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CLMR Centre for Law
Markets and Regulation

Annual Report 2018



Acknowledgements



We would like to recognise those who support the Centre for Law, Markets and Regulation and assist us in our work to be the premier national centre for the study of the dynamics of market regulation.

The Centre acknowledges that its office is built on the traditional lands of the people of the Bedegal Nation, and pays respects to Elders past and present.



Australian Government

Australian Research Council

We are also grateful to:

- UNSW Law for its continued direct and indirect financial support.
- UNSW Business for the three year grant (2018-2020) to support the CLMR's research and events.
- The Australian Research Council and regulators who have commissioned research whose grants and contract funding have been vital to our work.
- Our colleagues in the Faculty, some of whom are mentioned in the pages of this report, but many of whom are not specifically nominated.
- Our colleagues from the academy, profession and regulatory agency officers, in Australia and overseas. Your engagement is key to ensuring we stay relevant and at the forefront of debate.
- Our PhD candidates and undergraduate student interns, whose energy and fresh perspectives continue to inspire us.
- Our visitors and community, both personal and through our website, who enrich our work and for whom much of our work is done.

Director's Report



Prof. Dimity Kingsford Smith

Director, CLMR, UNSW Law

The last year has been exciting for the CLMR, both internally and externally. Internally because the CLMR is now a partnership between Law and UNSW Business. This has seen governance, membership and funding changes and researchers from both faculties working more closely. Externally, because the proceedings of the Royal Commission into Banking and Financial Services (RCFS) has shown just how salient and contemporary is the work of CLMR members. CLMR members both individually and in collaboration contributed 8 background papers and submissions to the RCFS. These were frequently cited and referred to in the media. The Centre's work on the RCFS Reports also included opinion pieces, events and an ARC grant application. Much of the CLMR's work on the RCFS was made

possible by the new partnership.

Along with continuing themes such as digital financial services, competition law & policy, modern professionalism and corporate governance we have recently added projects on the deterrent effects of enforceable undertakings and an RCFS inspired program on remuneration in the financial sector. Our work in most of these areas has been made available to the profession and public through the 7 events which the Centre held during the year. These attracted some high profile speakers such as the APRA Chairman Wayne Byres, Hon Robert Austin, Prof Sally Wheeler and Mr Michael Woodford MBE, the whistle-blower and former CEO of Olympus. Overall 880 people registered for these events and 610 attended. Those registering were alerted to materials or online web-casts of discussion after the events. We are pleased with this interest in the CLMR's work.

Significant professional engagement and work with regulators in 2018 has accompanied this mixture of high quality research as seen in the publications of CLMR members and events and media contributions. Dr Marina Nehme was the first author of a report for ASIC on the deterrent effect of Enforceable Undertakings, very relevant to the RCFS. Dr Justine Rogers led the writing of a report for the Professional Standards Authority on the value of professional associations. I joined an expert group to assist APRA with a report on its enforcement practices and how they might include more overtly legal action — another by-product of the RCFS Reports. Many of our speakers at CLMR events have been generous members of the professions and we value greatly the continuing support of professionals who attend our events. We are always very complimented when professionals and regulators engage with our work in whatever way they can.

Finally, nothing happens in research centres without the hard work of its staff and supporters. We are lucky to have attracted Dr Hannah Harris as a post-doctoral scholar, and to have been able to rely on the energy and enthusiasm of our undergraduate student interns. Tom Chapman continues to administer the CLMR (and three other Centres!) with his characteristic coolness. I am personally grateful to Prof Clinton Free from UNSW Business for driving the partnership initiative and its attached funding, and as a CLMR Deputy Director leading the RCFS work stream. Finally, to Dr Scott Donald a particular thanks is owed. Both for his work in the CLMR as Deputy Director between 2016-2018, and also agreeing to take over the CLMR Directorship in 2019 as I move to the Minter Ellison Research Chair.

The 2018 year has been a very good one for the CLMR and I hope you enjoy the further details in the following pages.

People

Steering Committee



Prof. Michael Walpole

Head of School, Tax and Business, UNSW Business



Prof. Dimity Kingsford Smith

Director, CLMR, UNSW Law



Assoc. Prof. Justine Nolan

Dean's Delegate, UNSW Law



Dr Christopher Walker

Head of School, UNSW School of Social Sciences



Prof. George Williams

Dean, UNSW Law



Prof Elizabeth Carson

Assoc Dean Research, UNSW Business

People

Centre Members



Associate Professor Paul Andon

AGSM Scholar

UNSW Business School

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Interests: Management accounting, public governance, accountability, risk management, professionalism



Ms Emma Armson

Senior Lecturer

UNSW Law

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Interests: Takeover law and policy, corporate and securities law, legal policy development.



Associate Professor Anthony Asher

Ethics Officer and Grievance Officer, Postgraduate Actuarial Programs Coordinator

UNSW Business School

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Interests: Ethics, actuarial studies, risk, professionalism



Professor Ross Buckley

Scientia Professor

UNSW Law

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Interests: FinTech, RegTech, TechFin, digital financial services regulation, Australian and international banking and finance law.



Mr John Chellew

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UNSW Law

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Interests: Regulation of derivatives (over-the-counter and exchange-traded), securities, financial markets, financial services and clearing and settlement facilities in Australia and internationally.

People

Centre Members



Professor Simone Degeling

Co-Director - Private Law Research & Policy Group
UNSW Law

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Interests: Law of unjust enrichment and restitution, commercial law, equity and trusts, remedies, banking law, private law theory.



Dr Anton Didenko

Research Fellow
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Interests: Regulation of Digital Financial Services (DFS), FinTech and RegTech, secured transactions law, rule of law in business.



Dr Olivia Dixon

Lecturer
University of Sydney

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Interests: Regulation of investment and financial markets, corporate law and corporate crime.



Dr Scott Donald

Deputy Director - CLMR; Senior Lecturer
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Interests: Regulation of financial products and services, theories of regulation, equity and trusts, superannuation.



Professor Clinton Free

Deputy Director - CLMR; Professor
UNSW Business School

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Interests: management accounting, fraud, corporate governance, risk management

People

Centre Members



Professor Pamela Hanrahan

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Interests: Financial services law, corporate and securities law.



Associate Professor Anil Hargovan

Associate Professor and Director of Education
UNSW Business School
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Interests: Corporate governance, corporate insolvency, commercial law and equitable obligations



Dr Hannah Harris

Research Fellow, Centre for Law Markets and Regulation
UNSW Law
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Interests: Transnational law, financial crime, corruption, bribery, comparative law, international law, transnational policing, experimentalism & regulatory theory



Professor Deborah Healey

Professor
UNSW Law
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Interests: Competition law in Australia, competition law in Asia, in particular China, Singapore, Hong Kong, sport and law, including governance, sponsorship, broadcasting and anti-doping, consumer law.



Jessica Hudson

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Interests: Equity, trusts, the law of unjust enrichment, restitution, remedies, commercial and corporations law, private law theory and medieval legal history.

People

Centre Members



Dr Katharine Kemp

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Interests: Competition law, consumer protection, digital financial services regulation.



Professor Dimity Kingsford Smith

Director - CLMR

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Interests: Regulation of securities and financial products and services, theories of regulation and fairness in markets, regulation of online investing and algorithmic financial advising, corporate governance and globalisation.



Professor Michael Legg

Professor

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Interests: Civil Procedure, class Actions, litigation funding, regulatory litigation, corporate and securities law, US legal system, comparative civil procedure.



Dr Louise Malady

Senior Research Fellow

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Interests: Digital Financial Services (DFS) in emerging markets (South Pacific, South Asia and Africa), FinTech and RegTech.



Professor Bronwen Morgan

Professor, Australian Research Council Future Fellow

UNSW Law

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Interests: Transformations of the regulatory state in both national-comparative and trans-national contexts, regulation and socio-economic rights, the 'new economy'.

People

Centre Members



Professor John Morgan

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Interests: Regulation of the insurance and reinsurance industry, the impact of that regulation on insurers and the acquirers of their products and corporate activities including portfolio transfers, mergers and acquisitions, restructurings, demutualisation; corporate governance.



Dr Marina Nehme

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Dr Rob Nicholls

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Interests: Telecommunications regulation, broadcasting regulation, regulation of networked industries, market analysis in competition law context, competition in retail financial services, expert determination, accredited mediator.



Justine Rogers

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Interests: Legal profession and regulation, professional ethics/ ethical decision-making, future of work, artificial intelligence and other changes to professions.



Professor Alex Steel

UNSW Law

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Interests: Criminal law, fraud and dishonesty, identity fraud, prisons and penology, criminal legal theory

People

Centre Members



Associate Prof Charlie Xiao-chuan Weng

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UNSW Law

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Interests: Corporate and securities law, law and finance, Chinese capital market regulations, bankruptcy, Chinese real estate property law.

Education

Internships

UNSW Law has the largest clinical and internship program of any law school in Australia. The CLMR has been a direct beneficiary of this program having had six interns, both from law and other faculties, working for the Centre in 2018. Most of the intern work was on a variety of aspects of the Royal Commission into Banking and Financial Services. In particular the interns gained experience with digesting the volume of information and opinions produced in such proceedings and helping CLMR members to write submissions. Two members of the Centre from UNSW Business enjoyed intern assistance to help with a submission to the ACCC on franchising. An intern from media studies assisted with data collection and analysis of media on the Royal Commission. Two interns from computer science assisted with program development for automation of CLMR contacts lists. Interns receive course credit for their participation.

Semester 1 and Winter Interns

Katherine Chow was involved in two major projects. The first project related to the 'Professionalism' research program. In particular, Katherine assisted in compiling research briefs, proof-reading excerpts and drafting online resource centre overviews for the Professional Standards Council (PSC). She was given the opportunity to co-author several titles, including '*Alternative Pathways to Becoming a Professional*', '*Higher Education Accreditation*' and '*The Future of Professional Certification*' for the Professional Standards Councils Research Library of Modern Professionalism.

The second project related to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Katherine was responsible for analysing individual party submissions and Counsel Assisting's closing address from Round 1 and Round 2 hearings (which investigated misconduct in the areas of '*Consumer Lending*' and '*Financial Advice*' respectively).

Tina Guan's internship was based upon discourse analysis work regarding the Banking Royal Commission and the related media treatment. Discourse analysis work comprised searching texts and comparative sentiment analysis of articles showing media treatment of the Royal Commission hearings. This was done in channels such as the Australian Financial Review, Sydney Morning Herald, ABC News amongst many media news outlets reviewed.

Semester 2 and Summer 2017/18 Interns

Samantha Wong worked collaboratively with a range of CLMR academics and interns to digest and filter complex material from the hearings and transcripts of the Royal Commission into Banking. Samantha engaged in a variety of tasks such as summarising key documents from each phase of the Royal Commission in live time and researched ASIC's regulatory approach.

Kelvin Yang and **Prateek Chatterjee** both worked on two major tasks during their internship. They implemented prototypes to achieve automation of the Centre contacts lists. This involved automatic communication between Excel, Mail Chimp and Eventbrite. Both Kelvin and Prateek also produced technical and summary reports which included suggestions on how to improve current systems.

Emily Chen explored policy questions associated with the Royal Commission. Assisting with CLMR Submissions to the RCFS, she began to think about what law 'should' look like and why. At every stage, Emily was given the autonomy to study the interests of each stakeholder and to form her own opinions. Emily worked hard to understand the full picture in each instance and gained valuable insight from doing so. She found the capability to ask 'why' events raised at the RCFS had occurred, and how a different approach might be taken.

Education

PhD Supervisions

Sophie Burbidge, 'The regulation of stored value financial products: A comparative analysis of approaches in Australia, Hong Kong, Japan and the EU'

Supervisors: **Ross Buckley**, Jonathan Bonnitcha, Douglas Arner.

Amanda Carrigan, 'Corporate governance and management below board level'

Supervisors: **Dimitry Kingsford-Smith**, Anil Hargovan.

John Chellew, 'Financial Derivatives versus Gambling: Where Should Australia Draw the Regulatory Dividing Line?'

Supervisors: **Dimitry Kingsford Smith**, **Scott Donald**.

Nana Frishling, 'Beyond the Audit: Multi-stakeholder Initiatives and the Challenges of Human Rights Protection'

Supervisors: Justine Nolan, **Dimitry Kingsford Smith**, **Bronwen Morgan**

Tahlia Gordon, 'The social value of alternate business structures: An empirical evaluation on the impact of incorporated legal practices on access to legal services in NSW'

Supervisors: **Justine Rogers**, **Bronwen Morgan**

Deborah Healey, 'How should competition law accommodate the rise of east Asian state capitalism?'

Supervisors: **Ross Buckley**, Michael Jacobs.

Jeremy Kloiser-Jones, 'Decentralising and automating trust? The legal and regulatory implications of distributed ledger system "smart contracts"'

Supervisors: **Ross Buckley**, Lyria Bennett Moses.

Simon Lacey; 'Success and failure in the race to coordinate domestic policies, regulatory frameworks and institutions to the realities of the 21st century trading system: Australia and its regional trade partners'

Supervisors: Colin Picker, **Heng Wang**, **Dimitry Kingsford Smith**

Emily McMullan, 'Do the traditional contract model and existing theory extend to modern consumer law?'

Supervisors: **Simone Degeling**, Michael Crawford, Arthur Glass.

Barbara Mescher, 'Putting ethics into legal ethics: Studying the work of corporate lawyers'

Supervisors: **Dimitry Kingsford-Smith**, **Justine Rogers**.

James Morris, 'Regulating the Australian retail corporate bond market: Market leading or stifling development'

Supervisors: **Dimitry Kingsford-Smith**, Jeff Coulton.

Michael Tercerio, 'Australian Competition and Consumer Commission's Role in the Waterfront Dispute: Master Stroke or Stroke of Madness'

Supervisors: **Deborah Healey**, **Alex Steel**

Major Research Themes

Enforceable Undertakings (New)

Enforceable Undertakings are a regulatory tool unique to the Australian context. CLMR researchers are engaged in understanding the impact of EUs by exploring their deterrent effect, their interaction with other regulatory tools, and their use by different regulators. The CLMR has done work for ASIC on Enforceable Undertakings and held a research symposium on the topic in April 2018 on the topic. CLMR members are currently pursuing future collaborative research with a wider group of regulators which also use EU powers in enforcement. This is to enhance understanding of this uniquely Australian regulatory tool, and its value in a post RCFS world and more generally.

Royal Commission into Banking, Financial Services and Superannuation (RCFS) (New)

The RCFS was a water-shed inquiry into the conduct of banks and financial services organisations, and their relationship with customers. It had wide terms of reference, looking not only at illegal and non-compliant conduct which may breach the law and damage customers, but also at conduct which may be below community standards. The RCFS hearings and Reports engaged with many of the on-going research themes of the CLMR: corporate governance, market conduct regulation, commercial law and equitable obligations, prudential regulation and competition law and policy. As well as being active in research and commentary the CLMR and its members submitted overall 8 submissions or background papers to the Commission. Many of the suggestions in the Final Report aligned with suggestions made in our submitted work. Centre researchers have identified models of remuneration as central to many of the findings and recommendations of the RCFS. During 2018 CLMR researchers worked in this area, writing media pieces, a significant submission on remuneration to the RCFS, and planned towards seeking grant funding for further research. We are now awaiting the outcome of an ARC Discovery Grant application entitled *The Banking Royal Commission: Remuneration, Professionalism and Integrity*. If successful this would supply funding to pursue this research theme over the coming three years.

Professionalism

This project explores whether the ethos and conduct standards of the professions, the training and competence and commitment to clients, the public interest and peers, could make a difference. In short it explores whether the structures, practices, beliefs and expectations of professions could act as a regulatory strategy to improve the conduct and hence trust in, the institutions of finance.

Digital Financial Services

DFS includes a range of services including e-money, transaction accounts, savings, credit and insurance. The challenge for regulators is to establish the appropriate (and not unduly burdensome) legal and regulatory environment for DFS to improve financial inclusion (where financial services are safe, affordable and accessible). The UNSW Digital Financial Services Research Team is conducting in-depth and pioneering research into the regulation of digital financial services with support from the Australian Research Council (ARC) and the United Nations Capital Development Fund.

FinTech/RegTech

FinTech is a contraction of the terms "financial" and "technology." FinTech is the use of technology to deliver financial solutions. FinTech is transforming finance and challenging its regulation at an unprecedented rate. FinTech runs the gamut of new platforms from P2P lending to robo-advice, and from payments to credit scoring. CLMR research in this area is a mix of funded research projects and on-going research by individual scholars. Focus areas include implications of the rise of TechFins and Big Data, online investing, equity crowd funding and algorithmic financial advising.

RegTech (like FinTech) is a contraction of the terms "regulatory" and "technology." It refers to the application of technology to regulatory matters and initially consisted of products to assist financial institutions to meet their compliance and reporting obligations, which increased massively after the Global Financial Crisis. RegTech now offers an opportunity to rethink entirely the way that regulation and finance work. RegTech offers a proportionate risk-based approach where access to and analysis of data enables more granular and effective supervision of markets and market participants. CLMR Researchers are seeking to illuminate the benefits of using RegTech.

Major Research Themes

Corporate Structure and Governance

Research at the Centre for Law Markets and Regulation on corporate governance, conduct and control ranges from legal control, through routines of governance observed in corporations to debates about ethics and the limits of regulation. It is not limited to the conduct of companies and changes in their control, but extends to a renewed interest in legal models for business beyond the corporation. CLMR research in this area is a mix of funded research projects, on-going research by individual scholars and of groups pursuing a program of research and influence as is the case with the Legal Models Beyond the Corporation Working Group.

Commercial Law and Equitable Obligations

Researchers at the Centre for Law, Markets and Regulation recognise the multi-dimensional and fundamental effects of private legal relations on regulation. In its creation, implementation and interpretation as well as in its enforcement, private law is all of facilitative, creative and limiting for regulation at varying points. The same may be argued for in reverse about regulation. Taking a lead from our colleagues in the UNSW Law Private Law Policy and Research Group, CLMR researchers consider 'private law' to be legal rules and principles that govern the relationships between individuals in society, or between individuals and the state where the state is afforded no greater privileges than a private person. In this CLMR research domain members have private law commercial and equitable obligations as their focus of inquiry. Modes of enforcement of private law rights are also a primary area of research interest.

Prudential Regulation

Prudential regulation is designed to ensure that entities, such as banks, insurance companies and superannuation fund trustees, which make financial promises to consumers are capable of meeting those promises. Although historically directed towards issues such as capital adequacy, operational risk and liquidity management, prudential regulators have in more recent times started to engage with issues such as governance and risk management more generally.

Market Conduct Regulation

Centre for Law Markets and Regulation research on market conduct regulation ranges from law, through a variety of formal regulation and a wide range of non-legal strategies to influence conduct. The kinds of market (mis)conduct CLMR researchers work on include misleading conduct, market manipulation and insider dealing, unfair conduct or that which leads to disorderly markets and market disruption. It may also include conduct not only at 'point of sale' but high in the 'value chain' such as product design and distribution networks and supply chains. Different strategies of enforcement such as class actions and enforceable undertakings are central to the research activities. The research here is a mix of funded research projects, on-going research by individual scholars and of groups pursuing a longer research program.

Competition Law and Policy

Competition law and policy relate to legal and regulatory settings that promote, improve and increase rivalry between competing businesses with the objective of promoting efficiency to the benefit of consumer welfare. Competition itself is a dynamic process undergoing continuing change. Many factors influence the degree to which competition thrives. These include sectoral characteristics, dynamic, allocative and productive efficiencies, the intensity of the product or services substitution processes and levels of enforcement. Competition regulation is in a state of flux, with legislative changes flowing from the 2015 Harper review coming into effect in late 2017. CLMR researchers take a wide view of what constitutes competition law and policy and the regulatory strategies which are significant and worthy of investigation in order that their research and competition law both have impact.

Sport

Sport is a major area of human endeavour and commercial activity. Sport law covers law and legal issues that govern and impact athletes, sporting organisations and their commercial partners. It is impossible to detail all legal areas relevant to sport, but some are commercial contracts, intellectual property, digital rights, risk management, established tort principles, administrative law and criminal law. Relevant regulation includes the rules and norms of the game, statutes and regulations of sports clubs and organisations, regulatory agencies and international laws, rules and conventions. International agreements, cover many aspects of anti-doping and the International organisation the Court of Arbitration for Sport, while individuals and organisations may be bound to these by the contracts they have signed.

Outputs, Events and Engagement

In the Shareholder's Interest or the Public Interest? ASIC and Director's Duties,

11 April, 2018

Location: Allens, Sydney CBD

Speakers: Prof Pamela Hanrahan, Prof Dimity Kingsford Smith, Hon Robert Austin and Ms Pauline Vamos

The law now recognises that public interests may be (and sometimes must be) protected and advanced by boards, instead of directors' decisions turning exclusively on private corporate or shareholder interests. During this seminar we heard about legislation and recent judicial decisions which reflect an evolution in opinion about what boards of directors should and must consider, and ASIC's role in these changes.



Outputs, Events and Engagement

The Banking Executives Accountability Regime (BEAR), 2 May, 2018

Location: Allens, Sydney CBD

Speakers: Mr Wayne Byres (APRA), Mr Steve Weston (Volt Bank), Ms Dominique Hogan Doran SC (NSW Bar), Ms Cris Parker (Banking and Finance Oath).

The Banking Executive Accountability Regime (BEAR) legislation passed the Australian Senate on 7 February 2018, and will come into effect on 1 July 2018. The legislation amends the Banking Act 1959 to impose accountability, remuneration, key personnel and notification obligations on authorised deposit-taking institutions. It is intended to make senior bankers more accountable for management decisions, and includes criminal liability amongst its sanctions. During this seminar we heard from APRA Chairman Mr Wayne Byres about how APRA intends to implement BEAR. Mr Steve Weston also spoke about the UK's experience with similar legislation which has now been in place for several years.



Outputs, Events and Engagement

Symposium on the Deterrent Effect of Enforceable Undertakings: Insights from a Pilot Study

27 April, 2018

Location: UNSW Law, Kensington Campus.

Symposium to discuss with ASIC policy and operations staff the Report undertaken as contract research report into the deterrent effects of Enforceable Undertakings. This report was researched and written by CLMR members, and was referred to by ASIC in its submission to the Royal Commission into Banking and Financial Services. It is now available on the ASIC website here: [The General Deterrence Effects of Enforceable Undertakings on Financial Services and Credit Providers](#)

Speakers: Prof Dimity Kingsford Smith; Dr Marina Nehme; Dr Olivia Dixon and Ms Jessica Anderson,

Prof Michelle Welsh from Monash Business Faculty attended as a guest along with 10 ASIC staff who work in areas of the agency involved with enforceable undertakings and enforcement including policy development. This symposium was by invitation only.

Outputs, Events and Engagement

Culture, Ethics and Law and Regulation,

Thursday, 10 May, 2018

Location: King & Wood Mallesons, Sydney CBD.

Speakers: Prof Elizabeth Sheedy, Ms Cris Parker, Prof Sally Wheeler and Mr Angus Armour.

Regulators, research and even royal commissions recognize the relevance and value of organisational culture in promoting positive corporate conduct. But what exactly is 'culture' and how does it affect the conduct of those in organisations? 'Ethics' and 'culture' are often joined in the same sentence, yet again, the relationship between them is not well understood. Corporate governance failures have drawn attention to the limits of regulation and law but also to the importance of culture and ethics in the acceptance of or resistance to, regulation. At this seminar in May 2018, we heard from experts who have researched the culture and published about ethics. We also heard from experts who have had long careers in thinking about the relationship of culture and ethics with law and regulation and how all three are best captured in practical corporate governance.



Outputs, Events and Engagement

Regulating in the Digital Economy - Bitcoin, Blockchain and Initial Coin Offerings

31 May, 2018

Location: Herbert Smith Freehills, Sydney CBD.

Speakers: Prof Ross Buckley, Prof Ron Van der Meyden, Mr Oliver Harvey (ASIC) and Mr Mark Adams (ASIC)

Distributed Ledger Technology (DLT), a technology of distributed data bases with great potential, was the subject of this seminar. Also known as 'blockchain' DLT supports crypto-currencies such as Bitcoin. It is the focus of start-ups making Initial Coin Offerings (ICOs) to fund their business development ideas using DLT. Reactions to the many applications of DLT have varied across jurisdictions and regulators, and devising regulatory responses is a balancing act. During this seminar we heard from computing expert and fine science communicator Prof Ron Van der Meyden to explain the technology for non-experts. We also heard from an academic writing on DLT's legal implications and regulators treading the difficult path between financial consumer protection and the need for funding in this market for technology start-ups.



Outputs, Events and Engagement

East Asia Academic Network on Competition Policy (EANCP) Conference at CLMR

29 August, 2018

Location: UNSW CBD Campus.

Speakers: Prof Deborah Healey and Dr Rob Nicholls, with Prof Dimity Kingsford Smith opening.

The Annual Conference of the East Asia Academic Network on Competition Policy (EANCP) was held in conjunction with CLMR on 29 August 2018 at UNSW City Campus. The EANCP Conference was organised by CLMR member and competition law researcher Professor Deborah Healey, in conjunction with EANCP, at the invitation of the ACCC.

The theme of the conference was 'Digital Platforms: The New Frontier'. The extent to which the growth of digital platforms provide additional challenges to competition law and mechanisms for dealing with the market power which may ensue were subjects of much discussion. Speakers and attendees included representatives of the ACCC, academics from Indonesia, Taiwan, Malaysia, Switzerland, Hong Kong, Vietnam, Philippines, Singapore and Australia, and local practitioners.

Professor Healey said:

"The growth of competition laws in jurisdictions in East Asia makes it particularly important to foster opportunities for academics to exchange ideas and experiences in relation to their interpretation and enforcement. Commonalities in experience with particular types of conduct, such as cartels or mergers, can be useful analogues, particularly for newer jurisdictions. In addition, some transactions or conduct occur in several jurisdictions, and it is useful to compare the approaches of individual laws and enforcers, or work to expand on cooperation between jurisdictions. The Conference provided many opportunities for useful interactions on competition law and policy issues."

The EANCP Conference was held at the same time as the East Asia Top Level Officials' Meeting on Competition Policy (EATOP) and the East Asian Conference on Competition Law and Policy (EAC) conferences were held in Sydney. The conferences attracted a large number of competition regulators and academics from East Asian jurisdictions. The EATOP was hosted by the ACCC in conjunction with the Japan Fair Trade Commission (JFTC) and the Asian Development Bank Institute (ADBI). This is the first time EATOP has been held in Australia."

CLMR partnered with East Asia Academic Network on Competition Law & Policy.



Outputs, Events and Engagement

Business of Ethics - Making Sense of the Banking and Financial Services Royal Commission

11 October, 2018

Speakers: Prof Clinton Free, Dr Scott Donald, Prof Dimity Kingsford Smith and Dr Simon Longstaff.

The expert panel examined the issues identified in the Royal Commission's fact-finding hearings and Interim Report and shed light on the long-term impact of the Commission's work. The panel also drew out the cross-cutting themes that emerged in evidence to and findings of the Commission, and their systemic and wide-reaching implications.

This panel event was a must-attend for those seeking RCFS Interim Report insights and expert analysis, as well as those interested in ethical conduct more generally.

CLMR provided the content and speakers and partnered with the UNSW alumni office for Business and Law.



Outputs, Events and Engagement

Michael Woodford MBE: A Story of Loyalty and Betrayal by Olympus' Former CEO and Whistle-blower **7 November 2018**

Location: Heritage Ballroom, Westin Hotel, 1 Martin Place, Sydney CBD

Speakers: Mr Michael Woodford, Prof Clinton Free, the Hon Justice Brigitte Markovic and Prof Paul Andon

Michael's story is extraordinary: as the newly-appointed president and then CEO of Olympus he uncovered an accounting fraud approaching \$2 billion. In blowing the whistle and exposing the scandal, Michael lost his job, the Olympus share price plummeted and the entire Board was forced to resign. Michael's story is both hilarious and terrifying, and his account of events is published in his book 'Exposure'.

In Australia, companies are dealing with considerable regulator and media scrutiny and whistle-blower reforms which should bring unacceptable corrupt conduct into the open. What are the expectations of our business leaders in Australia? How is business responding to increased obligations to whistle-blowers? Following his presentation, Michael was joined on a discussion panel by The Hon. Justice Brigitte Markovic and UNSW Business School's Professor Clinton Free and Prof Paul Andon.

CLMR provided content and speakers and partnered with McGrathNicholl.



Outputs, Events and Engagement

Media

CLMR members have been very busy in the media. In the weeks of hearings and after the Interim Report of the Royal Commission into Banking and Financial Services, CLMR had the highest level of media mentions at UNSW. CLMR has been active in opinion pieces in the AFR, Australian, Conversation and on radio and TV at ABC News. There was also considerable activity in regional media mentions in print and online media and wide syndication of these interventions.

Research Reports and Submissions to Government and Inquiries

Submissions and Background Papers for the Royal Commission into Banking, Financial Services and Superannuation:

As well as individual submissions made by CLMR members and three expert background papers written by Prof Pamela Hanrahan for the Royal Commission into Banking and Financial Services the CLMR made a submission written together by several of its researchers, and academics from else-where, with whom they work. This joint submission in response to the Interim Report of the Commission can be found here: https://financialservices.royalcommission.gov.au/Submissions/Documents/interim-report-submissions/POL_9100 Further publication details of other CLMR member submissions to the RCFS and Prof Hanrahan's expert reports, can be found below.

The authors of the CLMR joint submission covered consumer behaviour and fairness, remuneration, professionalism in financial services, regulatory structure and strategies of enforcement and enforceable undertakings. The authors of the report (limited to 50 pages) were Professor Dimity Kingsford Smith, Minter Ellison Professor of Risk and Regulation and CLMR Director, UNSW Law; Professor Clinton Free, Deputy Director of the CLMR, UNSW Business School; Professor Charles Sampford, Director of the Institute for Ethics, Governance and Law and President of the International Institute for Public Ethics, Griffith University Law Faculty; Dr Hugh Breakey, Senior Research Fellow at Griffith University's Institute for Ethics, Governance and Law and President of the Australian Association for Professional and Applied Ethics, Griffith University Law Faculty; Dr Hannah Harris, Post-doctoral Research Associate, CLMR and UNSW Law; Dr Marina Nehme, Senior Lecturer, CLMR and UNSW Law Dr Scott Donald, Deputy Director of the CLMR, UNSW Law. The Submission was commented on at length in the Australian on Sat 17 November 2018, and has been noted by regulators.

Anthony Asher, Financial Services Royal Commission, 26 October, 2018.

Anthony Asher, Financial Services Royal Commission, 25 October, 2018.

Anthony Asher, Financial Services Royal Commission, 21 September, 2018.

Anthony Asher, Productivity Commission Draft Report: Superannuation: Assessing Efficiency and Competitiveness (May 2018) 13 July 2018.

Jenny Buchan, Deborah Healey, Hannah Harris and Rob Nicholls, *Submission to the ACCC on a potential class exemption for collective bargaining*, 21 September 2018.

Scott Donald, *Submission to royal commission into banking, superannuation and financial services*, 21 September 2018.

Scott Donald, *Submission to the productivity commission on assessing efficiency and competition in superannuation*, 13 July 2018.

Pamela Hanrahan (2018) Background Paper 30: Information About Selected Aspects of Foreign Financial Services Regulation (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry)

Pamela Hanrahan (2018) Background Paper 25: Legal Framework Governing Aspects of the Australian Superannuation System (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry)

Pamela Hanrahan (2018) Background Paper 7: Legal Framework for the Provision of Financial Advice and Sale of Financial Products to Australian Households (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry)

Outputs, Events and Engagement

The Deterrence Effect of Enforceable Undertakings on Financial Services and Credit Providers: In mid-2018 CLMR researchers delivered to ASIC a report on the deterrent effect of Enforceable Undertakings. This is now available on the ASIC website, at the address below. It is a pilot piece of empirical research on the perceptions of providers in the financial sector, as to whether they are deterred from poor conduct by seeing a competitor enter an Enforceable Undertaking with ASIC. It is in short, a report on the potential for general deterrence of EUs in the financial sector. The EUs Report which was researched and written as contract research for ASIC by Nehme, Dixon, Anderson and Kingsford Smith as a CLMR project here: <https://download.asic.gov.au/media/4916053/18-325mr-deterrence-effects-of-enforceable-undertakings-on-financial-services-and-credit-providers.pdf>

The Value of Contemporary Professional Associations: Funded by an Australian Research Council Linkage Grant and the Professional Standards Councils, CLMR member Dr Justine Rogers was the lead author (with Ms Deborah Hartfield, research associate) on this report. The report answers the question: 'What is the value of professional associations to the good that professions do?' https://clmr.unsw.edu.au/sites/default/files/attached_files/Value%20of%20Contemporary%20Professional%20Associations.pdf The report combines desk-research and qualitative empirical methods of open ended-interviews, to investigate the views of professionals about their professional association and the work it does. The research report was part of a wider agenda of research into the challenges to and benefits conferred by modern professions, pursued by CLMR researchers under the Centre's major research theme of 'Professionalism'.

Mapping Professional Regimes Internationally: this report was researched and written with assistance by CLMR members with lead author Melea Lewis from Griffith University Law along with guidance from Professor Charles Sampford, also at Griffith Law. Using desk-based research this report seeks to understand the mixture of ethical standards, formal rules and institutions in terms of a range of professional governance models, seen world-wide. The report can be accessed here: https://www.psc.gov.au/sites/default/files/ARC_Professionalism13JAN.pdf. As with the report discussed immediately above, this one was part of the wider agenda of research into the challenges to and benefits conferred by modern professions, pursued by CLMR researchers under the Centre's major research theme of 'Professionalism'. Likewise it was also funded by an Australian Research Council Linkage Grant and the Professional Standards Council.

Professional Standards Councils Research Library of Modern Professionalism: The production of this online library of research materials about modern professions, was also a product of the CLMR's wider agenda of research into the challenges to and benefits conferred by modern professions, and also funded by an Australian Research Council Linkage Grant and the Professional Standards Council. The Library consists of over 40 over-views of a variety of dimensions of ethics, law and practice, governing professions. The over-views are each 2500 words, and accompanied by research materials for readers who wish to delve more deeply into a professional topic. CLMR members working in the professionalism research theme assisted by CLMR interns have written and contributed these over-views, which can be found here: <https://www.psc.gov.au/research-library>

The Professional Standards Councils who financially supported the creation of the Library, work with associations to help them develop effective self-regulation and to improve their professional standards. The PSC Research Library is designed to provide information on a range of topics related to professions, professionalism and professional regulation. It is designed to assist individual professionals and their associations to improve standards and further professionalise.

The research library contains several types of information: subject overviews identify the key concepts, issues and approaches to a topic; resources which provide further information about a subject, and include videos, articles, case studies, links to websites, and guidelines. The Library's major topics are: Professionalism; Ethics and Conduct; Regulation and Governance; Risk; Qualifications; Certification; Ongoing Education.

FinTech for Financial Inclusion: Douglas Arner, Ross Buckley and Dirk Zetsche, 'FinTech for Financial Inclusion: A Framework for Digital Financial Transformation', Alliance for Financial Inclusion (AFI) and G-24 Special Report, (September, 2018) <<https://www.afi-global.org/publications/2844/FinTech-for-Financial-Inclusion-A-Framework-for-Digital-Financial-Transformation>>

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Publications

Journals

Anton Didenko, Kathrine Kemp, Lousie Malady and Ross Buckley, 'Restricted Banking Licenses: An Opportunity to be Seized' (2018) 29(1) *Journal of Banking and Finance: Law and Practice* 57.

Douglas Arner, Ross Buckley & Dirk Zetsche, 'FinTech, RegTech and Systemic Risk: The Rise of Global Technology Risk', forthcoming, in Schwarcz, Avgouleas, Busch & Arner (eds), *Systemic Risk in the Financial Sector: Ten Years after the Global Financial Crisis* (CIGI Press, 2019, accepted Aug 14, 2018)

Ross Buckley, E Avgouleas and Douglas Arner, 'Three Major Financial Crises: What Have We Learned?', forthcoming in Schwarcz, Avgouleas, Busch & Arner (eds), *Systemic Risk in the Financial Sector: Ten Years after the Global Financial Crisis* (CIGI Press, 2019, accepted Aug 14, 2018)

Pamela Hanrahan and Rachel Yates, 'Directors' Duties of Oversight: Insights for Australia from Recent Development in Delaware's Caremark Jurisprudence' (2018) 33 *Australian Journal of Corporate Law*.

Deborah Healey and Jack Coles, 'From 'Carries on a Business' to 'In Trade or Commerce': Efficiency in Government or Semantic Endeavour?' (2018) 26 *Competition and Consumer Law Journal* 1.

Deborah Healey and Rhonda Smith, 'Competitive Neutrality in Australia: Opportunity for Policy Development' (2018) 25(3) *Competition and Consumer Law Journal* 223.

Louise Malady, Ross Buckley, Anton Didenko and Cheng-Yun Tsang, 'A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets' (2018) 34 *Banking and Finance Law Review* 9.

Kayleen Manwaring and Pamela Hanrahan, 'Bearing Responsibility for cyber security in Australian financial institutions: The rising tide of directors' personal liability' (2019) 30 *Journal of Banking and Finance Law and Practice*.

Dirk Zetsche, Ross Buckley and Douglas Arner, 'Digital ID and AML/CDD/KYC utilities for financial inclusion, integrity and competition' (2018) 47 *Journal of Financial Transformation* 133.

Dirk Zetsche, Ross Buckley, Douglas Arner and Linus Föhr, 'The IOC Gold Rush: It's a scam, it's a bubble, it's a super challenge for regulators' *Harvard international Law Journal* (2018, in press)

Dirk Zetsche, Ross Buckley & Douglas Arner, 'Blockchain Distributed Ledgers and Liability', (2018) 2(4) *Journal of Digital Banking* 296

Dirk Zetsche, Ross Buckley, Douglas Arner and Janos Nathan Barberis, 'From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance' (2018) 14(2) *New York University Journal of Law & Business* 393.

Journals (Special Issues)

Deborah Healey (ed), *Competition and Consumer Law Journal: Special Issue on Competitive Neutrality*, (2018) 25 (3)

Books

Pamela Hanrahan, Ian Ramsay and Geof Stapledon (eds) *Commercial Applications of Company Law* (19th Ed, OUP Australia, 2018)

Pamela Hanrahan and Ashley Black (eds), *Contemporary Issues in Corporate and Competition Law: Essays in Honour of Professor Robert Baxt AO*, (LexisNexis Butterworths, 2018)

Hannah Harris, *The Global Anti-Corruption Regime: The Case of Papua New Guinea*, Routledge, 1st ed, 2018.

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Book Chapters

Emma Armson, 'Assessing the performance of takeover panels: a comparative study' in Umakanth Varottil and Wai Yee Wan (eds), *Comparative Takeover Regulation: Global and Asian Perspectives*, (Cambridge University Press, 2018) 134.

Scott Donald, 'Climate Change and Fiduciary Investors: weathering a disaster scenario' in Rosemary Lyster and Rob Verchick (eds) *Research Handbook on Climate Disaster Law: Barriers and Opportunities* (Edward Elgar, 2018).

Deborah Healey, Jack Coles, 'Government, the market and the Level Playing Field: Covering All the Bases', in Pamela Hanrahan and Ashley Black (eds), *Contemporary Issues in Corporate and Competition Law: Essays in Honour of Professor Robert Baxt AO*, (LexisNexis Butterworths, 2018).

Dimity Kingsford Smith and Olivia Dixon, 'What Next for the Financial Consumer: More disclosure? Caveat Vendor? Fin-Tech Online?' in Howells, Ramsey and Wilhelmsson *Handbook of Research on International Consumer Law* (Edward Elgar, 2nd Edition, 2018).

Pamela Hanrahan, 'On Compliance' in Pamela Hanrahan and Ashley Black (eds), *Contemporary Issues in Corporate and Competition Law: Essays in Honour of Professor Robert Baxt AO*, (LexisNexis Butterworths, 2018) Chapter 9.

Pamela Hanrahan, 'Exchange traded funds in the shadow banking sector' in Chui and MacNeil (eds) *Research Handbook on shadow banking - legal and regulatory aspects* (Edward Elgar, 2018)

Other Publications

Anton Didenko and Ross Buckley, "The Evolution of Currency: Cash to Cryptos to Sovereign Digital Currencies", *Oxford Business Law Blog* (October 18, 2018) <<https://www.law.ox.ac.uk/business-law-blog/blog/2018/10/evolution-currency-cash-cryptos-sovereign-digital-currencies>>

Financial Statement



Statement of Financial Performance

For the Period Ending 31 December 2018

REVENUE	2018	Note	2017
ARC Linkage Mobile banking	179,109		337,124
ARC Professionalism	45,000		10,546
ASIC - Enforceable Undertakings	136,479		0
Other Revenue	0	2	46,370
Total Research Revenue	360,588		394,040
UNSW Strategic Funds	0		0
CLMR Practitioners Forum	0		8,100
UNSW Business School / Law Contribution	110,094	1	47,884
TOTAL REVENUE	470,682		450,024
EXPENSES			
People Costs	453,461		514,151
Scholarship Expenses	0		0
Contract & Consulting Services	4,358		13,360
Entertainment	0		0
Marketing	0		0
Overheads	55		0
Repairs and Maintenance	0		0
Consumables	4,271		1,148
Travel	54,790		47,273
Equipment Non capitalised	0		0
Other Expenses	2		2,967
Internal Expense	26,965		0
TOTAL EXPENSES	543,901		578,898
Operating result for the period	(73,219)		(128,874)
Brought Forward	341,056		469,930
Retained Funds Surplus/(Deficit)	267,837		341,056

Notes to Statement

1. Contribution in 2018 from UNSW Business School is \$104K.
2. The Brought Forward balance from 2017 includes the surplus amount of \$46,370 from Deborah Healey's research project RG162879 Capacity Building Roadmap. The surplus was transferred to PS45529.

Certified Correct to Ledger:

Anna Polykarpou, Finance Business Partner
UNSW Law

1/07/2019

