

**CENTRE FOR CORPORATE LAW AND  
SECURITIES REGULATION**

**Faculty of Law  
The University of Melbourne**

**Annual Report  
2001**

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## **DIRECTOR'S REPORT**

### **Professor Ian Ramsay**

2001 proved to be a very successful year for the Centre for Corporate Law and Securities Regulation. Members of the Centre continued to undertake major research projects and the Centre conducted a major conference and seminar program dealing with a range of topical matters relevant to academics and practitioners.

#### **Changes in membership of the Advisory Board**

##### **Australian Advisory Board**

Justice Philip Mandie and Justice Marilyn Warren, both of the Victorian Supreme Court, joined the Australian Advisory Board in 2001.

Mr Richard Kneebone resigned from the Advisory Board in 2001 following his resignation from Orica Limited. Mr Shane Tregillis also resigned from the Advisory Board following his resignation from the Australian Securities and Investments Commission.

##### **International Advisory Board**

As noted above, Mr Shane Tregillis resigned from his position as ASIC's Executive Director of Policy and Markets Regulation to take up an appointment as Assistant Managing Director (Securities and Futures) of the Monetary Authority of Singapore. Mr Tregillis has been a valuable member of the Australian Advisory Board and I am pleased to report that he has joined the International Advisory Board of the Centre for Corporate Law.

##### **Research**

Members of the Centre for Corporate Law continue to maintain a very active research program. Earlier in 2001, the 10th edition of *Ford's Principles of Corporations Law* was published by Butterworths. The authors are Professor Harold Ford, Justice Robert Austin and Professor Ian Ramsay.

Another book published in 2001 was the 5th edition of *Corporations Law – In Principle* (previously titled *Corporations Law Workbook*). The authors are Susan Woodward, Helen Bird and Sally Sievers.

The 2nd edition of *Commercial Applications of Company Law* was published in 2001. The authors are Pamela Hanrahan, Ian Ramsay and Geof Stapledon.

In addition, 2001 has seen a steady stream of articles published, or accepted for publication, in major law journals such as the *Australian Business Law Review*, the *Federal Law Review* and the *Company and Securities Law Journal*. These articles include:

- ‘Financial Services Reform in Australia’ (2001) 5 *Singapore Journal of International and Comparative Law* 485-515 (authored by Ian Ramsay)
- ‘Political Donations by Australian Companies’ (2001) 29 *Federal Law Review* 177-218 (co-authored by Ian Ramsay, Geof Stapledon and Joel Vernon)
- ‘Piercing the Corporate Veil in Australia’ (2001) 19 *Company and Securities Law Journal* 250-271 (co-authored by Ian Ramsay and David Noakes)
- ‘Corporate Groups in Australia’ (2001) 29 *Australian Business Law Review* 7-32 (co-authored by Ian Ramsay and Geof Stapledon)
- ‘Directors’ Conflicts: An Empirical Study’ in M Andenas and D Sugarman (eds), *Directors’ Conflicts of Interest: Legal, Socio-Legal and Economic Analysis*, Kluwer International, London, 2001, 141-162 (co-authored by Ian Ramsay and Geof Stapledon)
- ‘Incorporation and Regulation of Non-Profit Associations in Australia and Other Common Law Jurisdictions’ (2001) 13 *Australian Journal of Corporate Law* 124-142 (authored by Sally Sievers)
- ‘Institutional Investors: What are their Responsibilities as Shareholders?’ in J Parkinson, A Gamble and G Kelly (eds), *The Political Economy of the Company*, Hart Publishing, Oxford, 2001, 195-231 (authored by Geof Stapledon)

Members of the Centre for Corporate Law continue to undertake major research projects which have been funded by competitive research grants. Projects underway in 2001 include:

- Accountability and Corporate Governance in Non-Profit Companies
- Directorship in Entrepreneurial Firms and the Role of Public and Private Capital Markets
- The Governance of Managed Investment Schemes
- Use and Operation of the Enforcement Regime Attracted by Contraventions of Directors’ Duties in the Australian Corporations Law
- South-East Asian Laws in Transition: 1945-1995

An important aspect of the Centre’s research program is its research report series in corporate law and securities regulation. 2001 saw the publication of 2 further reports. These were:

- Anne-Marie Neagle and Natasha Tsykin, *‘Please Explain’: ASX Share Price Queries and the Australian Continuous Disclosure Regime*
- Ian Ramsay and Geof Stapledon, *Corporate Governance: The Role of Superannuation Trustees*

These research reports received extensive press coverage which is noted below under the heading ‘Media Coverage of Centre Activities’.

The research report titled *Corporate Governance: The Role of Superannuation Trustees* was featured as the cover story in the 12-18 March, 2001 issue of *Investor Weekly* – one of Australia’s leading institutional investment industry publications. The article can be viewed at <http://cclsr.law.unimelb.edu.au/news/investor-article.html>.

In addition, 2001 saw widespread media attention focussed on other research by Centre members, notably the report by Professor Ian Ramsay to the Minister for Financial Services Regulation on audit independence. The Minister, Joe Hockey, commended the report for striking “a good balance between safeguarding shareholders’ interests and preserving the commercial interests of public companies” and urged industry to consider its recommendations. The report was widely welcomed by key industry stakeholders and the major political parties as a focal point for the debate on auditor independence.

The Centre for Corporate Law research report titled *Proxy Voting in Australia’s Largest Companies* was referred to by the Commonwealth Treasurer, the Honourable Peter Costello MP in Parliament in April 2001. This research report has also been relied upon by the Australian Stock Exchange in its response to submissions received in relation to proposed ASX Listing Rule amendments, published in 2001.

### **Seminars**

In 2001 the Centre hosted or was involved in the organisation of 11 seminars and conferences. Frequently, 100 or more people register for the Centre’s seminars.

There were two distinguishing features of the conference and seminar program in 2001. First, on 16 March 2001, the Centre for Corporate Law organised (and co-hosted with The University of Melbourne Law School and The University of Melbourne Law Society) a one-day conference titled ‘Key Developments in Corporate Law and Equity – A Celebration of the Scholarship of Emeritus Professor Harold Ford’. Approximately 160 people registered for the conference. It was followed by a very successful dinner celebrating the 80th birthday of Professor Harold Ford. The after dinner speaker was Justice Kenneth Hayne of the High Court.

A second distinguishing feature of the 2001 conference and seminar program was that, for the first time, the Centre for Corporate Law organised seminars in Sydney. Two seminars held in Melbourne (Market Misconduct and the Financial Services Reform Bill and The New Takeovers Panel) were also held in Sydney.

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

The seminars and conferences dealt with topics including ‘The New Takeovers Panel: Key Issues and Developments’, ‘Market Misconduct and the Financial Services Reform Bill’, ‘Dual Listed Companies: Structure and Legal Issues’, ‘Lock-ups and Break Fees in the United States’, ‘Penalties and Regulatory Enforcement’, ‘The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads’, ‘The Very Uncertain Prospect of Global Convergence in Corporate Governance’, ‘2001 Australian Securities and Investments Commission Summer School’, ‘Enforcement of Foreign Country Judgments and the Proposed Hague Convention’ and ‘A Transactional Framework To Interpret Contact Law’.

Full details of the 2001 seminar and conference program are included under the heading ‘Seminars’.

## **Links with peak organisations**

2001 saw the further development of links with peak organisations both in Australia and overseas. Members of the Centre continue to play an active role with organisations such as the Law Council of Australia and the Australian Institute of Company Directors. This includes writing submissions regarding law reform proposals on behalf of several of these peak organisations.

## **Corporate Law Bulletin**

2001 saw the continued development of the Corporate Law Electronic Bulletin. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Stock Exchange and leading national law firms. 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 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.

## **Centre for Corporate Law Website**

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

- Corporate Law Judgments. This section of the website contains a comprehensive database of corporate law judgments delivered by courts of all Australian jurisdictions since September 1999.
- Corporate Law Electronic Bulletin. This section of the website contains an archive of all the issues of the Corporate Law Electronic Bulletins published by the Centre for Corporate Law.
- Research papers. This section of the website contains a range of topical research papers which deal with matters such as the Financial Services Reform Act, the Takeovers Panel, dual listed companies, and directors' duties.
- Links to other sites of interest. This section of the website contains links to many other sites divided by category. The categories include:
  - World securities commissions (links to approximately 60 securities commissions);
  - World stock exchanges (links to approximately 110 stock exchanges)
  - Asia-Pacific corporate law and securities regulation sites;
  - Governmental and regulatory bodies;
  - Corporate governance;
  - Professional and interest bodies;
  - Corporate social responsibility;
  - Financial news.

## **Contributions to law reform**

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

## **Editorial positions**

Members of the Centre continued in 2001 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Company, Financial and Insolvency Law Review* and the *International and Comparative Corporate Law Journal*.

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

Members of the Centre for Corporate Law supervised in 2001 a large number of theses being undertaken by graduate students. Of the theses, 25 were PhD theses; three were SJD theses, and five Master of Laws theses.

## **Staff developments**

In 2001, Professor Ian Ramsay was re-elected President of the Corporate Law Teachers Association.

Geof Stapledon was promoted to Associate Professor and Reader, effective 1 January 2001.

## **Auditors' Independence Report**

On 4 October 2001 the Minister for Financial Services and Regulation, the Hon Joe Hockey, welcomed a report by Professor Ian Ramsay on audit independence in Australia. Professor Ramsay had been commissioned by Minister Hockey to prepare the report for the Government.

Key recommendations include:

- inserting in the Corporations Act, which currently has several provisions dealing with auditors' independence, a requirement for auditors to be independent;
- strengthening, and bringing into line with best practice internationally, those provisions in the Corporations Act which deal with employment relationships between auditors and their clients and financial relationships between auditors and their clients;
- improved disclosure of non-audit services provided by auditors to their client so that the dollar value of all non-audit services is disclosed, divided by category of service, with appropriate discussion of those services;
- requiring all listed companies to have an audit committee;
- establishment of an auditor independence supervisory board; and



- measures to improve the operation of the Companies Auditors and Liquidators Disciplinary Board.

Minister Hockey stated in his media release: “We must ensure the independence of auditors is preserved and that stakeholders are secure with the knowledge that the auditor is objective and independent. Professor Ramsay’s recommendations strike a good balance between safeguarding shareholders’ interests and preserving the commercial interests of public companies. Regulation of auditors must be workable for all companies. Professor Ramsay’s report makes a substantial contribution to the debate and I urge industry to give it their careful consideration.”

The Shadow Minister for Financial Services and Regulation, Senator Stephen Conroy, in a media release issued on 4 October 2001 stated that the Labor Party welcomed the report by Professor Ramsay and its recommendations. The Australian Democrats’ Business and Corporate Affairs spokesperson, Senator Andrew Murray, in a media release dated 4 October 2001, stated that the Democrats “unreservedly supported the recommendations” on the basis that they will improve auditor independence.

In other media releases, the Australian Institute of Company Directors welcomed the publication of the report by Professor Ramsay. Chief Executive Officer of the AICD John Hall, stated that “AICD is pleased to see the Report implements many of the initiatives mentioned in the recently published Audit Committees Best Practice Guide produced by AICD, the Auditing and Assurance Standards Board of the Australian Accounting Research Foundation and the Institute of Internal Auditors. The Report adds further impetus to our constant message to all company boards that the independence of their auditors and the work of their audit committees is crucial to the integrity of the market. And the AICD is happy to assist in developing appropriate independence rules recommended by the Report”, Mr Hall said.

The major accounting bodies also issued media releases commenting on the report. The CEO of CPA Australia, Mr Greg Larsen, in a media release dated 4 October 2001, stated: “The report enshrines best practice audit principles, reinforces the vital role of auditors in our financial structure, and gives the public highly visible assurance on matters of auditors’ independence. Professor Ramsay’s recommendations are both considered and balanced, and very appropriate in addressing the concerns of the public. In particular, as the professions peak accounting body, we welcome the creation of an auditor independence supervisory board similar to that in place in the UK. This would provide arm’s length scrutiny of audit independence issues and practices.” The Institute of Chartered Accountants, in a media release dated 4 October 2001, stated that the report “is a significant step towards improving the role and effectiveness of audits in Australia whilst maintaining harmony with global standards. The ICAA and the accounting profession look forward to working with all stakeholders to implement the recommendations of Professor Ramsay to revise and update the Corporations Act and the Australian standards governing audit independence thereby enhancing good corporate governance.”

The report is available at <http://www.treasury.gov.au> or <http://cclsr.law.unimelb.edu.au> under “what’s new”

## **Media coverage of Centre activities**

The research activities of Centre members received significant coverage in the media. The research reports published in 2001 were the subject of many newspaper articles. In addition, during the year, members of the Centre gave 76 media interviews.

## **Visitors to the Centre**

Visitors to the Centre in 2001 have included Professor David Skeel, University of Pennsylvania; Professor Anthony Ogus, University of Manchester and Research Professor, University of Maastricht; Professor Cindy Schipani, University of Michigan, Professor Doug Branson, University of Pittsburgh; Professor John Farrar, Bond University; Professor Brian Cheffins, University of Cambridge; and Professor Deborah DeMott, Duke University.

## **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. In 2001 Sue Woodward continued her work as a Director of the Schizophrenia Australia Foundation and provided advice to the Foundation on corporate law matters. Professor Ian Ramsay provided pro bono advice to several community organisations.

Members of the Centre have also provided their expertise in relation to significant corporate transactions including company restructurings, takeovers, schemes of arrangement and capital raising transactions.

## **Acknowledgments**

Many people deserve thanks for their contribution to the work of the Centre during 2001. They include the members of the Australian Advisory Board and, in particular, the Chair of the Australian Advisory Board, the Hon Mr 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.

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 2001. 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.

## **PURPOSES AND OBJECTIVES OF THE CENTRE**

The objectives of the Centre and its members are to:

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

## INTERNATIONAL ADVISORY BOARD

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

- Professor Theodor Baums, University of Osnabruck, Germany
- Professor Brian Cheffins, Faculty of Law, University of Cambridge, England
- Professor John Coffee, School of Law, Columbia University, USA
- Professor Ronald Daniels, Dean, Faculty of Law, University of Toronto, Canada
- Professor Deborah DeMott, School of Law, Duke University, USA
- Professor Kenjiro Egashira, Faculty of Law, University of Tokyo, Japan
- Associate Professor Say Goo, Faculty of Law, University of Hong Kong
- Professor Hideki Kanda, Faculty of Law, The University of Tokyo
- Professor Jiang Ping, China University of Political Science and Law, China
- Professor Dan Prentice, Faculty of Law, Oxford University, England
- Professor Roberta Romano, Yale Law School, USA
- Professor Sang-Hyun Song, Dean, College of Law, Seoul National University, Korea
- The Honourable Justice Edmund Thomas, Court of Appeal of New Zealand
- Shane Tregillis, Assistant Managing Director, Securities and Futures Department, Financial Supervision Group, Monetary Authority of Singapore
- The Honourable Justice E Norman Veasey, Chief Justice, Supreme Court of Delaware, USA
- Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium

## **AUSTRALIAN ADVISORY BOARD**

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

- The Hon Mr Justice Hayne, High Court of Australia (Chair)
- Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks
- Jeremy Blackshaw, Partner, Minter Ellison
- Tom Bostock, Partner, Mallesons Stephen Jaques
- Mark Burger, Partner, Phillips Fox
- Stephen Creese, Vice-President and General Counsel, Rio Tinto Limited
- Quentin Digby, Partner, Freehills
- Tony Greenwood, Partner, Blake Dawson Waldron
- Michael Hoyle, Director, Macquarie Corporate Finance
- Richard Kneebone, Corporate Secretary, Orica Limited
- Alison Lansley, Partner, Mallesons Stephen Jaques
- Rodd Levy, Partner, Freehills
- The Hon Justice Philip Mandie, Supreme Court of Victoria
- Charles Rosedale, Partner, Clayton Utz
- Joseph Santamaria QC, Member of the Victorian Bar
- Ray Schoer, Director of IOOF Ltd, IIML Ltd and Australian Property Exchange Ltd, and former National Director of the Australian Stock Exchange
- Carl Thompson, Partner, Corrs Chambers Westgarth
- Catherine Walter, Director of National Australia Bank Limited, Australian Stock Exchange Limited, Mercury Asset Management Limited, SGIO Insurance Limited and Victorian Workcover Authority
- The Hon Justice Marilyn Warren, Supreme Court of Victoria
- Jon Webster, Partner, Arthur Robinson & Hedderwicks

## ACADEMIC MEMBERS OF THE CENTRE

The following academics were members of the Centre in 2001:

### **Ms Helen Bird**

Helen Bird is a graduate in Law (Hons) and Commerce from the University of Queensland. After graduation, she completed her articles of clerkship and worked as a solicitor in the corporate, property and commercial litigation departments of Freehills. She joined The University of Melbourne in 1994 and teaches Contract Law, Corporate Law and Principles of Business Law. Her research interests are corporate governance, corporate regulation and enforcement, and legal theory. She is the co-author (with Susan Woodward) of *Corporations Law – In Principle* (LBC Information Services, 5th ed, 2001) which is accompanied by a Teachers' Manual.

### **Ms Hellen Blue**

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

### **Ms Pamela Hanrahan**

Pamela Hanrahan joined the academic staff of The University of Melbourne as a Senior Lecturer in February 1997, having previously practised corporate law and securities law as a Senior Associate with Arthur Robinsons & Hedderwicks in Melbourne. She holds Honours degrees in Arts and Law from The University of Melbourne and a Master of Laws from Case Western Reserve University, Ohio USA, and is currently completing an SJD at The University of Melbourne.

She teaches Corporations Law at the undergraduate level in both the Law and Commerce faculties, and Regulation of Managed Investments as part of the Law School's graduate program. Her research interests include the law of managed funds, corporate and securities law and derivatives regulation. Pamela is Special Counsel with Arthur Robinson & Hedderwicks.

### **Ms Lesley Hitchens**

Lesley Hitchens holds Bachelor degrees in Arts from Macquarie University and Laws from the University of New South Wales. She also holds a Masters degree in Law from the University of London.

After graduation, Lesley worked for seven years in practice, first with Allen Allen & Hemsley, Sydney, and then with Herbert Smith in London. In 1989 she took up an academic position at the University of Leicester, moving to the

University of Warwick in 1996. She joined The University of Melbourne in July 2000.

Lesley's academic interests include corporations law and banking law, although her main research activity is broadcasting regulation. She has published with Professor Eric Barendt, University College London, a cases and materials book on media law. Before leaving the UK she was part of a European team involved in a government-funded project to advise on the drafting of a new media ownership and control law for Russia.

Lesley teaches Corporations Law and Electronic Communications.

### **Mr Jurgen Kurtz**

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

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

Jurgen is currently completing his LLM by research thesis at The University of Melbourne. His main research interest is in international efforts to liberalise domestic investment laws and the impact of those efforts on the regulation of transnational corporations.

### **Associate Professor Timothy Lindsey**

Tim 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 *Indonesia: Law and Society*, and *How Companies Work*. Tim is a member of the Board of the Department of Foreign Affairs and Trade's Australia-Indonesia Institute.

### **Professor Ian Ramsay**

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

- Member of the Takeovers Panel

- Deputy Director of the Federal Government's Companies and Securities Advisory Committee where he wrote a number of reports including a report on directors' and officers' insurance
- Member of the Executive Committee of the Business Law Section of the Law Council of Australia
- Member of the Corporations Law Committee of the Australian Institute of Company Directors and the Companies Committee of the Law Council of Australia
- President of the Corporate Law Teachers Association
- Consultant to the Australian Law Reform Commission for its managed investments project
- Member of the Australian Law Reform Commission's Advisory Committee for its civil and administrative penalties project
- Consultant to the Victorian Government on corporate law reform
- Distinguished Visiting Professor, Faculty of Law, The University of Toronto
- Professorial Fellow, Faculty of Law, The University of Hong Kong

Ian has published extensively on corporate law issues both internationally and in Australia. His books include *Ford's Principles of Corporations Law* (co-author, 10th edition, 2001); *Commercial Applications of Company Law* (co-author, 2nd edition, 2001); *Company Directors' Liability for Insolvent Trading* (editor, 2000); *Securities Regulation in Australia and New Zealand* (co-editor, 1998); *The Corporate Law Economic Reform Program Act Explained* (co-author 2000); *The New Corporations Law* (co-author, 1998); *Corporate Governance and the Duties of Company Directors* (editor, 1997); and *Education and the Law* (co-author, 1996).

### **Mrs Sally Sievers**

Sally Sievers (BA, LLB (Melb); LLM (Monash) was previously a Senior Lecturer at the Faculty of Law at Monash University. Her main research interests are corporations law, especially directors' duties and non-profit associations. She is the author of *Associations and Clubs Law in Australia and New Zealand* (2d ed, 1996). She teaches Corporations Law in the LLB Program. Sally is also a Barrister and Solicitor of the Supreme Court of Victoria and a member of the Corporations Law Committee of the Law Council of Australia.



### **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 finance 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.

### **Professor 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.

### **Dr Geof Stapledon**

Dr Geof Stapledon obtained undergraduate degrees in Economics and Law from the University of Adelaide before practising as a commercial solicitor with Finlaysons in Adelaide. He then spent three years at the University of Oxford, conducting doctoral research into the role of institutional investors in corporate governance in the UK and Australia. This research led to the publication in mid-1996 of Geof's book *Institutional Shareholders and Corporate Governance* (Oxford University Press). Geof joined the Faculty of Law at The University of Melbourne in 1995. Geof has a number of journal publications in the area of institutional investors and corporate governance, together with articles in the areas of directors' duties, shareholders' remedies, and auditors' liabilities. He is the Editor of the leading journal specialising in Australasian corporate and securities law: the *Company and Securities Law Journal*.

Geof spent 1997 on secondment with the law firm Minter Ellison in Sydney, advising on the demutualisation of the AMP Society. He is a Principal in the corporate governance advisory firm, Institutional Analysis.

### **Ms Susan Woodward**

Susan Woodward is a graduate of The University of Melbourne (LLB (Hons)) and is a Barrister and Solicitor of the Supreme Court of Victoria. Prior to

joining The University of Melbourne, Susan practised in commercial law both in Australia and London. She also worked as in-house legal counsel for the Australian Industry Development Corporation. At The University of Melbourne, Susan has taught Corporations Law in the law and commerce faculties for several years. Susan has co-authored *Corporations Law – In Principle* (LBC Information Services, 5th ed, 2001) which is accompanied by a Teachers' Manual. Susan's main research interest is in non-profit companies.

### **Honorary Research Fellow**

#### **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 Middlesex. His research interests focus on the regulation of financial markets, white collar crime and organised crime, and he has published extensively in these areas. His projects for the Centre for Corporate Law include an examination of civil penalties by the Australian Securities and Investments Commission. George is currently Logan Research Fellow in the Department of Business Law and Taxation at Monash University.

### **Research Associates**

Mr David Noakes, Solicitor, Allen Allen & Hemsley

Mr Joel Vernon, Associate to the Honourable Justice Mandie, Supreme Court of Victoria

## SEMINARS

A number of highly successful conferences and seminars were organised by the Centre during 2001. A list of previous seminars and conferences is contained in Appendix A.

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

Speakers - Mr Richard Cockburn, Director, Corporate Finance, Australian Securities and Investments Commission; Mr Rodd Levy, Partner, Freehills (Melbourne); Mr Justin Mannolini, Partner, Freehills (Sydney); Mr Simon McKeon, President, the Takeovers Panel and Executive Director of Macquarie Bank

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

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

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

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

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

Speaker - Professor David Skeel, University of Pennsylvania, USA

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

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

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

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

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

Speaker - Professor Cindy Schipani, University of Michigan, USA

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

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

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

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

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

*Welcome:*

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

*International Perspectives on Corporate Law and Corporate Governance*

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

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

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

*Key Issues in Corporate Law*

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

Directors' Duty of Care and the New Business Judgment Rule in a 21st Century Environment: Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks

Tending to Sick Companies: The Role & Responsibilities of Voluntary Administrators: Justice Robert Austin, Supreme Court of New South Wales

*Key Issues in Equity and Trusts Law*

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

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

Commentator: Justice Paul Finn, Federal Court of Australia

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

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

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

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

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

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

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

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

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

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

## **LINKS WITH PEAK ORGANISATIONS**

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2001 academic members of the Centre were also members of:

- The Takeovers Panel (Professor Ian Ramsay);
- The Corporations Law Committee of the Business Law Section of the Law Council of Australia (Pamela Hanrahan, Professor Ian Ramsay and Sally Sievers);
- The Corporations Law Committee of the Australian Institute of Company Directors (Professor Ian Ramsay);
- President of the Corporate Law Teachers Association (Professor Ian Ramsay); and
- The Legislation Review Board of the Australian Accounting Research Foundation (Dr Geof Stapledon).

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

## EDITORIAL POSITIONS

During 2001 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 Corporations & Securities Law Reporter* (Consultant Editor: Professor Ian Ramsay)
- *Australian Journal of Asian Law* (Editor: Associate Professor Timothy Lindsey)
- *Australia & New Zealand Journal of Law & Education* (Member of the Editorial Board: Professor Ian Ramsay)
- *Company, Financial and Insolvency Law Review* (Member of the Editorial Board: Dr Geof Stapledon)
- *Company and Securities Law Journal* (Editor: Dr Geof Stapledon; Member of the Editorial Board: Professor Ian Ramsay and Sally Sievers)
- *Corporate Law Electronic Bulletin* (Editor: Professor Ian Ramsay)
- *Doing Business in Asia* (Contributing Editor and member of the Editorial Advisory Board and Editor (Indonesia Chapter): Associate Professor Tim Lindsey)
- *Governance* (Member of the Editorial Board: Dr Geof Stapledon)
- *Insurance Law Bulletin* (Editor: Greg Reinhardt)
- *International and Comparative Corporate Law Journal* (Member of the Editorial Board: Professor Ian Ramsay)
- *International Corporate Law Bulletin* (Consultant Editor: Professor Ian Ramsay)
- *Journal of Corporate Law Studies* (Member of the Editorial Board: Dr Geof Stapledon)
- *Journal of Information, Law and Technology* (Member of the Editorial Board: Lesley Hitchens)
- *Journal of Judicial Administration* (Editor: Greg Reinhardt)



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

Other editorial work undertaken during 2001 included:

- Consulting Editor for the loose-leaf book *International Securities Regulation: Pacific Rim*, Oceana Publications, New York (Professor Ian Ramsay)

## RESEARCH

### BOOKS

Ford, H, Austin, R and Ramsay, I, *Ford's Principles of Corporations Law*, 10th edition, Butterworths, Sydney (2001)

Hanrahan, P, Ramsay, I and Stapledon, G, *Commercial Applications of Company Law*, 2nd edition, CCH Australia Ltd, Sydney (2001)

Woodward, S, Bird, H and Seivers, S, *Corporations Law – In Principle*, 5th edition, Law Book Company, Sydney (2001)

### Major Reference Works

Reinhardt, G, 'International Encyclopaedia of Civil Procedure – Australia' in P Taelman *International Encyclopaedia of Laws – Civil Procedure*, Kluwer Law International, The Hague (2001) 8-92

### Research Reports

Neagle, A-M and Tsykin, N, '*Please Explain*': *ASX Share Price Queries and the Australian Continuous Disclosure Regime*, Centre for Corporate Law and Securities Regulation, Melbourne, 2001, 52 pages

Ramsay, I and Stapledon, G, *Corporate Governance: The Role of Superannuation Trustees*, Centre for Corporate Law and Securities Regulation and Institutional Analysis, Melbourne, 2001, 42 pages

Ramsay, I, *Independence of Australian Company Auditors: Review of Current Australian Requirements and Proposals for Reform: A Report to the Minister for Financial Services and Regulation*, Commonwealth Department of the Treasury, 2001, 231 pages

Stapledon, G and Fickling, J, *Board Composition and Pay in the Top 100 Companies* University of Melbourne, 2001, 42 pages

### Chapters in Books

Lindsey, T, 'Abdurrahman, the Supreme Court and Corruption: Viruses, Transplants and the Body Politic in Indonesia' in D Kingsbury and A Budiman (eds), *Indonesia: The Uncertain Transition*, Crawford House, Hindmarsh (2001) 43-67

Lindsey, T, 'The Criminal State: Premanisme and the New Indonesia' in G Lloyd and S Smith (eds), *Indonesia Today: Challenges of History*, Institute of Southeast Asian Studies, Singapore (2001) 283-297

Ramsay, I and Stapledon, G, 'Directors' Conflicts: An Empirical Study' in M Andenas and D Sugarman (eds), *Developments in European Company Law:*

*Directors` Conflicts of Interest: Legal, Socio-Legal and Economic Analysis*, Kluwer Law International, The Hague (2001) 141-162

Smith, M, 'Changing Regulatory Patterns In Japan: An Australian Perspective' in A Osuka (ed), *State Legal Intervention and Freedom: Comparative Studies on Asian-Oceanic Legal Systems*, Shinzan-Sha Publishing Company, Tokyo (2001) 353-369

Stapledon, G, 'Institutional Investors: What are their responsibilities as Shareholders?' in J Parkinson, A Gamble and G Kelly (eds), *The Political Economy of the Company*, Hart Publishing, Oxford (2001) 195-231

Stapledon, G and Bates, J, 'Reducing the Costs of Proxy Voting' in J McCahery and L Renneboog (eds), *Convergence and Diversity in Corporate Governance Regimes and Capital Markets*, Oxford University Press, Oxford (2001)

### **Journal Articles**

Ramsay, I and Noakes, D, 'Piercing the Corporate Veil in Australia' (2001) 19 *Company and Securities Law Journal* 250-271

Ramsay, I, 'Financial Services Reform in Australia' (2001) 5 *Singapore Journal of International and Comparative Law* 485-515

Ramsay, I, Stapledon, G and Vernon, J, 'Political Donations by Australian Companies' (2001) 29 *Federal Law Review* 177-218

Ramsay, I and Stapledon, G, 'Corporate Groups in Australia' (2001) 29 *Australian Business Law Review* 7-32

Sievers, S, 'Incorporation and Regulation of Non-Profit Associations in Australia and Other Common Law Jurisdictions' (2001) 13 *Australian Journal of Corporate Law* 124-142

Stapledon, G and Fickling, J, 'The Adequacy of Australia's Auditor Independence Regime' (2001) 19 *Company and Securities Law Journal* 472-484

### **CASE NOTES**

Reinhardt, G, 'McCann v Switzerland Insurance Australia Ltd' (2001) 16 *Australian Insurance Law Bulletin* 18-20

Reinhardt, G, 'Morris v RACV Insurance Ltd' (2001) 16 *Australian Insurance Law Bulletin* 18-20

Reinhardt, G 'Kassem v Colonial Mutual' (2001) 16 *Australian Insurance Law Bulletin* 51-52

Reinhardt, G, 'To v Australian Associated Motor Insurers Ltd' (2001) 16 *Australian Insurance Law Bulletin* 78-80

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 75-77

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 77-80

Reinhardt, G 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 79-80

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 79-81

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 82-84

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 88-90

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 89-91

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 90-91

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 91-93

Reinhardt, G, 'Courts and Tribunals – Supreme Court Judgements' (2001) 75 *Law Institute Journal* 92-95

Reinhardt, G, 'AAMI Ltd v Eastwood Towing & Auto Salvage Pty Ltd' (2001) 16 *Australian Insurance Law Bulletin* 29-31

Reinhardt, G, 'Brooklyn Lane Pty Ltd v MIC Australia Pty Ltd' (2001) 16 *Australian Insurance Law Bulletin* 30-31

Reinhardt, G 'HIH Casualty and General Insurance Ltd v Pade' (2001) 16 *Australian Insurance Law Bulletin* 29-30

## **CONFERENCE PAPERS**

Ramsay, I, 'Managing Corporate Governance, Ethics and the Growing Trend of Shareholder Activism'. Paper presented as a commentary at the Australian Institute of Company Directors Conference, Governance and Disclosure, Melbourne, 26 October 2001

Ramsay, I, 'Developments in Corporate Law'. Paper presented to the Australian Taxation Office Legal Update Seminar Series, Melbourne, 13 September and 27 September 2001

Ramsay, I, 'Financial Services Reform in Australia'. Paper presented at the 9th Singapore Conference on International Business Law, Developments in Financial Regulation and Capital Markets, Singapore, 29-30 August 2001

Ramsay, I, 'Courts and Their Alternatives: A Case Study of the Takeovers Panel'. Paper presented as a commentary at the Australian Law Reform Commission Conference Penalties: Policy, Principles and Practice in Government Regulation', Sydney, 9 June 2001

Ramsay, I, 'Share Buy-backs and Other Share Capital Transactions'. Paper presented at the University of Hong Kong Faculty of Law, 27 March 2001

Ramsay, I, 'Allocating Liability in Corporate Groups: An Australian Perspective'. Paper presented at the University of Hong Kong Faculty of Law, 22 March 2001

Ramsay, I, 'Voting by Institutional Investors and Corporate Governance'. Paper presented at the University of Hong Kong Faculty of Law, 20 March 2001

Ramsay, I, 'Corporate Governance: The Role of Superannuation Trustees'. Paper presented at the Australian Institute of Superannuation Trustees Workshop, Melbourne, 28 February 2001

Reinhardt, G, 'Effect of September 11 Events and Ensuing Terrorist Activities on Insurance Coverage' (paper presented at AAR Insurance Forum, 2001)

Reinhardt, G, 'Contract Law – What's Changed Since You Left Uni?' (paper presented at Australian Corporate Lawyers' Association 2001 National Conference, 2001)

Reinhardt, G, 'Judicial Education in the Asia-Pacific Region' (paper presented at 9th Conference of Chief Justice of Asia and the Pacific, 2001)

Reinhardt, G, 'Insurance Contracts Act Developments' (paper presented at Australian Insurance Law Association National Conference, 2001)

Reinhardt, G, 'Disqualification on the Grounds of Bias - Some Current Developments' (paper presented at AIJA Tribunals Conference, 2001)

## **MONOGRAPH SERIES IN CORPORATE LAW AND SECURITIES REGULATION**

During 2001 the Centre published 2 research reports as part of its series in corporate law and securities regulation. These were:

Anne-Marie Neagle and Natasha Tsykin, **‘Please Explain’: ASX Share Price Queries and the Australian Continuous Disclosure Regime** (2001)

Recent high profile corporate failures have highlighted the need to re-examine the adequacy of Australian corporate disclosure requirements. Continuous disclosure plays a vital role in the mechanism for information provision to the Australian capital markets, and in ensuring that the markets are fair and efficient.

The Australian Stock Exchange (ASX) continuous disclosure listing rule requires a listed entity to inform ASX immediately of any information concerning it that it becomes aware of that can be expected to have a material effect on the price or value of the entity’s shares.

This Research Report contains the results of a study which investigates the compliance of companies with ASX’s continuous disclosure regime. It also investigates what types of companies have difficulties complying with the regime.

The study examines all queries issued by ASX to companies which had unusual share price movements for the two year period 1999 and 2000. A total of 911 queries were issued by ASX during this period. The study examines the responses of companies to ASX queries as well as all announcements made by these companies in the period of 4 weeks following receipt of the ASX query.

The Report examines the characteristics of companies which received ASX price queries. These characteristics include:

- the industry of the companies
- the size of the companies
- the financial performance of the companies
- information disclosed by the companies following receipt of the ASX price query.

The Report highlights a number of law reform implications arising from the results of the study.

Ian Ramsay and Geof Stapledon, **Corporate Governance: The Role of Superannuation Trustees** (2001)

This report was prepared for the members of the Australian Institute of Superannuation Trustees (AIST). AIST requested the authors to prepare a report covering a range of corporate governance issues relevant to the shareholding investments of trustees of Australian superannuation schemes.

The report does not contain a set of ‘guidelines’. Instead, it is designed to serve as a higher level document which could, for example, be used by trustees when formulating a set of voting guidelines tailored to the requirements of the superannuation fund in question.

The report does, however, refer to several sets of corporate governance guidelines. This is done to give a summary of generally accepted views, and sometimes to highlight differences in views. The main guidelines referred to are:

- **AFL-CIO Guidelines** - American Federation of Labor and Congress of Industrial Organizations, *Investing in Our Future: AFL-CIO Proxy Voting Guidelines* (1997).
- **ALI Principles** - American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* (1994).
- **Bosch Report** - Working Party of the Australian Institute of Company Directors and others, *Corporate Practices and Conduct* (3rd edition, 1995).
- **Cadbury Code** - Committee on the Financial Aspects of Corporate Governance (Sir Adrian Cadbury, chair), *Code of Best Practice* (1992).
- **Cadbury Report** - Committee on the Financial Aspects of Corporate Governance: (Sir Adrian Cadbury, chair), *The Financial Aspects of Corporate Governance* (1992).
- **CalPERS Guidelines** - California Public Employees’ Retirement System, *US Corporate Governance Core Principles and Guidelines* (1998).
- **CISCO Guide** - The City Group for Smaller Companies, *The Financial Aspects of Corporate Governance: Guidance for Smaller Companies*.
- **Council of Institutional Investors’ Policies** - Council of Institutional Investors, *Corporate Governance Policies*.
- **Hong Kong Code** - The Stock Exchange of Hong Kong, *Guide for Directors of Listed Companies*, Code of Best Practice (1995).
- **IFSA Guidelines** - Investment and Financial Services Association, *Corporate Governance: A Guide for Investment Managers and Corporations* (1999).
- **Toronto Guidelines** - Toronto Stock Exchange, *The Toronto Stock Exchange Company Manual*, Part IV.M.
- **Toronto Report** - Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where Were the Directors? Guidelines for Improved Corporate Governance in Canada*.
- **UK Combined Code** - Financial Services Authority, *The Listing Rules, Combined Code* (Appendix).
- **US Business Roundtable Report** - Business Roundtable, *Corporate Governance and American Competitiveness*.

The report’s structure is as follows. Section 2 outlines the meaning and importance of corporate governance. Section 3 discusses the role of superannuation fund trustees in corporate governance. The section includes a range of options as to how trustees can participate in corporate governance. And section 4 gives an overview of some key corporate governance issues. These are issues which superannuation trustees should address when formulating a new corporate governance policy, or revising an existing policy.

**Previous monographs and research reports of the Centre include:**

- Ian Ramsay (editor), **Company Directors' Liability for Insolvent Trading** (2000)
- Geof Stapledon, Sandy Easterbrook, Pru Bennett and Ian Ramsay, **Proxy Voting in Australia's Largest Companies** (2000)
- Asjeet Lamba and Ian Ramsay, **Share Buy-backs: An Empirical Investigation** (2000)
- Ian Ramsay, Geof Stapledon and Joel Vernon, **Political Donations By Australian Companies** (2000)
- Vivien Goldwasser, **Stock Market Manipulation and Short Selling** (1999)
- Jeffrey Lawrence and Geof Stapledon, **Do Independent Directors Add Value?** (1999)
- Helen Bird, George Gilligan and Ian Ramsay, **Regulating Directors' Duties – How Effective Are the Civil Penalty Sanctions in the Australian Corporations Law?** (1999)
- Elizabeth Boros, **The Online Corporation: Electronic Corporate Communications** (1999)
- Elizabeth Boros and the Australian Securities and Investments Commission, **Multimedia Prospectuses and Other Offer Documents** (1999)
- Donna Croker, **Prospectus Liability Under the Corporations Law** (1998)
- Pamela Hanrahan, **Managed Investments Law** (1998)
- Ian Ramsay and Geof Stapledon, **Corporate Groups in Australia** (1998)
- Ian Ramsay, Geof Stapledon and Kenneth Fong, **Institutional Investors' Views on Corporate Governance** (1998)
- Ian Ramsay (editor), **Corporate Governance and the Duties of Company Directors** (1997)
- Ian Ramsay and Richard Hoad, **Disclosure of Corporate Governance Practices by Australian Companies** (1997)
- Cally Jordan, **International Survey of Corporate Law in Asia, Europe, North America and the Commonwealth** (1997)
- Ian Ramsay (editor), **Gambotto v WCP 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 these reviews are noted below.

“The University of Melbourne has provided us with a work of intellectual rigour...These eight essays (including the Editor’s own), form a multi-faceted prism of scholarship and substance. An ASIC lawyer, a New Zealand barrister, a Sydney solicitor, Oxford don, Australian professors and a Colorado professor are a laser of learned minds shining on section 588G of the Corporations Law. The section needs this treatment to enlighten vital corporate cross-roads.”

Review of *Company Directors’ Liability for Insolvent Trading* published in *Ethos: Journal of the Law Society of the Australian Capital Territory*

“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.”

Review of *Deregulation of Public Utilities: Current Issues and Perspectives* published in *Agenda: A Journal of Policy Analysis and Reform*

“This book is essentially about how the economics of utilities affect asset valuation and in turn pricing. It’s about how technology determines the structure of an industry and how that structure determines the regulatory methods and process...The issues presented in this publication are topical, with deregulation either in the process of being implemented or well underway in most States...The book is recommended especially for those in Government, in any of the utilities and accountants who serve them.”

Review of *Deregulation of Public Utilities: Current Issues and Perspectives* published in *Australian CPA*

“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...includes interesting and thought-provoking material on issues which have been topical in the United Kingdom following the Law Commission’s Consultative Paper on *Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties* (1998) and other recent developments...The collection assembled by Professor Ian Ramsay is recommended reading for anyone who is interested in exploring these issues or in corporate governance more generally.”

Review of *Corporate Governance and the Duties of Company Directors* published in the *International Company and Commercial Law Review*

“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, auditors, 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*

“Pamela Hanrahan’s book represents a substantial analysis of the Managed Investments Act 1998. It is a good introduction to the area for lawyers and practitioners in the area and has the benefit of containing additional materials for the more experienced practitioner...The book provides a good overview of the area, and a sound evaluation of relevant provisions under the law. Legal

requirements relating to these schemes, the scope of relevant laws and the responsibilities of administrators and regulatory bodies have been thoroughly considered.”

Review of *Managed Investments Law* published in the *Company and Securities Law Journal*

“This book by Pamela Hanrahan of Melbourne University explains the application of the new legislation and provides insight into its operation, providing case authority and background material...The book is well written and researched. It describes the legislation and processes concerning managed investments well, but is not limited to this. The various anomalies and potential problems which the legislation may cause are identified and analysed. The views of the author on many of the well hidden problems and applications of the Managed Investments Act are of great assistance...This book will provide a useful basis upon which any lawyer may proceed to explore the intricacies of managed investments legislation.”

Review of *Managed Investments Law* published in *Proctor* – Journal of the Queensland Law Society

“This monograph provides commentary on the key legislation provisions and ASIC policy statements applicable to managed investment schemes...As an account and commentary on a particular area of financial regulation, the monograph is an invaluable resource for both legal practitioners and funds management professionals. Hanrahan’s background knowledge and experience in the area is drawn upon to provide a useful account of the law as it currently stands. The timeliness of the work must also be praised, being published only four months after the enactment of the legislation.”

Review of *Managed Investments Law* published in the *University of Tasmania Law Review*

“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: Legal Principles* 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*

## TEACHING

The Faculty of Law at The University of Melbourne has a very strong graduate program in corporate law and securities regulation. The 25 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
- Comparative Income Tax
- Corporate Governance and the Duties of Directors\*
- Corporate Taxation\*
- The Corporation as Criminal
- Current Issues in Corporate Law
- Derivatives Regulation
- Electronic Commerce Law\*
- The Electronic Corporation\*
- Financial Sector Regulation\*
- The International Financial System: Law and Practice\*
- International Securities Regulation
- Managed Investments Law\*
- Principles of Corporate Insolvency\*
- The Reconstruction of Companies
- Regulation of Securities Offerings\*
- Regulatory Environment for Corporations
- Securities for Corporate Lending
- Securitisation Law\*
- Shareholders' Remedies
- Superannuation Law
- Taxation of Business and Investment Income\*
- Taxation of Controlled Foreign Companies, Foreign Investment Funds and Transferor Trusts\*

A list of all the Faculty of Law's graduate subjects offered in 2001 is contained in Appendix B.

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 Oesterle of the University of Colorado Law School; and Ms Cally Jordan of the World Bank.

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\* indicates taught in 2001

## **CORPORATE LAW ELECTRONIC BULLETIN**

In 1997 the Centre for Corporate Law and Securities Regulation commenced publishing the Corporate Law Electronic Bulletin. It has been established with the support of the Australian Securities and Investments Commission, the Australian Stock Exchange and leading national law firms.

The monthly Bulletin includes the following:

- summaries of significant law developments (both statutory amendments and recent court judgments);
- significant announcements made by the Australian Securities and Investments Commission (for example new ASIC Policy Statements and Practice Notes) and the Australian Stock Exchange;
- abstracts from the most recent issue of the Company and Securities Law Journal;
- titles of articles from other corporate law journals including overseas journals specialising in corporate law;
- announcements of corporate law conferences and seminars.

There are approximately 2,000 subscribers to the Bulletin with readership estimated at well in excess of this number as the Bulletin is distributed widely within law firms, companies, regulators and government departments.

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

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



## COMPETITIVE RESEARCH GRANTS OBTAINED

This section identifies the competitive research grants obtained by members of the Centre in 2001. A list of competitive research grants obtained in 1996-2000 is contained in Appendix C.

### **Islamic Law in Contemporary Indonesia**

#### **Type of Grant**

Australian Research Council Discovery Grant (formerly ARC Large Grants)

#### **Chief Researchers**

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

#### **Funds received**

\$139, 270

#### **Project summary**

This project aims to fill serious gaps in Asian and Western scholarship on Islamic law in contemporary Indonesia in the context of the tension between Islam and state, an issue highlighted by the Bali bomb and Jemaah Islamiyah trials. It aims to do so by working closely with leading Indonesian legal scholars and institutions to develop an approach to researching Islamic law that embraces internal Islamic jurisprudence, both Middle Eastern and Southeast Asian, as well as leading Western scholarship on Islam and law.

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

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

## SUPERVISION OF GRADUATE STUDENTS' RESEARCH

This section identifies the supervision of graduate students undertaken by members of the Centre in 2001.

### PhD

- Amukotuwa, S: The Role Which the 'Investor Protection' Objective Plays in the Exercise of the Discretionary Powers of the ASC Under Part 7.12 of the Corporations Law

*Supervisor:* Professor Ian Ramsay

- Beaton-Wells, C: Proving the Market Under Part IV of the Trade Practices Act 1974 (Cth): Theory, Fact and Perception

*Supervisor:* Dr Geof Stapledon

- Blakie, J: Conflict Behaviour of Neighbours as a Function of Perceptual and Affectual Differences

*Supervisor:* Professor Greg Reinhardt

- Chairil, R: The Indonesian Contract of Work: A Comparative Study of Indonesian Contract and Overseas Contracts and Equivalent Regimes and Recommendations for Reform

*Supervisor:* Associate Professor Tim Lindsey

- Chellew, J: Derivatives Regulation: Drafting the Best Legal Definition of 'Derivative'

*Supervisor:* Professor Malcolm Smith

- Colmenares, N: International Jurisdiction and Amnesty

*Supervisor:* Associate Professor Tim Lindsey

- Darmono, B: The Position of Adat (Local) Land Rights in the Forestry Act, and Adat Law: A Study of Dayak Adat Law Community in Kalimantan

*Supervisor:* Associate Professor Tim Lindsey

- Eng, J: A Critical Review of the Customary Land Rights of the Natives of Sarawak

*Supervisor:* Associate Professor Tim Lindsey

- Hassan, MH: The Syarian Court of Singapore: A Study of a Court of Law From

the Civil and Islamic Perspective

*Supervisor:* Associate Professor Tim Lindsey

- Holland, P: The OECD Convention on Bribery of Foreign Government Officials: The Impact on Australian Business in Asia

*Supervisor:* Associate Professor Tim Lindsey

- Jung, S: Legal Aspects for OTC Derivatives

*Supervisor:* Professor Malcolm Smith

- Kwok, L: Restructuring of State-Owned Enterprises in China

*Supervisor:* Professor Malcolm Smith

- Mihalopoulos, A: A Comparative Study of the Legal Institutions and Systems Within Which the Jewish and Greek Christian Communities Functioned in Salonica and Istanbul Under Ottoman Rule

*Supervisor:* Professor Malcolm Smith

- Nicholson, P: Borrowing Court Systems: The Experience of the Democratic Republic of Vietnam, 1945-1976

*Supervisor:* Associate Professor Tim Lindsey

- Noakes, D: Reform to the Law of Corporate Groups to Protect Employees

*Supervisor:* Dr Geof Stapledon

- Parker, D: Lifting the Veil and Corporate Personality

*Supervisor:* Professor Ian Ramsay

- Shi, C: The Historical Development of Chinese Company Law and its Implications for Building up a Corporate Governance Regime: A Comparative Study

*Supervisor:* Associate Professor Tim Lindsey

- Skrekas, N: The Law and Practice of Takeover Defences

*Supervisor:* Dr Geof Stapledon

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

*Supervisor:* Professor Ian Ramsay

- Tabalujan, B: Corporate Governance in the Indonesian Capital Market: A Legal-Sociological Study of Legal Culture

*Supervisor:* Professor Malcolm Smith

- Wade, J: The Inter-Relationship of Private International Law Principles and International Corporate Insolvency

*Supervisor:* Professor Greg Reinhardt

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

*Supervisor:* Associate Professor Tim Lindsey

- Xu, Z: The Confucian Misgivings: Liang Shu-Ming's Narrative About Law

*Supervisor:* Professor Malcolm Smith

- Zhang, S: Tensions and Implications: Contractual Aspects of Technology Transfer to China

*Supervisor:* Professor Malcolm Smith

- Zhou, M: Antidumping in China, the West and the WTO

*Supervisor:* Professor Malcolm Smith

## **SJD**

- De Jonge, A: Media and Markets in China and Hong Kong

*Supervisor:* Professor Malcolm Smith

- Hanrahan, P: An Analysis of Members' Rights and Remedies Against Managers of Public Units Trusts

*Supervisor:* Professor Ian Ramsay

- McMullan, J: Dispute Proposals for BOT Projects in East Asia

*Supervisor:* Professor Malcolm Smith

## **Master of Laws**

- D'Andrea, A: Globalisation of the World's Securities Markets and the Impact on Australia

*Supervisor:* Associate Professor Geof Stapledon

- Bird, H: The Use of Enforceable Undertakings in the Corporations Law

*Supervisor:* Professor Ian Ramsay

- Bulman, A: How Judges Value Securities and Assess Expert Valuations

*Supervisor:* Professor Ian Ramsay

- Calleja, N: The New Takeovers Panel – A Better Way?

*Supervisor:* Professor Ian Ramsay

- Hider, J: Reforms to the Litigation of Building and Construction Disputes in Victoria

*Supervisor:* Professor 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 2001 members of the Centre were responsible for drafting a number of submissions relating to corporate law reform either in a personal capacity or on behalf of organisations such as the Australian Institute of Company Directors.

### **Requests for information**

During 2001 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.

Some of the newspaper articles published in 2001 which reported on the research of the Centre included:

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

##### **‘Please Explain’: ASX Share Price Queries and the Australian Continuous Disclosure Regime**

- ‘Disclosure road to nowhere for ASIC as rules lack sting’, *The Australian Financial Review*, 8 December 2001
- ‘AMP in breach of rules but no action’, *The Sydney Morning Herald*, 7 December 2001
- Business Daily Program, Sky News, 7 December 2001
- ‘Wink-nod breach or not, AMP got its message across: Our disclosure laws and ASX rules just don’t mesh’, *The Australian*, 7 December 2001
- Editorial, ‘Sanctions must be sharpened’, *The Australian Financial Review*, 7 December 2001
- ‘Companies failing to disclose all to ASX’, *The Age*, Business section, 5 December 2001
- ‘Corporations are spilling the beans – eventually’, *The Sydney Morning Herald*, 5 December 2001
- ‘Disclosures not always timely: study’, *The West Australian*, 5 December 2001
- ‘Listed firms coy on details’, *The Herald Sun*, 5 December 2001
- ‘Companies warned to improve disclosure’, *The Courier Mail*, 5 December 2001

- ‘Corporate disclosure a “failure”’, *The Australian Financial Review*, 5 December 2001
- ‘Aussie Inc fails test’, *The Daily Telegraph*, 5 December 2001
- ‘No explain, no pain’, *The Australian*, 5 December 2001
- ABC Radio Melbourne, *The Morning Program* with Jon Faine, 5 December 2001
- ABC Radio National, *The PM Program*, 4 December 2001
- ABC Radio National, *The World Today Program*, 4 December 2001

### **Corporate Governance: The Role of Superannuation Trustees**

- ‘Shaking up corporate Australia’, *Super Review*, April 2001
- ‘Super trustees warned on corporate governance’, *The Australian Financial Review*, 14 March 2001
- Cover story, ‘Voting with their funds: adding value through corporate governance’, *Investor Weekly*, 12-18 March 2001
- ‘Trustees obliged to consider voting’, *Investor Weekly*, 12-18 March 2001
- ‘Get involved, AIST urges super funds’, *Money Management*, 1 March 2001

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

Auditors’ independence inquiry - report to the Minister for Financial Services and Regulation by Professor Ian Ramsay

- ‘Independence and international standards: the talk of 2001’, *The Accountant*, 20 December 2001
- ‘New rules for audit standards’, *The Australian Financial Review*, 19 December 2001
- ‘Small step for auditors, giant leap for independence’, *The Age*, Business section, 19 December 2001
- ‘Groups release draft statement on ethics’, *The Age*, Business section, 19 December 2001
- ‘Auditors called to account’, *The Australian Financial Review*, 18 December 2001
- ‘Independence dominates down under’, *International Accounting Bulletin*, 14 December 2001
- ‘Auditors sign off on 26pc fee rise’, *The Australian Financial Review*, 10 December 2001
- ‘Reform slowed’, *Business Review Weekly*, 6 December 2001
- ‘Auditors flick pass the buck’, *The Australian*, Business section, 5 December 2001
- ‘Please explain! Auditor independence’, *CFO Magazine*, December 2001
- ‘Audit firm of the year’, *CFO Magazine*, December 2001
- ‘A new and improved audit committee’, *Board Report*, November 2001
- ‘Fees of Big Five legal arms to be revealed’, *Lawyers Weekly*, 23 November 2001
- ‘Australian audit independence: what the Big Five had to say’, *The Accountant*, 22 November 2001
- ‘Auditor independence raised as Australian election issue’, *International Accounting Bulletin*, 15 November 2001
- ‘Accountants seeking audit policy summit’, *The Adelaide Advertiser*, 12 November 2001

- ‘Check the pulse of your audit process’, *Company Director*, November 2001
- ‘Accounting: A global stance to model upon’, *Company Director*, November 2001
- ‘Auditor competency: Institute calls for Corps Act changes’, *Butterworths Corporation Law Bulletin*, 2 November 2001
- ‘Financial reporting, corporate governance and the vigilance of auditors and directors’, *Butterworths Corporation Law Bulletin*, 2 November 2001
- ‘Ramsay report welcomed’, *CPA Australia*, November 2001
- ‘Ramsay report on auditor independence’, *Charter*, November 2001
- ‘What the Ramsay report means’, *Charter*, November 2001
- ‘Auditors still feel misunderstood’, *Business Review Weekly*, 1 November 2001
- ‘Audits must be seen as above board’, *The Australian Financial Review*, Professional Services, Special Report, 31 October 2001
- ‘An independent perspective from Down Under’, *International Accounting Bulletin*, 30 October 2001
- ‘PwC Australia CEO says the Big Five must educate on role of auditors’, *The Accountant*, 26 October 2001
- ‘The Ramsay report: settling the audit independence debate’, *The Accountant*, 26 October 2001
- ‘Suggested AISB receives mixed criticism’, *The Accountant*, 26 October 2001
- ‘Super rules the top concern’, *Business Review Weekly*, 25 October 2001
- ‘ASIC and super win under Conroy’s plan’, *Money Management*, 25 October 2001
- ‘Ramsay report: 2 year moratorium for auditors on company boards’, *Butterworths Corporation Law Bulletin*, 19 October 2001
- ‘Australian Government releases report on auditor independence’, *International Accounting Bulletin*, 16 October 2001
- ‘The Ramsay report: settling the audit independence debate’, *International Accounting Bulletin*, 16 October 2001
- ‘Ramsay recommends publication of reasons for CALDB decisions’, *International Accounting Bulletin*, 16 October 2001
- ‘Auditor roles scrutinised’, *The Risk Report*, 12 October 2001
- ‘PwC Australia CEO says Big Five must educate on role of auditors’, *The Accountant*, October 2001
- ‘The Ramsay report: settling the audit independence debate’, *The Accountant*, October 2001
- ‘ASIC dabbles in DLCs’, *CFO Magazine*, October 2001
- ‘More controls won’t solve auditor issues’, *The Australian Financial Review*, 12 October 2001
- ‘Audit conflict unresolved’, *The Australian Financial Review*, 9 October 2001
- ‘Conflicting roles weigh on auditors’, *The Age*, Business section, 8 October 2001; *The Sydney Morning Herald*, 8 October 2001
- ‘Australia plans stricter controls on auditors’, *The Financial Times*, 5 October 2001
- ‘Report calls for audit safeguards’, *The Age*, Business section, 5 October 2001
- ‘Professor sent in to restore confidence’, *The Age*, Business section, 5 October 2001
- ‘Strict audit rules need cutting links’, *The Australian*, 5 October 2001
- ‘Auditing beauty not just in the eye of the beholder’, *The Australian*, 5 October



- ‘Stricter guidelines set out for company audits’, *The Sydney Morning Herald*, 5 October 2001
- ‘New audit board sets bar on ethics’, *The Australian Financial Review*, 5 October, 2001
- ‘Big five back 2-year board wait’, *The Australian Financial Review*, 5 October 2001
- ‘Why have auditors who can’t spot fiddles’, *The Australian Financial Review*, 5 October 2001
- ‘Bid to keep auditors off client company boards’, *The Canberra Times*, 5 October 2001
- ‘Auditors face board bans’, *The Courier Mail*, 5 October 2001
- ‘Independent audits urged’, *The West Australian*, 5 October 2001
- ‘Bid to keep auditors off client company boards’, *The Ballarat Courier*, 5 October 2001; *The Tamworth Northern Daily Leader*, 5 October 2001; *The Port Macquarie News*, 5 October 2001; *The Dubbo Daily Liberal*, 5 October 2001
- Business Daily Program, *Sky News*, 4 October 2001
- ABC Radio National, *The PM Program*, 4 October 2001
- ABC Radio National, *The World Today Program*, 4 October 2001
- ABC Radio National, *The AM Program*, 4 October 2001
- ‘A matter of independence’, *Business Review Weekly*, 4 October 2001
- ‘Audit rules to be tightened’, *Business Review Weekly*, 4 October 2001
- ‘KPMG’s sale to US is bonanza for its partners’, *The Age*, Business section, 4 October 2001; *The Sydney Morning Herald*, 4 October 2001
- ‘Taking on big business’, *The Australian Financial Review*, 3 October 2001
- ‘Defining the sanctity of the audit process’, *Chartered Accountants Journal (New Zealand)*, October 2001
- ‘Auditor independence’, *Charter*, September 2001
- ‘Audit report nears completion’, *Business Review Weekly*, 27 September 2001
- ‘Independent auditors’, *Company Director*, September 2001
- ‘Crackdown on Australian auditors’, *Chartered Accountants Journal (New Zealand)*, September 2001
- ‘Definitive guide to auditor independence’, *Company Director*, September 2001
- ‘Call for auditors role to be limited’, *The Australian Financial Review*, 24 August 2001
- ‘ASIC audit review’, *The Australian*, Business section, 24 August 2001
- ‘Corporations in the firing line’, *The Australian Financial Review*, 17 August 2001
- ‘Hockey to push tougher corporate rules’, *The Australian Financial Review*, 16 August 2001
- ‘Best in show’, *The Bulletin*, 14 August 2001
- ‘Review of auditor independence announced’, *Accountants Weekly*, 10 August 2001
- ‘Auditors under scrutiny’, *The Daily Telegraph*, 3 August 2001
- ‘Australian Government asks top professor to review audit regulation’, *The Accountant*, July 2001
- ‘Closing gap between expectations and reality in audits’, *The Age*, Business section, 31 July 2001
- ‘Audit of auditing is too limited’, *The Sydney Morning Herald*, 31 July 2001

- ‘Transparency better than regulation’, *www.eccountancy.com*, 31 July 2001
- ‘Global line for audit laws’, *The Australian Financial Review*, 30 July 2001
- ‘Clamp seen on auditors, size of bosses’ bonuses’, *West Australian*, Business News section, 30 July 2001
- ‘After One.Tel, Hockey pledges new rules’, *The Sydney Morning Herald*, 28 July 2001
- ‘Laws on auditors nearer’, *The Australian*, Business News, 28 July 2001
- ‘Govt to act on audit laws, bonuses’, *The Canberra Times*, 28 July 2001
- ‘Minister pledges check on corporate auditors’, *The Courier Mail*, 28 July 2001
- ‘Auditor review’, *The Illawarra Mercury*, 28 July 2001
- ‘Corporate clampdown’, *The Newcastle Herald*, 28 July 2001
- ‘Audits, bonuses the focus of new laws’, *The Warrnambool Standard*, 28 July 2001
- ‘Audit moves’, *The Mercury*, 28 July 2001
- ‘Ramsay to examine auditors’ independence’, *Butterworths Corporation Law Bulletin*, 27 July 2001
- Business Daily Program, Sky News, 27 July 2001
- ‘Talks on role of auditor’, *The Age*, Business section, 27 July 2001
- ‘Timely inquiry on audit rules’, *Business Review Weekly*, 27 July 2001
- ‘Expert appointed to head audit inquiry’, *The Age*, Business section, 23 July 2001
- ‘Running interference on auditor independence’, *Company Director*, July 2001

Research study on executive remuneration by Dr Geof Stapledon

- ‘Bosses’ pay swells to \$2.2m’, *The Age*, 31 March 2001

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

Insider trading

- ABC Radio National, PM Program, 5 June 2001, interview with Professor Ian Ramsay

Auditors’ independence

- ‘Firms brace for ALP reforms’, *The Australian Financial Review*, 15 June 2001, interview with Professor Ian Ramsay
- ‘Auditors face conflict crackdown’, *The Australian Financial Review*, 12 June 2001, interview with Professor Ian Ramsay

ASX rules on directors’ share trading

- Editorial, ‘Market needs full disclosure’, *The Australian Financial Review*, 15 January 2002, interview with Professor Ian Ramsay
- ‘Directors oppose share trade rules’, *The Australian Financial Review*, 10 January 2002, interview with Professor Ian Ramsay
- ‘ASX to tighten rules for directors’, *The Australian Financial Review*, 15 May 2001, interview with Professor Ian Ramsay

#### Continuous disclosure

- ‘ASIC seeks fines for non-disclosure’, *The Australian Financial Review*, 7 December 2001, interview with Professor Ian Ramsay

#### Law firms offering non-legal services

- ‘Allens looks outside law for ‘major slab of revenue’’, *Lawyers Weekly*, 7 December 2001, interview with Professor Ian Ramsay

#### Executive remuneration

- ABC TV, The Lateline Program, 30 October 2001, interview with Professor Ian Ramsay
- ‘Huge CEO pay bonuses are widespread’, *Canberra Times*, 7 June 2001, article by Associate Professor Geof Stapledon

#### Corporate governance

- Business Sunday Program, Channel 9, 28 October 2001, interview with Professor Ian Ramsay
- ‘Chagrin at the board: new report arms trustee voters’, *Investor Weekly*, 9-15 April 2001, interview with Associate Professor Geof Stapledon

#### The collapse of Ansett airlines

- ‘KPMG’s Ansett audit change’, *Business Review Weekly*, 20 September 2001, interview with Professor Ian Ramsay
- ‘Air New Zealand in the shadow’, *InvestorWeb*, 21 September 2001, interview with Professor Ian Ramsay
- ABC Radio National, The Law Report Program, 18 September 2001, interview with Professor Ian Ramsay
- ABC Radio Sydney, The Drive Program with Richard Glover, 18 September 2001, interview with Professor Ian Ramsay
- ABC Radio Melbourne, The Morning Program with Jon Faine, 18 September 2001, interview with Professor Ian Ramsay
- ABC TV, The Lateline Program, 17 September 2001, interview with Professor Ian Ramsay
- Business Daily Program, Sky News, 17 September 2001, interview with Professor Ian Ramsay
- SBS Radio, World View Program, 17 September 2001, interview with Professor Ian Ramsay
- ‘Liability triggered by knowledge’, *The Australian Financial Review*, 15 September, 2001, interview with Professor Ian Ramsay

#### ASIC litigation against Nick Whitlam, former Chairman of NRMA Insurance

- ‘Big guns called in for difficult legal battle’, *The Australian Financial Review*, 7 September 2001, interview with Professor Ian Ramsay

#### ASIC enforcement powers

- ‘Push to widen ASIC powers’, *The Australian Financial Review*, 31 August 2001, interview with Professor Ian Ramsay

#### Analysts and insider trading laws

- ‘Share trading law ‘murky, ambiguous’’, *The Australian Financial Review*, 23 August 2001, interview with Professor Ian Ramsay

#### Increasing litigation against companies

- ‘Leave corporate crooks to us: Cashman’, *The Australian Financial Review*, 13 July 2001, interview with Professor Ian Ramsay

#### Selection of company directors

- ‘Member of Australia’s In Crowd Draws Fire for Failures’, *The New York Times*, 29 June 2001, interview with Professor Ian Ramsay
- ‘Australian ‘Old Boy’ Draws Investors’ Ire’, *The International Herald Tribune*, 29 June 2001, interview with Professor Ian Ramsay

#### ASIC litigation against GIO executives involved in the AMP takeover of GIO

- ‘GIO executives sued over AMP bid’, *The Australian Financial Review*, 21 June 2001, page 1, interview with Professor Ian Ramsay
- Business Daily Program, Sky News, 20 June 2001, interview with Associate Professor Geof Stapledon

#### Directors’ duties

- ABC TV, Law Matters Program, 18 June 2001, interview with Professor Ian Ramsay

#### Corporate collapses and directors’ duties

- ABC Radio National, The Law Report Program, 16 June 2001, interview with Associate Professor Geof Stapledon
- ABC TV, 7.30 Report, 13 June 2001, interview with Professor Ian Ramsay
- ‘Flaws and failure behind some fine façade’, *The Financial Times*, 8 June 2001, interview with Associate Professor Geof Stapledon
- ‘Directors’ duties set to be tested’, *The Australian Financial Review*, 8 June 2001, interview with Professor Ian Ramsay
- ABC Radio National, Australia Talks Back Program, 4 June 2001, interview with Professor Ian Ramsay

## Government's proposal to legislate to claw back some directors' bonuses

- 'No need for new law on bonuses', *The Age*, 11 June 2001, Business section, article by Associate Professor Geof Stapledon
- 'Lawyers warn on PM bonus clamp', *The Age*, Business section, 7 June 2001, interview with Professor Ian Ramsay
- ABC Radio National, AM Program, 5 June 2001, interview with Professor Ian Ramsay
- ABC Radio Sydney, The Morning Show Program, 5 June 2001, interview with Professor Ian Ramsay
- 'One.Tel: PM turns on executives', *The Australian Financial Review*, 5 June 2001, interview with Professor Ian Ramsay
- Business Daily Program, Sky News, 4 June 2001, interview with Professor Ian Ramsay

## Corporate collapses and ASIC

- ABC Radio National, PM Program, 31 May 2001, interview with Professor Ian Ramsay

## The collapse of HIH Insurance

- Business Daily Program, Sky News, 18 June 2001, interview with Associate Professor Geof Stapledon
- 'Why HIH could happen again', *Business Review Weekly*, 15 June 2001, page 54, Interview with Professor Ian Ramsay
- Business Daily Program, Sky News, 30 May 2001, interview with Professor Ian Ramsay
- ABC Radio National, World Today Program, 22 May 2001, interview with Professor Ian Ramsay
- ABC TV, 7.30 Report, 21 May 2001, interview with Professor Ian Ramsay
- ABC TV, Lateline Program, 16 May 2001, interview with Professor Ian Ramsay

## Independence and auditing: When companies collapse

- ABC Radio National, Background Briefing Program, 13 May 2001, interview with Professor Ian Ramsay

## Corporate regulation in Asia

- 'Asia specific', *Your Trading Edge*, April-May 2001, interview with Professor Ian Ramsay

## Corporate governance and NRMA

- 'The politics of Whitlam', *The Australian Financial Review*, 3 April 2001, interview with Professor Ian Ramsay

#### Superannuation funds and corporate governance

- ‘Should super change corporate Australia?’, *Super Review*, April 2001, interview with Associate Professor Geof Stapledon

#### Australian companies relocating their headquarters offshore

- ABC Radio National, Business Program, 17 February 2001, interview with Professor Ian Ramsay

#### The Australian federation and corporate law

- ABC Radio National, The Law Report Program, 30 January 2001, interview with Professor Ian Ramsay

#### Corporate law reform in 2000

- ‘Abnormals get the standard treatment under new rules’, *The Age*, 2 January 2001, Business section, interview with Professor Ian Ramsay

#### High Court decisions in Hughes and Wakim and the referral of corporate law powers by the State Parliaments to the Commonwealth Parliament

- ‘Federal Court’s doors open again’, *The Australian Financial Review*, 16 February 2001, interview with Professor Ian Ramsay

## APPENDIX A

### SEMINARS HELD IN 1995-2000

#### **Directors' Duties: Recent Developments and their Implications for Directors and Advisers**

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

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

#### **The Future of Corporate Regulation: Hughes and Wakim and the Referral of Powers**

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

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

#### **E-Commerce and Financial Services**

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

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

## **Economic Law Reform in Developing Countries: The Case of Indonesian Company Law**

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

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

## **Insider Trading: Recent Developments and Practical Issues for Market Participants**

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

## **Hughes and Wakim: The Challenges for Corporate Regulation**

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

## **The Corporate Law Economic Reform Program and Fundraising**

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

## **The Corporate Law and Economic Reform Program and Takeovers**

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

## **Corporate Law Economic Reform Program Paper 6 and Securities**

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



### **Lawyers' Professional Negligence: Recent Developments**

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

### **Directors' and Officers' Liability Insurance: Practical and Legal Issues**

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

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

### **Share Capital Changes: Practical Implications**

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

### **The Business Judgment Rule: Key Issues for Company Directors and Officers and Their Advisers**

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

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

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

### **1999 Australian Securities and Investments Commission Summer School**

The 1999 Australian Securities and Investments Commission Summer School was held at The University of Melbourne. It was planned with the support of the Centre for Corporate Law and Securities Regulation. The theme of the Summer School was 'Strengthening the Architecture of the Financial System: National, Regional and International Responses to Volatile Global Financial Markets'. The Summer School brought together senior regulators from many countries including Australia, China, the United Kingdom, the United States, Canada, Singapore, Hong Kong, New Zealand, Thailand, Indonesia, Korea, Malaysia, The Philippines, Fiji, India, Sri Lanka and Papua New Guinea.

The keynote speakers at the Summer School included:

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

### **Interpreting Ministerial Directions to Statutory Corporations: Can Responsible Government Determine Corporate Governance?**

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

### **Long-Term Contracts and Competition Laws**

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

### **A United States Perspective on the Business Judgment Rule**

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

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

### **Patrick Stevedores v Maritime Union of Australia: The Labour Law, Corporate Law and Commercial Litigation Issues**

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

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

## **1998 Australian Securities Commission Summer School**

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

Keynote speakers at the Summer School included:

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

### **The Regulation of Managed Investments: Current Issues and Perspectives**

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

This seminar was co-hosted with the Australian Securities Commission.

### **Developments in Closely Held Firms in the United States**

Speaker - Professor Robert Thompson, Washington University, USA.

### **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 Freehill Hollingdale & Page; Professor Robert Baxt,

Chairman, Corporations Law Committee, Australian Institute of Company Directors and Partner of Arthur Robinson & Hedderwicks; Professor Bernard Black, Columbia University Law School, USA; Mr David Goddard, Partner, Chapman Tripp Sheffield Young, New Zealand.

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

### **Do Independent Directors Matter?**

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

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

### **Directors' and Officers' Remuneration: Current Australian and United States Issues**

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

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

### **Commercial Fiduciary Duties**

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 Tregillis, National Director, Regulation, Australian Securities Commission and Associate Professor Mark Sneddon, Faculty of Law, The University of Melbourne

This seminar was co-hosted with the Australian Securities Commission.

## **Corporate Law Teachers National Conference**

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

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

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

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

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

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

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

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

## **The Courts and Corporate Law**

Speakers - Justice Norman Veasey, Chief Justice, Supreme Court of Delaware; Justice David Malcolm, Chief Justice, Supreme Court of Western Australia; Justice Edmund Thomas, Court of Appeal of New Zealand; Andrew Rogers QC, former Chief Judge, Commercial Division, Supreme Court of New South Wales; Alan Cameron, Chairman, Australian Securities Commission; Catherine Walter, professional non-executive company director; Karen Byrne, General Counsel, Australian Stock Exchange; Professor Robert Baxt, Partner, Arthur Robinson & Hedderwicks; Michael Rozenes QC, Commonwealth Director of Public Prosecutions; Alex Chernov QC, Victorian Bar; Professor Ian Ramsay, Centre for Corporate Law and Securities Regulation, The University of Melbourne

This conference was co-hosted with the Australian Institute of Company Directors, the Australian Institute of Judicial Administration and the Business Law Section of the Law Council of Australia.

### **Corporate Strategies in the Single European Market**

Speaker - Professor Gilles Guyot 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 Tregillis 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 Philip Williams of the Melbourne Business School, Mr Jim Holmes, Executive Manager, Business Development of Powernet, Mr David Goddard a partner with the New Zealand firm of Chapman Tripp Sheffield Young, and Mr John Perham of the Privatisation and Industries Reform Division of the Victorian State Treasury Department. This public lecture was co-hosted with the Australian Law and Economics Association

### **The CRA-RTZ Merger**

Speakers - Mr Stephen Creese of CRA Limited and Mr Ian Renard and Mr Cameron Rider of Arthur Robinson & Hedderwicks

### **Recent Developments in Legal Professional Privilege and the Privilege Against Self-Incrimination**

Speakers - Associate Professor Sue McNicol of Monash University and Mr Peter Cranswick and Mr Peter Hiland of the Australian Securities Commission

### **Corporate Governance: An International Perspective**

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 Kluver, Companies and Securities Advisory Committee; Dr Elizabeth Boros, Blake Dawson Waldron

### **Daniels v AWA Limited**

Speakers - Professor Robert Baxt, Arthur Robinson & Hedderwicks; The Hon Andrew Rogers QC, formerly Chief Judge, Commercial Division, Supreme

Court of New South Wales; Mr W R M Irvine, Chairman of the Board of Directors, National Australia Bank

**Recent US Developments in Directors' Duty of Care in Corporate Transactions**

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

**Gambotto v WCP Limited**

Speakers - Quentin Digby, Freehill Hollingdale & Page; Geoff Hone, Blake Dawson Waldron; Ian Renard, Arthur Robinson & Hedderwicks; Ron White, Norton Smith & Co

**Corporate Groups: A United States Perspective on Current Legal Issues and Policies**

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

**The NRMA Case**

Speakers - George Durbridge, Australian Securities Commission; Frances Hanks, The University of Melbourne; Norman O'Bryan, Barrister; Jon Webster, Arthur Robinson & Hedderwicks

**Recent Developments in Closely Held Firms in the United States: Limited Liability Companies and Limited Liability Partnerships**

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

## **APPENDIX B**

### **2001 FACULTY OF LAW GRADUATE SUBJECTS**

- Advanced Construction Claims
- Advanced Construction Contracts
- Advanced Electronic Commerce Law
- Advanced Evidence
- Advanced Litigation
- Advanced Restrictive Trade Practices
- Aspects of International and Comparative Labour Law
- Australian International Taxation
- Avoidance, Management and Resolution of Construction Disputes
- Broadcasting and Telecommunications Law
- Broadcasting Regulation and its Future: A Comparative Analysis
- Commercial Law in Asia
- Comparative Constitutional Law
- Comparative Law
- Competition Law and Intellectual Property
- Construction Claims
- Construction Contracts
- Copyright Law
- Corporate Governance and the Duties of Directors
- Corporate Taxation
- Current Issues in Insurance Law
- Defamation Law
- Designs Law and Practice
- Discrimination and Dismissal Law
- Dispute Resolution in the Cyberspace Era
- e-Health Law
- Electronic Banking and Payments
- Electronic Commerce Law
- The Electronic Corporation
- Employment Law
- Energy Regulation Law and Policy
- Environmental Law
- Financial Sector Regulation
- Financial Transactions Law
- Fundamentals of the Common Law
- Globalisation, APEC and Law



- Goods and Services Tax Principles
- Indigenous Peoples and the Law
- Individual Accountability for Human Rights Violations
- Infrastructure Development in Australia and Overseas
- Intellectual Property in the Digital Age
- International Commercial Arbitration
- International Economic Organisations
- The International Financial System: Law and Practice
- International Human Rights Law
- International Humanitarian Law
- International Issues in Intellectual Property
- International Law on the Rights of the Child
- International Trade Law
- Internet Law
- Labour Relations Law
- Law and Economic Reform in Asia
- Law and Human Genetics
- Law Medicine and Ethics
- Law of Intergovernmental Relations
- Law of the Sea and National Security
- Legal Systems Information
- Licensing Law and Technology Transfer
- Managed Investments Law
- Marine Insurance
- Medical Law: Statutory Obligations of Health Professionals
- Mineral Exploration and Production Law
- Native Title Law and Resources Development
- New Income Tax System
- Patents and Trade Secrets
- Principles of Corporate Insolvency
- Principles of Public and International Law
- Project Finance
- Regulation in the Digital Age
- Regulation of Securities Offerings
- Researching Labour Law
- Resources Joint Ventures and Transactions
- Securitisation Law
- Sports Labour Law
- Sports Marketing Law
- Tax Incentives for Industry and Investment

- Tax Litigation
- Taxation of Business and Investment Income
- Taxation of Controlled Foreign Companies, Foreign Investment Funds and Transferor Trusts
- Taxation of Partnerships and Trusts
- Theories of Constitutional Interpretation
- Trade Mark Practice
- Trade Marks and Unfair Competition
- TRIPS Law and Practice
- Water Resources Law
- Weapons, Health and Law
- Women and War
- Workplace Health and Safety

## APPENDIX C

### COMPETITIVE RESEARCH GRANTS OBTAINED IN 1996-2000

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

##### **Type of Grant**

Australian Research Council Strategic Partnerships with Industry Grant

##### **Chief Researchers**

Professor Ian Ramsay, Ms Sue Woodward and Ms Sally Sievers

##### **Industry Partner**

Philanthropy Australia Inc

##### **Funds received**

\$80,000 with matching funds contributed by Philanthropy Australia Inc

##### **Project summary**

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

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

##### **Type of Grant**

Australian Research Council Large Grant

##### **Chief Researchers**

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

**Funds received**

\$127,393

**Project summary**

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

**An Analysis of Factors Influencing the Share-back Decision****Type of Grant**

University of Melbourne Faculty of Economics and Commerce Research Grant

**Chief Researchers**

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

**Funds received**

\$7,000

**Project summary**

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

**The Governance of Managed Investment Schemes****Type of Grant**

Australian Research Council Large Grant

### **Chief Researchers**

Professor Ian Ramsay, Ms Pamela Hanrahan and Dr Geof Stapledon

### **Funds received**

\$137,000

### **Project summary**

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

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

#### **Type of Grant**

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

### **Chief Researchers**

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

### **Industry Partner**

The Australian Securities and Investments Commission

### **Funds received**

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

### **Project summary**

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

about corporate crime. The project will evaluate the effectiveness of enforcement of directors' duties by ASIC.

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

#### **Type of Grant**

Australian Research Council Large Grant

#### **Chief Researcher**

Dr Timothy Lindsey

#### **Funds received**

\$128,000

#### **Project summary**

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

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

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

#### **Type of Grant**

Australian Research Council Small Grant

#### **Chief Researcher**

Dr Geof Stapledon

#### **Funds received**

\$7,500

#### **Project summary**

The Australian Securities and Investments Commission (ASIC) has the power to modify the prospectus - and other fundraising - provisions of the Corporations Law on a case-by-case basis. The project involves an analysis of

the use of this power by ASIC. The objective is to determine whether the statutory fundraising requirements could be reduced further than is being proposed under the Federal Government's Corporate Law Economic Reform Program, in order to minimise the cost of capital raising to Australian business.

### **The Costs of Corporate Litigation**

#### **Type of Grant**

University of Melbourne Faculty of Economics and Commerce Research Grant

#### **Chief Researchers**

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

#### **Funds received**

\$8,900

#### **Project summary**

The project examines the costs associated with corporate litigation and possible sources of these costs by using event study methodology. In particular, the study provides evidence on (1) the costs of litigation involving companies and a breakdown of these costs and (2) the rules on allocating legal costs between parties. The results of the study should lead to a better understanding of the market's reaction to corporate litigation events and to more informed dispute resolution.

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

#### **Type of Grant**

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

#### **Chief Researchers**

Dr Elizabeth Boros and Professor Ian Ramsay

#### **Industry Partner**

The Australian Securities and Investments Commission

### **Funds received**

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

### **Project summary**

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

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

#### **Type of Grant**

Australian Research Council Large Grant

#### **Chief Researchers**

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

### **Funds received**

\$65,000

### **Project summary**

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

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

#### **Type of Grant**

Australian Research Council Collaborative Grant



### **Chief Researchers**

Professor Ian Ramsay, Dr Geof Stapledon and Professor Kevin Davis  
(Department of Accounting and Finance, The University of Melbourne)

### **Industry Partner**

The Australian Investment Managers' Association (which represents approximately the 60 largest institutional investors in Australia)

### **Funds received**

\$72,452 with matching funds contributed by the Australian Investment Managers' Association

### **Project summary**

Institutional investors are significant investors in Australian companies. The impact of institutional investment upon capital markets and upon corporate performance are important matters that have been widely researched overseas, but have received little attention in Australia. One reason for the lack of Australian research is the lack of information about institutional shareholdings in Australian companies. The project will provide this information, largely through the Australian Investment Managers' Association, by identifying the fund managers which control the registered shareholdings disclosed by companies. The information will then be utilised in several studies of the impact of institutional investors on the capital markets and corporate performance.

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

### **Type of Grant**

Criminology Research Council Grant

### **Chief Researchers**

Ms Helen Bird, Dr George Gilligan and Professor Ian Ramsay

### **Funds received**

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

### **Project summary**

This project examines the effect of decriminalisation of misconduct by company directors in contravention of the Corporations Law. It involves an empirical study of prosecution and enforcement actions taken by the

Australian Securities and Investments Commission before and since decriminalisation took effect in 1993.

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

#### **Type of Grant**

University of Melbourne Special Initiatives Grant

#### **Chief Researcher**

Associate Professor Mark Sneddon

#### **Funds received**

\$15,000

#### **Project summary**

Many governments and businesses have proposed that paper-based transactions as diverse as sales contracts and issuing drivers' licences be replaced by electronic messages. Electronic signatures will be used to authenticate the sender's identity and make the person to whom that signature is certified to belong legally bound by the message. The possible changes required to existing laws involve important policy choices. This project will (1) identify existing Australian laws that would require alteration and (2) provide a comparative analysis of the models for legal change proposed in Australia and overseas and their underpinning policy choices.

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

#### **Type of Grant**

Australian Research Council Small Grant

#### **Chief Researchers**

Professor Ian Ramsay and Dr Geof Stapledon

#### **Funds received**

\$19,800 plus research infrastructure funds provided by The University of Melbourne of \$4,954

#### **Project summary**

There is a lack of evidence and information on the role of institutional investors in corporate ownership and control. The project provides this evidence by way of detailed interviews with Australian institutional investors

on a range of matters relating to their activities and views on corporate governance and investment policy. The project also identifies possible barriers, including legal barriers, to institutional investor activism (ie, why institutional investors may not actively monitor the management of companies in which they invest) and the views of institutional investors are sought in relation to whether these possible barriers do actually inhibit institutional investor activism.

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

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researcher**

Ms Helen Bird

### **Funds received**

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

### **Project summary**

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

## **Compulsory Acquisition of Minority Shareholdings**

### **Type of Grant**

Australian Research Council Small Grant

### **Chief Researcher**

Dr Elizabeth Boros

### **Funds received**

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

### **Project summary**

Debate regarding the landmark decision in *Gambotto v WCP Ltd* has culminated in a law reform proposal by the Companies and Securities Advisory Committee (CASAC) proposing expansion of the range of situations in which a majority shareholder can compulsorily acquire all outstanding shares in a company. This project will conduct detailed interviews with takeover offerors in order to ascertain the relative importance to them of the various benefits of 100 per cent ownership. It will then seek to determine whether the most significant of those advantages can be achieved by means other than expropriation of minority shareholdings and, if so, to suggest alternative directions for law reform to that proposed by CASAC.

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

#### **Type of Grant**

University of Melbourne Special Initiatives Grant

#### **Chief Researcher**

Dr Geof Stapledon

#### **Funds received**

\$12,000

### **Project summary**

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

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

#### **Type of Grant**

State of Victoria Office of Multimedia Grant

#### **Chief Researcher**

Associate Professor Mark Sneddon

**Funds received**

\$16,340

**Project summary**

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

**Remedies for Directors' Improper Use of Position****Type of Grant**

University of Melbourne Special Initiatives Grant

**Chief Researcher**

Dr Elizabeth Boros

**Funds received**

\$12,000

**Project summary**

This project focuses on the situation where directors divert a business opportunity away from the company of which they are a director either to themselves or to another company of which they are also a director. Specifically, it:

- (1) examines the means by which courts determine the amounts which are recoverable from directors in equitable proceedings and in proceedings brought under statutory provisions; and
- (2) seeks to identify the assumptions and policies underlying the results of the decided cases.

**Women and Commerce****Type of Grant**

University of Melbourne Special Initiatives Grant

**Chief Researcher**

Dr Belinda Fehlberg

**Funds received**

\$8,000

## **Project summary**

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

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