Re: The Corporation

Re-Thinking *Re*-Forming *Re*-Imagining

A Virtual and In-Person Conference of the Society of Corporate Law Academics

Sunday 3rd July – Tuesday 5th July 2022

School of Law and Society
University of the Sunshine Coast, Sippy Downs

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#SCOLA2022, #RETHECORPORATION

CONFERENCE HOST

Timothy D Peters

CONFERENCE ORGANISING COMMITTEE

Vincent Goding
Kirsty Walker
Ashley Pearson
Jordan Belor
Timothy D Peters

CONFERENCE SUPPORT

Kayla Thornhill
Susan Schiotz

VOLUNTEERS AND TECH SUPPORT

Timothy Bell
Joseph Grant
Zach Meredith
Rebecca Moldoveanu

CONTENTS

ABOUT US

Society of Corporate Law Academics

SCoLA
Society of Corporate Law Academics (SCoLA)

The Society of Corporate Law Academics, or SCoLA, (formerly known as the Corporate Law Teachers Association (CLTA)) was established in 1994 by scholars of corporate law. The Society seeks to represent the voices of the various corporate law scholars in Australia, New Zealand and the Asia Pacific region and provides a forum for exchange of ideas about corporate law. It also provides a vehicle to link scholarship to government and industry.

The Society's 'main event' is the Annual Conference, which draws together eminent and emerging scholars from our region, as well as across the globe. All academics and postgraduate students interested in joining the association are welcome to do so. Membership is free, and our regular newsletters will link you to various corporate law events and opportunities that may be of interest.

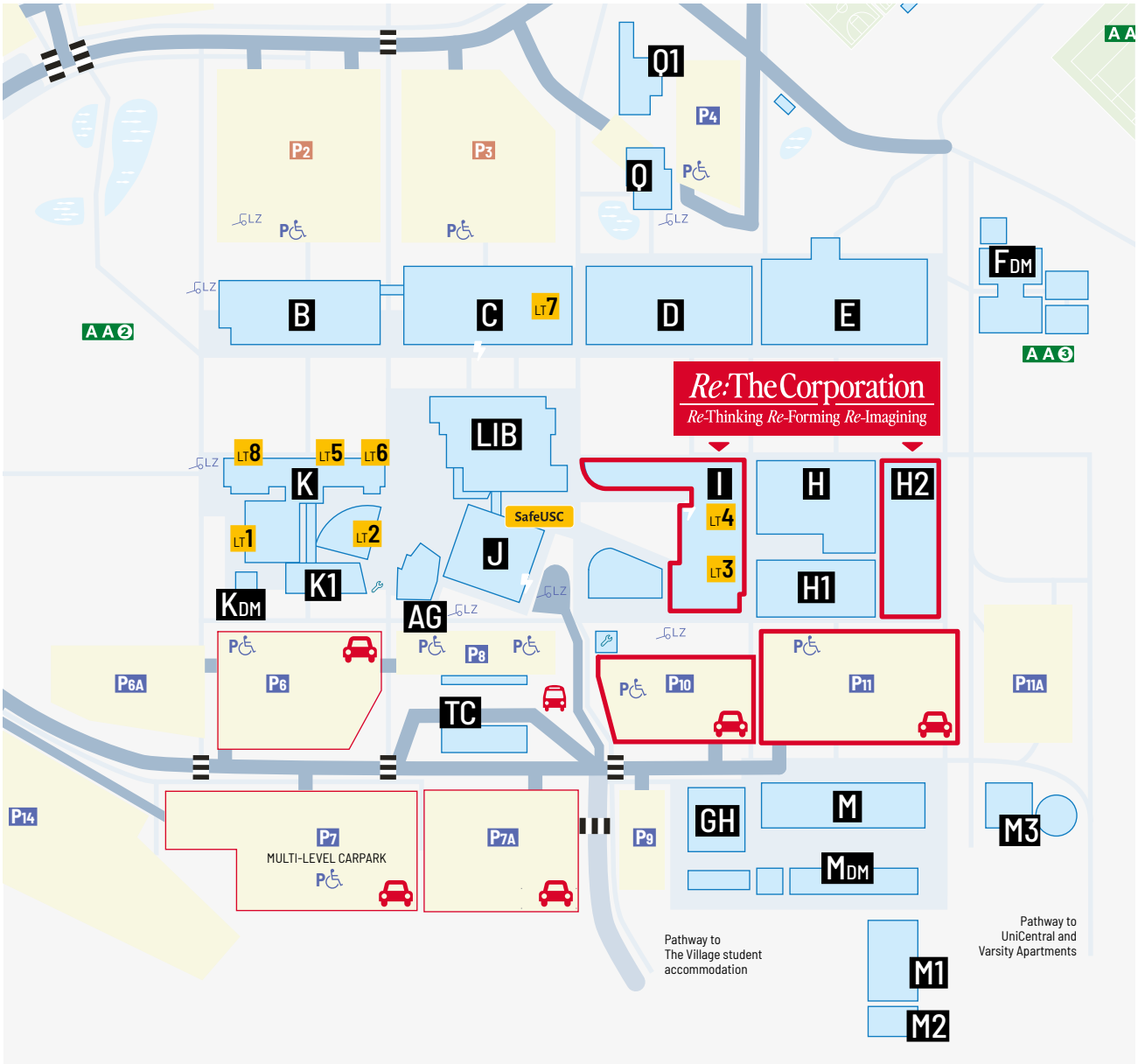
For more about how to become a member, see: *https://scola.asn.au/about/membership/*
or scan the QR code below ▾

ANNUAL GENERAL MEETING

SCoLA's Annual General Meeting will be held as part of the conference on **Tuesday 5th July 2022 at 12.15pm AEST**

- **AGM Zoom Link:** *https://usc-au.zoom.us/j/84304974235?pwd=RkNLbTgrVzkxUjQ3WVY2bFNKTDkyZz09*
- **Meeting ID: 843 0497 4235**
- **Passcode: SCoLA2022**

MAP & PARKING



The nearest parking to the conference venue is carparks P11 and P10. If these are full, additional parking is available in P6, P7 (multi-story) and P7A. Parking is $5 per day and you can purchase an e-ticket beforehand, at machines on campus or via the PAYG – CellOPark app. More information is available here: *https://www.usc.edu.au/about/locations/transport-and-parking/parking.*

CONFERENCE INFORMATION

On Campus Rooms

The conference will be held in H2 and I Blocks (highlighted on the map) in rooms LT3, LT4 and H2.G.02 (see conference schedule). The drinks on Sunday will be in the USC Art Gallery (AG).

Room Facilities

Each of the conference rooms are equipped with AV facilities including desktop and projector for PowerPoint presentations, laptop cables and internet access. If you are using the desktop, please bring your presentation on a USB stick and load onto the computer at the beginning of the day or during one of the breaks.

Breaks

Morning tea, lunch and afternoon tea will be available on each day in the area outside H2.G.02.

Registration

Registration will be available outside H2.G.02 on each of the days of the conference.

Online breaks

Zoom rooms will be kept open so you can continue conversations during the breaks, or arrange a virtual catch-up.

Conference Dinner (buses available)

The conference dinner will be at DeeDen, 1st Floor, 87 Burnett St, Buderim. Shuttle buses will be provided from the USC campus for those needing them, and then will provide a return to campus, Mooloolaba and Maroochydore after the dinner.

Zoom Information

For those attending online, we recommend that you download the latest version of Zoom prior to the conference. Zoom links and passcodes will be distributed a few days prior to the conference.

PRIZES & AWARDS

The SCoLA Prizes will be awarded at the Conference Dinner on Monday evening, including:

- The SCoLA Corporate Law Student Essay Prize – 2021-2022
- The Best Conference Paper Prize 2022
- SCoLA "Life Member" Bursaries
- Honorary Life Time Members Plaque

More information on the prizes and bursaries is available at *www.scola.asn.au*

CONFERENCE SCHEDULE

PLEASE NOTE.

- The conference is hosted on the Sunshine Coast, Queensland, Australia. As such, all times are in Australian Eastern Standard Time.
- For those in other timezones, a useful time converter can be found here: *https://www.timeanddate.com/worldclock/converter.html*
- Except for the conference dinner, all sessions will have both Zoom and in-person options
- Time-keeping will be strictly kept
  - For 3-paper panels, presenters will have 20 minutes to present
  - For 4-paper panels, presenters will have 15 minutes present
- The standard format of presentation will be for all presenters to present, and then for questions and discussion to occur at the end of the session. Zoom Links will be provided as part of the "Live Schedule" that will be made available just before the conference.

DAY ONE: SUNDAY 3 JULY 2022

1.30 – 2.45pm	SCoLA Executive Meeting – *Room I.2.03*
2.45pm	Registration desk open – *Outside H2.G.02*
3.15 – 5.15pm	Teaching Session – *Room H2.G.02* *Acknowledgment of Country & Welcome* ▸ **Incorporating Indigenous Content, Knowledges and Contexts into Teaching Corporate Law** – *Dr Robin Bowley, UTS* (Strategies for incorporating Indigenous cultural capability into the teaching of corporate law) **- Panel Discussion 1:** – *Uncle Kevin Williams, University of the Sunshine Coast* – *Dr Fady Aoun, University of Sydney* – *Peter Mitchell, University of the Sunshine Coast* – *Dr Robin Bowley, UTS* **- Panel Discussion 2:** – *Professor Rebecca Johnson, University of Victoria, British Columbia* – *Assistant Professor Bradley Bryan, University of Victoria, British Columbia* ▸ **Open Discussion on Teaching**
5.15 – 6.30pm	Welcome Cocktail Reception – *USC Art Gallery*
6.30pm	Day One concludes

DAY TWO: MONDAY 4 JULY 2022

8.15am	Registration desk open – *Outside H2.G.02*
8.45 – 10.15am	Official Conference Opening – *LT3* Welcome to Country: *Kerry Neill, TribalLink* Official Welcome: *Professor Susan Watson & Professor Jay Sanderson* Opening Remarks: *Opening Remarks: Dr Timothy D Peters & Dr Ashley Pearson* Keynote Presentation – *LT3* ▸ ***Towards a New Approach to Global Corporations and International Law: Professor Sundhya Pahuja*** *Chair – Dr Timothy D Peters*
10.15 – 10.40am	Morning tea – *Outside H2.G.02*
10.40am – 12.10pm	Concurrent Panel Session 1

PANEL 1A (LT3)	PANEL 1B (LT4)	PANEL 1C (H2.G.02)
Theorising The Corporate Form *Chair: Michelle Worthington*	**Re-Thinking And Re-Building Insolvency Law For The 21st Century 1** *Chair: Priya Misra*	**Re-Approaching The Public Interest: Engagement, Disclosure And Representation** *Chair: Vivienne Brand*
▸ **What Is The Company? And Why It Matters** *– Susan Watson* ▸ **A Remarkable Concession: Domestic Recognition Of Foreign Entities** *– Jonathan Barrett* ▸ **Re-thinking our Thinking About the Corporation** *– Timothy D Peters*	▸ **Rebuilding Insolvency Law** *– Jason Harris & Michael Murray* ▸ **Bankruptcy in the Space Sector** *– Akshaya Kamalnath* ▸ **The Role of Technology in an effective and efficient Australian Small Business Insolvency Framework** *– Catherine Brown & Jennifer Dickfos*	▸ **Public Interest Shareholder Engagement** *– Samantha Tang* ▸ **Matters And Crises Of Conscience In 21st Century Corporate Lawyering** *– Bryan Horrigan* ▸ **Transnational Taxonomy For Green Financing: What Eu Developments Mean For Australian Corporate Disclosure** *– Natania Locke* ▸ **Can Compulsory Stakeholder Representation On Corporate Boards Improve Corporations' Social And Environmental Impact? A Proposed Research Agenda** *– Tim Connor & John Tearle*

DAY TWO: MONDAY 4 JULY 2022 - *CONTINUED*

12.10 – 1.10pm Lunch & Book Launch – *Outside H2.G.02*

- ***The Making of the Modern Company (Bloomsbury): Susan Watson***

– Speakers: Professor Jennifer Hill & Dr Timothy D Peters

1.10 – 2.20pm Plenary Panel Session – *LT3*

Chair – Dr Timothy D Peters

- **Thinking and Re-Thinking the Best Interests of the Corporation: From Shareholder to Entity Primacy, Stakeholder Capitalism to Corporate Purpose**

– Professor Susan Watson, Professor Rosemary Langford & Dr Tim Connor

2.20 – 2.30pm Short Break

2.30 – 3.55pm Concurrent Panel Session 2

PANEL 2A (LT3)	PANEL 2B (LT4)	PANEL 2C (H2.G.02)
Corporate Purpose: Leadership, Enforcement, Commitment *Chair: Joseph Lee*	**Re-thinking and Re-building Insolvency Law for the 21st Century 2** *Chair: Catherine Brown*	**Ain't Misbehavin: Corporate Crime, Director Misconduct and Abusive Shareholders** *Chair: Loganathan Krishnan*
▸ **Corporate Purpose and Director Accountability: Towards a Quasi-Private Enforcement Model** *– Alan Koh* ▸ **Leading Corporate Social Change Through Business** *– Grace Borsellino* ▸ **Enlivening corporate purpose through voluntary sustainability commitments** *– Drossos Stamboulakis*	▸ **A Tale of Two Financial Hubs: How Enforcing Directors' Accountability Matters for Corporate Restructuring Laws** *– Wai Yee Wan* ▸ **Shareholders and Insolvency Resolution: "Circuiting" a High-risk trail?** *– Surbhi Kapur* ▸ **Oppression and the Subordination of Claims under s 563A** *– Nadia Hess*	▸ **Responsive Law and the Problem of Corporate Crime** *– Meredith Edelman* ▸ **The Horror of Corporate Harms** *– Penny Crofts* ▸ **Ownership Structure and Abusive Related Party Transactions: Evidence from India** *– Kaushiki Brahma*

3.55 – 4.20pm Afternoon Tea – *Outside H2.G.02*

DAY TWO: MONDAY 4 JULY 2022 - *CONTINUED*

4.20 – 5.45pm Concurrent Panel Session 3

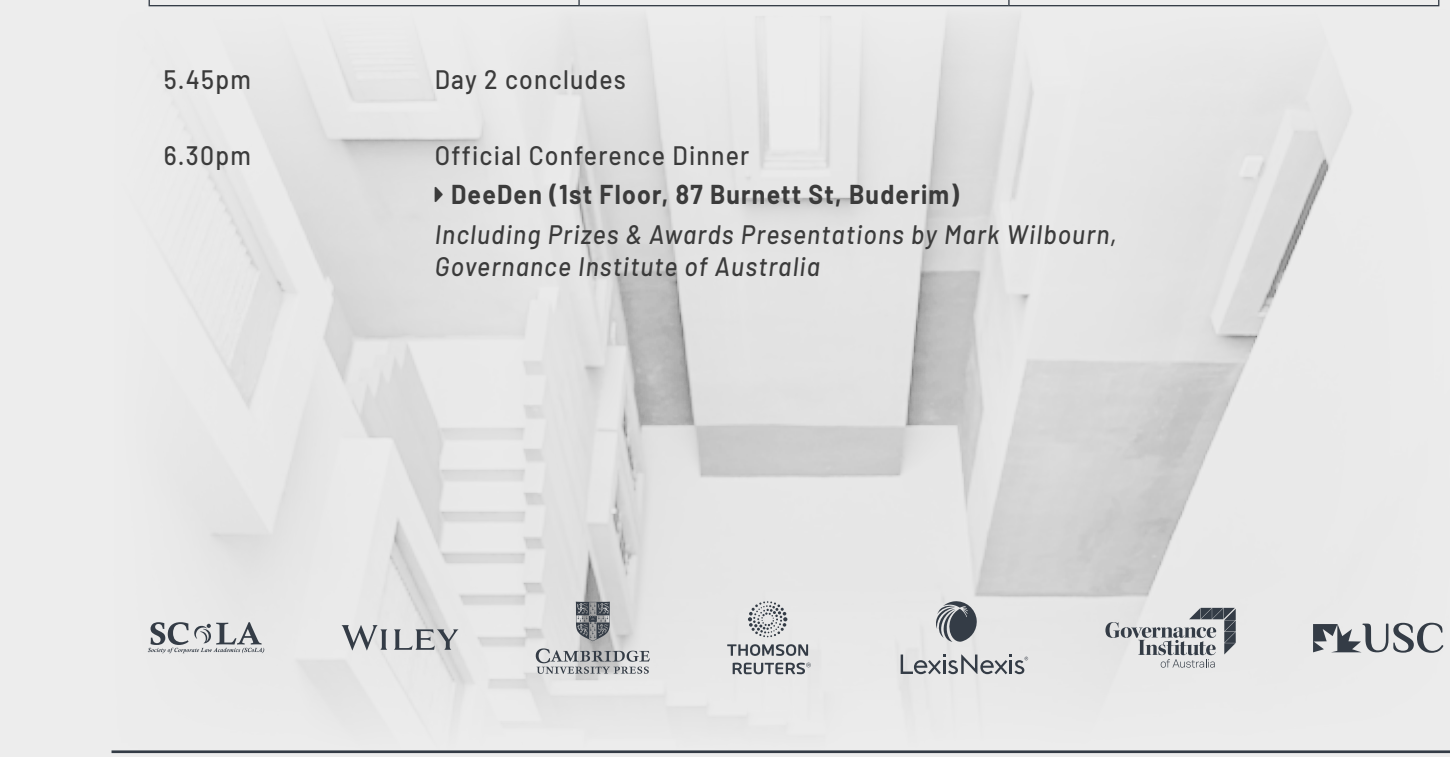
PANEL 3A (LT3)	PANEL 3B (LT4)	PANEL 3C (H2.G.02)
Re-thinking Financial Markets and Regulation *Chair: Michael Duffy*	**Theorising Corporate Law and Governance** *Chair: Beth Nosworthy*	**Re-imagining Legal Forms: Old and New** *Chair: Jonathan Barrett*
Seven recommendations for incorporating Chapter 7 into the corporate law curriculum *– Robin Bowley* **Robots vs Institutions: Markets and Information in the Age of Algorithmic Trading** *– Ellie Chapple* **Re-thinking Market Integrity? Re-visiting the Prohibition on Insider Trading** *– Juliette Overland* **Re-thinking Financial Regulation: A New Theoretical Approach to Inform Financial Regulatory Debates** *– Lee-Anne Sim*	**The Complexity of Corporate Law** *– Stephen Bottomley* **The Corporate Helix: Purpose, Governance, Culture** *– Pamela Hanrahan* **Towards a Generalized Theory of Corporate Law** *– Kenneth Khoo* **Metaphysics and Metaphors: Re-thinking Corporate Identity in the Age of AI** *– Jordan Belor*	**New Frontiers: corporate information governance** *– Michael Adams* **Crowd-equity Funding - Time to review corporate structure** *– Marina Nehme* **Reforming Australia's Limited Partnership Laws** *– Tamara Wilkinson* **Limited Liability DAOs: Australian Options for Implementation** *– Aaron Lane, Darcy Allen & Chris Berg*

5.45pm Day 2 concludes

6.30pm Official Conference Dinner

DeeDen (1st Floor, 87 Burnett St, Buderim)

Including Prizes & Awards Presentations by Mark Wilbourn, Governance Institute of Australia



DAY THREE: TUESDAY 5 JULY 2022

8.30am Registration desk open – *Outside H2.G.02*

9.00 – 10.30am Concurrent Panel Session 4

PANEL 4A (LT3)	PANEL 4B (LT4)	PANEL 4C (H2.G.02)
Re-Imagining the Corporate Form *Chair: Natania Locke*	**Roundtable Discussion**	**Sources of Corporate Authority** *Chair: Vincent Goding*
Re-imagining the Corporation: What Can we Learn from Social-Enterprises? *– Juan Diaz-Granados & Benedict Sheehy* **Hidden in plain sight – success of Indigenous Corporations** *– Guzyal Hill* **The curious case of stakeholder ownership: Theoretical insights into the niche persistence of the cooperative and mutual form across advanced economies** *– Michael Duffy*	**The natural entity theory of the corporation – time to look again?** *– Duncan Wallace* *– Tim Connor* *– Ann Apps* *– Anthony Taylor*	**Re-thinking company accountability with shareholders mandatory examinations** *– Aaron Timoshanko* **Re-thinking corporate regulation: Construction of the content and meaning of due diligence defence for prospectus misstatements and omissions liability in Australia** *– Rangika Palliyaarachchi* **State and Corporate Sovereignty in Pandemic Times** *– Steven Stern* **Enforcement of directors' duties: an empirical study of 5 countries** *– Vivien Chen, Michelle Welsh & Wai Yee Wan*

10.30 – 11.00am Morning tea – *Outside H2.G.02*

11.00am – 12.00pm Keynote presentation – LT3

Between Form and Profession in the Margins of Corporate Law: *Professor Bronwen Morgan*

Chair: Associate Professor Marina Nehme

12.00 – 1.30pm Lunch & ScoLA Annual General Meeting (from 12.15pm) – *Outside H2.G.02*

DAY THREE: TUESDAY 5 JULY 2022 – *CONTINUED*

1.30 – 2.45pm — Plenary Panel – *LT3*

Chair: Professor Jason Harris

- **Reforming the Corporation: Past, Present and Potential Futures for Corporate and Financial Services Law Reform**

– Associate Professor Andrew Godwin, Mr Matthew Corrigan, Professor Elise Bant and Professor Penny Crofts

2.45 – 3.15pm — Afternoon tea – *Outside H2.G.02*

3.15 – 4.45pm — Concurrent Panel Session 5

PANEL 5A (LT3)	PANEL 5B (LT4)	PANEL 5C (H2.G.02)
From Company Towns to Global Citizens: Re-thinking Corporate Rights and Responsibilities *Chair: Ashley Pearson*	**Re-considering Directors' Duties: Enforcement and Responsibility** *Chair: Ellie Chapple*	**Renewing Board Governance** *Chair: Juliette Overland*
JobKeeper vs ProfitSeeker: Trajectories of Corporations Law and COVID-19 *– Vincent Goding* **Next level of social responsibility of corporations: Citizenship treatment to companies?** *– Priya Misra* **The Company Town - Everything Old is New Again** *– Beth Nosworthy* **When the Magic is Over: Disney, Florida and the Possibilities of Corporate Free Speech** *– Michelle Worthington*	**Directors' Duties & Stakeholders' Interests: Recognition and Enforcement Approach** *– Param Pandya* **Directors' duty towards climate risk mitigation: The case of India** *– Hemavathi Shekhar & Vidhi Madaan Chadda* **Australia-China cross-border listed companies' continuous disclosure supervision: Dilemmas and improvement proposals** *– Belle Guo*	**How director financial literacy and motivation influence board and director performance** *– Jackie Bettington* **Re-thinking the Regulation Governing Enhanced Auditors' Report** *– Loganathan Krishnan* **Independent Directors in Australian Private Limited Corporations: From the National Security Perspective** *– Joseph Lee* **Perils of Contemporary Corporate Governance of Multinational Companies: An Analysis of Recent CEOs Resignations at Rio Tinto** *– Zehra Kavame Eroglu*

4.50 – 5.00pm — Conference Close – *LT3*

– Dr Timothy D Peters

5.30pm — Informal dinner options available

KEYNOTES

Towards a New Approach to Global Corporations and International Law

Professor Sundhya Pahuja

Professor Pahuja was recently awarded an ARC Laureate Fellowship for her project, The Corporate Challenge to Democracy: Harnessing International Law. The starting point for the project is that the rising power of global corporations poses a serious challenge to democratic rule within nation-states. Corporations have gone global, but the mechanisms to ensure they serve the public interest, pay tax and comply with national laws have not. Efforts are frustrated by a mismatch between the global operational structure of multinational corporations, and their national legal form.

The intuition sparking the project is that international law - not corporate governance or national laws - creates this disjuncture. And so, the essence of the research program is to understand the rise and influence of global corporations as a question of international law. To do this, the project will take a long historical approach, framed through the lens of authority, and rival forms of law, to consider how the mobility of corporations has been and is facilitated, how rights are created, and how corporate power is produced and made effective through and by law.

The overall aim of the project is to produce a new historical, theoretical and conceptual understanding of the relationship between corporations, states, state law and international law from the early modern period to the present day. In this keynote address, Professor Pahuja will outline the project, and describe its key elements with the intention of starting a conversation between corporate lawyers and international lawyers about the changing relationship between corporations and international law.

Professor Sundhya Pahuja, University of Melbourne

Sundhya Pahuja is ARC Kathleen Fitzpatrick Laureate Professor, and Director of the Institute for International Law and the Humanities at the Melbourne Law School. She is known for her work on the encounter between plural forms of international law, the legal, historical, political and economic dimensions of the relations between Global South and North. In 2021, Sundhya was awarded a Laureate Fellowship for a project on Global Corporations and International Law, set to begin in July. Her other current projects include an interdisciplinary project on Populism and International Law with Richard Joyce, James Martel, Andrew Benjamin and Rose Parfitt and Cold War Histories of International Law with Gerry Simpson and Matthew Craven. Sundhya is the author of the prize-winning book, Decolonising International Law: Development, Economic Growth and the Politics of Universality (Cambridge 2011). Her other books include The Routledge Handbook of International Law and the Humanities (2021) edited with Shane Chalmers, International Law and the Cold War (2019) edited with Gerry Simpson and Matt Craven and The Oxford Handbook on International Law and Development (forthcoming) edited with Luis Eslava and Ruth Buchanan.

Between Form and Profession in the Margins of Corporate Law

Professor Bronwen Morgan

In this keynote address, Bronwen Morgan will explore the landscape of plural forms for economic enterprise, ranging from benefit corporations and legal structures for social enterprise to cooperatives and commons-based experiments. The address will move from an anatomy of these forms to a consideration of their implications for professional advice and career trajectories. In a world beset by major systemic challenges and rising calls to craft 'new economies' in response, Professor Morgan will argue that the creative potential embedded in these small-scale experiments is a vital component of the legal imagination needed to respond effectively to these challenges over the long term.

Professor Bronwen Morgan, University of New South Wales

Bronwen Morgan joined the UNSW Faculty of Law and Justice School as a Professor of Law in October 2012, after seven years as Professor of Socio-legal Studies at the University of Bristol, and six years at the University of Oxford. Her research explores creative ways of re-imagining the economy to respond to contemporary challenges, including innovative ways of sharing the ownership and governance of digital platforms, and distributed participatory approaches to providing important infrastructure such as energy, food and water. She is also co-founder of the New Economy Network of Australia.

PLENARY PANELS

Thinking and Re-Thinking the Best Interests of the Corporation: From Shareholder to Entity Primacy, Stakeholder Capitalism to Corporate Purpose

Panellists: Professor Susan Watson, Dr Tim Connor and Professor Rosemary Langford
Chair: Dr Timothy D Peters

Questions about the nature of the corporation and in whose interests it should be managed have dominated theoretical, doctrinal and practical considerations of whether its purpose is limited to economic interests or can/should encompass broader social goals and responsibilities.

Whilst shareholder primacy still holds sway, there has been an increasing shift away from it, whether this is in terms of a greater emphasis on stakeholder capitalism, a recognition of the primacy of the corporation as an entity or a focus on the need for a more social corporate purpose. This plenary panel will engage in a discussion of recent case law, legislative changes and corporate activity in Australia and New Zealand, considering the relevance of our understanding of the corporation and its purpose to articulating the notion of 'best interests'. Given the way in which legal and social expectations on the corporation are developing, is there a need to further re-think or reform the law in relation to the best interests of the corporation?

PLENARY PANELS – Panellists

Professor Susan Watson, University of Auckland

Susan Watson holds joint chairs in the Faculty of Law, and the Faculty of Business and Economics at the University of Auckland. She is the Dean of the University of Auckland Business School. Susan has a particular interest in the corporate form and in her research seeks to understand how the form evolved, why it is so successful, and the economic and societal impact of corporations. Her monograph The Making of the Modern Company (2022, Bloomsbury) focuses on these questions, challenging the dominant contractual model and setting out an alternative model that conceives of the modern company as an artificial legal person based on a fund contributed by shareholders that becomes an entity as it operates in the world.

Dr Tim Connor, University of Newcastle

Dr Tim Connor is a socio-legal scholar with expertise in corporate law, international labour law, corporate social responsibility, and social movements. He is a Senior Lecturer in Newcastle Law School at the University of Newcastle (Australia), where he has worked since 2010. From 1995 until 2010 he worked for Oxfam Australia, coordinating research, campaigns and advocacy regarding workers' rights in global supply chains. Tim's educational qualifications include a PhD in Economic Geography from the University of Newcastle, a Bachelor of Laws from the University of New South Wales and a Bachelor of Arts from the University of Sydney. A full list of Tim's publications can be found at: *https://www.newcastle.edu.au/profile/tim-connor#publications*

Professor Rosemary Teele Langford, University of Melbourne

Rosemary is a professor with Melbourne Law School, University of Melbourne and acting director of the Centre for Corporate Law. Her primary research interest is directors' duties (with two sole-authored monographs and numerous journal articles on this topic) and she teaches a range of subjects including Corporations Law and Corporate Governance and Directors' Duties. In the last three years Rosemary has been undertaking a project on governance and regulation of charities funded by the Australian Research Council. She is a member of the Corporations Committee and Not for Profit Law Committee of the Law Council of Australia and of the Laws Committee of the Australian Institute of Company Directors, as well as editor of the directors' duties section of the Company and Securities Law Journal. Prior to joining academia, Rosemary practised with Arthur Robinson & Hedderwicks (now Allens Linklaters).

PLENARY PANELS

Reforming the Corporation: Past, Present and Potential Futures for Corporate and Financial Services Law Reform

Panellists: Associate Professor Andrew Godwin, Mr Matt Corrigan, Professor Elise Bant and Professor Penny Crofts

Chair: Professor Jason Harris

The past decade has experienced increasing momentum towards law reform in the area of corporate and financial services law. The factors driving law reform have included the Global Financial Crisis, the Financial Services Royal Commission, technological innovation, and the need to update legislation to accommodate ever-changing circumstances. All of this has attracted a significant degree of attention from both academics and law reform bodies at both the State and Federal levels. The Australian Law Reform Commission, for example, is in the middle of its Inquiry into the simplification of corporations and financial services legislation, which comes hot on the heels of its 2020 report on corporate criminal responsibility. What does the experience in this area suggest about the future direction of law reform and how law reform might best be designed and implemented?

Dr Andrew Godwin, Team Leader and Special Counsel

Andrew is Team Leader and Special Counsel at the Australian Law Reform Commission, assisting its inquiry into the simplification of corporations and financial services regulation. He previously spent 15 years as an Associate Professor at Melbourne Law School (2006 – 2021) and 15 years in practice (1992 – 2006). Andrew's research interests include financial services law, finance and insolvency law, financial regulation, property law and the regulation of the legal profession. Recent books that he has published as an author or editor include The Cambridge Handbook of Twin Peaks Financial Regulation (Cambridge University Press, 2021), Technology and Corporate Law: How Innovation Shapes Corporate Activity (Edward Elgar Publishing, 2021) and Sackville & Neave Australian Property Law (11th edition, LexisNexis, 2021). Andrew has acted as a consultant to a broad range of organisations, including the World Bank and regulators and governments in Australia and abroad.

PLENARY PANELS – Panellists

Matt Corrigan, General Counsel

Matt is a Senior Executive responsible for managing the ALRC's corporate governance functions and leading a team of lawyers and researchers in support of the President and Commissioners. Matt joined the ALRC in July 2016. Prior to joining the ALRC, Matt had a diverse legal career working for the Australian Government, private law firms, the Parliament of Australia, the United Nations, international NGOs, and as an independent consultant. Matt has worked in Bangladesh, Myanmar and South Sudan. Matt holds a Master of Laws with Merit from ANU and Bachelor degrees with Honours in both Law and Arts.

Professor Elise Bant, University of Western Australia

Dr Elise Bant is Professor of Private Law and Commercial Regulation at The University of Western Australia, a Professorial Fellow at the University of Melbourne and Fellow of the Australian Academy of Law. She is a general editor of the Journal of Equity with Professor Simone Degeling (UNSW) and Associated Professor Ying Khai Liew (MLS). Her main areas of teaching and research interests lie in the fields of unjust enrichment and restitution law, contract and consumer law, commercial regulation, civil remedies, property, equity and trusts. Elise has been appointed an Australian Research Council Future Fellow to examine corporate liability for serious civil misconduct, including fraud and predatory trading practices (FT 190100475): *https://www.uwa.edu.au/schools/research/unravelling-corporate-fraud-re-purposing-ancient-doctrines-for-modern-times*

Professor Penny Crofts, University of Technology, Sydney

Doctor Penny Crofts is a Professor at the Faculty of Law, UTS. Professor Crofts is an international expert on criminal law and models of culpability. Her research is cross-disciplinary, drawing upon a range of historical, philosophical, empirical and literary materials to enrich her analysis of the law. Her research is in the area of socio-legal studies coalescing around issues of justice in criminal law in practice and theory makes a distinctive contribution to critical evaluations of criminal legal models of culpability and enforcement. Professor Crofts is currently undertaking a large research project entitled 'Rethinking Institutional Culpability: Criminal law, horror and philosophy' funded by the Australian Research Council.

TEACHING SESSIONS

Incorporating Indigenous Content, Knowledges and Contexts into Teaching Corporate Law

Presentation: Dr Robin Bowley
Panellists: Uncle Kevin Williams, Peter Mitchell, Dr Fady Aoun, Professor Rebecca Johnson and Assistant Professor Bradley Bryan

Strategies for Incorporating Indigenous Cultural Capability into the Teaching of Corporate Law – Dr Robin Bowley, UTS

Over recent years the need for law graduates to have the knowledge and skills to interact in a culturally sensitive manner with Indigenous Australians has been widely recognised. There has accordingly been a concerted effort to incorporate Indigenous cultural capability graduate attributes into subjects across the whole gamut of Australian law courses.

The paper discusses how Indigenous knowledge has been incorporated into the teaching of Corporate Law at the University of Technology Sydney. The teaching strategies that have been used include tutorial discussions and research essay questions on the function of the Office of the Registrar of Indigenous Corporations; analyses of cases relating to the governance of Indigenous corporations regulated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth); and discussions of Indigenous cultural heritage matters that companies should factor into their decision-making processes. It will also outline problem solving exercises that have been formulated to reflect legal challenges that might arise in the context of managing Indigenous corporations. The paper concludes with practical suggestions for law teachers who are planning to incorporate Indigenous cultural capability into the teaching of corporate law and also law for business courses more broadly.

Open Discussion on Teaching

The above presentation and panel discussions will be followed by a time for open discussion on teaching corporate and financial services law – so bring along any questions, quandaries or general issues you would like to discuss!

TEACHING SESSIONS – Panellists

Uncle Kevin Williams, University of the Sunshine Coast

Kevin Williams is Wakka Wakka (Wokka Wokka) on his mother's side and Gungurrie (Goon Gur Ree) on his fathers.

Kevin was born the year his great grandfather died. His great grandfather was the first of his family to see white people in what is now known as the Mary Valley.

Kevin's father was a stockman and a fencer, his mother a domestic. They worked and lived on pastoral properties around Longreach in central western Queensland where Kevin was born. The first five years of Kevin's life were spent living in a tent with his parents and two older siblings. They all moved to the outskirts of Longreach when Kevin was five years old, the reason being so the children could get an education so that in the words of his father "you will not be a slave like me."

He got an education and despite having attended four different high schools in five years he still managed to get a scholarship to go to university, but he didn't go to university because he didn't know anything about tertiary education.

He ended up getting dragged along to university in the late seventies by a friend. He did two years part time, left and went back in the early eighties full time. He was the first male Aboriginal degree graduate from Central University.

In 1991 Kevin applied to and was accepted to study graduate law at UNSW, he completed the degree in three years. He stayed on at UNSW and set up the Indigenous pre-law program in 1995 as well as the Indigenous law students association in 1997. He guest lectured at ANU, UWS, Sydney University and Macquarie while working for the UNSW Aboriginal Education Program and the National Indigenous Working Group on Native Title.

Kevin was offered a part time law lecturers position in 1998 at Southern Cross University and in 2000 he was awarded the Lionel Murphy scholarship to undertake his LLM.

After he completed his LLM he was offered a lecturer's position at Newcastle University law school where he taught across several core law subjects as well as being the course coordinator for Administrative Law. He also set up and taught electives on Native Title Law and Indigenous Legal Issues as well as Anti-Discrimination law as he was the Queensland Director of the Human Rights and Equal Opportunity Commission from 1989 to 1990.

Kevin has spoken at a number of conferences over a twenty-year period both internationally and domestically mainly on Indigenous issues including convincing members of the UN Committee on the Elimination of All Forms of Racial Discrimination that the amendments to the Native Title Act was in breach of the UN Convention on the Elimination of All Forms of Racial Discrimination.

Kevin was seriously injured in 2013 which ended his teaching career.

Since then, he has semi-retired to the Sunny Coast where he is doing major house renovations, makes Didges, paints and collects Aboriginal art, tinkers with his too many BMW M3's and M5's as well as running a legal consultancy. He is a member of UQ's School of Anatomy Research Ethics Committee, has recently stepped down as the Chair of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Human Research Ethics Committee and is the resident elder at the Buranga Centre USC where he mentors Indigenous students and lecturers.

Dr Fady Aoun, University of Sydney

Dr Fady Aoun BEc (Hons), LLB (Hons) Phd (Syd) is a Senior Lecturer in law at the University of Sydney Law School. His research and teaching interests are mainly intellectual property, corporations law and legal history.

Peter Mitchell, University of the Sunshine Coast

TEACHING SESSIONS – Panellists

Professor Rebecca Johnson, University of Victoria, British Columbia

Rebecca Johnson is Professor of Law and Associate Director of the Indigenous Law Research Unit at the University of Victoria Faculty of Law. Professor Johnson teaches Business Associations; Indigenous Research, Method and Practice; Legal Theory; and Inuit Law and Film. She is a (non-Indigenous) member of the Testify: Indigenous Laws + the Arts Collective, and is one of the co-curators of the TRC-inspired blog ReconciliationSyllabus. She has been involved in the development of a new course in Inter-societal Business Associations as part of the University of Victoria's new combined degree in Canadian Common Law and Indigenous Legal Orders. *https://www.uvic.ca/law/admissions/jidadmissions/index.php*

Assistant Professor Bradley Bryan, University of Victoria, British Columbia

Bradley Bryan is an Assistant Professor in the Faculty of Law at the University of Victoria, situated on the traditional and unceded territories of the on Lekwungen and WSÁNEĆ peoples. Brad teaches and carries out research on the settler-colonial framework of Indigenous fiscal relations in Canada, specifically as these arise in tax and corporate-commercial law, with a focus on showing the way capitalist legal orders hide the colonizing force of law. He works to find the limits of settler-colonial law in favour of possibilities for Indigenous economic and legal orders within fiscal law. Prior to teaching at UVic, he practiced law with Woodward & Company Lawyers LLP, advising Indigenous governments on a variety of tax, financing, and corporate structuring matters. Brad is of settler stock, and he hails from the Treaty 7 territories of the Stoney Nakoda Nations.

PANEL 1A

Theorising the Corporate Form

Chair: Dr Michelle Worthington

What is the Company? And Why It Matters

Professor Susan Watson

"Amongst mankind's greatest inventions"? "the primary tool of capitalism"? a legal fiction? or "a real thing"? What exactly is the modern company and why does it matter?

The core argument in this paper is that two competing models of the modern company sit behind our understanding of the modern form. The origins of each model links back in time connecting the modern company with robust private enterprises like guilds and the Elizabethan privateers, and also business corporations like the East India Company that had a public purpose. Each model is based on what can be termed a Corporate Fund that is separated from shareholders for legal and accounting purposes. The separated Corporate Fund is a key, but underrecognised, component of the modern company contributing to the unparalleled success of the form. The paper focusses on the nature of the legal form that surrounds the Corporate Fund. Is the modern company primarily contractually based on its current shareholders? Or is the modern company primarily an artificial legal person that becomes an entity as it operates in the world?

Why should we care? It is the consequences of our understanding of the model of the company that matter, relating to foundational questions in company law like the source of corporateness, and the legal relationship of corporate constituents and stakeholders to the company. In determining the primary purpose of the modern company and its role in modern society is the form essentially public or private?

Professor Susan Watson, University of Auckland

Professor Susan Watson holds joint chairs in the Faculty of Law, and the Faculty of Business and Economics at the University of Auckland. She is the Dean of the University of Auckland Business School. Professor Watson researches and teaches primarily corporate law and corporate governance. She has a particular interest in the corporate form and in her research seeks to understand how the form developed, why it is so successful, and the economic and societal impact of corporations. Her current monograph The Making of the Modern Company focusses on these questions. Her research has been published widely in New Zealand and internationally; she has edited and co-authored treatises and textbooks, five edited collections and numerous articles and book chapters. Her work has been cited and discussed by other scholars in the field and by courts at all levels including the New Zealand and UK Supreme Court.

PANEL 1A – Theorising the Corporate Form

A Remarkable Concession: Domestic Recognition of Foreign Entities

Associate Professor Jonathan Barrett

When the concession theory of the corporation was prominent, it was commonly argued that, since a particular legal system permitted formation of a company, that body corporate could not exist outside its home jurisdiction.

Pseudo-foreign corporations were also not recognised. Those arguments have long been displaced by the principle that, if a corporation has been registered by a competent authority, it does not require re-incorporation in any other state in which it operates. Subject to compliance with minimal administrative requirements, foreign corporations are automatically recognised as legal entities.

This paper examines the origins of the doctrine of recognition of alien corporations, and considers that doctrine from a neo-concession perspective. Neo-concession because, while the analytical approach employed is derived from traditional concession theory, it also takes into account contemporary information, including the economic power of the corporation, the structural flexibility offered by offshore centres that permits non-traditional entities, technological developments, and corporate claims to human rights. The principal focus of the paper lies with the state's power to regulate corporate activity. It is argued that, since the state permits domestic arrangements to be recognised as companies if – and only if – they meet prescribed requirements, the same or more onerous requirements should apply to foreign entities that operate in that jurisdiction.

Associate Professor Jonathan Barrett, Victoria University of Wellington

Dr Jonathan Barrett is an Associate Professor in Commercial Law and Taxation at the Wellington School of Business and Government. His research interests include the role of the corporation in the human rights state. He is a co-author of Barrett & Feehily Understanding Company Law.

PANEL 1A – Theorising the Corporate Form

Re-thinking our Thinking About the Corporation

Dr Timothy Peters

What does it mean to attempt to re-think the corporation? This paper seeks to work through that question. It examines the need to re-think the modern corporation not just in terms of the debates over whose interests corporations should be managed in, the content of the corporate purpose, how corporations can be made more accountable, or how we can further embed public duties or social responsibility, but by historicising and situating the oppositional structure between the state and corporation, which often underlies such debates—emphasising the need for state regulation to be altered, bringing corporations to heel. Such an oppositional structure forgets, however, the history of the corporation and company in that it pre-existed the modern state and the emphasis on corporate personhood as being granted by the state (whether as charter, act of parliament or by registration) is itself a political move that presupposes the authority of a state that subordinates to it the very existence of corporate entities. Corporations, therefore, function as both extensions or delegations of state power as well as independent sources of authority. It is only by recognising this 'both/and' structure, that we can approach the problem of corporate irresponsibility today.

In working through these issues, this paper proceeds in three parts. The first outlines the plethora of calls to re-think, re-theorise, re-construct, re-configure, re-define, re-conceptualise and re-invent the corporation and corporate law, regulation and accountability. It highlights that in the midst of all these "re" projects, there is not only a sense that the fundamental structures of corporate law today are inadequate, but that our very mode of thinking and conceptualising corporate economic activity and its regulation does not sufficiently capture the actualities of corporate activity in today's globalised, technology mediated, crisis-ridden and precarious world. The second section then focuses on an account of corporations as forms of authority that are related to, but separate from, the state. It does this by working through pluralist, jurisdictional and global accounts of the corporation and modern state. The third section will attempt to demonstrate the significance of the proposed rethinking of the corporation.

Dr Timothy Peters, University of the Sunshine Coast

Dr Timothy D Peters is a Senior Lecturer in Law at the School of Law and Society, University of the Sunshine Coast, an Adjunct Research Fellow at the Law Futures Centre, Griffith University and President of the Law, Literature and Humanities Association of Australasia. He is author of A Theological Jurisprudence of Speculative Cinema: Superheroes, Science Fictions and Fantasies of Modern Law (Edinburgh University Press, 2022), co-editor of the forthcoming Routledge Handbook of Cultural Legal Studies and the recipient of an Australian Research Council Discovery Early Career Researcher Award (project number DE200100881) funded by the Australian Government, examining 'New Approaches to Corporate Legality: Beyond Neoliberal Governance'.

PANEL 1B

Re-thinking and Re-building Insolvency Law for the 21st Century 1

Chair: Priya Misra

Rebuilding Insolvency Law

Professor Jason Harris & Michael Murray

There have been calls for a new Harmer Report into insolvency law. In this paper the authors argue that the there is a need to reconsider the traditional public and private purposes of insolvency and to rebalance how those purposes are served. The authors argue that a government liquidator's office is needed to rebuild insolvency law to meet contemporary business needs and to better allocate responsibility for meeting the public and private interests in insolvency matters.

Professor Jason Harris, The University of Sydney

Dr Jason Harris is Professor of Corporate Law at Sydney Law School where he teaches corporate law and insolvency law.

Michael Murray, Murrays Legal

Michael Murray is principal of Murrays Legal and a lawyer with a background in government and regulatory law, insolvency and related issues. Michael and Jason are co-authors of Keay's Insolvency, now in its 11th edition (Thomsonreuters)

PANEL 1B – Re-thinking and Re-building Insolvency Law for the 21st Century 1

Bankruptcy in the Space Sector

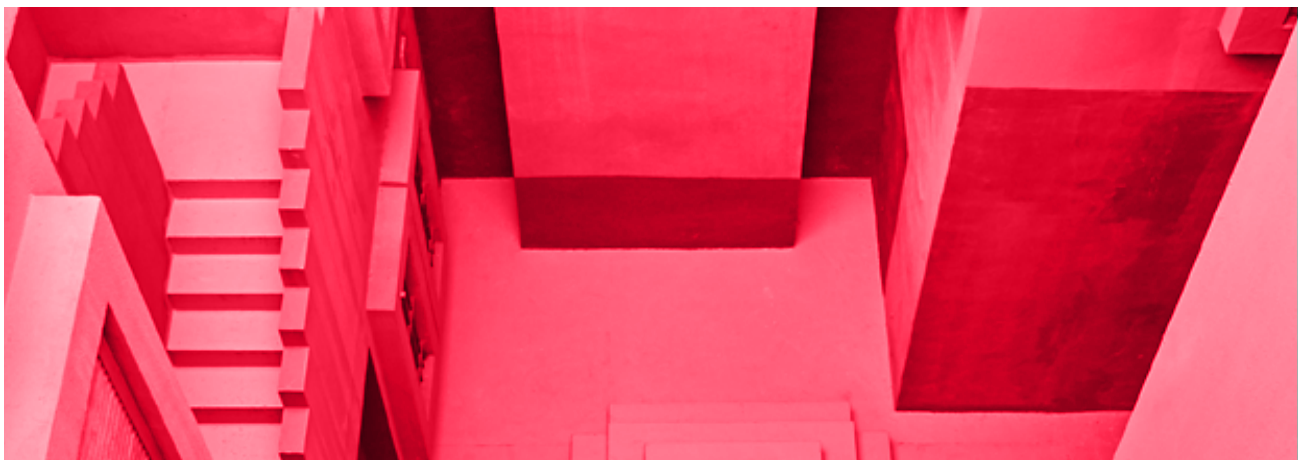
Dr Akshaya Kamalnath

The mushrooming space sector means that bankruptcy considerations for the sector become significant. To that end, this article considers rules that will enable the private space sector to access resources, and put them to their best use. Such rules are important for any industry to thrive, but they are particularly valuable for new and innovative sectors. A level playing field, undistorted by barriers to entry and entrenched subsidies, will allow companies with fresh ideas to bring them to life, while the ability to fail and then make a fresh start is important for ongoing innovation. Rules that allow new competitors to enter the space market and secure financing to operate are thus essential. An efficient bankruptcy system is a key example of such rules, because it will not only improve access to capital but also ensure that viable firms are rescued while non-viable firms are liquidated, following which their assets can become available for other projects. Rescue and liquidation are also greatly facilitated by an efficient secondary market for assets of corporations operating in this sector. Yet few countries recognise space assets within their property regimes. Further, bankruptcies of corporations in the space sector might require courts in different jurisdictions to cooperate, not only because such corporations are likely to have operations in more than one country but also because stakeholders in different parts of the world might be affected by disruption in services, such as internet connectivity, being provided by the company in question. Thus, a non-territorial approach to bankruptcy in this sector will help both the broader industry and various stakeholders.

The ideas I outline in this article will facilitate the success of the space industry, and also underline the importance of bankruptcy rules for any sector to flourish.

Dr Akshaya Kamalnath, Australian National University

Dr. Akshaya Kamalnath in a senior lecturer at the ANU College of Law. Her research is focused on issues at the intersection of corporations and society, corporate insolvency law, and corporations and technology.



PANEL 1B – Re-thinking and Re-building Insolvency Law for the 21st Century 1

The Role of Technology in an effective and efficient Australian Small Business Insolvency Framework

Dr Catherine Brown & Dr Jennifer Dickfos

In its 2017 report on the treatment of micro, small, and medium enterprises (MSMEs) in insolvency, the World Bank emphasised the importance of having an effective and efficient insolvency system to mitigate many of the challenges facing financially distressed MSMEs. These challenges include the lack of financial resources, a general lack of incentive to access insolvency procedures, creditor passivity, limited information, overlaps with the personal insolvency regime.

In response to the 'tsunami' of MSME insolvencies that were expected following the economic impact of Covid-19, the Australian Government determined that the existing corporate insolvency framework of a one size fits all was no longer suitable. The simplified liquidation and debt restructuring regime was introduced by the Government in 2021 as a way of achieving a more effective and efficient insolvency system for MSMEs.

It is the premise of this paper that the Australian Government small business insolvency law regime forms only part of what should be considered an efficient and effective insolvency framework for small business. Where effectiveness is measured by the extent to which the insolvency system achieves its intended objectives and efficiency is the measure of the extent to which the insolvency system achieves those objectives using the minimum amount of resources. The authors argue that the strategic use of technology is essential in predicting insolvency, lowering /saving costs, transforming insolvency work, and saving time. Accordingly, this paper seeks to highlight the importance of technology in an efficient and effective Australian small business insolvency framework.

Dr Catherine Brown, Queensland University of Technology

Catherine Brown is a Lecturer in the Faculty of Law at QUT. Catherine lectures in a number of areas, including insolvency and corporate law, taxation and real property. Catherine's current research interests include the intersection of insolvency and taxation laws, insolvency and bankruptcy law and the impact of technology on the legal profession.

Dr Jennifer Dickfos, Griffith University

Jennifer currently lectures in Business law and Company law at Griffith University's Gold Coast campus. Jenny has a Master of Laws from Queensland University of Technology and gained her PhD from the University of Queensland. Her dissertation was entitled: Specific Conflicts of Interest and Debtor Opportunism within Corporate Groups: A case for additional creditor protection. Her principal legal research interests are in the personal and corporate insolvency areas including AI and insolvency, creditor protection measures, and insolvency practitioner regulation.

PANEL 1C

Re-approaching the Public Interest: Engagement, Disclosure and Representation

Associate Professor Vivienne Brand

Public Interest Shareholder Engagement

Samantha Tang

Companies have been involved in a variety of crises, scandals, and controversial business practices, including the international slave trade, environmental pollution, and greenhouse gas emissions. Corporate decisions can and do impact society on issues of "public interest", which excludes the purely commercial interests of the company's managers and shareholders, but includes the interests of stakeholders, such as employees, consumers, and members of the public.

Whether companies – and corporate law by extension – should respond to public interest issues is a controversial topic. Opponents argue that social welfare demand political action, not corporate law reform, and that labour law and environmental law are better suited to regulating corporate behaviour affecting the public interest.

`This Paper argues that corporate law and shareholder engagement would steer companies towards public interest issues. I define the concept of "public interest" and explain why companies have begun to pay more attention to public interest issues. I evaluate different avenues for steering companies towards the public interest, including legal and regulatory regimes such as environmental law. I examine the extent to which public and political advocacy efforts on public interest issues have been successful in altering corporate behaviour. Finally, I examine how different corporate participants (managers, stakeholders, and shareholders) can engage the company on public interest issues. I conclude by contextualising shareholder engagement and corporate law in relation to other options for guiding companies on public interest issues.

Samantha Tang, National University of Singapore

Samantha Tang researches on, and contributes to, research projects on environmental, social and governance (ESG) investing. Her dissertation is on how various shareholders work with or around corporate law rules to engage in discourse about and make decisions on investee companies' actions from a public interest perspective.

PANEL 1C – Re-approaching the Public Interest: Engagement, Disclosure and Representation

Matters and Crises of Conscience in 21st Century Corporate Lawyering

Professor Bryan Horrigan

The intersections between corporate law, business ethics, common morality, and professional responsibility are timeless, fundamental, and suddenly topical again. Those intersections generate matters and crises of conscience in contemporary commercial lawyering.

Continuous improvement in thinking about the corporation presupposes a framework and criteria for a theory of the corporation that informs successful and sustainable corporate governance, regulation, and practice, updated to accommodate 21st century conditions for the corporation. How we rethink the corporation also affects how we rethink the roles and responsibilities of corporate lawyers and counsel, and others in the corporate regulatory eco-system.

An ongoing series of public debates, royal commissions, law reform inquiries, regulatory developments, and test cases raise questions from different standpoints about curing illegal, unethical, and irresponsible corporate and banking behaviour. The perennial debate about corporate social responsibility (CSR) is a strong undercurrent in recent royal commissions, debates about a company's social licence to operate, boardroom responses to climate change, and even a commercial law firm's stance on representing unpopular corporate and political clients.

More broadly, an emerging body of judge-made and statutory law thematically coheres in regulating an informed Australian business conscience and promoting commercial morality and business integrity. This paper therefore adopts a cross-cutting approach to a wide range of socio-ethical, politico-regulatory, and eco-environmental interests that are inextricably implicated in the regulation and practice of successful corporate governance, responsibility, and sustainability, with implications for good regulatory design, business practice, and lawyerly advice.

Professor Bryan Horrigan, Monash University Faculty of Law

Professor Bryan Horrigan is Executive Dean at Monash Law, with a DPhil from Oxford University as a Rhodes Scholar. He is one of few Australian law deans to have more than 20 years of experience simultaneously in both the legal academy and commercial legal practice. Bryan has academic expertise and professional experience in public and corporate law and governance. The Australian Government appointed him to a three-member expert panel in 2010, with all of the panel's recommendations being legislated in three major pieces of national economic regulation. His book, Corporate Social Responsibility in the 21st Century, was published internationally in 2010.

PANEL 1C – Re-approaching the Public Interest: Engagement, Disclosure and Representation

Transnational taxonomy for green financing: What EU developments mean for Australian corporate disclosure

Associate Professor Natania Locke

The EU Taxonomy Climate Delegated Act (2021/2139 of 4 June 2021) sets out the first technical screening criteria to determine which activities contribute substantially to climate change adaptation and climate change mitigation in terms of the EU Taxonomy Regulations (2020/852 of the European Parliament and of the Council of 18 June 2020). The Taxonomy Climate Delegated Act was accompanied by a Proposal for a Directive on Corporate Sustainability Reporting to supplement the Non-financial Reporting Directive (2014/95/EU) already in place. It proposes the establishment of EU Sustainability Reporting Standards with which all large (more than 500 employees) and listed companies in the EU will have to comply. Compliance with these reporting requirements will be subject to external audit and digital tagging will further ensure supervision and the use of data to enable comparison between reporters.

In November 2021, the International Financial Standards Board ('IFRS') Trustees announced the creation of the International Sustainability Standards Board, which is also tasked with developing international baseline sustainability-related disclosure standards. On 24 March 2022, IFRS and the Global Reporting Initiative ('GRI') announced that they will coordinate their programmes in standard setting. Similarly, the EU has indicated collaboration with the IFRS in their standard setting.

While not compulsory, most listed Australian companies have moved to voluntary non-financial reporting, of which the GRI is widely adopted. This paper considers whether the EU developments predict the imminent adoption of similar mandatory standards in Australia.

Associate Professor Natania Locke, Swinburne Law School

Dr Natania Locke is an Associate Professor and deputy department chair at the Swinburne Law School. Before moving to Australia from South Africa, she was a Professor of Corporate and Financial Law at the University of Johannesburg, where she remains a Visiting Professor, and before that at the University of the Witwatersrand. She has published widely in the fields of corporate governance, corporate law and disruption and business rescue. Her current research focuses on shareholder stewardship and the potential role of technology to improve corporate governance.

PANEL 1C – Re-approaching the Public Interest: Engagement, Disclosure and Representation

Can compulsory stakeholder representation on corporate boards improve corporations' social and environmental impact? A proposed research agenda

Dr Tim Connor & John Tearle

As Justice Glazebrook discussed in her keynote address at the 2019 edition of this conference, prominent politicians in the US and the UK have proposed legislating compulsory worker representation on corporate boards. Some scholars have gone further and suggested that in certain circumstances governance rights should be extended to other stakeholders, in addition to employees. Advocates of such proposals commonly argue that when corporate boards are solely accountable to shareholders it can lead companies to prioritise profit over all other concerns, resulting in socially and environmentally destructive outcomes.

But in what ways and under what conditions can broadening the franchise for board elections improve companies' social and environmental performance? In this paper we review the available evidence and suggest a means of building a more reliable evidence base. Although there is a considerable body of research into the impact of regulatory limitations on shareholders' control of board selection (including codetermination and gender quotas), most of that research has focused on the implications for shareholders' financial interests. When scholars have examined the impact of such regulatory interventions on companies' social and environmental performance, they have encountered several methodological challenges, including difficulties in defining and measuring social and environmental outcomes and difficulties in identifying when correlation indicates causation. We argue that research that incorporates discursive analysis of board communication with independent and credible measures of social and environmental performance has potential to ameliorate these methodological challenges.

Dr Tim Connor, University of Newcastle

Dr Tim Connor is a socio-legal scholar with expertise in corporate law, corporate social responsibility and social movements. He is a Senior Lecturer at the University of Newcastle (Australia), where he has worked since 2010. From 1995 until 2010 he worked for Oxfam Australia, coordinating research, campaigns and advocacy regarding workers' rights in global supply chains. Tim's educational qualifications include a PhD in Economic Geography (UoN), a Bachelor of Laws (UNSW) and a Bachelor of Arts (USyd). A list of Tim's publications can be found at *https://www.newcastle.edu.au/profile/tim-connor#publications.*

John Tearle, University of Newcastle

John Tearle is a Bachelor of Laws (Hons) student at the University of Newcastle (Australia). His degree focuses have included environmental law, as well as corporate social responsibility and governance. He has previously achieved a Bachelor of Arts (UoN) and a Graduate Certificate in Disaster Risk Reduction (UoN). This paper is an expansion upon the thesis John submitted in partial fulfillment of his Bachelor of Laws.

PANEL 2A

Corporate Purpose: Leadership, Enforcement, Commitment

Chair: Associate Professor Natania Locke

Corporate Purpose and Director Accountability: Towards a Quasi-Private Enforcement Model

Dr Alan Koh

Business leaders seem to be embracing a new paradigm where the purpose of for-profit corporations is to profit but lawfully, ethically, sustainably, and in the interests of non-shareholder stakeholders. Skeptical of this Damascene conversion to stakeholderism, some corporate law scholars question how directors might be held accountable for falling short of their commitment to some corporate purpose. One suggestion raised is to concretise corporate purpose as a legally binding director's duty to the company. As legal enforcement playing an essential role in fostering compliance with law including directors' duties, the critical question is: How might a corporate purpose duty be effectively enforced? This Paper argues that the answer likely lies with neither private enforcement by shareholders nor public enforcement by regulators, but rather a third way with elements of both. Drawing on examples from China, Japan, and Taiwan, this Paper makes the case that quasi-private enforcement offers a potential means of enforcing corporate purpose, reinforces the case for a director's corporate purpose duty, and opens fresh perspectives on making directors more legally accountable.

Dr Alan Koh, Nanyang Business School, Nanyang Technological University, Singapore

Alan Koh is Assistant Professor of Business Law at Nanyang Business School. His research focuses on comparative corporate law and governance, with particular interests in Singapore and Japan. More broadly, as a jurist trained mostly in common law but also partly in the civil law tradition, he is interested in comparative law and dispute resolution in Asia, particularly in cross-border contexts raising issues of private international law.

PANEL 2A – Corporate Purpose: Leadership, Enforcement, Commitment

Leading Corporate Social Change Through Business

Grace Borsellino

The modern-day corporation has been synonymous with profit-maximisation, predominately in the interests of a single stakeholder: the shareholder.

However, recent trends have demonstrated the benefit – if not the need – of corporations to embrace a broader purpose beyond the limits of shareholder wealth-maximisation alone. In doing so, corporations are now moving into what has traditionally been the realm of State responsibility by engaging in socially motivated activity whilst also maintaining a profit-seeking agenda. However, this trend to broaden the corporate purpose to address social issues has been sporadic in its format, with varying types and degrees of social contribution across different corporate structures and jurisdictions.

One possible reason behind this variance in corporate social activity is the underlying conflict that still exists between broader stakeholder interests and the embedment of shareholder primacy theory within corporate policy. In its most simple form, this is a conflict between corporations combining both profit-making and social objectives. This paper will seek to identify how corporate social activity has and continues to manifest by identifying the current means in which for-profit corporations are engaging in a socially driven activity. In doing so, the business models, certifications, memberships, and incorporation types of for-profit companies will be examined across the jurisdictions of Australia, the United Kingdom (UK) and the United States (US), with an aim to observe the current means in which they are engaging in social markets.

Grace Borsellino, Western Sydney University

Grace Borsellino is Chair of the Equity and Diversity Working Party in the School of Law at Western Sydney University and a Lecturer and Course Convenor in Corporate Law and Governance. She co-convenes and teaches two Law and Technology units entitled 'Technology, Innovation and The Law, and Designing Law Apps for Access to Justice. Grace has been an invited international speaker to universities in Taiwan and Hong Kong delivering conference speeches in areas of Corporate Law, Corporate Culture, the Regulation of FinTech, the Digital Economy, and Blockchain related Cryptocurrencies.

PANEL 2A – Corporate Purpose: Leadership, Enforcement, Commitment

Enlivening corporate purpose through voluntary sustainability commitments

Dr Drossos Stamboulakis

It has become increasingly important to supplement a profit-driven narrative of corporate activity with a purpose-led vision of corporations. Corporate social responsibility, as a normative framework encouraging sustainable action, does not sit alone. Instead, legal avenues are increasingly pursued to meaningfully embed concepts of sustainability into all spheres of corporate activity, and to tie these measures to long term performance. In this article, I explore how the widespread use of voluntary sustainability commitments in sourcing contracts may assist by 'crystallising', 'legalising' or 'hardening' what might otherwise be considered sub-legal or legally ambiguous corporate social responsibility obligations. Where sustainability clauses are integral to a corporation's contracting practice, so much so that they form part of the public-facing persona of the corporation, it is possible to conceive of this commitment to sustainability as a de facto corporate purpose. Indeed, in a broader global governance context, commitments such as these are increasingly seen as mechanisms to operationalise private action towards pro-social ends, including working towards achieving ambitious sustainability goals (such as the UN Sustainable Development Goals). However, significant questions remain about the efficacy of voluntary sustainability commitments, most prominently with respect to their specificity and precision, and the standing of affected persons to enforce them. These issues must be addressed before voluntary sustainability commitments can contribute to defining corporate purpose in a meaningful way.

Dr Drossos Stamboulakis, Monash University

Dr Drossos Stamboulakis is Lecturer at Monash University, and is admitted to practice as an Australian Lawyer. He is the Deputy Convenor of Monash's Commercial Disputes Group, and coaches the Monash Vis International Commercial Arbitration Moot team. His research spans commercial arbitration, comparative law and private international law, emphasising private law intersections with public biodiversity and sustainability goals.

PANEL 2B

Re-thinking and Re-building Insolvency Law for the 21st Century 2

Chair: Dr Catherine Brown

A Tale of Two Financial Hubs: How Enforcing Directors' Accountability Matters for Corporate Restructuring Laws

Professor Wai Yee Wan

This paper explores the relationship among corporate insolvency and restructuring law, corporate governance and enforcement of corporate law in two international financial hubs - the United Kingdom (UK) and Hong Kong, in the last two decades. Both started at the turn of the century by being creditor-friendly jurisdictions but the UK has amended its insolvency and restructuring framework to embrace more debtor-friendly features along the lines of Chapter 11 of the US Bankruptcy Code 1978. In contrast, Hong Kong has remained largely creditor-friendly. The adherence by Hong Kong to a creditor-friendly framework may seem puzzling given the developments globally which favour a Chapter 11 style of insolvency reforms. This article explores the reasons for the puzzle in the context of the wider literature on the determinants of the desirability of creditor and debtor-friendly regimes. It presents in summary form, the results of the semi-structured interviews with insolvency lawyers and practitioners in Hong Kong, including those who are also familiar with the practice in the UK. The interviews identify two critical aspects present in Hong Kong that are absent or not present in the same scale as the UK: debtors come to the negotiation table later and creditors do not perceive that directors of insolvent companies are being called to account for their failure to consider their interests. We then discuss implications of our findings.

Professor Wai Yee Wan, City University of Hong Kong

Wai Yee WAN is Associate Dean and Professor of Law at School of Law, City University of Hong Kong. Her research interests lie in corporate governance, financial regulation and corporate insolvency and restructuring laws.

PANEL 2B – Re-thinking and Re-building Insolvency Law for the 21st Century 2

Shareholders and Insolvency Resolution: "Circuiting" a High-risk trail?

Dr Surbhi Kapur

"FRL shareholders to be hit if banks opt for IBC resolution"- read a news headline dated April 25, 2022. The usage of the expression "to be hit" projected the wiping out of the value of the equity shareholding of Future Retail Ltd (FRL), if the company is taken for resolution under the Insolvency and Bankruptcy Code, 2016 (Code/IBC), the Indian insolvency law. In other words, the stock would, perhaps, hit the Lower Circuit (LC) with the Code circumscribing the rights of the equity holders. It cannot be gainsaid that owing to a fundamental change in the management and governance of the listed corporate debtor (CD), during the corporate insolvency resolution process (CIRP), the shareholders and their shares "circuit" precariously, oscillating between the Upper and the Lower circuits of the market. The securities laws cast several obligations on listed entities in the interest of the investors. The insolvency law arrays the secured creditors (banks and the financial institutions) at the top of the payment waterfall before the statutory dues. Equity shareholders sail at the bottom of the waterfall, getting whatever remains after the banks and the bondholders are paid up. Keeping in view their interests, the modified governance structure of the listed CD, and the need for ensuring its revival pursuant to the approval of a resolution plan, this research explored the possibility or rather, a necessity, of rethinking the role of the shareholders of CDs subject to CIRP.

Dr Surbhi Kapur, Indian Institute of Corporate Affairs

Dr Surbhi Kapur is a trained legal professional, having more than seven years of professional experience, working as an academic and a legal researcher. She is an alumnus of the National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad and Guru Gobind Singh Indraprastha University (GGSIPU), New Delhi, India. Dr Kapur has authored and presented articles and research papers in both national as well as international journals and conferences on the themes of, inter alia, insolvency and bankruptcy laws. In 2019, she was selected to be a part of the first Indian Delegation of two at the INSOL Europe Academic Forum and Annual Congress, held in Copenhagen, Denmark.

PANEL 2B – Re-thinking and Re-building Insolvency Law for the 21st Century 2

Oppression and the Subordination of Claims under s 563A

Nadia Hess

The oppression remedy in s 232 of the Corporations Act 2001 (Cth) allows a member to seek relief for conduct that is 'oppressive to, unfairly prejudicial to, or unfairly discriminatory against a member' or is otherwise 'contrary to the interests of the members as a whole'. Under s 233, the court may grant any order it sees fit to provide relief to the oppressed member, as long as the relief has utility. The oppression remedy is generally used by a member when the company is solvent, although it is possible for a member to successfully bring an oppression action when the company is in liquidation in the right circumstances. To be successful, there are numerous roadblocks that must be overcome, including s 563A. Sections 563A provides that, in a liquidation, the payment of 'subordinated claims' are to be postponed until all other claims against the company are satisfied. A 'subordinated claim' includes claims against the company in 'the person's capacity as a member' or any other claim arising from the 'buying, holding, selling or otherwise dealing in shares'. This paper considers whether an oppression claim would be classified as a subordinated claim under s 563A and concludes that, in certain circumstances, an oppression claim will not meet this definition, allowing the member to be treated pari passu with other unsecured creditors in the liquidation (rather than subordinated). This may ensure that there is utility in the relief sought, resulting in a successful oppression application by the member.

Nadia Hess, University of Adelaide

Nadia is a PhD Candidate and sessional academic at the University of Adelaide Law School. Nadia's PhD looks at the members' oppression remedy and its application in the insolvency context. Her supervisors are Prof Chris Symes and Assoc Prof Beth Nosworthy.

PANEL 2C

Ain't Misbehavin': Corporate Crime, Director Misconduct and Abusive Shareholders

Chair: Dr Loganathan Krishnan

Responsive Law and the Problem of Corporate Crime

Dr Meredith Edelman

This paper contributes to ongoing discussions about corporate crime and wrongdoing. At a time when abolitionist movements are calling for fundamental reconsiderations of criminal law and process, it is appropriate to revisit the foundations of corporate crime and reconsider whether we should continue to use the same legal systems to respond to both human and corporate wrongdoing. The analysis finds little evidence that corporations facing criminal prosecution results in real accountability that satisfies rising concerns with corporate power and malfeasance. Indeed, the foundations of criminal legal systems are so linked to human ontology that they result in an elevation of corporate personhood over human. Corporations, while rightfully understood as moral agents who should be held accountable for wrongdoing, should not be entitled to the protections carved out in criminal procedure around aspects of humanity that corporations do not share. Instead, they should be subjected to proceedings better suited to their nature as creations of state law. The orderly reorganisation, redistribution of value, or liquidation of corporations engaged in morally repugnant activity need not be constrained by prophylactic measures intended to protect human life, freedom, and dignity. The article proposes leaving behind the concept of corporate criminality and moving toward a responsive model of corporate moral insolvency that better targets corporate vulnerabilities.

Dr Meredith Edelman, Monash Business School

Dr. Meredith Edelman is a lecturer in the Department of Business Law and Taxation at Monash Business School. She has a PhD from the Australian National University's School of Regualtion and Global Governance. Her work focuses on responsive law and corporate accountability.

PANEL 2C – Ain't Misbehavin': Corporate Crime, Director Misconduct and Abusive Shareholders

The Horror of Corporate Harms

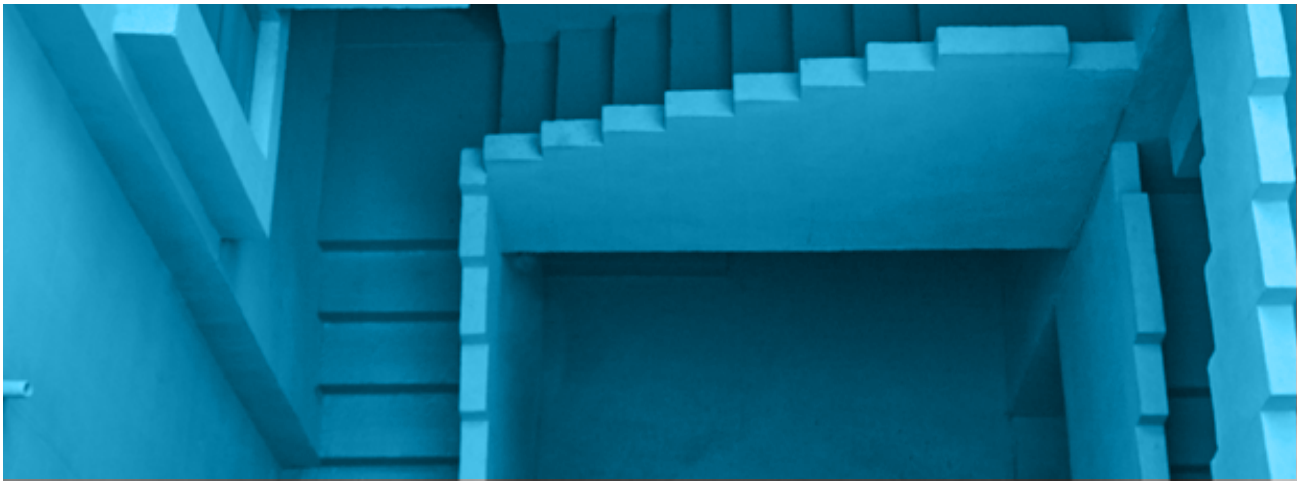
Professor Penny Crofts

The extent and prevalence of harms caused by large organisations is such that cries of horror and 'never again' are common responses. This horror is exacerbated by the relative absence of criminal culpability attributed to the organisations that caused these harms. This paper turns to the horror genre to meditate on organisational harms and the criminal legal response (or lack thereof).

If, according to Thacker, horror is a 'privileged site of the unthinkable' what is unthinkable in horror? Thacker's question intersects with Fisher's idea of capitalist realism, that it is easier to imagine an end to the world than an end to capitalism. Justice for corporate malfeasance is at least restricted, if not unthinkable, in horror films and criminal law. Harms are collateral damage that do not enter into a cost benefit analysis, permitted and required by law. In horror and law, these harms are rendered banal and normal and not even categorised as crime but as part of doing business. Although horror films frequently depict corporate greed and capitalism, they simultaneously garner huge profits and are embroiled in the very practices that they presume to attack. The horror genre enacts an explanation for the criminal legal failure to respond to corporate harms whilst simultaneously justifying its urgent need. Are we trapped with Cavarero's horrorism – a state of paralysis? Or can we draw on the affect of horror as demanding and requiring a response to reshape our response to corporate wrongs?

Professor Penny Crofts, University of Technology Sydney

Doctor Penny Crofts is a Professor of the Faculty of Law, UTS. Her research is cross-disciplinary, drawing upon a range of historical, philosophical, empirical and literary materials to enrich her analysis of the law. Her research is in the area of socio-legal studies coalescing around issues of justice in criminal law in practice and theory makes a distinctive contribution to critical evaluations of criminal legal models of culpability and enforcement. Penny's current research project entitled 'Rethinking Corporate Culpability: Criminal Law, Horror and Philosophy' is funded by the ARC.



PANEL 2C – Ain't Misbehavin': Corporate Crime, Director Misconduct and Abusive Shareholders

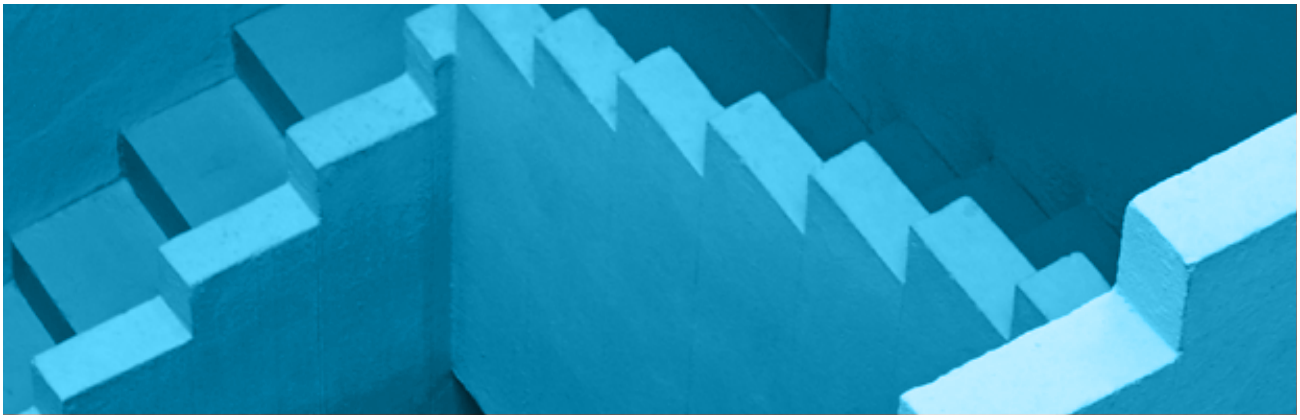
Ownership Structure and Abusive Related Party Transactions: Evidence from India

Assistant Professor Kaushiki Brahma

Following the recent corporate frauds involving related party transactions in India (RPTs), this study seeks to assess the trends of abusive RPTs of listed companies in India. We seek to study the association between ownership structures and abusive RPTs. This study uses multivariate analysis to examine the effect of ownership structure on abusive RPTs. We carried out a comprehensive qualitative and quantitative content analysis of 33 non-financial companies against which SEBI (Securities Exchange Board of India) has passed orders for abusive RPTs. Using a sample of 33 non-financial companies against which SEBI (Securities Exchange Board of India) has passed orders for abusive RPTs, we found that promoters with opportunistic motives play a crucial role in engaging in abusive RPTs. We also found promoters with an opportunistic motive to contract abusive RPTs deter the firm performance of the companies. Previous studies on RPTs and ownership structure in India were widely attributed to normal RPTs. However, studies on abusive RPTs were under-researched because of a lack of data accessibility. This study circumvents this limitation by using a sample of companies against whom SEBI has passed orders for abusive RPTs.

Assistant Professor Kaushiki Brahma, National Law University, Odisha

Prior to joining National Law University, Odisha, in 2018 she was working as an Assistant Professor of Law at KIIT School of Law, KIIT University for more than two years and in Indian Institute of Legal Studies, Siliguri for one semester. She has qualified CBSE –NET in 2017. She has completed her LL.M from National Law School of India University, Bangalore with specialization in Business Laws in the year 2015 after completing B.Sc. LL.B (Business Law Hons.) from KIIT School of Law, KIIT University, Bhubaneswar in the year 2014. She has published research papers and has participated in teaching workshops and seminars. Her areas of interest include Corporate Laws, Insolvency & Bankruptcy and Competition Law.



PANEL 3A

Re-thinking Financial Markets and Regulation

Chair: Dr Michael Duffy

Seven recommendations for incorporating Chapter 7 into the corporate law curriculum

Dr Robin Bowley

Chapter 7 of the Corporations Act 2001 sets out the framework for the regulation of financial services and markets in Australia. It is a very active field of practice for many Australian lawyers – with financial services providers, governments, investors and consumers frequently seeking legal advice about their rights and responsibilities. The 2019 Haye Financial Services Royal Commission highlighted the consequences that can result from failures to comply with the requirements of Chapter 7.However Chapter 7 can be a very challenging area of corporate law, with many complex definitions and exceptions, and calling for a high level understanding of financial market processes and terminology.

For the most part, coverage of Chapter 7 within the curricula of Australian law schools tends to be confined to advanced electives.

This paper outlines the advantages of incorporating the fundamentals of the Chapter 7 regime for regulating financial services and markets into the core teaching program in corporate law.

Using the example of 70417 Corporate Law at University of Technology Sydney, it outlines suggested teaching strategies for incorporating Chapter 7 into the teaching of mainstream corporate law subjects. These include the use of quizzes, short discussion and scenario-based exercises and research essays.

The paper concludes by reinforcing the importance of providing future law graduates with the knowledge about an increasingly active field of practice in order to equip them with the capabilities to be successful legal professionals.

Dr Robin Bowley, University of Technology Sydney

Dr Robin Bowley lectures and researches in corporate, financial services and insurance law at the University of Technology Sydney. In 2019 he received a University Teaching and Learning Citation for his development and implementation of resources to enable student learning in corporate law. From 2005 to 2011 he worked as a Lawyer with ASIC where he managed investigations into possible breaches of corporations and financial services legislation. He is actively involved in the Australian Insurance Law Association and is a Fellow of the Governance Institute of Australia and of the Australian and New Zealand Institute of Insurance and Finance.

PANEL 3A – Re-thinking Financial Markets and Regulation

Robots vs Institutions: Markets and Information in the Age of Algorithmic Trading

Professor Ellie Chapple

Algorithmic trading (AT) of securities in public markets automates trades by using speed and scale to detect and exploit small market fluctuations to generate trading profits. Much AT is at the behest of professional investors who have the resources to develop the technology. The company's share price is the external signal of the value of the company and unexpected fluctuations raise regulatory issues as to extreme volatility and market crashes. Prior research focuses on the advantages and disadvantages of AT on market integrity and whether regulators, market operators and other (non-AT retail) investors have adapted their processes and expectations in response to the reality of AT. This paper examines the longitudinal effect of AT on the information environment of investee firms subject to AT in the capital market. How AT alters the information environment and how these conditions fit the laws and enforcement in Australia and New Zealand of market events such as insider trading and market manipulation will be explored in this paper.

This paper fits the conference theme "Reimagining capitalism" as it reflects on the overt way that algorithmic trading commodifies shareholding.

Professor Ellie Chapple, Queensland University of Technology Business School

LLB, LLM, SJD. Professor, QUT Business School, Queensland University of Technology, Brisbane, Australia

PANEL 3A – Re-thinking Financial Markets and Regulation

Re-thinking Market Integrity? Re-visiting the Prohibition on Insider Trading

Associate Professor Juliette Overland

The accepted rationale for prohibiting insider trading in Australia is to protect and maintain market integrity. Indeed, this was confirmed by the majority of the High Court in Mansfield and Kizon v R (2012) 247 CLR 49, when it was stated that insider trading laws are intended to ensure that 'securities market operates freely and fairly, with all participants having equal access to relevant information.' While a number of other jurisdictions also base insider trading prohibitions on a market integrity rationale, the United States relies on 'anti-fraud' laws to prohibit insider trading on the basis of fiduciary duty and misappropriation rationales.

How important is the underlying rationale for the insider trading prohibition to the construction, interpretation, and application of relevant laws? With the Australian Law Reform Commission currently conducting an inquiry into the Legislative Framework for Corporations and Financial Services Regulation, with Chapter 7 of the Corporations Act under review, it is timely to re-consider these questions.

In this paper, different approaches to the prohibition of insider trading will be compared and contrasted. The legislative history of the insider trading prohibition in Australia will be examined, to determine the extent to which the market integrity rationale underpins the relevant laws. Judicial commentary on the insider trading prohibition will be analysed, to assess its impact on the interpretation of those laws. Past and present law reform proposals concerning insider trading will also be addressed, so that the influence of the underlying rationale can be understood. The paper will conclude with recommendations for future regulatory reform in this area.

Associate Professor Juliette Overland, University of Sydney

Associate Professor Juliette Overland (LLB (Hons I) (QUT), PhD (ANU) of the University of Sydney Business School, researches and teaches in the area of corporate law, particularly the regulation of securities markets, insider trading, and corporate crime. Juliette's research examines issues concerning corporate liability for insider trading, the effectiveness of insider trading regulation, and the relationship between corporate governance and insider trading. In addition to her experience as an academic, Juliette has extensive practical experience as a corporate lawyer, having worked in leading Australian law firms and as the Australian legal counsel for a global technology company.

PANEL 3A – Re-thinking Financial Markets and Regulation

Re-thinking Financial Regulation: A New Theoretical Approach to Inform Financial Regulatory Debates

Lee-Anne Sim

Following the 2007-2009 global financial crisis, many jurisdictions implemented financial regulatory reforms. However, despite all this change, commentators continue to express their dissatisfaction with financial systems and their regulatory frameworks. Financial regulatory debates continue.

Corporate law scholars apply many theories to inform these debates. Economic theories arguably dominate, because these theories have some key theoretical strengths. However, a key weakness of economic theories is that they do not recognise the impact context has on the overall practices that ultimately determine financial system outcomes. Other theories recognise this complexity but lack the strengths of economic theories. Scholars could better inform debates about the likely effect of financial regulation on the practices that determine financial system outcomes, if there were theories that recognise this complexity and have these strengths.

My paper explains these strengths and weaknesses, and argues that the institutional logics approach can be modified into a theory that both recognises context and overall practices, and ostensibly has the strengths of economic theories for three reasons. First, it was developed precisely to address a critique of theories that assume that individuals and organisations, such as states and financial firms, can act unconstrained by context. Second, it focuses on overall practices. Finally, the approach has many of the same theoretical features that facilitate economic theories to dominate financial regulatory debates. As such, with some modification, this paper contends that the institutional logics approach has potential to address the gap that existing theories leave in the financial regulatory toolkit.

Lee-Anne Sim, Australian National University

With more than a decade's professional experience working on finance tax, corporate regulation, and fiscal policy, Lee-Anne Sim is a PhD candidate at the ANU College of Law. Her scholarship has been published in International Affairs, the top journal in its field, and she has been funded to present in a workshop hosted at New York University. Her current interests focus on how these institutions shape choices and the implications this has for how problems in financial sectors and financial systems are identified and solved via statutory interventions.

PANEL 3B

Theorising Corporate Law and Governance

Chair: Associate Professor Beth Nosworthy

The Complexity of Corporate Law

Emeritus Professor Stephen Bottomley

Our system of corporate and financial services law is complex. This is an unremarkable observation, in two senses. First, no one disagrees with it; academics, judges, corporate regulators, law reformers and legal practitioners have made the same point, in different ways, for many years. Secondly, having made the point, few people then remark on it; the observation is repeated rather than analysed. It serves as a brief introduction to more detailed arguments about the need for law reform, legislative simplification, increased regulatory enforcement or resourcing, and more (or less) freedom from regulatory control for specified categories of actors in the corporate world. Our attention is thus drawn to the proposals and inquiries that inevitably follow from the apparently self-evident claim about corporate law's complexity. But when significant and official consequences follow on from the claim about complexity it is appropriate to reconsider the claim so that we can be sure that there is a clear understanding about its meaning and implications.

This paper analyses the nature of corporate law's complexity by reference to the growing body of literature that deals with complexity theory. The paper argues that corporate law constitutes a 'system', that systems are complex by nature, and it examines the consequences of this for the process of corporate law reform.

Emeritus Professor Stephen Bottomley, Australian National University

Stephen Bottomley is an Emeritus Professor at the ANU Law School. He is a former President of the Corporate Law Teachers Association (now SCoLA), and a keen birdwatcher. He is the co-author, with Kath Hall, Peta Spender and Beth Nosworthy of the text Contemporary Australian Corporate Law (Cambridge UP, 2nd ed, 2021). His latest book, The Responsible Shareholder (Edward Elgar, 2021) explores the idea that shareholders should be thought of as morally, and in some cases legally, responsible agents in relation to the actions of the companies in which they own shares.

PANEL 3B – Theorising Corporate Law and Governance

The Corporate Helix: Purpose, Governance, Culture

Professor Pamela Hanrahan

Since the financial crisis of 2008, corporate law scholarship has focused increasingly on questions of purpose, governance, and culture. Recent Royal Commissions and public inquiries in Australia have brought to light serious conduct and compliance failures across diverse sectors; their findings highlight the need for corporate behaviour – and the hard and soft rules that seek to shape it – to align and integrate these factors more fully. This paper explains the helix model, in which the strands of corporate purpose (what the company is for, and in whose interests it operates) and corporate governance (how power is distributed, exercised and controlled with the company) twist around each other, held together by the rungs of the company's culture (comprising its shared attitudes, values, assumptions, and practices). The twisting ladder of the double helix provides a powerful image of the way in which these factors are related and might be harnessed to improve corporate conduct.

Professor Pamela Hanrahan, University of New South Wales Business School

Professor of Commercial Law and Regulation at UNSW Business School, Senior Fellow of the Melbourne Law School, member of the Society of Investment Law (USA), Fellow of FINSIA, and solicitor member of the Law Society of NSW. Deputy Chair of the Business Law Section of the Law Council of Australia, member of the National Corporate Governance Committee of the AICD, member of the Conexus Institute Advisory Board, and deputy chair of Landcom. Former ASIC Regional Commissioner and adviser to the Hayne Royal Commission. Author or co-author of several books on company law and financial regulation, including Corporate Governance (2017) and Securities and Financial Services Law (10th ed, 2021).

PANEL 3B – Theorising Corporate Law and Governance

Towards a Generalized Theory of Corporate Law

Kenneth Khoo

Despite almost a century of research on business organizations, there remains a lack of consensus as to the essential functions of corporate law. In particular, most Law and Economics scholars continue to view corporate law as responding to the agency costs arising from a complex web of contractual relationships between corporate constituents. Other Law and Economics scholars have criticized the hegemony of this framework, suggesting that anomalies in corporate law are inadequately explained by agency-cost theories. In this article, I suggest that these competing theories are reconcilable under a generalized theory of corporate law. While agency cost theories are strong at explaining economic problems that arise from information asymmetry, they are very weak in explaining economic problems that arise from ill-defined terms of trade. I argue that the nature of multilateral agreements is fundamentally distinct from bilateral agreements, warranting a much more involved theory of incompleteness beyond that seen in theories of incomplete contracting in contract law. My theoretical framework is able to explain an extraordinary array of phenomena observed in existing corporate law. I elucidate the exact nature of economic tradeoffs arising in four contemporary debates in organisational law: (1) "Shareholderism" vs "Stakeholderism", (2) "Board Power" vs "Shareholder Power", (3) "Default Rules" vs "Mandatory Rules", and (4) "Dual-Class Shares" vs "One-Share-One-Vote". While I eschew a "one-size-fits-all" approach like other corporate law scholars, I argue that many of these debates can be settled by empirical research as to whether such tradeoffs swing one way or the other.

Kenneth Khoo, National University of Singapore

Kenneth is a Lecturer at the NUS Faculty of Law. Kenneth graduated from NUS in 2014 with a Bachelor of Laws (First Class Honours) and a Bachelor of Social Sciences (Economics) (First Class Honours), from the London School of Economics and Political Science with a Master of Science in Economics in 2018, and from Yale Law School with a Master of Laws in 2019. Kenneth has research and teaching interests in hybrid areas where Law and Economics intersect, especially in commercial subjects like Corporate Law, Competition Law and Contract Law. His work has been published (or is forthcoming) in international journals like the UPenn Journal of Business Law and the American Business Law Journal.

PANEL 3B – Theorising Corporate Law and Governance

Metaphysics and Metaphors: Re-thinking Corporate Identity in the Age of AI

Jordan Belor, University of the Sunshine Coast

This paper engages in a consideration of the imaginary of artificial personhood via an engagement with identity metaphysics. It considers the way in which the notion of corporate personhood at times leads to the analogising of the corporation with a human person and attributing it rights and obligations on that basis. By contrast, an engagement with identity metaphysics enables a distinction to be made between personal and physical identity, the latter being more appropriate to a consideration of artificial corporate persons. On this basis it considers whether the metaphor of a 'ship' is a more useful way of thinking about the nature of the corporate form. Drawing upon the Ship of Theseus thought experiment in identity metaphysics (and a particular recent popular rendering of it), the paper engages in a comparison between the nature of identity as the basis for corporate legal personhood, legal personhood for AI and their intersection in Corporate Technology.

Jordan Belor, University of the Sunshine Coast

Jordan Belor is in the first year of his PhD candidature at the School of Law and Society, University of the Sunshine Coast. His research currently focuses on the way in which the corporate image is presented and seen and its relationship to law and technology. His PhD project is part of Dr Timothy D Peters' ARC-funded DECRA project, 'New Approaches to Corporate Legality: Beyond Neoliberal Governance' (project number DE200100881). Jordan aims to extend the current work on the corporate form, its historical and legal contexts, from a cultural legal perspective.

PANEL 3C

Re-imagining Legal Forms: Old and New

Chair: Associate Professor Jonathan Barrett

New Frontiers: - corporate information governance

Professor Michael Adams

Corporate law, corporate governance and information governance, all naturally overlap. During the COVID-19 pandemic period (2020-2022) the working from home and other changes have put huge pressure on governance principles and the value of data and privacy. This paper presents data over the period 2017 to 2021 (based on three surveys conducted by the Information Governance ANZ) and compares it to the latest trends on corporate governance. All organisations work within governance frameworks and the role of data is gaining importance in evidence based decision making by boards of directors to not-for-profit charities to universities! This places the governance in a framework context.

Professor Michael Adams, University of New England

Professor of Corporate Law and Governance for over 30 years. Experiences at UTS, Western Sydney Uni and currently Head of UNE Law School. Have published 12 books, 35 chapters and 120 articles. Former President of the Governance Institute of Australia, Past President of CLTA and ALTA and currently on the Board of Information Governance ANZ. This paper is base don a chapter in the 2022 Thomson Reuters book (edited by Prof Mark Perry) Legal Issues in Information Technology - "Theoretical frameworks and governance of information"

PANEL 3C – Re-imagining Legal Forms: Old and New

Crowd-equity Funding - Time to review corporate structure

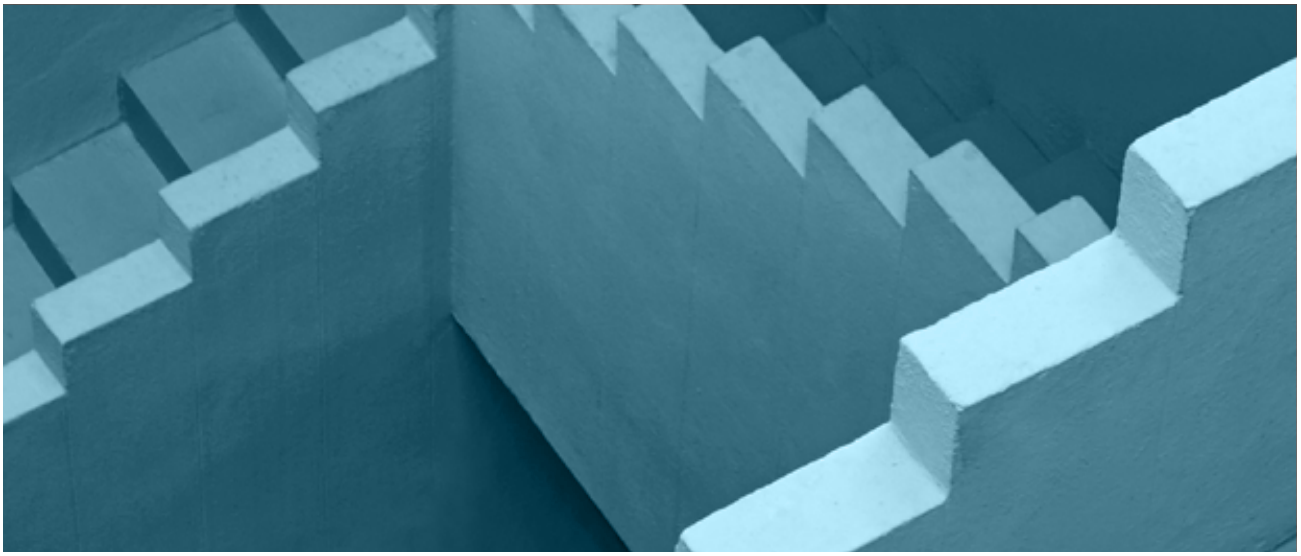
Associate Professor Marina Nehme

The introduction of crowd-sourced equity funding in Australia provided an opportunity for the legislator to review the corporate form. However, this opportunity was missed and a shortcut was instead relied on to allow a range of proprietary companies to raise capital through this form of finance. As a result, we ended up with a regime that adds additional requirements for proprietary companies without necessarily ensuring the protection of investors.

After introducing the rules attached to crowd-sourced equity funding, this paper considers the impact this form of funding has on the running of proprietary companies and assesses its suitability for these companies. The paper then compares the Australian position with overseas jurisdiction and discusses the need to reform the Australian corporate structure to create a regime where crowd-sourced funding may thrive while shareholders are protected.

Associate Professor Marina Nehme, University of New South Wales Law and Justice

Marina is an Associate Professor at the Faculty of Law and Justice at UNSW. She is recognised internationally for her substantial body of work on negotiated settlements, known as enforceable undertakings. Further, her research on crowd equity funding has led to invitations to present evidence to the Commonwealth Senate Economics Legislation Committee and the Commonwealth Treasury regarding crowd equity funding legislation. Lastly, Marina has written a number of papers on Indigenous corporations in Australia. She has actively participation in the consultation on amending to the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) with the National Australian Indigenous Agency.



PANEL 3C – Re-imagining Legal Forms: Old and New

Reforming Australia's Limited Partnership Laws

Tamara Wilkinson

Australia's States and Territories began passing legislation to allow the use of limited partnerships and incorporated limited partnerships in the 1990s and 2000s respectively. These 'hybrid' vehicles, which are primarily used to make high-risk venture capital and private equity investments, are intended to combine the most attractive features of companies and partnerships (particularly limited liability and concessional "flow-through" tax treatment). However, the tax treatment of limited partnerships and incorporated limited partnerships in Australia is confusing and often not particularly concessional, which reduces their appeal. Although the two kinds of vehicles operate in materially the same way, limited partnerships are generally treated as separate legal entities for tax purposes (i.e., they are taxed as companies and their losses are quarantined), while incorporated limited partnerships, which can only be used in conjunction with Australia's government venture capital incentives, are treated as "flow-through" entities for tax purposes (allowing losses to be utilised).

In this paper, I argue that Australia's limited partnership laws should be standardised between States, and significantly streamlined to provide for flow-through taxation in all circumstances. If this reform process occurs, incorporated limited partnerships should then be abolished as a vehicle (as there would no longer be a need for them). This would support high-risk venture capital investment in Australia by providing wider access to a concessional investment vehicle and would improve Australia's attractiveness as an investment destination in line with recognised government policy objectives.

Tamara Wilkinson, Monash University

I am a Lecturer in the Faculty of Law at Monash University, and the co-author of two books on venture capital and angel investment: Incentivising Angels: A Comparative Framework of Tax Incentives for Start-Up Investors (Springer, 2019) and Innovation and Venture Capital Law and Policy (Federation Press, 2016). I have recently submitted my thesis on the topic of government venture capital incentives. I teach Private Investment Law and Lawyer's Ethics in the undergraduate and JD degrees. Other topics within my particular areas of interest include innovation and entrepreneurship, corporations law, tax and law reform.

PANEL 3C – Re-imagining Legal Forms: Old and New

Limited Liability DAOs: Australian Options for Implementation

Dr Aaron Lane, Dr Darcy Allen & Associate Professor Chris Berg

Decentralised Autonomous Organisations (DAOs) are a new category of organisation that operates on decentralised blockchain infrastructure, whose operations are pre-determined in open-source code and enforced through smart contracts. In this way, blockchain is best understood as a governance technology – providing the digital infrastructure for new ways of governing economic exchange (Davidson, De Filippi and Potts 2018). Just as companies are the typical organisational form in the traditional economy, DAOs are the typical organisation form in the blockchain economy. Currently under Australian law, a DAO could be held to be a partnership or an unincorporated association. This means that the ability to hold assets and contract in its own name and, significantly, the liability of members, is not clear. Accordingly, the Senate Select Committee into Australia as a Technology and Financial Centre recommended that the Australian Government establish a new DAO company structure (Australian Senate, 2021). The Australian Government agreed in principle to this proposal (Treasury, 2021). This paper will provide a comparative analysis of the legislative options open to Australia for reform to the Corporations Act 2001 to achieve the objective of a DAO company structure. The paper will consider the operation of the Wyoming's Decentralized Autonomous Organization Supplement to the Wyoming Limited Liability Company Act and the Model DAO law proposed by the Coalition of Automated Legal Applications – and how these may be adapted to suit the existing Australian corporate frameworks.

Dr Aaron Lane, RMIT University

Dr Aaron M. Lane is a Senior Lecturer in Law in the Graduate School of Business and Law and a Senior Research Fellow in the RMIT Blockchain Hub at RMIT University. He practices law as Special Counsel with Duxton Hill.

Dr Darcy Allen, RMIT Blockchain Innovation Hub

Dr Darcy Allen is a Senior Research Fellow at the RMIT Blockchain Innovation Hub in Melbourne, Australia. He is an economist working on new technologies and innovation. Dr Allen has published across the economics of technology, entrepreneurship and regulation, in journals including Research Policy, the Harvard Negotiation Law Review and the Australian Journal of Public Administration. He has authored four books including When Entrepreneurs Meet (World Scientific, 2020) and Cryptodemocracy (Lexington, 2019). Dr Allen has appeared as an expert witness before parliamentary inquiries six times.

Associate Professor Chris Berg, RMIT Blockchain Innovation Hub

Chris Berg is a Principal Research Fellow at RMIT University and co-director and co-founder of the RMIT Blockchain Innovation Hub. He is the author of eleven books including Understanding the Blockchain Economy: An Introduction to Institutional Cryptoeconomics. Associate Professor Berg is a nationally and internationally recognised expert in blockchain, regulation, and civil liberties. He is a regular media commentator in newspapers, radio and television and has appeared as a keynote speaker around the world.

PANEL 4A

Re-Imagining the Corporate Form

Chair: Dr Timothy D Peters

Re-imagining the Corporation: What Can we Learn from Social-Enterprises?

Dr Juan Diaz-Granados & Professor Benedict Sheehy

The corporation can be analysed by focusing on the structure: corporate identity and corporate organs. These basic elements are re-imagined and reformed in corporations categorised as a social enterprise. The social enterprise corporation is an expression of dissatisfaction with existing corporate behaviour and related distributions of goods and evils. Some of the thinking underpinning social enterprises could be crystalised and considered as a partial pathway for corporate reform. Thus, we present new theorising about the corporation drawing from ideas and arguments found in the social enterprise literature.

To embed some of the social enterprise thinking and use it as a foil for corporate reform, the paper considers social enterprise purposes and what results would obtain as a result of potential modifications to any one or more of the four corporate categories (ie shareholders, directors, corporate identity and assets) of actors and property within the corporation and its immediate sphere.

The paper presents imaginative thinking in how the categories can be reformed by the creation of new corporate rights and duties, and redistributions of existing rights and duties. Thus, shareholders can be supplemented with a category called 'stakeholders' and this category can be granted rights vis-a-vis shareholders or other parties to the corporate contract. The legal entity itself could be reimagined, as a social actor rather than merely an economic actor, directors and officers as community leaders, and assets (contracts and property rights) as achieving broader social goals beyond private wealth generation.

Dr Juan Diaz-Granados, University of Canberra

Dr Juan Diaz-Granados is a lecturer at the University of Canberra, Australia. He holds an LLB (Hons); Grad Dip Commercial Law; Grad Dip Business Law; Grad Dip Insurance Law (Summa Cum Laude); LLM International Commercial Law (Distinction); and PhD. Dr Diaz-Granados is a lawyer with an international focus and with more than 12 years of experience between practice and teaching.

Professor Benedict Sheehy, University of Canberra

Dr Benedict Sheehy, FAAL, is a Professor of Law at the University of Canberra. He holds a BTh, MA, JD, MA, LLM, and PhD. He is an internationally renowned scholar of corporate law and regulation with over 90 scholarly publications.

PANEL 4A – Re-Imagining the Corporate Form

Hidden in plain sight – success of Indigenous Corporations

Dr Guzyal Hill

This paper provides analysis of performance indicators among Indigenous corporations to see how the prevalent tensions between western values and Indigeneity concepts impact definition of success. Interrogating large data from 6613 Indigenous corporations between 2018 and 2021 (including the corporations that were deregistered), this research questions the modern narrative of struggling Indigenous enterprise.

The literature is unequivocal – profit is not single driving measure of the Indigenous enterprise. Office of the Registrar of Indigenous Corporations is focused on ensuring adequate reporting and good governance as a benchmark of good Indigenous corporation. We provide empirical evidence confirming that this strategic direction has important implications for defining success of Indigenous enterprise before COVID, during COVID and beyond. Good governance and stakeholder contribution reflected through reporting is a way of expressing Indigeneity and culture, leading to the community engagement and relationship building, this in turn leads to soundness in securing and resecuring the sustainable (not excessive) amount of grants that ensure sustainability of Indigenous enterprise and therefore result in profit.

This profit is not the primary concern of Indigenous enterprise, rather a by-product of serving stakeholders through good governance. Additionally, this profit is subjected to a major handicap – 'tyranny of distance' - as majority of Indigenous corporations are located in remote and rural Australia where access to goods, services and support is limited.

Dr Guzyal Hill, Charles Darwin University

Dr Guzyal Hill is a Senior Lecturer in Asia Pacific College of Business and Law, a founding coordinator of the Indigenous Pre-Accounting Enabling Program and coordinator of Indigenous Pre-Law Enabling Program in 2021.

PANEL 4A – Re-Imagining the Corporate Form

The curious case of stakeholder ownership: Theoretical insights into the niche persistence of the cooperative and mutual form across advanced economies

Dr Michael Duffy

Stakeholder ideas of the late twentieth century challenged the doctrine that corporate managers work exclusively for the interests of equity owners. Yet markets have long been delivering alternative models where workers, customers or suppliers own the firm and run it in their interests. Stakeholder ownership in the form of customer, supplier or worker owned cooperatives and mutuals also incidentally addresses possible managerial conflict of interest in duties to multiple constituencies by establishing obligations to a single species of stakeholder. This article examines the development of such forms locating them within the stakeholder paradigm and within the modern economy. It provides theoretical insights into persistence of the stakeholder owned enterprises with agency, transaction cost, capital and market analyses, noting additional behavioural factors working both for and against their persistence. The article finds that comparative organisational advantages of cooperative and mutual forms appear to exist in particular niche service and product lines where asymmetric information causes weaknesses in competitive market governance of contracting and/or where there is excessive market power of other corporations at one level of the supply chain

Dr Michael Duffy, Monash University

Dr Michael J. Duffy is a lawyer, Research Group Director and Senior Lecturer at Monash University. He has bachelor degrees in Law and Commerce, a Masters degree in Law from the University of Melbourne, and a PhD from Monash University. He researches in corporations, investment, financial service regulation, litigation and organisation and has made academic contributions in all these areas. Before academia he practised as a lawyer in major litigation. His full profile is at *https://research.monash.edu/en/persons/michael-duffy.*

PANEL 4B

Roundtable Discussion: The natural entity theory of the corporation – time to look again?

In the second half of 2021 a zoom-mediated reading group was convened on the works of Otto von Gierke (1841-1921) and F. W. Maitland (1850-1906). Participants were co-operative and corporate law specialists and academics from around the world, though mainly from Australia. The focus was on Gierke and Maitland's discussion and advocacy for the 'natural entity' theory of the corporation, sometimes also called the 'organic' theory. The theory has suffered for a lack of advocates for close to a century, though recent philosophical work on social ontology has shown support for it. The main contemporary work in this regard, Pettit and List's Group Agency (2011), was also read and discussed by the group.

This panel will begin with introductory comments from each panel member before we open the discussion. Audience participation will be encouraged.

Panel members' introductory comments will address the following questions:

- What are the defining characteristics of natural entity theory according to Gierke and Maitland? **– *Duncan Wallace***
- What are the implications of the natural entity theoretical approach for corporate law reform? **– *Tim Connor***
- What are the implications of the natural entity theoretical approach for co-operatives as an alternative type of corporation? **– *Ann Apps***
- Does it have practical utility for advocating for co-operatives? **– *Anthony Taylor***

Dr Duncan Wallace, Monash University

Duncan Wallace is a PhD student at Monash University. His thesis is about the natural entity theory and corporate rights. He lectures company law and tutors in trusts law.

Dr Tim Connor, Newcastle University Law School

Dr Tim Connor is a Senior Lecturer at Newcastle University Law School. He previously worked for Oxfam Australia in a policy development and advocacy role.

Ann Apps, University of Newcastle

Ann Apps is an Honorary Lecturer at University of Newcastle Law School and is also completing her PhD on co-operative law and regulation in Australia.

Anthony Taylor, Business Council of Co-operatives and Mutuals

Anthony Taylor is Head of Corporate Affairs at the Business Council of Co-operatives and Mutuals, the peak body for the co-operatives sector in Australia.

PANEL 4C

Sources of Corporate Authority

Chair: Vincent Goding

Re-thinking company accountability with shareholders mandatory examinations

Dr Aaron Timoshanko

This paper examines the use of mandatory examinations by shareholders under s 596A of the Corporations Act 2001 (Cth) as a re-thinking of company accountability. This paper commences with an empirical analysis of the mandatory examination power, which shows its previous use as limited to liquidators and auditors. In this regard, the recent decision of Walton v ACN 004 410 833 Ltd (formerly Arrium Ltd) In Liq [2022] HCA 3 ('Walton') represents a notable departure from the usual exercise of this power. In Walton, the High Court of Australia held (3:2 majority) that the mandatory examination power can be used by eligible applicants, such as shareholders, in circumstances where the company would not benefit. In this case, the shareholders sought to question a former director and advisor about the examinable affairs of the company to ascertain whether they have a potential claim. Through the empirical analysis, this paper will attempt to situate this expansion of the mandatory examination power as either a change in policy or a legal development. If mandatory examinations by shareholders increase in frequency, this will necessitate a re-thinking of the accountability company boards face.

Dr Aaron Timoshanko, University of Southern Queensland

Dr Aaron Timoshanko is a Senior Lecturer in the School of Law and Justice at the University of Southern Queensland. Aaron has previously held positions at the Queensland University of Technology, Griffith University and Flinders University. Aaron's main research focus lies corporate law, accountability and regulatory theory. Aaron's PhD thesis was conferred in 2018 by Monash University and was awarded the 2018 Mollie Holman Medal for the best thesis for the Faculty of Law. In 2020, Aaron was awarded the USQ School of Law and Justice Citation for Excellence in Teaching.

PANEL 4C – Sources of Corporate Authority

Re-thinking corporate regulation: Construction of the content and meaning of due diligence defence for prospectus misstatements and omissions liability in Australia

Dr Rangika Palliyaarachchi

The due diligence defence provides one of Australia's most important defences to prospectus misstatements and omissions liability. The due diligence defence provides that a defendant is exonerated if it is proved that a 'reasonable investigation' is conducted, and based on such investigation, a 'reasonable belief' is formed as to the truth and the accuracy of the statements in the prospectus. However, very limited guidance is provided by public legal institutions as to what is meant by a reasonable investigation, what kind of activities would amount to a reasonable investigation, and how such activities are to be carried out. Using the Legal Endogeneity Framework expounded by Lauren B. Edelman, this paper argues that when ambiguous and vague terms like reasonableness are used, a dual process occurs with the legalisation of organisations alongside the managerialisation of law. This leads to a co-construction process where organisations together with public legal institutions occupy the regulatory space to construct the meaning and content of laws. Therefore, by moving beyond existing legal frameworks and recognising the operation of non-legal forms of norm-creation, this paper concludes that when legislative provisions are ambiguous or vague, this vacuum is filled by practices/structures adopted by regulatees, who thereby become the determiners of compliance with legal provisions. Given the frequency of use of terms like 'reasonableness' in statutes, it is essential to be mindful of this process and ensure sufficient regulatory oversight over the compliance mechanisms developed by regulatees.

Dr Rangika Palliyaarachchi, Western Sydney University

Rangika Palliyaarachchi is a Lecturer at the School of Law, Western Sydney University. She teaches corporate law and enterprise law, and her research interests lie broadly in commercial law, including but not limited to corporations law, consumer law and contract law. Over the past four years, her research interests have focused mainly on understanding how organisations and, more specifically, corporations construct the content and meaning of laws. Rangika examines how socio-legal frameworks can be used to understand the meaning-making process to design better corporate regulatory regimes and achieve desired outcomes.

PANEL 4C – Sources of Corporate Authority

State and Corporate Sovereignty in Pandemic Times

Dr Steven Stern

The COVID-19 pandemic challenges many assumptions. In corporate law, these challenges raise such issues as those pertaining to the governance and management of corporations; and the legal liability of corporations, their directors and other officers;, criminally and civilly. The current Federal Government in office throughout the pandemic (since January 2020 to date (January 2022)) has often cited State Sovereignty as the reason why it cannot interfere with a relatively substantial range of decisions by State Governments. In the late 1980s, there tended to be a general assumption that the Commonwealth constitutionally could legislate directly with respect to the regulation of corporations and securities markets, bypassing the States entirely. The Commonwealth assumed it had power to legislate for the incorporation of a company if the subscribers intended there to be any substantial trading or financial activities; and could prohibit incorporation under State law if a body upon incorporation would be a trading or financial corporation. Any such assumption was found to be unsound by the High Court of Australia in New South Wales v The Commonwealth (1990) 169 CLR 428. Nevertheless, the Commonwealth quickly achieved a paramount position in respect of the regulation of corporations and securities markets. This paper examines the extent to which, if any, recent developments over the COVID-19 pandemic could impact upon the Commonwealth's paramount position in this respect; and, if there is an exposure to such an impact, the ramifications identifying the areas where significant changes might reasonably be anticipated and what are the changes.

Dr Steven Stern, Victoria University

Dr Steven Stern is an Adjunct Professor in the College of Law & Justice, Victoria University and a Barrister-at-Law practising at the Victorian Bar on List S Svenson Barristers. He has previously been the University Solicitor, and then the University General Counsel and University Secretary at Victoria University; a Senior Associate in the Merger & Securities Group at what is now King & Wood Mallesons;; Director, Legal Advice and Review Branch/General Counsel at the National Companies and Securities Commission/Australian Securities Commission; Corporation Secretary and Principal Legal Officer of the Australian Wool Corporation; and an officer of the Commonwealth Attorney-General's Department.

PANEL 4C – Sources of Corporate Authority

Enforcement of directors' duties: an empirical study of 5 countries

Dr Vivien Chen, Professor Michelle Welsh & Professor Wai Yee Wan

The Hayne Royal Commission emphasised the importance of accountability in deterring corporate misconduct, asserting that 'adequate deterrence of misconduct depends upon visible public denunciation and punishment'. We build on Cheffins and Black's cross-country study of the legal risks faced by outside directors of public companies, expanding on their work to examine all types of directors in both private ad public companies. In addition to out-of-pocket risks, we consider risks of criminal, administrative and judicial sanctions such as disqualification.
Our project focuses particularly on common law jurisdictions including Australia, Singapore, Hong Kong, Malaysia and India. We examine the law on the books and the law in action over a 10-year period and consider whether, as was found by Cheffins and Black, directors are more likely to be out of pocket following an enforcement action instigated by a government agency, rather than a private enforcement action.

Dr Vivien Chen, Monash Business School

Vivien is Senior Lecturer at the Department of Business Law and Taxation, Monash Business School. She teaches and researches corporate governance, particularly from an empirical and socio-legal perspective.

Professor Michelle Welsh, Monash Business School

Professor Michelle Welsh is the Senior Deputy Dean Faculty Operations, Monash Business School. She undertakes research in the public enforcement of corporate law, the role of the public regulator and the impact of enforcement on corporate compliance. She was a chief investigator on an ARC Discovery Project with colleagues from the Melbourne Law School: 'Phoenix Activity: Regulating Fraudulent Use of the Corporate Form' (2014-2016). Currently, she is a member of a Monash University Network of Excellence (NoE) project: "Enhancing Corporate Accountability" (with researchers from Monash Law School, the National University of Singapore (NUS) and Manchester University).

Professor Wai Yee Wan, School of Law, City University of Hong Kong

Wai Yee WAN is Associate Dean and Professor of Law at School of Law, City University of Hong Kong. Her research interests lie in corporate governance, financial regulation and corporate insolvency and restructuring laws.

PANEL 5A

From Company Towns to Global Citizens: Re-thinking Corporate Rights and Responsibilities

Chair: Dr Ashley Pearson

JobKeeper vs ProfitSeeker: Trajectories of Corporations Law and COVID-19

Vincent Goding

There is a perceived trajectory within Australian corporations law in respect of the interrelated issues of how we understand what the corporation is, its purpose, and the duties of directors to act in its best interests. In various spheres, a popular and widely-held view equated the company with its shareholders and its best interests with the financial interests of shareholders as a general body. Although this view has sometimes been qualified or even rejected as erroneous as a matter of law, it has often been deployed as a statement of general principle. However, this understanding, it is thought, has been challenged in a modern turn in corporations law which has (re)asserted the separate legal entity status of the corporation and acknowledged the various stakeholder interests which might be said to represent the interests of the company. More broadly, this apparent turn is seen as a disruption to the deeply embedded perceptions we associate with the concept of shareholder primacy. This paper considers this trajectory of corporations law in the context of the JobKeeper wage subsidy scheme. As the Australian Government's flagship economic stimulus program during the pandemic, the explicit purpose of JobKeeper was to keep workers in jobs. However, the scheme has also been criticised as corporate-welfare which, contrary to its purpose, saw billions of dollars of public money paid to large and profitable companies, and extracted in the form of executive bonuses and shareholders' dividends. This paper asks to what extent the outcomes of that scheme challenge or affirm the perceived trajectory of corporations law and how the behaviour of corporations in this recent scandal can be situated and understood in terms of directors' duties and the best interests of the corporation.

Vincent Goding, University of the Sunshine Coast

Vincent Goding is a PhD candidate at the School of Law and Society, University of the Sunshine Coast, Sippy Downs, Australia. His thesis examines 'Exceptionality, Neoliberalism and Corporations in COVID Times: The Australian Government's Economic and Legal Responses to the Pandemic'.

PANEL 5A – From Company Towns to Global Citizens: Re-thinking Corporate Rights and Responsibilities

Next level of social responsibility of corporations: Citizenship treatment to companies?

Priya Misra

Corporate Social responsibility in India is turning a new leaf and regulators are steadily increasing their emphasis on its implementation in the glaring need for making companies more responsible especially in the area of environment. The companies are wealth generators and greatest polluters at the same time. The increasing inequalities in society contrasted with the grant of privileges to companies has made us wonder whether companies should be imposed with more responsibilities- perhaps responsibilities that equate with that of a citizen. The fundamental duties of a citizen are etched in the Indian Constitution (Article 51A) that include protection & preservation of environment, public property, integrity and cultural heritage of the country, among others. What if these duties can be imposed on an artificial legal entity such as company? Can it not encourage companies to pursue more sustainable and ethical practices? If the duties be imposed, would companies become eligible for rights of a citizen as well? What is the extent of rights of citizenship that the companies already enjoy? By this analogy, can multinational companies be treated as global citizens? This paper will weigh the pros and cons of the proposition to reach to a suitable conclusion. Citizenship could be the next big change in corporation law!

Priya Misra, National Law School of India University

Priya Misra is an Assistant Professor of Law and a Legal Consultant in specialised areas of Business Laws. She has taught at National Law School of India University, Bengaluru, India, University of Petroleum and Energy Studies , Dehradun, India and at Ram Manohar Lohia National Law University, Lucknow, India. She is pursuing her Ph.D. from National Law School of India University, Bengaluru, India in the area of Cross-border Corporate Insolvency Law. Her current areas of interest include Corporate Insolvency Law, Corporate Governance and Corporate Social Responsibility.

PANEL 5A – From Company Towns to Global Citizens: Re-thinking Corporate Rights and Responsibilities

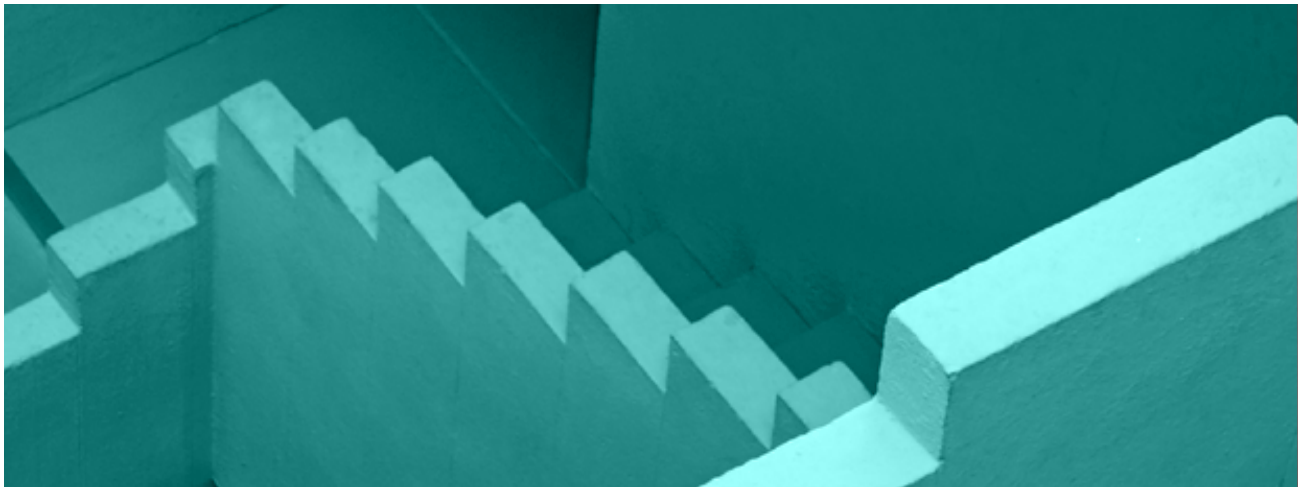
The Company Town – Everything Old is New Again

Associate Professor Beth Nosworthy

In 2021, Amazon announced that it would spend US$2billion building affordable housing for Amazon employees near its three new headquarters, in the US states of Virginia, Tennessee and Washington. 'Company towns' were once commonplace in the United States, and are associated in Australia particularly with the mining industry. They have been described as 'a semi-feudal form of capitalism, an archaic throwback to the days when serfs were tied to their domiciles – as well as their jobs – by the local lord' (J Weinstein, 2003), but other research suggests they can also offer high levels of service provision, including housing, education and childcare, beyond what might be expected from a self-interested employer or what is otherwise available in the community. Against a historical reflection of the successes and failures of the company town in the past, this paper will examine the tension between this self-interested benevolence and the directors' duties to the company, and particularly the challenge it presents to a shareholder-primacy interpretation of the duty to act in good faith in the interests of the company.

Associate Professor Beth Nosworthy, Adelaide Law School, University of Adelaide

Beth is an associate professor at Adelaide Law School, University of Adelaide, and a member of the Research Unit on the Regulation of Corporations, Insolvency and Taxation. She obtained her undergraduate degrees at the University of Adelaide, before completing the BCL at the University of Oxford in 2006. She was awarded her PhD from the University of Adelaide in 2013, for a thesis considering the obligations of directors in closely-held companies. Her research interests broadly include directors' duties, creditors' rights, and corporate governance. She primarily teaches in Equity and Corporate Law at the undergraduate level, and is the Director of the Entrepreneur and Venture Advice Clinic, a pro bono clinic providing free legal advice to small businesses where students gain practical experience before they graduate.



PANEL 5A – From Company Towns to Global Citizens: Re-thinking Corporate Rights and Responsibilities

When the Magic is Over: Disney, Florida and the Possibilities of Corporate Free Speech

Dr Michelle Worthington

This paper will use the unfolding dispute between Disney and the State of Florida as a launching pad for a comparative discussion of corporate political speech in Australia and the US. The paper will consider the differing approaches to corporate political speech in both jurisdictions, and consider whether and how a similar dispute could arise in Australia. The paper will consider both legal and socio/political matters concerning the participation of corporations in public political debate.

Dr Michelle Worthington, Australian National University

Dr Michelle Worthington is a Lecturer at the ANU Law School. An interdisciplinary scholar, Michelle's work focusses on the design of legal systems and devices, with a particular focus on the role that values play in legal design.

PANEL 5B

Re-considering Directors' Duties: Enforcement and Responsibility

Chair: Professor Ellie Chapple

Directors' Duties & Stakeholders' Interests: Recognition and Enforcement Approach

Param Pandya

The growing influence of corporations and devastating consequences of their failure coupled with the rise of pro-stakeholder shareholders and the COVID-19 pandemic has exacerbated the trend towards stakeholder oriented corporate law. This debate has played out particularly in the case of directors' duties.

The jurisdictions under study – India, UK, Singapore and Australia have recognised directors' duties to consider stakeholders' interests. While the UK and India have prescribed these duties under their respective company laws, Singapore and Australia have recognised these duties through judicial precedents and executive instruments. India treats stakeholder interests as an 'end goal' of corporate decision-making and adopts the 'pluralist' approach to directors' duties. The UK, Singapore and Australia have adopted the 'enlightened shareholder value' approach. They prescribe that while directors should consider stakeholders' interests, in case of conflict, they should prioritise the best interests of the company. However, these jurisdictions do not provide an enforcement mechanism to remedy breach of directors' duties to consider stakeholders' interests.

This paper discusses three-key aspects: (1) importance of directors' duties as a corporate governance tool to regulate corporate conduct; (2) different recognition approaches to directors' duties to consider stakeholders' interests in the jurisdictions under study and their implications; and (3) inadequacy of existing approaches to enforce general directors' duties to assuage concerns of stakeholders in the event of breach of directors' duties to consider stakeholders' interests.

Param Pandya, National University of Singapore

Mr Param Pandya is currently pursuing his doctoral studies at the National University of Singapore as the President's Graduate Fellow. He completed the MSc. in Law & Finance at the University of Oxford as the J N Tata Scholar in 2019-2020. He is qualified to practice law in India. Prior to pursuing his masters, he worked as a Research Fellow at Vidhi Centre for Legal Policy, New Delhi. Here, he had the opportunity to draft the Zero Draft of India's National Action Plan for Business & Human Rights. He also assisted the Government of India in drafting amendments to the Indian Insolvency law, company law, among others. Before this, he worked as a corporate lawyer at Cyril Amarchand Mangaldas – a top-tier full-service law firm in India. His key interest areas are Business & Human Rights, Corporate Governance, and Financial Regulation, with a special focus on India.

PANEL 5B – Re-considering Directors' Duties: Enforcement and Responsibility

Directors' duty towards climate risk mitigation: The case of India

Hemavathi Shekhar & Dr Vidhi Madann Chadda

Corporate Social responsibility in India is turning a new leaf and regulators are steadily increasing their emphasis on its implementation in the glaring need for making companies more responsible especially in the area of environment. The companies are wealth generators and greatest polluters at the same time. The increasing inequalities in society contrasted with the grant of privileges to companies has made us wonder whether companies should be imposed with more responsibilities- perhaps responsibilities that equate with that of a citizen. The fundamental duties of a citizen are etched in the Indian Constitution (Article 51A) that include protection & preservation of environment, public property, integrity and cultural heritage of the country, among others. What if these duties can be imposed on an artificial legal entity such as company? Can it not encourage companies to pursue more sustainable and ethical practices? If the duties be imposed, would companies become eligible for rights of a citizen as well? What is the extent of rights of citizenship that the companies already enjoy? By this analogy, can multinational companies be treated as global citizens? This paper will weigh the pros and cons of the proposition to reach to a suitable conclusion. Citizenship could be the next big change in corporation law!

Hemavathi Shekhar, TERI School of Advanced Studies & Vidhi Madaan Chadda

Hemavathi S Shekhar is a PhD Scholar at the TERI School of Advanced Studies. Her topic for PhD research is on 'Corporate Climate Governance: Challenges and Proposals for India Inc.' She has previously worked as an Assistant Professor at the Tamil Nadu National Law University where she taught Corporate Laws I and II, Law of Taxation(Income Tax) and Law of Contracts. She has completed her BBA LLB(Hons.) with specialisation in Business Laws and Intellectual Property Rights from Faculty of Law, IFHE and LLM in Business Laws from Rajiv Gandhi National University of Law. Apart from this she is also interested in working on Climate Change. Through her PhD research she had brought together her two areas of interest, Corporate Laws and Climate Change together. She wishes to explore and analyse the ever growing need to adapt the current Corporate System in India to the risk posed and the opportunities available due to Climate Change.

Dr Vidhi Madann Chadda, TERI School of Advanced Studies

Dr Vidhi Madann Chadda is a fellow member of the Institute of Company Secretaries of India. She has completed a Masters in laws (with specialization in corporate laws) and obtained Ph.D. in the area of Competition law from the Faculty of Law, University of Delhi, India. She has presented research at several national and international conferences and has several research publications to her credit. She has authored a commentary on 'Competition Act, 2002' published by Bloomsbury publishing and co-authored a practice handbook titled 'Law and Procedures under NCLT and NCLAT' published by Wolters Kluwer.

PANEL 5B – Re-considering Directors' Duties: Enforcement and Responsibility

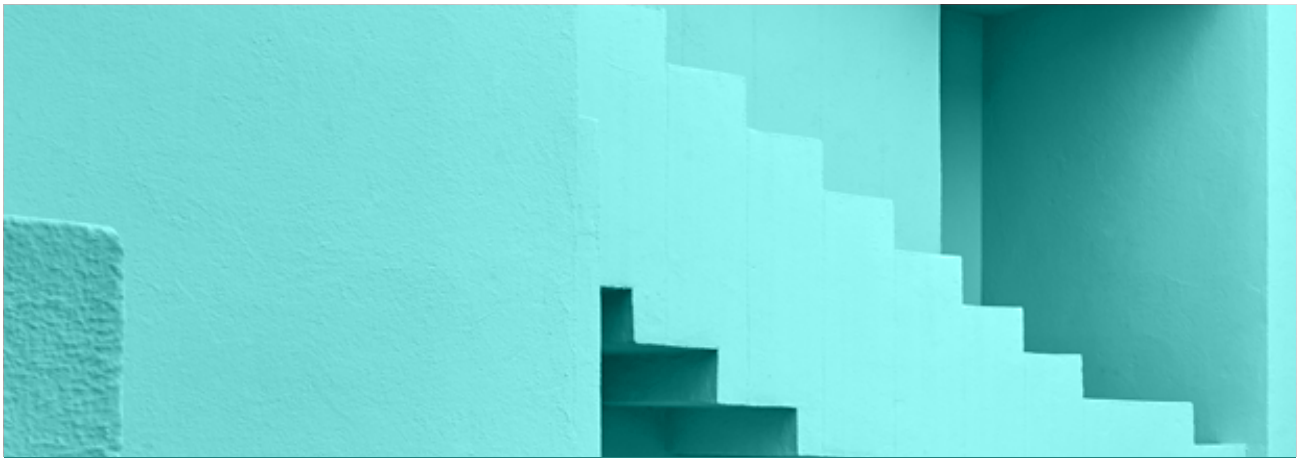
Australia–China cross-border listed companies' continuous disclosure supervision: Dilemmas and improvement proposals

Belle Guo

The continuous disclosure compliance of Chinese cross-border companies listed in Australia has long been a concern, as Chinese companies are either frequently delisted or rejected by the Australian Securities Exchange. The particularity of cross-border listings generates information asymmetry between securities regulators in the host jurisdiction and the home jurisdiction. This then impacts the effectiveness of the host jurisdiction's supervision of the cross-border listed companies and each company's continuous disclosure compliance. The purpose of this article is to clarify the issues surrounding securities cross-border supervision in China to shed light on current dilemmas and suggest possible reform proposals. Considering the similarities of the securities markets in the US and Australia, as a case study example, this article looks at Luckin Coffee, a US-listed Chinese company, which created a scandal in 2020 when it was accused of continuous disclosure fraud. The case points out relevant lessons for Australia–China securities cross-border supervision.

Belle Guo, University of New South Wales Law and Justice

Belle Qi Guo is a PhD Candidate in the School of Private and Commercial Law of the Faculty of Law & Justice at the University of New South Wales. A focus of her current research is Chinese company law and securities law, especially comparative laws between China and Australia. She is part of the Australian government's Endeavour Leadership Program (ELP).



PANEL 5C

Renewing Board Governance

Chair: Associate Professor Juliette Overland

How director financial literacy and motivation influence board and director performance

Dr Jackie Bettington

There is a paucity of evidence into why boards such as Centro fail despite meeting normative financial governance standards. Drawing on Agency and organisational behavioural theories this mixed-method study involved developing and applying in the field a psychometrically robust measure of director financial literacy (DFL) and interviewing directors to investigate how they develop and apply this capability to financial monitoring. Findings verified that, generally, directors lack the requisite baseline DFL for financial monitoring and challenged the prevailing view that skill-based board diversity is a critical antecedent for effective board performance. Importantly, this study identifies practical strategies for strengthening DFL.

Dr Jackie Bettington, Queensland University of Technology

Jackie is a researcher and lecturer at the Queensland University of Technology. Her research interests are corporate governance, business ethics and boards of directors. In 2015 Jackie completed a Research Masters in which she developed a director financial literacy (DFL) competency framework for directors serving boards in Australia. Continuing her research into a PhD Jackie investigated the relationship between DFL, board dynamics and the financial monitoring performance of individual directors and boards. Jackie has served as a director of several nonprofit boards and has extensive professional experience in information governance law, policy and practice. Further details at: *https://www.linkedin.com/in/jackiebettington/* and *https://www.qut.edu.au/about/our-people/academic-profiles/j.bettington.*

PANEL 5C – Renewing Board Governance

Re-thinking the Regulation Governing Enhanced Auditors' Report

Dr Loganathan Krishnan

Various duties have been imposed by the common law, Companies Act 2016, Capital Market and Services Act 2007, Code of Corporate Governance 2021, By-Laws (On Professional Ethics, Conduct and Practice) of the Malaysian Institute of Accountants and Central Bank of Malaysia's Guidelines on auditors. This is to ensure that auditors prepare a reliable report as there are various parties who will depend on the report before making certain decisions. Nevertheless, there were cases of financial irregularities which were not detected by the auditors. This has severely affected the reliability of auditors' report and the significance of the audit profession. The decision was then made by the regulators and professional bodies to enhance the duties of auditors in order to ensure that auditors' report is more reliable, credible and transparent. Thus, the requirement of Enhanced Auditors' Report (EAR) was expected of auditors. This not only concerns auditors, as the wider eco-system of reporting involves those governing a corporation i.e. the directors of the company. This study will explore the legal perspective of EAR and revisit the duties that are imposed on auditors. The study will also explore the extent EAR is required of auditors. The study will examine the extent EAR will enhance the duties of auditors and standard expected of auditors in preparing the report. A comparative study will be undertaken with the approach taken in Australia to take a leaf or two on the success of EAR.

Dr Loganathan Krishnan, Monash University Malaysia

Pursued LL.B (Hons) at University of London, LL.M and Ph.D at Universiti Malaya, Postgraduate Certificate in Higher Education at Curtin University. He was in practice at Thampa Solicitors, London then moved to SEGi University, Curtin University, Universiti Tunku Abdul Rahman and now at Monash University. His research is on corporate law. His publications include Principles of Business and Corporate Law, Malaysia and scholarly journals. He is a council member of Asean Law Association and Australian Association of Law Academics, member of the corporate law section, LAWASIA. He was a visiting scholar at University of Sussex, England.

PANEL 5C – Renewing Board Governance

Independent Directors in Australian Private Limited Corporations: From the National Security Perspective

Joseph Lee

The system of independent directors is a rare feature in Anglo-American private limited corporations. There is also a dearth of literature on independent directors in private limited corporations. This paper analyses whether independent directors should be introduced in Australia's private limited corporations owning and operating Australian critical infrastructure, and if yes, how the system ought to be implemented. The study undertakes empirical, theoretical, and doctrinal analysis. It finds most, if not all, corporations acquiring and operating Australian electricity networks, liquefied gas facilities, ports, and water take the form of private limited corporations in Australia. The acquisitions and operations of the assets, particularly by corporations with close affiliations with a foreign state, carry national security risks. The paper argues the public interest rationales for the implementation of independent directors in public-listed corporations ought to be extended to private limited corporations in Australia's critical infrastructure industry. It theorises the concept of independence by reference to the structural, behavioural and cultural aspects of independent directors and the wider boardroom environment. It addresses the issue of whether independent directors may breach directors' duties for failing to exercise impartiality in monitoring board decisions on matters of national security arising from the operations of the assets. Finally, the paper suggests options for implementing independent directors in the corporations. The first study to discuss independent directors in the context of national security, the outcome of the analysis could also be applied to private limited corporations operating business of national significance in Australia and the broader Anglo-American jurisdictions.

Joseph Lee, Australian National University College of Law

Joseph is a PhD candidate at the ANU College of Law. His thesis analyses Chinese corporate investment in Australian critical infrastructure, and how corporate law may be used to regulate the investment to secure Australia's national security. Born and raised in Malaysia, Joseph is a naturalised Australian and barrister at the ACT. Joseph has practised civil and commercial litigation for 13 years in Australia and Malaysia. He is proficient in Mandarin and Malay, both at advanced level. Having taught law and national security related subjects at the ANU, UNSW, and the University of Tasmania, he has a passion for teaching.

PANEL 5C – Renewing Board Governance

Perils of Contemporary Corporate Governance of Multinational Companies: An Analysis of Recent CEOs Resignations at Rio Tinto

Dr Zehra Kavame Eroglu

Seemingly irrelevant issues that happened in the third largest mining company in the world, Rio Tinto, have cost the company its CEOs and directors again and again over the past decade. In the case of an accounting irregularity leading to the breach of timely disclosure duties, Rio Tinto faced charges from regulators on three continents concurrently. In the case of blowing up the rock shelters in the Pilbara region of Western Australia, however, Rio Tinto's acts were legal. Unfortunately, now blown away shelters were once described as the most archaeologically significant site in Australia containing evidence of continuous human occupation dating back 46,000 years. This time it was not the regulators but the institutional investors that were asking for more accountability. There were, once again, endless discussions on the need for a cultural change and short termism. This paper looks are the recent events to better assess the perils of corporate governance of multinational companies and discuss contemporary issues such as short termism, stakeholders of a company, shareholder activism, and cultural change. From Australia's unique two strikes rule to how to create accountability, there is much to say.

Dr Zehra Kavame Eroglu, Deakin Law School

She is the Director of Master of Professional Accounting and Law and teaching Corporations, Corporate Governance, Corporate Insolvency Law, and Financial Services Regulation at Deakin Law School since 2017. She first completed LL.M. at Columbia Law School in New York specialising on corporations, corporate finance, and financial statement analysis. Later, she was a Postdoctoral Research Scholar at Columbia Law School, working with a team advising resource rich governments on their multi-year investment plans. She has completed her S.J.D. at Fordham University School of Law. At Fordham, she was also an Adjunct Professor teaching Comparative Corporate Law and Comparative Financial Reporting.