

Foreword

Ian Ramsay AO is Redmond Barry Distinguished Professor Emeritus, Melbourne Law School, University of Melbourne. Between 1994 and 2021, he held the Harold Ford Chair of Commercial Law. He has long been an exemplary scholar who has contributed to corporate law and governance in very many, different and significant ways. All of us who have had any interest in company law have been informed, guided and challenged by his work over these last three decades.

Working in a legal system founded in the common law tradition, it is sometimes easy to overlook the temporal dimension to the law. What we now know to be the law has not always been so. Law keeps changing and developing as new statutory provisions are made and judge-made law continues to evolve. Ian Ramsay's work has provoked change and development and has responded to the succession of changes that have happened in company law.

Company law is a striking example of the temporal dimension to the law. Modern company law began to emerge only in the middle of the 19th century. As the plurality in *New South Wales v Commonwealth* noted,¹ the *Companies Act 1862* (UK) marked a watershed in the development of modern corporations law. But *Salomon v A Salomon & Co Ltd*² was not decided until November 1896, and only then did the courts fully grasp the implications of corporate personality. Even so, the consequences for the rights of creditors and others were still being debated, and dealt with, well into the 20th century.³ And, as Andrew Keay's essay shows,⁴ the consequences of corporate personality with limited liability are still playing out in the courts in the continuing debate about whether and when directors owe a duty to consider the interests of a financially distressed company's creditors.

Because company law is always changing and evolving, there are always new and different challenges and issues. The essays in this collection examine challenges and issues that face us now. Not all of them are new. So, for example, Tom Bathurst's essay considers commercial trusts and the liability of trust beneficiaries on insolvency. But, as he points out, these problems were identified more than 40 years ago and still await the devising of any comprehensive solution. Pamela Hanrahan traces the course of successive statutory schemes regulating collective investments. Future defaults and difficulties will no doubt provoke still further changes in those statutory schemes.

1 (2006) 229 CLR 1, 91 [100] ('*Work Choices Case*').

2 [1897] AC 22.

3 O Kahn-Freund, 'Some Reflections on Company Law Reform' (1944) 7 *Modern Law Review* 54; *Work Choices Case* (2006) 229 CLR 1, 97 [121].

4 Chapter 5 'Pursuing the Judicial Foundation for the Obligation of Directors to Consider the Interests of their Financially Distressed Company's Creditors'. See also, *BTI 2014 LLC v Sequana SA* [2022] UKSC 25.

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Perhaps the pace of change has faltered. Jason Harris records that it is now more than 20 years since the last large scale structural reform of Australian company law and asks whether it is time to look again at comprehensive corporate law reform. Relatedly, Robert Austin examines whether statute law has become unduly complicated and whether simple normative statements not burdened with definitions or exceptions may be a better model to adopt. But change is upon us, whether or not the statutory law is keeping pace. Several essays look at what responses companies and their boards, the law and regulators can or should make to the ever-changing and increasingly radical developments in technology.

All of the essays collected here will provoke further thought and reflection. And every one of the essays in this work can be seen to build upon or respond to issues which Ian Ramsay has thought about, written or spoken about during his long and distinguished career. But no single collection of essays could fully reflect the breadth or depth of his work over those years. What these essays can and do reflect is one undoubted fact – all who are now associated with or affected by company law in Australia are as much beneficiaries of Ian Ramsay's work as all of us who have worked in the area in years now past.

There will be no break in the pattern of company law changing and evolving. Whatever may be the nature and extent of future changes in company law, this collection of essays will stand as a fitting tribute to Ian Ramsay's work.

*K M Hayne
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