

Annual Report 2016



*Centre for Corporate Law
and Securities Regulation*

MELBOURNE LAW SCHOOL

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Director's Report

Professor Ian Ramsay

2016 was a very successful year for the Centre for Corporate Law and Securities Regulation. Members of the Centre continued to undertake important research projects and the Centre conducted an active conference and seminar program dealing with a range of topical matters relevant to academics and practitioners. A list of members and associates is included under the heading '**Academic Members and Associates of the Centre**'.

Research

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

In 2016, the following books were published by Centre members:

- Edgeworth, B, Rossiter, C, O'Connor, P and **Godwin, A**, *Sackville & Neave Australian Property Law*, LexisNexis, Australia (10th ed, 2016)
- Hanrahan, P, **Ramsay, I**, and Stapledon, G, *Commercial Applications of Company Law*, Oxford University Press, Australia (17th ed, 2016)
- **Howe, J** and Owens, R (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, Hart Publishing, United Kingdom (2016)
- **Lindsey, T** and Nicholson, P, *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam*, Hart Publishing, United Kingdom (2016)
- **Lindsey, T** and Pausacker, H, *Religion, Law and Intolerance in Indonesia*, Routledge, United Kingdom (2016)

In addition, 2016 saw Centre members publish 45 journal articles and 5 research reports or papers.

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

Members of the Centre were successful in obtaining the following new grants in 2016:

- Harmful Financial Products: Analysis of Their Impact and Regulation (Australian Research Council Linkage Grant)
- Comparative Insolvency Law in the Asia-Pacific
- Integrity in Sport: Comparative Approaches to Match-Fixing in Australia, Japan and Korea

In 2016, members of the Centre continued research funded by grants obtained in earlier years:

- Director's Conflicts: Multiple Directorships and Corporate Opportunities
- An Analysis of Penalties under ASIC Administered Legislation

- Australian Personal Insolvency Laws in the Context of Changing Demographics and Increasing Financial Stress
- Phoenix Activity: Regulating Fraudulent Use of the Corporate Form
- The Legal and Social Dimensions of Financial Hardship in Australia: Implications for Legal, Regulatory and Policy Frameworks
- Financial Regulation in Asia – A New Model for Regional Cooperation
- Financial System Regulation – Is Australia’s ‘Twin Peaks’ Approach a Model for China and Asia?
- A Comparative Analysis of the Reform of Personal Property Security Law in Australia and the United Kingdom
- Remuneration of Insolvency Practitioners in Australia and Singapore: Legal and Policy Trends

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

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

Seminars and conferences

In 2016 the Centre hosted or participated in the organisation of 15 seminars and conferences.

A continuing initiative for the Centre in 2016 was an invitation from the Supreme Court of Victoria for the Centre to co-host with the Court the eighth Supreme Court Commercial Law Conference. The conference was successful with 86 people registering to attend.

Another important initiative was the annual Harold Ford Memorial Lecture. The speaker was the Hon Marilyn Warren AC, Chief Justice, Supreme Court of Victoria, who spoke on the topic “Corporate Structures, The Veil and The Role of the Courts”. One hundred and twenty people registered to attend the lecture.

Other seminars dealt with topics including financial integration and regional coordination in Asia, corporate governance, private equity in the wake of Brexit, social impact bonds, the evolution and regulation of financial technology, as well as the role of transnational corporations in sustainable development.

Full details of the 2016 seminars are included in this report under the heading ‘**Seminars and Conferences**’.

Links with peak organisations

2016 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 Corporate Law Teachers Association. This includes participation in writing submissions regarding law reform proposals on behalf of

several of these peak organisations. Further details are included in this report under the heading ‘**Links with Peak Organisations**’.

Corporate Law Bulletin

2016 saw the continued development of the Corporate Law Bulletin. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms and distributed in partnership with SAI Global. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2016, 232 issues of the Bulletin had been published.

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

Centre for Corporate Law and Securities Regulation Website

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

Particular features of the website are:

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

- Professional and interest bodies;
- Corporate social responsibility;
- Financial news; and
- **History of Australian corporate law** (this section of the website provides information regarding the history of Australian corporate law including links to historical documents).

Contributions to law reform and policy focussed research

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

In 2016 Professor Ian Ramsay was appointed by the Minister for Revenue and Financial Services, the Hon Kelly O’Dwyer MP, to chair an independent panel to review the external dispute resolution and complaints framework in the financial system. The panel published an issues paper in September 2016 and an interim report in December 2016. The panel will provide its final report to the government in 2017.

In 2016 Professor Ian Ramsay was appointed by the Minister for Revenue and Financial Services, the Hon Kelly O’Dwyer MP, to be a member of the ASIC enforcement review taskforce. The taskforce will assess the suitability of the existing regulatory tools available to ASIC to perform its functions adequately and whether there is a need to strengthen ASIC’s enforcement toolkit. The taskforce will publish a series of consultation papers in 2017 and provide a report to the government in 2017.

In 2016 Professor Ian Ramsay was appointed by the Association of South East Asian Nations (ASEAN) Connectivity through Trade and Investment to prepare a report on equity crowd funding in ASEAN. The report will be provided to ASEAN in 2017.

Editorial positions

Members of the Centre continued in 2016 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Australian Business Law Review*, the *Australian Tax Review* and the *Corporate Law Bulletin*.

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

Supervision of graduate students' research

During 2016, members of the Centre for Corporate Law and Securities Regulation supervised 13 PhD theses being undertaken by graduate students.

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

Media coverage of Centre activities

The research activities of Centre members received significant coverage in the media in 2016. Members of the Centre gave approximately 40 reported interviews to the media in 2016. Further details of the media coverage are included in this report under the heading '**The Centre as a Public Resource**'.

Visitors to the Centre

Visitors to the Centre in 2016 included:

- Professor Douglas Arner, University of Hong Kong, Hong Kong
- Dr Pablo Bayon, Comillas Pontifical University, Spain
- Dr Rhada Ivory, University of Queensland, Australia
- Professor Jasper Kim, Ewha University, South Korea
- Professor Natania Locke, University of Johannesburg, South Africa
- Professor Arjya Majumdar, Jindal Global Law School, India
- Professor Bryan Mercurio, Chinese University of Hong Kong, Hong Kong
- Mr Timothy Spangler, University of California, Los Angeles, United States
- Mr Jordan Thomas, Labaton Sucharow, United States
- Dr Georgina Tsagas, Bristol University, United Kingdom
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands
- Professor Karen Yeung, King's College London, United Kingdom

Consultancies and pro bono work

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

Acknowledgments

Many people deserve thanks for their contribution to the work of the Centre during 2016. In particular, they include the academic members of the Centre, the research fellows and research assistants, and the members of the Australian and International Advisory Boards who have provided valuable advice in relation to particular matters and who have continued to assist the work of the Centre.

Purposes and Objectives of the Centre

The objectives of the Centre and its members are to:

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

International Advisory Board

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

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

- The Honourable E Norman Veasey, Former Chief Justice, Supreme Court of Delaware, USA
- Professor Susan Watson, University of Auckland, New Zealand
- Professor Eddy Wymeersch, Director, Financial Law Institute, University of Ghent, Belgium

Australian Advisory Board

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

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

Academic Members and Associates of the Centre

Academic members

Members of the Centre in 2016 were:

Associate Professor Paul Ali
 Professor Helen Anderson
 Dr George Gilligan
 Associate Professor Andrew Godwin
 Professor John Howe
 Associate Professor Cally Jordan
 Dr Rosemary Langford
 Professor Timothy Lindsey
 Professor Ann O'Connell

Professor Ian Ramsay (Director)
Dr Julian Sempill
Associate Professor Stacey Steele

Associates of the Centre

Associates of the Centre in 2016 were:

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

Research fellows and research assistants

Research fellows and research assistants in 2016 were:

Helen Bird
Evgenia Bourova
Leo Bromberg
Vivien Chen
Andre Dao
Jasper Hedges
Timothy House
Sharon Korman
Steve Kourabas
Robert Macdonald
Cosima McRae
Lucinda O'Brien
Elly Patira
Madeleine Roberts
Belinda Sandonato
Edwin Sayes
Drossos Stamboulakis
Miranda Webster
Hannah Withers

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

Seminars and Conferences

The Centre for Corporate Law and Securities Regulation hosted or participated in organising a number of highly successful conferences and seminars during 2016.

- **Conference - Finance in Asia: Integration & Regional Coordination**
(7 December 2016)
Organised by the Centre for Cross-Border Commercial Law in Asia, Singapore Management University; Melbourne School of Government; Global Economic Law Network, Centre for Corporate Law and Securities Regulation and Transactional Law Group, Melbourne Law School
- 25 registrations
- **On Corporate Governance – Lessons from the Australian Banks since the GFC**
(16 November 2016)
Speaker: Professor Pamela Hanrahan (UNSW Business School)
- 92 registrations
- **Is China at Risk of Financial Crisis?**
(20 October 2016)
Speaker: Michael Taylor (Moody's Investors Service)
- 180 registrations
- **The Supreme Court of Victoria Commercial Law Conference 2016**
(13 October 2016)
Speakers: The Rt Hon Lady Justice Elizabeth Gloster DBE, Court of Appeal England & Wales; Mr Phillip Crutchfield QC, Barrister; The Hon Justice Ruth McColl AO, Supreme Court of New South Wales Court of Appeal; Mr David O'Callaghan QC, Barrister; Professor Richard Garnett, Melbourne Law School; Ms Helen Tiplady, Barrister
- 86 registrations
- **Legitimacy and Compliance in the Global Anti-Corruption Business**
(20 September 2016)
Speakers: Dr Radha Ivory, TC Beirne School of Law
- 50 registrations
- **Annual Tax Lecture, Can't Tax; Won't Tax. Some Reflections on Jurisdiction to Impose and Collect Tax**
(31 August 2016)
Speaker: Professor Philip Baker QC
- **Climate Change Risk and Corporate Governance: Directors' Duties and Liability Exposures in a Post-Paris World**
(29 – 30 August 2016)
Speakers: Professor David Karoly, University of Melbourne; Ben Caldecott, University of Oxford; Freddie Sharpe, Climate Friendly Pty Ltd; Michael Salvatico, ESG Research, MSCI; Sarah Barker, Minter Ellison; Lisa Nichols SC, Barrister; Jon

Hutchins, Mt Hotham Alpine Resort Management Board; John Purcell, CPA Australia; Terence Jeyaretnam, Ernst and Young; Andrew Thomson, Acciona Energy; Jane Stanton, Chartered Accountants ANZ; Professor Ian Ramsay, University of Melbourne; Helga Birgden, Mercer; Ed John, Australian Council of Superannuation Investors; Maged Girgis, Minter Ellison; Ian Laughlin, OnePath Life; Nick Sherry, FNZ (APAC); Natalie Smith, Company and Financial Client Earth; Matthew Kennedy, IMF Bentham; Melita Simic, Marsh FINPRO; Joel Pridmore, Munich Re – Corporate Insurance Partner

- 54 registrations

- **Private Equity in the wake of Brexit**

(20 July 2016)

Speaker: Timothy Spangler, Dechert LLP

- 89 registrations

- **Using Social Impact Bonds to fund projects: Australia, Asia and Beyond**

(12 July 2016)

Speakers: Professor Jasper Kim, Ewha University; Fabienne Michaux, Australian Advisory Board; Malcolm Garrow, Social Ventures Australia; Jeremy King, Corrs Chambers Westgarth

- 45 registrations

- **Fintech: Evolution and Regulation**

(1 June 2016)

Speaker: Professor Douglas Arner, University of Hong Kong

- 98 registrations

- **Making corporations responsible: The parallel tracks of the B Corp movement and the business and human rights movement**

(10 May 2016)

Speaker: Professor Joanne Bauer, Columbia University

- 40 registrations

- **2016 Harold Ford Memorial Lecture**

"Corporate Structures, The Veil and The Role of the Courts" presented by The Hon. Marilyn Warren AC, Chief Justice, Supreme Court of Victoria

(5 May 2016)

- 120 registrations

- **Transnational Corporations and Sustainable Development: Clash or Mutual Supportiveness Between Human Rights and Investment Law?**

(20 April 2016)

Speaker: Dr Marcos A. Orellana, George Washington University

- 34 registrations

- **True North: The Ethical Compass, An Instrument of Change**

(15 April 2016)

Speaker: Jordan A. Thomas, Labaton Sucharow

- 67 registrations

- **Hypernudge: Big Data as a Mode of Regulation by Design**
(8 April 2016)
Speaker: Professor Karen Yeung, King's College London
- 54 registrations
- **Managing In-House Teams: Lessons from the Dutch Development Bank FMO**
(22 March 2016)
Speaker: Jan Job de Vries Robbe, Dutch Development Bank FMO
- 24 registrations

Full details of the seminars and conferences in 2016 are available on the [Centre's website](#).

Links with Peak Organisations

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2016, academic members of the Centre were members of:

- Australasian Law Teachers' Association Executive Committee (Professor Helen Anderson)
- Australian Tax Office, General Anti-Avoidance Panel (Professor Ann O'Connell)
- Australian Tax Office, Public Advice and Guidance Panel (Professor Ann O'Connell)
- Board of Taxation, Advisory Panel (Professor Ann O'Connell)
- Corporations Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Cally Jordan and Professor Ian Ramsay)
- Corporate Law Teachers Association, Executive Committee (Professor Helen Anderson)
- Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia (Professor Helen Anderson)
- International Financial Experts Panel of the P.R.I.M.E. Finance Foundation, The Hague (Associate Professor Cally Jordan)
- Panel of Foreign Arbitrators, Shanghai International Arbitration Centre (Associate Professor Andrew Godwin)
- Taxation Committee, Business Law Section of the Law Council of Australia (Professor Ann O'Connell)

Editorial Positions

During 2016 academic members of the Centre occupied editorial positions with a number of corporate law and other publications:

- *Australian Accounting Review* (Member of the Editorial Board: Professor Ian Ramsay)
- *Australian Business Law Review* (Section Editor: Associate Professor Paul Ali)
- *Australian Journal of Asian Law* (Editor: Professor Timothy Lindsey)
- *Australian Tax Review* (Member of the Advisory Board, Guest Editor, Volume 37(2): Professor Ann O'Connell)
- *Capital Markets Law Journal* (Member of the Editorial Board: Associate Professor Paul Ali)
- *The Company Lawyer* (Consulting Editor: Dr George Gilligan)
- *Company and Securities Law Journal* (Editor: Associate Professor Paul Ali; Section Editor: Dr Rosemary Langford; Member of the Editorial Board: Professor Ian Ramsay)
- *Corporate Law Bulletin* (Editor: Professor Ian Ramsay)
- *Doing Business in Asia* (Contributing Editor and Member of the Editorial Advisory Board: Professor Tim Lindsey)
- *Governance, Risk and Compliance Newsfeed* (Editorial Advisor: Professor Ian Ramsay)
- *International Journal of Disclosure and Governance* (Member of the Executive Editorial Committee: Dr George Gilligan)
- *International Journal of Law & Education* (Member of the Editorial Board: Professor Ian Ramsay)
- *International Securities Regulation: Pacific Rim* (Consulting Editor: Professor Ian Ramsay)
- *Journal of Financial Crime* (Member of the Editorial Advisory Board: Dr George Gilligan)
- *Journal of Law and Financial Management* (Member of the Editorial Board: Professor Ian Ramsay)
- *Journal of Money Laundering Control* (Member of the Editorial Advisory Board: Dr George Gilligan)

- *Journal of Sustainable Finance and Investment* (Associate Editor: Associate Professor Paul Ali)
- *Macquarie Law Journal* (Member of the Editorial Board: Professor Ian Ramsay)
- *Northern Ireland Legal Quarterly* (Member of the Editorial Advisory Board: Dr George Gilligan)
- *Singapore Academy of Law Journal* (Member of the International Editorial Board: Professor Ian Ramsay)
- *SSRN eJournal, Fiduciary Law* (Member of the Editorial Advisory Board: Dr Rosemary Langford)
- *University of Western Sydney Law Review* (Member of the Editorial Advisory Board: Professor Ian Ramsay)

Research

Books

Edgeworth, B, Rossiter, C, O'Connor, P and Godwin, A, *Sackville & Neave Australian Property Law* (10th ed), LexisNexis, Australia (2016)

Hanrahan, P, Ramsay, I, and Stapledon, G, *Commercial Applications of Company Law*, Oxford University Press, Australia (17th ed, 2016)

Howe, J and R Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, Hart Publishing, United Kingdom (2016)

Lindsey, T and Nicholson, P, *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam*, Hart Publishing, United Kingdom (2016)

Lindsey, T and Pausacker, H, *Religion, Law and Intolerance in Indonesia*, Routledge, United Kingdom (2016)

Chapters in books

Lindsey, T and Butt, S, 'State Power to Restrict Religious Freedom: An Overview of the Legal Framework' in T Lindsey and H Pausacker (eds), *Religion, Law and Intolerance in Indonesia*, Routledge, United Kingdom (2016), 19-41

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Ali, P, Bourova, E and Ramsay, I, 'The Statutory Right to Seek a Credit Contract Variation on the Grounds of Hardship: A History and Analysis' (2016) 44 *Federal Law Review* 77-109

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Anderson, H, 'Understanding the Phoenix Landscape for Employees' (2016) 29 *Australian Journal of Labour Law* 257-282

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Anderson, H, 'Labor's Policy to Deal with Phoenix Activity Affecting Employees' (2016) 34 *Company and Securities Law Journal* 316-320

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Anderson, H, 'FEG, Moral Hazard and the Innovation Agenda' (2016) 28 *Australian Restructuring Insolvency & Turnaround Association Journal* 28-29

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Anderson, M, Clark, M, Ramsay, I and Shekhar, C, 'Super Behaviour: A Note on Young Australian Adults' Engagement with their Superannuation accounts' (2016) 10 *Australasian Accounting, Business and Finance Journal* 63-74

Bird, H and Gilligan, G, "Deterring corporate wrongdoing: Penalties, financial services misconduct and the Corporations Act 2001 (Cth)" (2016) 34 *Company and Securities Law Journal* 332-359

Bird, H, Gilligan, G and Ramsay, I, 'The Who, Why and What of Enforceable Undertakings Accepted by the Australian Securities and Investments Commission' (2016) 34 *Company and Securities Law Journal* 491-517

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- Langford, R, 'The Corporate Culture Chameleon: Reflections and Reporting' (2016) 34 *Company and Securities Law Journal* 558-562
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- O'Connell, A and Martin, F, 'Charities, Tax and Wrongdoing: A Principled Approach' (2016) 45 *Australian Tax Review* 99-107

Steele, S, 'Japan's National Bar Examination: Results from 2015 and Impact of the Preliminary Qualifying Examination' (2016) 41 *Zeitschrift fuer Japanisches Recht/Journal of Japanese Law* 55-75

Steele, S, Chen, V and Ramsay, I, 'An Empirical Study of Australian Judicial Decisions Relating to Insolvency Practitioner Remuneration' (2016) 24 *Insolvency Law Journal* 165-191

Steele, S and Haruyama, A, 'Japanese Bar Examination Questions and Student Preferences: Why do more Students choose Insolvency Law over Public International Law and Why does it Matter?' (2016) 42 *Zeitschrift fuer Japanisches Recht/Journal of Japanese Law* 1-29

Steele, S, 'Book Review: Juries in the Japanese Legal System' (2016) 17 *Australian Journal of Asian Law* 1-3

Welsh, M and Anderson, H, 'The Public Enforcement of Sanctions Against Illegal Phoenix Activity: Scope, Rationale and Reform' (2016) 44 *Federal Law Review* 201-225

Research reports and research papers

Bird, H, Gilligan, G, Godwin, A, Hedges, J and Ramsay, I, *An Empirical Analysis of Enforceable Undertakings by the Australian Securities and Investments Commission between 1 July 1988 and 31 December 2015*, Centre for International Finance and Regulation (Working paper No. 106/2016/Project T021), (2016)

Bromberg, L, Gilligan, G, Hedges, J and Ramsay, I, *Sanctions Imposed for Insider Trading in Australia, Canada (Ontario), Hong Kong, Singapore, New Zealand, the United Kingdom and the United States: An Empirical Study*, Centre for International Finance and Regulation (Working Paper No. 117/2016/ Project T021), (2016)

Godwin, A, Li, G and Ramsay, I, *Is Australia's 'Twin Peaks' System of Financial Regulation a Model for China?*, Centre for International Finance and Regulation (Working Paper No. 102/2016/Project E018), (2016)

Hedges, J, Bird, H, Gilligan, G, Godwin, A and Ramsay, I, *An Empirical Analysis of Public Enforcement of Directors' Duties in Australia: Preliminary Findings*, Centre for International Finance and Regulation (Working Paper No. 105/2016/Project T021), (2016)

Jordan, C, *Success and Failure in Stock Exchange Consolidations: Implications for Markets and their Regulation*, Centre for International Finance and Regulation (Working Paper No. 118/2016/Project E018), (2016)

Online columns and blog posts

Abramson, J, Kirkland, A and Ramsay, I, 'Expert panel explains why bank tribunal isn't required', *The Australian Financial Review*, 7 December 2016

Ali, P, Bourova, E and Ramsay, I, 'The statutory right to seek a credit contract variation on the grounds of hardship: A history and analysis', Oxford Business Law Blog, 24 June 2016

Bromberg, L, Gilligan, G and Ramsay, I, 'How insider traders dodge jail on geography', Pursuit, 7 December 2016

Bromberg, L, Gilligan, G and Ramsay, I, 'Enforcement of financial market manipulation laws: An international comparison of sanctions', Oxford Business Law Blog, 9 November 2016

Bromberg, L, Gilligan, G and Ramsay, I, 'Insider trading penalties: An international study', The CLS Blue Sky Blog, Columbia Law School's Blog on Corporations and the Capital Markets, 19 August 2016

Chen, V, Godwin, A and Ramsay, I, 'Cross-border cooperation in bank resolution: A framework for Asia', Oxford Business Law Blog, 31 May 2016

Chia, H and Ramsay, I, 'An analysis of shareholder resolutions involving Australian listed companies from 2004 to 2013', Oxford Business Law Blog, 9 December 2016

Godwin, A and Ramsay, I, 'From enforcement to prevention: International cooperation and financial benchmark reform', Oxford Business Law Blog, 22 September 2016

Godwin, A, Li, G and Ramsay, I, 'Is Australia's 'twin peaks' system of financial regulation a model for China? Oxford Business Law Blog', 25 April 2016

Hedges, J and Ramsay, I, 'Has the introduction of civil penalties into Australia's Corporations Act increased the speed and success rate of directors' duties cases?', Oxford Business Law Blog, 25 October 2016

Hedges, J, Gilligan G and Ramsay, I, 'An empirical analysis of public enforcement of directors' duties in Australia, Harvard Law School Forum on Corporate Governance and Financial Regulation', 9 June 2016

O'Connell, A, 'Fact Checker: Is the Australian Sex Party right about religious organisations, tax and record keeping?', The Conversation, 24 June 2016

Ramsay, I, 'Research helps wipe the slate clean', Pursuit, 25 February 2016

Steele, S, 'Japanese Supreme Court considers what's in a woman's name', Asian Currents, 2 January 2016

Steele, S, 'Submarine saga highlights Australia's dilemma over China and Japan', Asian Currents, 28 April 2016

Stacey Steele and Yoshiko Ohmachi, 'Japan's declining youth crime?', Asian Currents, 24 May 2016

Stacey Steele, 'Will Japan's lowered voting age reverse decreasing voter turnouts?', Asian Currents, 14 August 2016

Teaching

Melbourne Law School has a very strong master's program in corporate and banking & finance law. The subjects offered in 2016 were:

- Accounting for Commercial Lawyers
- Australian Consumer Law
- Banking and Secured Finance
- Commercial Applications of Equity
- Commercial Law: Issues and Policies
- Company Takeovers
- Comparative Corporate Tax
- Contract Interpretation
- Corporate Governance and Directors' Duties
- Corporate Insolvency and Reconstruction
- Corporate Tax A (Shareholders, Debt and Equity)
- Debt Capital Markets
- Economic Regulators
- Financial Services Law
- Global Financial Order: IMF and World Bank
- Hedge Funds and Private Equity Funds
- International Financial System: Law and Practice
- International Financial Transactions: Law and Practice
- Liability Insurance Law
- Managed Investments Law
- Project Finance
- Regulatory Policy and Practice
- Special Issues in Tax Treaties
- Superannuation Law
- Taxation of Business and Investment Income
- Taxation of Mergers and Acquisitions
- UK International Law

A feature of the master's program in corporate law is the use of international lecturers. These included in 2016:

- Professor Douglas Arner, University of Hong Kong, Hong Kong (International Financial System: Law and Practice)
- Professor Philip Baker QC, The University of Oxford and the English Bar
- Ms Katharine Christopherson, International Monetary Fund, United States (Global Financial Order: IMF and World Bank)

- Professor Peter Harris, University of Cambridge, United Kingdom (Comparative Corporate Tax)
- Professor William Kovacic, George Washington University, United States (Economic Regulators)
- Professor David McLauchlan, Victoria University of Wellington, New Zealand, (Contract Interpretation)
- Mr Jacques Sasseville, Organisation for Economic Co-operation and Development, Paris (Special Issues in Taxation)
- Mr Timothy Spangler, University of California, United States (Hedge Funds and Private Equity Funds)
- Mr William Swadling, University of Oxford, United Kingdom (Commercial Applications of Equity)
- Mr Jan Job de Vries Robbe, Dutch Development Bank FMO, The Netherlands (Debt Capital Markets)
- Prof Sarah Worthington, University of Cambridge, United Kingdom (Commercial law: Issues and Policies)
- Prof Karen Yeung, King's College London, United Kingdom (Regulatory Policy and Practice)

Corporate Law Bulletin

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

By the end of 2016, 232 issues of the Bulletin had been published.

The monthly Bulletin includes the following:

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

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

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

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

<http://www.saiglobal.com>

Competitive Research Grants

This section identifies the competitive research grants that were obtained by members of the Centre in 2016, or that were obtained earlier than 2016 but continued to fund research in 2016. A complete list of all research grants obtained is available on the [Centre's website](#) and will as [publications resulting from the major research grants](#).

New Grants Obtained in 2016

Harmful Financial Products: Analysis of Their Impact and Regulation

Type of grant

Australian Council Linkage Grant

Funds allocated

\$620,000

Chief Investigators

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

Partner Organisations

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

Project summary

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

Comparative Insolvency Law in the Asia-Pacific

Type of grant

Melbourne Law School International Collaboration Fund

Funds allocated

\$9,735

Chief Investigators

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

Project summary

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

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

Type of grant

Melbourne Law School Asia Research Collaboration Funding Scheme

Funds allocated

\$9,000

Chief Investigators

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

Project summary

This project by the Asian Law Centre and Sports Law Program at Melbourne Law School takes the form of a multi-contributor book which examines approaches to combatting match-fixing in Australia, Japan and South Korea. The book is part of the Asian Law Centre and Sports Law Program's efforts to engage with Asian academics, regulators and law enforcement bodies to achieve a greater understanding of match-fixing and the current level of legal response in these key Asian sporting nations. It builds on the papers presented at the Sports Law and Integrity Workshop in February 2015.

Grants Obtained Earlier than 2016 but Continuing to Fund Research in 2016

Director's Conflicts: Multiple Directorships and Corporate Opportunities

Type of grant

University of Melbourne Early Career Researcher Grant

Funds allocated

\$19,320

Chief Investigator

Dr Rosemary Langford

Project summary

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

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

An Analysis of Penalties under ASIC Administered Legislation

Type of grant

Centre for International Finance and Regulation

Funds allocated

\$389,084

Chief Investigators

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

Project Summary

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

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

Type of Grant

Australian Research Council Linkage Grant

Funds Received

\$425,465

Chief Investigators

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School), Dr Kathy Landvogt (Good Shepherd Youth & Family Service), Mr Gerard Brody (Consumer Action Law Centre) and Ms Fiona Guthrie (Financial Counselling Australia Incorporated)

Project Summary

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

Phoenix Activity: Regulating Fraudulent Use of the Corporate Form

Type of Grant

Australian Research Council Discovery Grant

Funds Received

\$403,000

Chief Investigators

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

Project Summary

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

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

Type of Grant

Australian Research Council Discovery Grant

Funds Received

\$396,000

Chief Investigators

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

Project Summary

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

Financial Regulation in Asia – A New Model for Regional Cooperation

Type of Grant

Melbourne School of Government Research Cluster Grant

Funds Received

\$213,917

Chief Investigators

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

External Collaborators

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

Project Summary

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

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

Type of Grant

Centre for International Finance and Regulation Grant

Funds Received

\$57,548

Chief Investigators

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

Project Summary

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

A Comparative Analysis of the Reform of Personal Property Security Law in Australia and the United Kingdom

Type of Grant

Oxford University Law School – Melbourne Law School Research Partnerships Grant

Funds Received

\$17,500 and £10,000

Chief Investigators

Associate Professor Paul Ali and Professor Ian Ramsay (Melbourne Law School) and Professor Louise Gullifer (University of Oxford)

Project Summary

The law of personal property security deals broadly with the issue of how lenders and other providers of corporate and consumer credit can protect their claims against borrowers by taking security over the personal property held by borrowers. Personal property securities reduce the risks associated with providing credit and should therefore contribute to the increased availability of credit. Balanced against this, however, are the legal complexities confronted by lenders when taking security over personal property. This area of law has been the subject of several proposals for reform in both the UK and Australia. This project aims to assess the divergent approaches towards the regulation of personal property securities in the two jurisdictions, with a view to seeing what benefits an Australian Personal Property Securities Act 2009 - type reform could have for the UK and also what pitfalls are likely in any such reform process. This assessment will involve a comparative analysis of selected corporate and consumer financing transactions, an empirical survey of possible difficulties in respect of small-to-medium enterprise financing in the UK and an empirical survey of how the Australian reforms are operating in practice.

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

Type of grant

NUS Law - MLS Research Partnerships

Funds received

\$20,000

Chief Investigators

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

Project summary

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

Supervision of Graduate Students' Research

This section identifies the supervision of graduate students undertaken by members of the Centre in 2016.

PhD theses in progress

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

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

The Centre as a Public Resource

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

Submissions

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

Requests for information

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

Media

During the course of 2016 members of the Centre gave approximately 40 reported interviews to newspaper, radio and television journalists. A list of these interviews is available on the [Centre's website](#).