

## EDITORIAL

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The law of directors' duties has always been at the forefront of critical debate. It is therefore not surprising that we are no closer to a consensus on the issues in this area now than we were 20 years ago when this Journal published an edition on *Corporate Regulation and the New Corporations Law*.<sup>1</sup> We revisit the topic in this edition, but we are not simply covering the same ground; old arguments have expanded the boundaries for later ones, pushing them in new directions. So too have events in recent history provided new glosses.

The Global Financial Crisis ('GFC') has thrown deficiencies in existing frameworks for corporate governance into sharp relief. It has been argued, for example, that these frameworks failed to serve their purpose in safeguarding against excessive risk-taking.<sup>2</sup> The need to reinvigorate debate around the form and content of directors' duties has never been more pertinent and this has been reflected in a number of significant legal developments that have taken place, particularly in the aftermath of the GFC. While the issue of directors' duties is always relevant, today we have the benefit of modern perspectives, such as corporate social responsibility, which provide new ways of understanding the function of corporate regulation in the context of recent public policy. The *James Hardie* litigation highlighted this shift, with the adequacy of existing corporate governance structures tested against extrinsic moral standards (although it took human tragedy to set this in motion).

The articles in this edition vary in both subject and purpose. At one end, the Australian Securities and Investments Commission has contributed a piece in which it discusses its expectations of directors and the practicalities of corporate regulation. At the other end, a number of authors have opted to take a theoretical approach to the question of where the law of directors' duties needs to go. In the middle are articles that canvass the various considerations that directors should, and must, take into account when discharging their duties. One is perhaps the recent, increased awareness of the personal liability that attaches to the role of a director.

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\* Editor, General Edition 35(1) and Forum 18(1), 2011.

1 'Corporate Regulation and the New Corporations Law' (1992) 15 *University of New South Wales Law Journal* 1.

2 Grant Kirkpatrick, *The Corporate Governance Lessons from the Financial Crisis* (11 February 2009) OECD Steering Group on Corporate Governance <<http://www.oecd.org/dataoecd/32/1/42229620.pdf>>.

Notably, the discussion in many articles of this Edition cuts across multiple jurisdictions through comparative analyses of corporate governance in the United States and the United Kingdom. This Edition is rich with different ideas as to what should inform the theoretical framework for directors' duties.

Over the years, one could surmise, that the operational boundaries within which directors are able to operate is narrowing as reforms in the law have introduced greater accountability for directors' decision-making. Yet, at the same time, the range of considerations and interests that directors should (and, on a practical level, are required to) take into account is broadening. This process of intensification is fertile ground for discussion.

I must thank a number of people whose involvement was critical to the production of this Edition. I would like to thank the authors who have provided valuable contributions to this longstanding topic. I would also like to thank the anonymous reviewers whose generous assistance has made the composition of this Edition possible.

I am extremely grateful to the Editorial Board for their hard work and their willingness to take on tasks. I owe a great deal to our Faculty Advisors, Michael and Lyria, for their patience while I constantly sought their advice and their wisdom along the way.

Finally, I would like to thank the Executive Committee for their friendship and support throughout this whole process. It has been a great honour working so closely with five amazing people who have never failed to lend support when needed.