# Book Review

***Corporate Governance and the Duties of Company Directors***
ed. Alan Ramsay

*continued from page 18*

fiduciary relationships.

Most interestingly, Malcolm CJ addresses himself to the judicial balancing act involved in deciding between "foreseeable risk of harm against the potential benefits that could reasonably be expected to accrue to the company ..." a formulation of Ipp J's in *Vrisakis v ASC* (1993) 11 ACSR 162. He concludes optimistically about judicial approaches and adaptability, ending with *dicta* typical of his style: "The temptation to lay down detailed general rules or principles has been strenuously avoided. This is an approach which should continue to be followed."

Professor John Farrar of Bond University writes of directors' duties of care in Australia and New Zealand, pointing to the wide discretion allowed NZ directors exercising business judgment, a trend no doubt partially accounting for Auckland's current commercial surge.

Associate Professor Bob Baxt points to the shift this decade to greater judicial scrutiny of decisions made by directors pursuant to duties to exercise care and diligence – a "swing of the pendulum." He then examines the issues in the *AWA* case (1992) 10 ACLC 933, and its appeals. The story of the consequences of Andrew Koval's apparently unrestricted forex dealings and the subsequent attempt to recover from auditors is already a legend in Australian corporate law and not to be missed. Baxt, too, cites Ipp J's *Vrisakis* judgment and provides a nice summary of conflict of interest, referring to the *Marcus Clark* case.

In conclusion, while Malcolm CJ and Rogers CJ resist a statutory business judgment rule, Baxt suggests the time has come for reassessment.

Michael J Whincop of Griffith University discusses statutory duties of honesty and propriety and concludes "the present formulations of the duties of propriety have been demonstrated to be misspecified from doctrinal and analytical perspectives ...", a view with which most students would probably agree. But his attitude to fiduciary duties presumes a freedom of shareholder activity which, at least within the markets as currently constituted in Australia, is perhaps romantic.

Justice E W Thomas of New Zealand discusses nominee directors and fiduciary obligations and elaborates on the Privy Council's 1991 decision in the *Kuwait-Asia Bank* case on the liability of parent companies for acts of employee directors, emphasising the need for corporations law both to maintain "fundamental canons of the common law" and to accord with commercial reality.

Robyn Carroll of UWA discusses "shadow directors" and corporate third party liability. She, too, after an interesting case review, addresses the relevance of fiduciary duties imposed on directors, and the underlying equitable foundation of such duties.

Professor Paul Redmond of UNSW addresses the need fora statutory business judgment rule, concluding, after a review of costs and benefits, that such a rule is "unnecessary and undesirable when the general law presently accords a respect bordering upon deference for directors' business judgments and the financial obstacles to shareholder suits are so formidable and their incidence so rare." This is a view most shareholders would probably take too.

Finally, Alan Cameron AM deliberates from the perspective of the ASC on enforcement and the role of the courts, an unconventional piece which concludes with a suggestion , one couldn't call it a plea, for revival of the sentence-indication system in corporate litigation.

To sum up: no laughs, a few good ideas, some insights.

*-Rosemary O'Grady*