

Society of Corporate Law Academics

President's Report: 2024 AGM

The Society of Corporate Law Academics was established as an unincorporated association in 1994, by scholars of corporate law, with the original name of Corporate Law Teachers Association. The society seeks to represent the voices of the various corporate law scholars in Australia, New Zealand and the Asia Pacific region. The goals of SCOLA include:

- Advancing corporate law teaching, research and scholarship.
- Promoting cooperation and exchange of ideas between corporate law scholars in the region.
- Promoting active cooperation between corporate law teachers and universities.
- Promoting cooperation with professional legal associations and law reform agencies.
- Hosting an annual conference to highlight current developments in corporate law scholarship.

This report has been prepared for the 2024 AGM and covers the activities of the Society of Corporate Law Academics for the period February 2023 to January 2024. This represents a return to the usual reporting timeframe for SCoLA Presidencies, following some minor changes during the Covid19 period.

Executive Committee of the SCOLA: 2023 Membership

The Executive Committee of SCOLA for 2023 comprised:

Vivienne Brand, Flinders University [President]

Susan Watson, University of Auckland [Immediate Past President]

Michael Duffy, Monash University [Secretary]

Anil Hargovan, University of New South Wales [Treasurer]

Ellie Chapple, Queensland University of Technology

Beth Nosworthy, University of Adelaide

Natania Locke, Swinburne University of Technology

Marina Nehme, University of New South Wales

Suzanne Le Mire, University of Adelaide

Michelle Worthington, Australian National University

Tim Peters, University of the Sunshine Coast

2023 SCOLA Conference: Corporations Law: Rising to the Challenges of our Time

Last year's conference was hosted by Associate Professor Natania Locke and her colleagues Helen Bird; Karnika Bansal; Zale Zhou and Irene Thavarajahat of Swinburne Law School, in their Hawthorn campus, under the theme of 'Corporations Law: Rising to the Challenges of our Time'. Associate Professor Natania

Locke provided the following excellent summary of the conference in her editorial introduction to a special issue of papers from the conference for the *Australian Journal of Corporate Law* (Vol 39(1)), which is reproduced here, with thanks:

‘The conference was held in hybrid format to continue to allow for the participation of delegates restricted from travel owing to continuing Covid-19 concerns. Members were obviously eager to meet in person, leading to 70 in-person delegates and seven online delegates. The conference welcomed delegates from all the Australian states and territories, New Zealand, Hong Kong, Singapore and the United Kingdom.

The 2023 conference theme was: Corporations Law: Meeting the Challenges of Our Time. Delegates were invited to consider the role of corporations and corporations law to contribute to the serious challenges society is currently facing, including climate change, inequity of gender and race, rapid technological advancement and security concerns. Sessions included corporate insolvency; corporate crime; corporate purpose; financial services; ESG and sustainability; and technology and innovation.

The keynote speaker, Professor Iris Chiu, delivered an address entitled ‘Sustainable Finance Regulation: Authoritative or Market-based Regulation’. Professor Chiu is a Professor of Corporate Law and Financial Regulation at the Faculty of Laws, University College London. Her paper identified a difference of approach to the regulation of mis-selling of investment products labelled as ‘green’ or ‘social’ in the European Union as opposed to the United Kingdom and the United States of America. She discussed how the European sustainable finance regulations, while containing some authoritative steering of investment decisions, still offers choice of investment to the market. The approach in the United Kingdom and in the United States has been to focus on investor protection, creating ‘greenwashing’ and social-washing’ as forms of mis-selling, rather than promoting investment in properly labelled investment products for better environmental and social outcomes. Professor Jennifer Hill, inaugural Bob Baxt AO Professor of Corporate and Commercial Law at Monash University Faculty of Law and SCoLA life member, acted as a discussant to Professor Chiu’s keynote address.

This year’s conference hosted three plenary sessions. We welcomed a variety of thought leaders from industry and practice to a plenary panel focused on the conference theme. The panel comprised of The Hon Ray Finkelstein AO KC, Commissioner and Chairperson, Royal Commission into the Casino Operator and Licence; Susan Staples, Director of Risk & Governance, KPMG; Paul Murphy, Investment Stewardship Director and Head of Superannuation Policy & Advocacy, Vanguard Australia; James Hutton, Partner, Minter Ellison; James Gerraty, Manager Issuers, ASX Ltd; and Jordan Hunt, Director Cyber and Incident Response, Forensic IT. Panellists offered a brief view on the conference theme from their areas of expertise and then responded to a lively session of questions from the audience.

A second plenary session considered regulatory complexity and coherence in the charities sector, as well as for corporations and financial services. This paper was delivered by Professor Rosemary Teele Langford, Harold Ford Professor of Commercial at the University of Melbourne and Dr Andrew Godwin, Acting General Counsel, Australian Law Reform Commission and Principal Fellow at Melbourne Law School. A revised version of this paper appears in this issue entitled: ‘Corporations, Financial Services and Charities: Regulatory Complexity and Coherence’.

Our third plenary session was a special treat. We asked SCoLA life members to prepare some informal comments about the scholarship that has deeply affected their thinking and that has had an impact on their subsequent research. This led to an inspiring session, where Professors Jennifer Hill, Paul Redmond, Ian Ramsay and John Farrar entertained us with accounts of thought-provoking experiences that shaped them as researchers. Added to this esteemed line-up was Professor Stephen Bottomley, who was overwhelmingly voted to join the ranks of SCoLA life members at the previous afternoon’s AGM.

The annual conference always devotes a dedicated session in plenary to scholarship of teaching and learning. This year was no exception. We started with a session entitled, 'Teaching Corporate Law as a Subversive Activity' and delivered by Professor Prue Vines, Associate Professor Marina Nehme (both from the University of New South Wales) and Associate Professor Natania Locke (Swinburne Law School). Inspiration for this session was taken from the recently published book by Helen Gibbon et al (eds), Critical Legal Education as a Subversive Activity (Routledge, 2023), which does not specifically consider the teaching of corporations law. This was followed by a presentation by Dr Meredith Edelman (Monash University), 'Authentic Assessment, Corporate Crime, and the Criminological Imagination'; and Associate Professor Beth Nosworthy and Nadia Hess (University of Adelaide), 'Incorporating Ethics into the Teaching of Corporate Law'.

We are grateful to our 2023 sponsors Thomson Reuters, LexisNexis, Cambridge University Press and MinterEllison.

2024 Conference: Shifting Connections Between the Corporation and Society

This year's conference is hosted by Associate Professor Marina Nehme at the University of New South Wales Law School, in the Sydney CBD, under the theme of '*Shifting Connections Between the Corporation and Society*', supported by her team - Professor Dimity Kingsford Smith, Professor Michael Legg, Associate Professor Anil Hargovan, Dr Anton Didenko, Associate Professor Scott Donald, Associate Professor Kayleen Manwaring, Ms Riona Moodley, Mr Tamas Allenby, Ms Vanessa Cali, Lycia Gunawan and Dani/Daniela Ospitale (with special thanks from us all to Tamas for just being amazing).

The conference features multiple plenary sessions, with a keynote presentation from Professor Christine Parker of the University of Melbourne on '*Nudge versus Sludge: The Great Greenwashing and the Failure of Corporate Regulation*', chaired by Professor Bronwen Morgan (University of New South Wales), and a keynote presentation by Professor Hillary Sale, (Georgetown Law) on '*Good Faith Information Forcing*', with Professor Jennifer Hill (Monash) as discussant and chaired by Professor Dimity Kingsford Smith (UNSW). The conference also features a plenary discussion panel on '*The Role of Corporations in Australia's Consumer Data Right*', featuring Dr Natalia Jevglevskaja (UNSW), Professor Jason Harris (USyd), Mr Mathew Mytka (Co-founder & Chief Vision Shaper at Tethix), Mr Aidan Storer (Treasury (Cth)), chaired by Dr Anton Didenko (UNSW); and a special plenary panel on '*Enforcement of the Corporation's Obligations to Society*' featuring Professor Michael Legg (UNSW), ASIC Chair Mr Joseph Longo, Dr Vicky Comino (UQ), chaired by Ms Sera Mirzabegian SC, NSW Bar.

The conference also features teaching, learning and related discussions on Sunday afternoon, including a discussion of Corporate Law teaching, research and outreach taking a next generation (NextGen) focus, with a panel comprising Ian Ramsay AO (Unimelb), Professor Dimity Kingsford Smith (UNSW) and Associate Professor Timothy Peters (USC) and hosted by Associate Professor Akshaya Kamalnath; a session on post-lockdown challenges and student attitudes, with Associate Professor Edith I-Tzu Su (NCHU, Taiwan) and Mr Chris Pearce (UNSW) and chaired Ms Nicola Kozlina (UNSW); and a third session on corporate law assessment and creativity with Dr Michelle Worthington (ANU), chaired by Ms Riona Moodley (UNSW). A final plenary session on Insolvency chaired Ellie Chapple (QUT) focuses on *Preference Post Badenoch: Anomalies and Policy Considerations Arising from the Abolition of the 'Peak Indebtedness Rule'* with Mark Wellard (SCU) and Anil Hargovan, and *Technology and the Insolvency Profession* with Catherine Brown (QUT) and Jennifer Dickfos (Griffith).

We are grateful to our 2024 sponsors Thomson Reuters, LexisNexis, Cambridge University Press and the Governance Institute.

2024 Best Paper Prize and Best Student Paper Prizes

Every year one paper is selected from the annual conference for the best paper prize. A full description of the terms of the award can be found on the SCOLA website. The prize is designed to encourage scholarship by authors at Senior Lecturer level or below. Accordingly, papers submitted by authors whose appointment is above Senior Lecturer (or equivalent) are ineligible for the prize. The eligible papers must be submitted by the date which is nominated in the call for papers.

Best Paper Prize

The Best Paper Prize is presented at the SCOLA Conference dinner on behalf of our major sponsor, Governance Institute of Australia. We thank the Governance Institute for their continued support of the SCOLA and the Best Paper Prize – a prize the Institute has sponsored since inception.

Best Student Paper Prizes

In addition, the first SCOLA – or as it then was, CLTA - Corporate Law Student Essay Prize was offered in 2017, with submissions of student essays of between 3,000 and 5,000 words from students studying corporate law and related subjects at either undergraduate or postgraduate level in Australian and New Zealand universities. This year we expanded the competition to include two categories, one for 10,000 words and one for a shorter paper of 5000 words. Prize winners were again scheduled for the conference dinner.

2024 SCOLA Life Members Conference Bursary

Our bursary program offers financial support to scholars, usually HDR candidates, to present a paper at the conference. There are generally two bursaries awarded each year. Congratulations to this year's recipients:

- Professor Jennifer Hill Life Member Bursary: Ms Amanda Bull for a paper entitled '*Understanding Small Business Restructuring from the Practitioners' Perspective: Insights into Part 5.3B*'
- Redmond Barry Distinguished Professor Emeritus Ian Ramsay Life Member Bursary: Ms R Bhagyalakshmi for a paper entitled '*Regulatory Interventions in Green Financing: An Analysis on Indian Securities Law Regime*'
- Emeritus Professor John Farrar Life Member Bursary: Param Nayankumar Pandya for a paper entitled '*Directors' Duties and Stakeholders' Interests: Public Enforcement Mechanism – Issues and Challenges*'
- Emeritus Professor Paul Redmond Life Member Bursary: Avin Tiwari for a paper entitled '*Evaluating the Influence of ESG on India-Australia Trade Partnership: A Critical Analysis*'

Vale The Honourable former Justice Paul Finn and Professor Julie Cassidy

We have continued this year our practice of notifying our community of significant events and among the less happy duties for the President this year was notifying members of the passing of two dear friends of SCoLA/CLTA.

In September we shared the sad news that Professor Julie Cassidy, of The University of Auckland, had died. Julie was a long standing member and friend of the Corporate Law Teachers' Association/Society of Corporate Law Academics, regularly attending and participating in our conferences. As frequent attendees will recollect, Julie's friendly and kind presence was always welcome, together with her many, broadly based, scholarly contributions. After undergraduate and honours studies at the University of Adelaide, Julie taught law at Adelaide before being a foundation staffer at Bond University, where she earned her PhD with a thesis titled *Customary international law's protection of aboriginal rights in post colonial states*. Subsequently, Julie worked at Deakin University, Auckland University of Technology and finally the University of Auckland. She also had an adjunct relationship with Monash University. We will very much miss Julie's optimistic and warm presence at our Society gatherings.

Shortly afterwards, we notified you of the death of The Honourable former Justice Paul Finn, also in September. Formerly an academic at the University of Queensland and the Australian National University, Justice Finn was a judge of the Federal Court, a visiting judicial fellow at Flinders University and following his retirement in 2012 worked in academic roles at ANU, the University of Melbourne and the University of Adelaide, including as a Professorial Fellow. He was the Goodhart professor at Cambridge in 2010-2011; in 2008 he was awarded a Doctor of Laws by Flinders University and in 2014 a Doctor of Laws honoris causa by UQ. Justice Finn attended a number of Corporate Law Teachers Association conferences, offering generous insights and contributions to many. His legendary work on fiduciary obligations is of course familiar to us all and will no doubt form an enduring part of his significant legacy. Paul is survived by his wife, Professor Emerita Suzanne Corcoran, known to many of us as a friend of CLTA/SCoLA, and as someone who played an influential role in its development.

The Society wrote to both Julie and Paul's families to express condolences on behalf of our Society.

General Activities of the Executive

The SCOLA executive has had a busy 2023, with a number of activities worth special mention.

1. Constitutional Update work

In 2023 the Society's impending 30th anniversary prompted the Executive to contemplate the need for a review of the Constitution. Apart from the name change in clause one, the Constitution had not been amended since the inception of the organisation. For this purpose we drew on the expertise of the University of Adelaide's Entrepreneur And Venture Advice Clinic, staffed by students of Adelaide Law School, supervised by experienced practitioners. It seemed appropriate to some of the foundational goals of the Association that we integrate this educational element into any proposed update of the Constitution. Following advice from the students and their practitioner mentors at the Clinic we shared the proposed updated Constitution with our Life Members and Past Presidents to invite comments ahead of a process at the 2024 conference AGM. A copy of the Constitution is included with the papers for this year's AGM, showing proposed changes and accompanied by some explanatory comments.

2. Website update

The Executive resolved in late 2023 to update the website and retain a web developer for this purpose. We look forward to launching the refreshed and improved website early in 2024!

3. Parliamentary Joint Committee on Corporations and Financial Services: engagement

Once again in 2023 the Executive were also active in engagement with parliamentary inquiries, facilitating invited submissions to, and invited appearances, in relation to two inquiries:

- *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry; prepared by Assoc Prof Natania Locke and Assoc Prof Michael Duffy, who both appeared before the Inquiry; and*
- *Oversight of ASIC, the Takeovers Panel and the Corporations Legislation – CHESS Replacement Project; private submission prepared by Helen Bird and William Klein.*

4. CAMAC reform work

The Society also wrote to the Federal Treasurer in March 2024 to urge the reinstatement of CAMAC, or the creation of a body with similar characteristics. This letter was shared with the Australian Law Reform Commission and the Law Council of Australia's Business Law Division in October, at the instigation of the Division.

The Governance Institute of Australia has also contacted the Society in relation to this issue and initiated a conversation that is ongoing.

2025 SCOLA Conference

We are delighted that the Faculty of Law at the University of Technology Sydney, represented by Dr Robin Bowley, have offered to host the SCOLA conference in February 2025.

The SCOLA website: www.SCoLA.edu.au will be updated in due course with 2025 conference details (dates, conference theme and call for papers) via a link to the host university's website.

Thank You

I would like to thank the members of the 2023 Executive for their support and wonderful collegiality. I am particularly grateful to Michael Duffy as Secretary and Anil Hargovan as Treasurer, as well as to Ellie Chapple as Society corporate memory holder, for their generous and extensive work on behalf of the Executive. The volume of work that passes across their desks on behalf of the Society is significant and the efficiency with which they deal with it is remarkable. We are all the beneficiaries of their dedication. I also extend a particular thankyou to Tim Peters who is stepping down at this conference after a very valuable contribution to the Executive, first as conference host at the 2022 conference and then subsequently as a general member of the Executive. Tim's work with the ECR cohort of SCoLA has been especially valuable. It has been an honour to serve as President of the SCOLA over the past 18 months and I look forward to seeing the Society continue to grow and evolve into 2025 and thereafter.

Vivienne Brand

SCoLA President