 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...Thoughtful consideration has been extended to the issue of corporate governance...while the substantive law pertaining to directors’ duties is admirably presented."

Review of Corporate Governance and the Duties of Company Directors published in the Law Institute Journal

"This is a useful book for both professionals and academics involved in the corporate and finance sectors. The number of recent cases in which the issue of authority has arisen in recent years...make this book a beneficial addition to the legal library."

Review of The Authority of Agents and Officers to act for a Company: Legal Principles published in Current Commercial Law

"This monograph is a valuable addition to the existing body of knowledge on this topic and I strongly recommend it to practitioners, teachers and students. It is clearly and precisely written and provides an excellent coverage of this difficult and extremely important topic."

Review of The Authority of Agents and Officers to act for a Company: Legal Principles published in the Company and Securities Law Journal

"[This book] is on a topical subject of interest to all who work in the corporate environment...It provides practical points for company officers, particularly those involved in lending."

Review of The Authority of Agents and Officers to act for a Company published in the Commercial Law Quarterly

"This book deserves to be read by all academics and practitioners with an interest in corporate law and shareholders’ rights...It is a fascinating collection of papers by nine leading authorities evaluating the most significant practical and theoretical implications of the decision of the High Court in Gambotto v WCP Ltd."

Review of Gambotto v WCP Ltd: its Implications for Corporate Regulation published in the Company and Securities Law Journal

Looking across South Lawn towards the Arts tower and the Law building at the University of Melbourne.
Teaching

The Faculty of Law at The University of Melbourne has a very strong graduate program in corporate law and securities regulation. The 17 subjects offered are:

- Commercial Applications of Equity*
- Company Takeovers*
- Comparative Companies Law in the Asia-Pacific Region – A Focus on Hong Kong, Japan, Vietnam and the People's Republic of China*
- Corporate Governance and the Duties of Directors*
- The Corporation as Criminal
- Current Issues in Corporate Insolvency*
- Current Issues in Corporate Law*
- Derivatives Regulation
- International Securities Regulation
- Members' Remedies*
- The Reconstruction of Companies
- Regulation of Managed Investments
- Regulation of Securities Offerings
- Regulatory Environment for Corporations
- Restructuring Government Business Enterprises*
- Securities for Corporate Lending
- Superannuation Law

A list of all the Faculty of Law's graduate subjects offered in 1998 is contained in Appendix A.

At the undergraduate level, the following subjects are offered:

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

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

A feature of the graduate program in corporate law is the use of international corporate lawyers. These have included Professor Roberta Karmel who is a former Commissioner of the United States Securities and Exchange Commission; Professor Deborah DeMott of Duke University School of Law; Professor Douglas Branson of the University of Pittsburgh School of Law; Professor Dale Cesterle of the University of Colorado Law School; and Ms Cally Jordan of the Asian Development Bank.

* indicates taught in 1998
Competitive Research Grants Obtained

This section identifies the competitive research grants obtained by members of the Centre in 1998.

**Australian Research Council Strategic Partnership With Industry – Research and Training Grant**

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

**Chief Researchers**
Ms Helen Bird, Professor Ian Ramsay and Professor Arle Foote (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.

**Australian Research Council Large Grant**

**Project title**

**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.

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**Australian Research Council Small Grant**

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

**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.

**University of Melbourne Faculty of Economics and Commerce Research Grant**

**Project title**
The Costs of Corporate Litigation

**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.

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Baldwin Spencer Building, The University of Melbourne.

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 Bonica 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 Corporate Markets and Corporate Performance
Type of Grant
Australian Research Council Collaborative Grant
Chief Researchers
Professor Ian Ramsay, Dr Geoff 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
$20,995 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 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 project will test the actual use made of electronic signatures by investors and their advisers. It will also obtain evidence on why there is substantial non-compliance with the existing law regulating electronic transactions.
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 officers 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 these 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 Geoff Stapledon

Funds received
$12,000

Project summary
Many publicly listed Australian companies have a single shareholder, who, in 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. This in turn would probably lead to improved performance by the Australian corporate sector overall.

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 Steddon

Funds received
$16,540

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.
Supervision of Research

This section identifies the supervision of graduate students undertaken by members of the Centre in 1998.

PhD
  Supervisor: Professor Ian Ramsay
- Ryad Chatrili: Modelling the Application of Future Indonesian Mineral Policy  
  Co-supervisor: Dr Timothy Lindsey
  Supervisor: Dr Timothy Lindsey
- Hadiliah Hawashin: Should Target Company Directors be Allowed to Use Takeover Defensive Measures?  
  Supervisor: Professor Ian Ramsay
- Lam Kwok: Restructuring of State-owned Enterprises in China  
  Supervisor: Professor Malcolm Smith
- Penelope Nicholson: Vietnamese Court Development since 1945  
  Co-supervisor: Dr Timothy Lindsey
- Benny Tjahjaja: The Legal Framework of Corporate Governance in the Indonesian Stock Market – Implications for Shareholders and Foreign Investors  
  Supervisor: Professor Malcolm Smith
- Judith Wade: The Interrelationship of Private International Law Principles and International Corporate Insolvency  
  Supervisor: Dr Greg Reinhardt
- Caron Buten-Wellis: Competition Law and the Role which Disciplines such as Marketing, Business Strategy and Consumer Behaviour should Play in its Conceptualisation and Application  
  Supervisor: Dr Geof Stapledon
- Zhang Xu: The Confucian Mitigations: Liang Shuming's Narrative about Law  
  Supervisor: Professor Malcolm Smith
- Se Se Zhang: Tensions and Implications – Contractual Aspects of Technology Transfer to China  
  Supervisor: Professor Malcolm Smith

SJD
- Helen Bird: Women in the Boardroom – The Impact of Corporate Law upon Female Participation in Corporate Leadership  
  Supervisor: Professor Ian Ramsay
- Alice De Jonge: Media and Markets in China and Hong Kong  
  Supervisor: Professor Malcolm Smith
- Vivien Goldwater: The Regulation of Stock Market Manipulation  
  Supervisor: Professor Ian Ramsay
- Geoffrey Green: Reshaping the Legal and Regulatory Regime for Australian Equity Markets to Facilitate the Development of Small and Medium Sized Enterprises  
  Supervisor: Professor Ian Ramsay
- Pamela Hannah: Legal Constraints on Self Dealing in Managed Investment Schemes  
  Supervisors: Dr Elizabeth Boros and Professor Ian Ramsay

Master of Laws
- Saraf Baidi: The Influence of Foreign Lawyers and APEC on the Development of Law Affecting Commercial Transactions in Indonesia  
  Supervisor: Dr Timothy Lindsey
- John Chelliew: Derivatives – Clearly Dividing the Retail/Wholesale Markets in a Merged Futures/Securities Regime  
  Supervisor: Professor Malcolm Smith
- Donna Cooker: An International Comparative Analysis of Prospectus Liability and Recommendations for Law Reform  
  Supervisor: Professor Ian Ramsay
- Yvonne De Fina: Litigation in Australia in the Next Millennium  
  Supervisors: Mr Greg Reinhardt  
  Co-supervisor: Ms Pamela Hannah
- Ken Hashimoto: Towards the International Harmonization and Unification of the Arbitration Law  
  Supervisor: Professor Malcolm Smith
- Caroline Kenny: Directors and Officers Insurance Policies  
  Supervisor: Mr Greg Reinhardt
- Henry Lloyd: Compulsory Acquisition of Minority Interests  
  Supervisor: Professor Ian Ramsay
- David Naake: Corporate Governance and Responsibility  
  Supervisor: Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia & Ceylon  
  Supervisors: Dr Greg Reinhardt
- Justin Pearse: Analysis of the Risks and Documentation Requirements of a United States Financiers Seeking to Lend Money to Australian Film Producers and Distributors Secured against Distribution Contracts and/or Territorial Rights  
  Supervisor: Associate Professor Mark Srodden
- Andrew Pflaum: The Problems of Financing Infrastructure Development Through the Equity Market in Malaysia  
  Supervisor: Professor Malcolm Smith
- Terry Rees: A New Legal Framework for a Transitional Economy – The Lao Peoples Democratic Republic  
  Supervisor: Professor Malcolm Smith
- David Roche: Class Actions in the Federal Court  
  Supervisor: Mr Greg Reinhardt
The Centre as a Public Resource

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

Submissions
During 1998 members of the Centre were responsible for drafting the following submissions:

- The Corporate Law Economic Reform Program – Opposition Remedy and Statutory Derivative Action. Drafted by Dr Elizabeth Boros for the Companies and Business Organisations Committee of the Law Institute of Victoria and submitted to the Business Law Division of the Federal Department of the Treasury.
- The Corporate Law Economic Reform Program – Compulsory Acquisitions. Personal submission drafted by Dr Elizabeth Boros and submitted to the Business Law Division of the Federal Department of the Treasury.
- The Corporate Law Economic Reform Program – Compulsory Acquisitions. Drafted by Dr Elizabeth Boros for the Companies and Business Organisations Committee of the Law Institute of Victoria and submitted to the Business Law Division of the Federal Department of the Treasury.
- The Corporate Law Economic Reform Program – Directors’ Duty of Care. Personal submission drafted by Dr Geof Stapledon and submitted to the Business Law Division of the Federal Department of the Treasury.
- The Corporate Law Economic Reform Program. Personal submission drafted by Dr Geof Stapledon and submitted to the Parliamentary Joint Committee on Corporations and Securities.
- Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties. Personal submission drafted by Dr Geof Stapledon and Mr Jonathan Bates and submitted to the English and Scottish Law Commissions.
- The Corporate Law Economic Reform Program Proposals. Professor Ian Ramsay participated in the preparation of submissions prepared by the Corporations Law Committee of the Australian Institute of Company Directors and the Corporations Law Committee of the Business Law Section of the Law Council of Australia which were submitted to the Business Law Division of the Federal Department of Treasury.

Requests for information
During 1998 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 a number of interviews to newspaper journalists and radio journalists. In addition, the monograph written by Professor Ian Ramsay, Dr Geof Stapledon and Mr Kenneth Fong titled Institutional Investors’ Views on Corporate Governance received extensive media coverage. This included articles in The Age, The Australian Financial Review, The Sydney Morning Herald, The Herald-Sun, The Daily Telegraph, The Courier Mail and The West Australian.

Some of the newspaper articles published in 1998 which reported on the research of the Centre included:

- ‘Call for overhaul of corporate regulation’, The Age, 24 November 1998
- ‘Institutions seek stronger voice’, The Age, 4 November 1998
- ‘Investors want more influence over boards’, The Sydney Morning Herald, 4 November 1998
- ‘Investors seek leave to lobby’, The West Australian, 4 November 1998
- ‘Big investors admit conflict potential’, The Herald-Sun, 4 November 1998
Appendix A

1998 Faculty of Law Graduate Subjects

Administrative Law: Australia and the United States of America Compared
Advanced Restrictive Trade Practices
Alternative Dispute Resolution
Asia-Pacific Constitutional Systems
Australian Income Tax System
Australian International Taxation
Broadcasting and Telecommunications Law
Commercial Applications of Equity
Commercial Dispute Resolution
Commercial Law in South East Asia
Company Takeovers
Comparative Companies Law in the Asia-Pacific Region
Comparative Law
Comparative US and Australian Taxation
Competition Law and Intellectual Property
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Consumer Credit Law
Copyright and Designs
Corporate Governance and the Duties of Directors
Corporate Taxation
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Current Issues in Corporate Insolvency
Current Issues in Corporate Law
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Employment Law
Energy Regulation Law and Policy
Environmental Law
Environmental Law: Current Energy and Resources Issues
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Insurance Intermediaries
Insurance Litigation
International Carriage of Goods
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International Environmental Law
International Humanitarian Law
International Issues in Intellectual Property
International Law and the Middle East Conflict
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International Trade Law
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Labour Relations Law
Law Medicine and Ethics
Licensing Law and Technology Transfer
The Media and the State
Medical Law: Professionals and Procedures
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Members' Remedies
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Patents and Trade Secrets
Principles of Public and International Law
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Resources Joint Ventures and Transactions
Resources Projects in Indonesia: Legal and Regulatory Issues
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Structure and Operation of the European Community
Taxation of Business and Investment Income
Taxation of Controlled Foreign Companies, Foreign Investment Funds and Transferor Trusts
Taxation of Partnerships and Trusts
Taxation of Remuneration
Trade Marks and Unfair Competition
Transfer Pricing in International Taxation
Unions and Industrial Action
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Appendix B

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Chapters in Books


Tilbury M, 'Uniformity, the Constitution and the Australian Defamation Law at the Turn of the Century' in NJ Mullaney and Justice AM Linden (eds), Torts Tomorrow: A Tribute to John Fleming (1998) LBC Information Services, Sydney, 244–270.


Refereed Journal Articles


Contributions Other than Articles to a Refereed Journal


Reference Work


Reports and Working Papers


