

**Centre for Corporate Law**  
**Melbourne Law School**  
**The University of Melbourne**

**Annual Report 2018**

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### Professor Ian Ramsay

2018 was a very successful year for the Centre for Corporate Law. Members of the Centre continued to undertake important research projects and the Centre conducted an active seminar program dealing with a range of topical matters relevant to academics and practitioners. A list of members and associates is included under the heading '**Academic Members and Associates of the Centre**'.

### Research

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

In 2018, the following books and book chapters were published by Centre members:

- Austin, R and **Ramsay, I**, *Ford, Austin and Ramsay's Principles of Corporations Law* (17th ed), LexisNexis, Australia (2018)
- **Bant, E**, 'Australia' in S Worthington, A Robertson and G Virgo (eds), *Revolution and Evolution in Private Law*, Hart Publishing Ltd, United States (2018), 193-201
- **Bant, E** and Paterson, J, 'Misleading Conduct before the Federal Court: Achievements and Challenges' in P Ridge and J Stellios (eds), *The Federal Court's Contribution to Australian Law: Past, Present and Future*, Federation Press, Australia (2018) 165-186
- **Hanrahan, P, Ramsay, I** and **Stapledon, G**, *Commercial Applications of Company Law* (19th ed), Oxford University Press, Australia (2018)
- **Hanrahan, P** and **Ramsay, I**, 'Regulation of Mutual Funds in Australia' in W Birdthistle and J Morley (eds), *Research Handbook on the Regulation of Mutual Funds*, Edward Elgar Publishing Ltd, United Kingdom (2018), 414-445
- **O'Connell, A**, 'Taxation and the Not-For-Profit Sector Globally: Common Issues, Different Solutions' in M Harding (ed), *Research Handbook on Not-For-Profit Law*, Edward Elgar Publishing Ltd, United Kingdom (2018), 388-417

In addition, Centre members published 23 journal articles, research notes and research reports in 2018.

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

## Grants

Members of the Centre were successful in obtaining the following new grants in 2018:

- Negotiated Enforcement: Regulatory Power and Corporate Misconduct in the Financial Sector (Australian Research Council Discovery Grant)
- Restoring Public Trust in Charities: Reforming Governance and Enforcement (Australian Research Council Discovery Early Career Researcher Award)

In 2018, members of the Centre continued to undertake research funded by grants obtained in earlier years:

- Comparative Insolvency Law in the Asia-Pacific
- Directors' Liability for Insolvent Trading in Australia: Reflections on Recent Reforms From Experience in Singapore and Japan
- Evaluating Australian Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress
- Financial Exclusion, Poor Insurer Practices and Consumer Protection
- Financial Regulation in Asia – A New Model for Regional Cooperation
- Harmful Financial Products: Analysis of Their Impact and Regulation
- Phoenix Activity: Regulating Fraudulent Use of the Corporate Form
- Remuneration of Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends
- The Legal and Social Dimensions of Financial Hardship in Australia: Implications for Legal, Regulatory and Policy Frameworks

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

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

## Seminars and conferences

In 2018 the Centre hosted or participated in the organisation of 10 seminars, with a total estimated attendance of 765, and two major conferences co-hosted with multiple event partners.

A continuing initiative for the Centre in 2018 was the annual Harold Ford Memorial Lecture. The speaker was The Hon Chief Justice Susan Kiefel AC, Chief Justice of the High Court of Australia, who spoke on the topic "Judicial advice to trustees: its origins, purposes and nature".

Other seminars dealt with topics including FinTech, bankruptcy, blockchain, and green bonds.

Full details of the 2018 seminars are included in this report under the heading ‘**Seminars and Conferences**’.

### **Links with peak organisations**

2018 saw the further development of links with peak organisations both in Australia and overseas. Members of the Centre continue to play an active role with organisations such as the Law Council of Australia. This includes participation in writing submissions regarding law reform proposals on behalf of several of these peak organisations. Further details are included in this report under the heading ‘**Links with Peak Organisations**’.

### **Corporate Law Bulletin**

2018 saw the continued development of the Corporate Law Bulletin. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms and distributed in partnership with SAI Global. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2018, 256 issues of the Bulletin had been published.

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

### **Centre for Corporate Law Website**

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

Particular features of the website are:

- **Corporate Law Bulletin:** This section of the website contains an archive of previous issues of the Corporate Law Bulletin published by the Centre for Corporate Law;
- **Research papers:** This section of the website contains a range of topical research papers;
- **Links to other sites of interest:** This section of the website contains links to many other sites divided by category. The categories include:
  - World securities commissions (links to approximately 60 securities commissions);
  - World stock exchanges (links to approximately 110 stock exchanges);

- Asia-Pacific corporate law sites (links are provided, on a country by country basis, to sites such as stock exchanges, securities commissions, corporate law legislation and corporate law judgments for each of these countries);
- Governmental and regulatory bodies;
- Corporate governance (links to a range of organisations which are involved in corporate governance issues);
- Professional and interest bodies;
- Corporate social responsibility;
- Financial news; and
- **History of Australian corporate law** (this section of the website provides information regarding the history of Australian corporate law including links to historical documents).

### Social Media Engagement

A new initiative in 2018 was the launch of a LinkedIn page for the Centre for Corporate Law. The LinkedIn page is a way for the Centre to share research publications by Centre members, publicise events hosted by the Centre, and share other research in the field of corporate law.

### Contributions to law reform and policy focussed research

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

**Dispute resolution in the financial system:** In 2016-2017 Professor Ramsay chaired the independent panel appointed by the Australian Government to review the financial system's external dispute resolution and complaints framework. The panel published two issues papers, an interim report and two final reports: *Review of the Financial System External Dispute Resolution and Complaints Framework, Final Report*, Commonwealth of Australia, 2017, 246 pages (co-author with J Abramson and A Kirkland) and *Review of the Financial System External Dispute Resolution and Complaints Framework, Supplementary Final Report*, Commonwealth of Australia, 2017, 204 pages (co-author with J Abramson and A Kirkland). The panel made 11 recommendations in its final report. All these recommendations were accepted by the government. In February 2018 the Australian Parliament passed the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth) which enacts the recommendations. In November 2018 the Australian Financial Complaints Authority commenced operation.

**ASIC enforcement review taskforce:** In 2016-2017 Professor Ramsay was appointed by the Australian Government to be a member of the Australian Securities and Investments Commission Enforcement Review Taskforce. During the review, the taskforce published 8 consultation papers on matters including the level of penalties for corporate and financial sector misconduct, ASIC's power to ban individuals working in the financial sector, ASIC's licencing powers, search warrant powers, and industry codes in the financial sector. In December 2017, the taskforce submitted its final report with recommendations to the Government. On 20 April 2018, the Commonwealth Treasurer, the Hon Scott Morrison MP, announced that the Government had agreed to all 50 of the Taskforce recommendations and would prioritise the implementation of 30 of the recommendations. In February 2019 the Australian Parliament passed the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2018 (Cth) which enacts the recommendations.

**Australian Securities and Investment Commission enforcement policies, processes and decision-making procedures review:** In 2018-2019 Professor Ramsay was appointed by the Chair of the Australian Securities and Investments Commission to be a member of the ASIC Enforcement Policies, Processes and Decision-Making Procedures Review. The terms of reference for the review stated that it should identify what changes should be made to ASIC's enforcement policies to ensure they are aligned with internal and external expectations of ASIC and ensure ASIC obtains enforcement outcomes that are necessary for a fair, strong and efficient financial system for all Australians. The Review should particularly focus on policies, processes and decision-making procedures relevant to:

- whether or not to enforce the law using criminal and civil proceedings or other regulatory options; and
- the effectiveness and timeliness of the conduct of litigation and of enforcement outcomes.

The review submitted its report to ASIC in January 2019. In February 2019 ASIC announced that it had adopted the recommendations in the report including the establishment of an Office of Enforcement within ASIC.

### **Editorial positions**

Members of the Centre continued in 2018 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Australian Business Law Review*, the *Australian Tax Review* and the *Corporate Law Bulletin*.

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

### **Supervision of graduate students' research**

During 2018, members of the Centre for Corporate Law supervised 13 PhD theses being undertaken by graduate students.



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

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

The research activities of Centre members received significant coverage in the media in 2018. Members of the Centre gave 47 reported interviews to the media in 2018. Further details of the media coverage are included in this report under the heading ‘**The Centre as a Public Resource**’.

### **Visitors to the Centre**

Visitors to the Centre in 2018 included:

- Professor Douglas Arner, University of Hong Kong, Hong Kong
- Professor Danny Bradlow, University of Pretoria, South Africa
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands
- Professor Andrew Keay, University of Leeds, United Kingdom
- Mr Ranjit Singh, Former Chair of the Securities Commission of Malaysia
- Professor Thomas Telfer, Western University, Canada
- Professor Jane K Winn, University of Washington, USA
- Prof Karen Yeung, University of Birmingham, United Kingdom

### **Consultancies and pro bono work**

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

### **Acknowledgments**

Many people deserve thanks for their contribution to the work of the Centre during 2018. In particular, they include the academic members of the Centre, the research fellows and research assistants, and the members of the Australian and International Advisory Boards who have provided valuable advice in relation to particular matters and who have continued to assist the work of the Centre.

## Objectives of the Centre

The objectives of the Centre and its members are to:

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

## International Advisory Board

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

- Professor Theodor Baums, JW Goethe University, Frankfurt, Germany
- Professor Brian Cheffins, Faculty of Law, University of Cambridge, England
- Professor John Coffee, School of Law, Columbia University, USA
- Professor Ronald Daniels, President, John Hopkins University, USA (former Provost and Professor of Law, University of Pennsylvania, USA and former Dean, Faculty of Law, University of Toronto, Canada)
- Professor Deborah DeMott, School of Law, Duke University, USA
- Professor Say Goo, Faculty of Law, University of Hong Kong
- Professor Hideki Kanda, Faculty of Law, University of Tokyo, Japan
- Associate Professor CK Low, Chinese University of Hong Kong
- Professor Jennifer Payne, University of Oxford, United Kingdom
- Professor Roberta Romano, Yale Law School, USA
- The Honourable E Norman Veasey, Former Chief Justice, Supreme Court of Delaware, USA

- Professor Susan Watson, University of Auckland, New Zealand
- Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium

## Australian Advisory Board

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

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

## Academic Members and Associates of the Centre

### Academic members

Members of the Centre in 2018 were:

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

Associate Professor Stacey Steele

### **Associates of the Centre**

Associates of the Centre in 2018 were:

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

### **Research fellows**

Research fellows in 2018 were:

Evgenia Bourova  
Lucinda O'Brien  
Miranda Webster

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

## **Seminars and Conferences**

The Centre for Corporate Law hosted or participated in organising a number of highly successful conferences and seminars during 2018.

### **The New Bankruptcy “Detective Agency”? The Origins of the Superintendent of Bankruptcy in Great Depression Canada**

(31 October 2018)

Speaker: Professor Thomas GW Telfer, Western University Faculty of Law

- Registrations 9

### **2018 Harold Ford Memorial Lecture - "Judicial advice to trustees: its origins, purposes and nature"**

(14 September 2018)

Speaker: The Hon Chief Justice Susan Kiefel AC, Chief Justice of the High Court of Australia

- Registrations 390

### **Technological Innovation and the Implications for the Legal Profession — Taking Global Polyarchy Seriously**

(27 August 2018)

Speaker: Professor Jane K Winn, University of Washington

- Registrations 45

### **Companies, Corporate officers and Public Interests: Are we at a Legal Tipping Point?**

(3 August 2018)

Speaker: Professor Pamela Hanrahan, UNSW Business School

- Registrations 47

### **Contemporary Issues in Corporate and Competition Law: A Conference in Honour of Professor Robert Baxt AO**

(26 June 2018)

Speakers:

- The Hon Chief Justice Thomas F Bathurst AC, Chief Justice of the Supreme Court of New South Wales
- The Hon Justice Ashley Black, Supreme Court of New South Wales
- The Hon Dr Robert Austin, New South Wales Bar
- Professor Caron Beaton-Wells, Melbourne Law School
- Mr Alan Cameron AO, Chairman, NSW Law Reform Commission
- Associate Professor Julie Clarke, Melbourne Law School
- Professor Pamela Hanrahan, UNSW Business School
- Professor Deborah Healey, UNSW Law
- Ms Rebecca Maslen-Stannage, Global Deputy Senior Partner, Herbert Smith Freehills
- Professor Ian Ramsay, Melbourne Law School
- Dr Benjamin Saunders, Deakin Law School

### **The ICO Gold Rush: It's a Scam, It's a Bubble, It's a Super Challenge for Regulators**

(16 May 2018)

Speaker: Prof. Douglas Arner

- Registrations 48

### **Is the Model of Business Format Franchising Broken? And can it be Fixed?**

(9 May 2018)

Speaker: Professor Jenny Buchan, University of New South Wales and Dr Tess Hardy, Melbourne Law School

- Registrations 49

### **G-Zero World and Trade: A Return to Bilateralism and Self-Interest**

(16 April 2018)

Speaker: Professor Bryan Mercurio, Chinese University of Hong Kong

- Registrations 36

### **Regulation by Blockchain: The Emerging Battle for Supremacy between the Code of Law and Code as Law**

(13 April 2018)

Speaker: Professor Karen Yeung, University of Birmingham

- Registrations 103

### **50 Shades of Green: Challenges and Opportunities in the Green Bonds Market**

(26 March 2018)

Speaker: Jan Job de Vries Robbé, Netherlands Development Bank

- Registrations 18

## **Finance and Human Rights: Connecting the Dots**

(2 March 2018)

Speaker: Professor Danny Bradlow, University of Pretoria Law School

- Registrations 20

## **Asian Financial Law Conference**

(23 January 2018)

Hosts: Centre for Cross-Border Commercial Law in Asia, Singapore Management University; Centre for Corporate Law, Melbourne Law School; Transactional Law Group, Melbourne Law School; Asian Institute of International Financial Law, University of Hong Kong; Shandong University

Full details of the seminars and conferences in 2018 and earlier years are available on the [Centre's website](#).

### **Links with Peak Organisations**

The Centre has developed links with peak organisations with an interest in corporate law. During 2018, academic members of the Centre were members of:

- Australasian Law Teachers' Association Executive Committee (Professor Helen Anderson)
- Australian Tax Office, General Anti-Avoidance Panel (Professor Ann O'Connell)
- Australian Tax Office, Public Advice and Guidance Panel (Professor Ann O'Connell)
- Corporations Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Cally Jordan, Associate Professor Rosemary Langford and Professor Ian Ramsay)
- Corporate Law Teachers Association, Executive Committee (Professor Helen Anderson)
- Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia (Professor Helen Anderson)
- International Financial Experts Panel of the P.R.I.M.E. Finance Foundation, The Hague (Associate Professor Cally Jordan)
- Not for Profit Legal Practice and Charities Committee of the Law Council of Australia (Associate Professor Rosemary Langford)
- Panel of Foreign Arbitrators, Shanghai International Arbitration Centre (Associate Professor Andrew Godwin)

- Taxation Committee, Business Law Section of the Law Council of Australia (Professor Ann O’Connell)

## Editorial Positions

During 2018 academic members of the Centre occupied editorial positions with a number of corporate law and other publications:

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

- *Singapore Academy of Law Journal* (Member of the International Editorial Board: Professor Ian Ramsay)
- *SSRN eJournal, Fiduciary Law* (Member of the Editorial Advisory Board: Associate Professor Rosemary Langford)

## Research

The following is a list of some of the publications of members of the Centre for Corporate Law in 2018. Some members of the Centre publish in several areas and only publications relevant to the objectives of the Centre are listed below.

### Books

Austin, R and **Ramsay, I**, *Ford, Austin and Ramsay's Principles of Corporations Law* (17 ed), LexisNexis, Australia (2018)

**Hanrahan, P, Ramsay, I and Stapledon, G**, *Commercial Applications of Company Law* (19 ed), Oxford University Press, Australia (2018)

### Chapters in books

**Bant, E**, 'Australia' in S Worthington, A Robertson and G Virgo (eds), *Revolution and Evolution in Private Law*, Hart Publishing Ltd, United States (2018), 193-201

**Bant, E** and Paterson, J, 'Misleading Conduct before the Federal Court: Achievements and Challenges' in P Ridge and J Stellios (eds), *The Federal Court's Contribution to Australian Law: Past, Present and Future*, Federation Press, Australia (2018) 165-186

**Hanrahan, P** and **Ramsay, I**, 'Regulation of Mutual Funds in Australia' in W Birdthistle and J Morley (eds), *Research Handbook on the Regulation of Mutual Funds*, Edward Elgar Publishing Ltd, United Kingdom (2018), 414-445

**O'Connell, A**, 'Taxation and the Not-For-Profit Sector Globally: Common Issues, Different Solutions' in M Harding (ed), *Research Handbook on Not-For-Profit Law*, Edward Elgar Publishing Ltd, United Kingdom (2018), 388-417

### Journal articles and research notes

**Anderson, H**, 'Illegal Phoenix Activity: Practical Ways to Improve the Recovery of Tax' (2018) 40(2) *Sydney Law Review* 255-287

**Anderson, H**, 'Shelter from the Storm: Phoenix Activity and the Safe Harbour' (2018) 41(3) *Melbourne University Law Review* 999-1034



**Anderson, H**, ‘Insolvency—It’s All About the Money’ (2018) 46(2) *Federal Law Review* 287-312

**Anderson, H** and Hardy, T, ‘Superannuation Guarantee Contributions as a Tax: The Case for Reincarnation over Reform’ (2018) 33(3) *Australian Tax Forum* 497-532

**Bourova, E**, Anderson, M, **Ramsay, I** and **Ali, P**, ‘Impacts of Financial Literacy and Confidence on the Severity of Financial Hardship in Australia’ (2018) 12(4) *Australasian Accounting Business and Finance Journal* 4-24

**Bromberg, L**, **Godwin, A** and **Ramsay, I**, ‘Cross-border Cooperation in Financial Regulation: Crossing the Fintech Bridge’ (2018) 13(1) *Capital Markets Law Journal* 59-84

**Bromberg, L**, **Ramsay, I** and **Ali, P**, ‘The Vulnerability of Older Australians in Bankruptcy: Insights from an Empirical Study’ (2018) 39(2) *Adelaide Law Review* 393-437

Chan, A, **Godwin, A** and **Ramsay, I**, ‘Depositor Preference and Deposit Insurance Schemes - Challenges for Regulatory Convergence and Regulatory Coordination in Asia’ (2018) 12(2) *Law and Financial Markets Review* 71-85

Chen, V, **O’Brien, L** and **Ramsay, I**, ‘An Evaluation of Debt Agreements in Australia’ (2018) 44(1) *Monash University Law Review* 151-197

**Gilligan, G**, ‘The Hayne Royal Commission and Trust Issues in the Regulation of the Australian Financial Sector’ (2018) 12(4) *Law and Financial Markets Review* 175-185

**Hedges, J**, **Anderson, H**, **Ramsay, I** and Welsh, M, ‘Harmful Phoenix Activity and Disqualification from Managing Corporations: An Unenforceable Regime?’ (2018) 36(2) *Company and Securities Law Journal* 169-174

**Hedges, J**, **Ramsay, I**, Welsh, M and **Anderson, H**, ‘The Potential Economic Gains from Increasing Public Law Enforcement Against Illegal Phoenix Activity’ (2018) 44(1) *Monash University Law Review* 267-311

Kourabas, S and **Ramsay, I**, ‘Equity Crowdfunding in Australia and New Zealand’ (2018) 29(9) *International Company and Commercial Law Review* 571-589

Kourabas, S and **Ramsay, I**, ‘Equity Crowdfunding in Malaysia’ (2018) 39(6) *The Company Lawyer* 187-196

**Langford, R**, ‘Client Letters as a Means of Refining Legal Analysis and Writing’ (2018) 31(1) *The Second Draft* 30-34

**Langford, R** and **Ramsay, I**, ‘Is a Conflict of Interest under the General Law the same as a Material Personal Interest under the Corporations Act?’ (2018) 36(3) *Company and Securities Law Journal* 284-287

**O'Brien, L, Ramsay, I and Ali, P**, 'The Hidden Dimension of Business Bankruptcy in Australia' (2018) 46(5) *Australian Business Law Review* 291-306

Martin, F and **O'Connell, A**, 'Crowdfunding: What are the Tax Issues?' (2018) 20(2) *Journal of Australian Taxation* 16-33

**Ramsay, I** and Sandonato, B, 'An Analysis of the Business Objectives of the Largest Listed Companies in Australia, The United Kingdom and the United States' (2018) 36(1) *Company and Securities Law Journal* 98-110

**Ramsay, I** and Tan, C, 'Social Impact Bonds in Australia' (2018) 29(3) *Journal of Banking and Finance Law and Practice* 248-257

**Sempill, J**, 'What Rendered Ancient Tyrants Detestable: The Rule of Law and the Constitution of Corporate Power' (2018) 10(2) *Hague Journal on the Rule of Law* 219-253

**Steele, S, Godwin, A, Jin, C, Han, C, Ren, Y and Chi, W**, 'Trends and Developments in Chinese Insolvency Law: The First Decade of the PRC Enterprise Bankruptcy Law' (2018) 66(3) *American Journal of Comparative Law* 669-711

**Steele, S, Wee, M and Ramsay, I**, 'Remunerating Corporate Insolvency Practitioners in the United Kingdom, Australia, and Singapore: The Roles of Courts' (2018) 13(1) *Asian Journal of Comparative Law* 141-172

#### **News columns and blog posts**

**Godwin, A and Ramsay, I**, "[Depositor preference and deposit insurance schemes: Challenges for regulatory convergence and regulatory coordination in Asia](#)", Oxford Business Law Blog, 10 September 2018

**Ali, P, O'Brien, L and Ramsay, I**, "[Melbourne Law School research explores the practical impact of personal insolvency](#)", Personal Insolvency Register, Vol 16 No 1, March 2018

**Bromberg, L, Godwin, A and Ramsay, I**, "[Cross-border cooperation in financial regulation: Crossing the fintech bridge](#)", The CLS Blue Sky Blog, Columbia Law School's Blog on Corporations and the Capital Markets, 13 February 2018

**Godwin, A and Ramsay, I and Webster, M**, "[International commercial courts: The Singapore experience](#)", Oxford Business Law Blog, 31 January 2018

## Teaching

Melbourne Law School has a very strong master's program in corporate law and banking & finance law. The subjects offered in 2018 were:

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

A feature of the master's program in corporate law is the use of international lecturers. These included in 2018:

- Professor Douglas Arner, University of Hong Kong, Hong Kong (International Financial System: Law and Practice)
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands (Debt Capital Markets)
- Professor Thomas Telfer, Western University, Canada (Comparative Corporate Insolvency Law)
- Professor Jane Winn, University of Washington, United States (Regulation of FinTech)
- Prof Karen Yeung, University of Birmingham, United Kingdom (Regulatory Policy and Practice)

## Corporate Law Bulletin

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

By the end of 2018, 256 issues of the Bulletin had been published.

The monthly Bulletin includes the following:

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

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

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

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

<http://www.saiglobal.com>

## Competitive Research Grants

This section identifies the competitive research grants that were obtained by members of the Centre in 2018, or that were obtained earlier than 2018 but continued to fund research in 2018. A complete list of all research grants obtained is available on the [Centre's website](#) as well as [publications resulting from the major research grants](#).

### New Grants Obtained in 2018

#### Negotiated Enforcement: Regulatory Power and Corporate Misconduct in the Financial Sector

##### Type of grant

Australian Research Council Discovery Grant

##### Funds allocated

\$311,000

## **Chief Investigator**

Professor Ian Ramsay (Melbourne Law School)

## **Project summary**

There is growing concern within the community, consumer advocates, elected representatives and the finance industry itself about the increasing preference of regulators to use negotiated enforcement mechanisms rather than litigation to counter serious corporate misconduct in the financial sector. This paradigm shift in regulatory enforcement raises concern because these practices may: lack transparency; be inefficient; fail to deter corporate misbehaviour; and may operate to subvert individual justice and the rule of law. This project aims to address these concerns by developing detailed recommendations for reform based on an innovative and exhaustive examination of the theory and practices of Australian and US financial regulators.

## **Restoring Public Trust in Charities: Reforming Governance and Enforcement**

### **Type of grant**

Australian Research Council Discovery Early Career Researcher Grant

### **Funds allocated**

\$401,980

## **Chief Investigator**

Associate Professor Rosemary Langford (Melbourne Law School)

## **Project summary**

This project aims to undertake a comprehensive and comparative investigation of governance and enforcement in the charitable sector in Australia. Public trust in the charitable sector has been damaged by governance failures, particularly in religious contexts, exacerbated by the sector's complex and incoherent governance system. As yet, there has been limited academic consideration or empirical analysis of the effectiveness of the governance and regulatory framework of the sector or concrete reform proposals. This project aims to undertake comparative analysis and empirical research of these aspects, and to develop proposals for effective law and policy reform. This is expected to strengthen and maximise the sector's capacity to contribute to the social and economic life in Australia.

## **Grants Obtained Earlier than 2018 but Continuing to Fund Research in 2018**

### **Financial Exclusion, Poor Insurer Practices and Consumer Protection**

### **Type of grant**

Australian Research Council Discovery Grant

## **Funds allocated**

\$358,916

## **Chief Investigators**

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

## **Project summary**

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

## **Harmful Financial Products: Analysis of Their Impact and Regulation**

### **Type of grant**

Australian Research Council Linkage Grant

### **Funds allocated**

\$620,000

### **Chief Investigators**

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

### **Partner Organisations**

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

### **Project summary**

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

## **Directors' Liability for Insolvent Trading in Australia: Reflections on Recent Reforms from Experience in Singapore and Japan**

### **Type of grant**

Melbourne Law School International Collaboration Fund

### **Funds allocated**

\$9,110

### **Chief Investigators**

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

### **Project summary**

This project will compare approaches to director liability in an insolvency context in Australia, Singapore and Japan. A director may be liable in Australia if a company of which she or he is a director incurs a debt when it is insolvent, or becomes insolvent by incurring that debt, and there are reasonable grounds for suspecting that the company was insolvent, or would become insolvent (Corporations Act 2001, section 588G). Recently, the Australian government proposed amendments to the statutory provisions imposing liability for insolvent trading by directors. The project will evaluate the approaches to director liability when a company is insolvent in the three countries in light of the proposed reforms.

## **Comparative Insolvency Law in the Asia-Pacific**

### **Type of grant**

Melbourne Law School International Collaboration Fund

### **Funds allocated**

\$9,735

### **Chief Investigators**

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

### **Project summary**

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

## **Evaluating Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress**

### **Type of Grant**

Australian Research Council Linkage Grant

### **Funds Received**

\$425,465

### **Chief Investigators**

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

### **Partner Organisations**

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

### **Project Summary**

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

## **Phoenix Activity: Regulating Fraudulent Use of the Corporate Form**

### **Type of Grant**

Australian Research Council Discovery Grant

### **Funds Received**

\$403,000

### **Chief Investigators**

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

### **Project Summary**

Fraudulent phoenix activity is of great concern to Australian policymakers. It occurs where there is the deliberate liquidation of a company to avoid paying debts but the business



continues through another company, and in corporate groups through the liquidation of undercapitalised subsidiaries and transfer of business to other companies in the group. This behaviour causes huge losses in taxation revenue and large financial losses for employees and unsecured creditors. To strengthen Australia's economic fabric, this project aims to determine the optimal method of dealing with fraudulent phoenix activity through a thorough examination of all of its aspects in Australia and by a comparative analysis of international responses.

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

#### **Type of Grant**

Australian Research Council Discovery Grant

#### **Funds Received**

\$396,000

#### **Chief Investigators**

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

#### **Project Summary**

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

### **Financial Regulation in Asia – A New Model for Regional Cooperation**

#### **Type of Grant**

Melbourne School of Government Research Cluster Grant

#### **Funds Received**

\$213,917

#### **Chief Investigators**

Associate Professor Andrew Godwin (Melbourne Law School), Professor Andrew Mitchell (Melbourne Law School), Professor Ian Ramsay (Melbourne Law School),

Professor Kevin Davis (Faculty of Business and Economics, University of Melbourne), and Professor Andrew Walter (Faculty of Arts, University of Melbourne)

### **External Collaborators**

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

### **Project Summary**

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

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

#### **Type of grant**

NUS Law - MLS Research Partnerships

#### **Funds received**

\$20,000

#### **Chief Investigators**

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

#### **Project summary**

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

## Supervision of Graduate Students' Research

This section identifies the supervision of graduate students undertaken by members of the Centre in 2018.

### PhD theses in progress

- Busch, Matthew: 'Indonesia as a weak state: authority and competition in post-Suharto Indonesia'  
*Supervisor:* Professor Tim Lindsey
- Dewi, Apsari, 'International crime cooperation in extradition between Indonesia and Australia'  
*Supervisors:* Professor Tim Lindsey and Professor Jeremy Gans
- Howell, Nicola, 'The use and impact of legal solutions to consumer over-indebtedness: A comparison of Australian and Dutch approaches'  
*Supervisors:* Professor Jeannie Paterson and Professor Ian Ramsay
- Khatarina, Josi: 'Assessing central government performance in a decentralized natural resource management setting: A case study of environmental governance of the palm oil industry in Indonesia'  
*Supervisor:* Professor Tim Lindsey
- Landau, Ingrid: 'From rights to risks: transnational labour regulation and the emerging business of human rights due diligence'  
*Supervisors:* Professor John Howe and Professor John Tobin
- Legg, Michael: 'Public and private enforcement of securities laws in Australia'  
*Supervisors:* Professor Helen Anderson and Professor Ian Ramsay
- Mulyani, Lilis: 'Reforming legal personhood in Indonesian land law: Towards equitable land rights'  
*Supervisor:* Professor Tim Lindsey
- Newman, Andrew: 'Temporary migrant labour schemes in the Australian and Canadian agricultural sectors from a rights based perspective'  
*Supervisor:* Professor John Howe
- Sjarief, Rifqi: 'Socio-legal study of criminal sentencing in Indonesia: Case study of decisions in selected courts'  
*Supervisor:* Professor Tim Lindsay
- Rulliadi, Dudi: 'Indonesian public-private partnerships (PPPs): A legal study on private sector participation in infrastructure development in the post 'new-order' era'  
*Supervisor:* Professor Tim Lindsay

- Tranfaglia, Maria Azzurra, ‘Precarious work and the quest for “good” flexibility: A comparative study of agency work and its regulation in Italy and Australia ’  
*Supervisors:* Professor John Howe and Anthony Forsyth
- Triana, Windy, ‘Schooling judges: The education of religious court judges in Indonesia’  
*Supervisors:* Professor Tim Lindsey and Associate Professor Farrah Ahmed
- Widiatedja, I Gusti Ngurah Parikesit (Pary), ‘The relationship between trade and investment agreements and the national interest: A case study of tourism in Indonesia’  
*Supervisors:* Professor Tim Lindsey and Dr Jenny Beard

## The Centre as a Public Resource

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

### Submissions

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

### Requests for information

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

### Media

During the course of 2018 members of the Centre gave 47 reported interviews to newspaper, radio and television journalists. A list of these interviews is available on the [Centre's website](#).