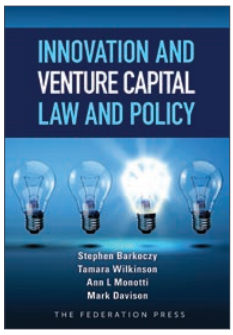
Innovation and venture capital law and policy

S Barkoczy & Ors | Federation Press | 2016



This book appears to be original and seminal in its subject matter and approach.

It is said by the authors to have emanated from a research project funded by an Australian Research Council Discovery Grant awarded in 2012 to a research team in the Faculty of Law at Monash University. The research project was titled 'Designing World-Class Venture Capital Programs to Support the Commercialisation of Australian Research During and Beyond an Economic Crisis'. The project team included three of the authors: Professor Stephen Barkoczy (who devised the project); Professor Ann Monotti and Professor Mark Davison. Grant funding enabled the engagement of the fourth author, Ms Tamara Wilkinson, then a recent Monash law graduate, as a research assistant and project manager. The currency date for the book is February/March 2016.

Professor Barkoczy is the nominated author of most chapters, conjointly with Ms Wilkinson on those which describe venture capital investment and deal with various grant and other support or incentive programmes. The focus of all those chapters is aspects of venture

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capital investment and other aspects of innovation. In his sole authorship Professor Barkoczy gives an overview of the work, describes government programmes that support innovative entities, addresses perspectives on the appropriate role for the Commonwealth Government in supporting venture capital investment, describes Australia's existing capital raising and emerging crowd-sourced equity funding rules and Australian taxation of and vehicles for venture capital investment, and concludes the work with a discussion of policy issues in designing innovation and venture capital programmes.

Professor Monotti has authored two chapters on, first, universities as 'key drivers' of innovation and the role of venture capital in supporting the commercialisation of university research and, secondly, US innovation and venture capital programmes.

Professor Davison has authored a chapter on innovation and venture capital programmes in Israel.

Each of the three lead authors has had extensive experience in innovation, taxation, intellectual property and other relevant legal disciplines in private professional work, the academy and government consulting.

As Professor Barkoczy outlines in the overview chapter, the book describes the genesis and operation of Australian government programmes aimed at supporting start-ups and early stage companies, including the 'often complex and technical' legal and taxation rules governing their operation. An assessment of each programme is offered in terms of its policy objectives, practical operation and 'fit' within Australia's innovation system.

The United States and Israel are seen as worthwhile comparators because of their high (comparatively) percentage of GDP constituted by venture capital and their substantial increase in venture capital investment after the global financial crisis compared with a downturn in other developed economies including Australia.

As Professor Barkoczy and Ms Wilkinson develop in their chapter on the nature of venture capital investment, venture capital is a worthwhile study because of its 'ginger' role in pioneering commercialisation of new ideas, products, technologies and business models. Venture capital provides the test bed with a high degree of flexibility and can be an important engine for job creation.

The methodology is deliberately cross-disciplinary between relevant areas of law, economics and finance, in conjunction with anecdotal information gathered from discussion with participants in the innovation system.

The objective is stated to be, in summary (p 6):

> To use a multi-disciplinary approach to weave a tapestry that pulls together the salient features of a broad range of eclectic government programs from around the world that have been designed to assist start-up and early stage companies raise finance, crystallise their research, develop their products and grow their businesses. Our major objective has been to thoroughly explain the Australian programs and place them into an overarching framework that allows them to be conveniently analysed and evaluated. We have also raised various policy issues that the Australian Government may wish to consider in any future review of its programs.

The work is said to be (p 8) a technical academic text that is addressed at scholars and students studying innovation and venture capital law and policy.

Largely, the work achieves its significant and worthwhile objectives. Of necessity from its objectives, it is primarily descriptive and derivative in its evaluation but in that space it appears to be comprehensive, with extensive footnotes and references at the end of each chapter and a helpful index. The style is clear and easy to comprehend by readers with varying levels of expertise (one can skip parts with which one is familiar).

This reviewer would have liked to have seen (for instance, at pp 173 et seq and in the final chapter) more in-depth explanation and evaluation of the role of government as a necessity and a 'good thing' and what degree and type of government support for private initiative for profit crosses the line and ceases to be a 'good thing'. Certainly, there is much source material here for debate on those issues within policy think-tanks and within the processes for formulating government policy by choosing among specific options, and providing that source material appears to have been the primary goal of the work. As the book endorses, working to minimise a culture of aversion to risk-taking is a priority. The ability of government (which does not risk its own money and has deals with political demands in terms of removing regulation) to influence such a cultural change is a matter for debate.

This reviewer also was left wondering whether the discussion essentially in the context of publicly-funded universities in Australia applies, or could with appropriate policy and other encouragement apply, to private tertiary institutions. The rich heritage of innovation involving private tertiary institutions in the United States, which is examined in the work as a good comparator, seems to make this a useful area for further exploration.

Reviewed by
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