

Solutions 2008/09

Arnold Bloch Leibler is pleased to present our 2008/09 review of matters.

Global and Australian economic conditions over the past 12 months have certainly presented many challenges for everyone in the business community. Fortunately, due to the firm's reputation, expertise, flexible approach and the calibre of our lawyers, Arnold Bloch Leibler has been well positioned to help our clients through these uncertain times to develop innovative solutions for our clients and play a role in their commercial success.

While this review documents many interesting and professionally stimulating matters in which the firm has been involved, there have also been many other confidential matters in which the firm has acted that do not appear here—many of our clients are intensely private, and we respect their right to maintain a low profile.

Arnold Bloch Leibler's commitment to our clients remains as strong as ever. Big or small, publicly listed or privately owned, our approach does not vary—we are partners in analysing legal and business problems to achieve the best commercial solutions.

This review recognises and celebrates both the accomplishments of our clients and Arnold Bloch Leibler's lawyers in what has been a turbulent year. This retrospective is also the ideal place to thank our clients for the confidence you have placed in us. We are honoured to partner with you and look forward to helping you meet future challenges.

Banking & finance

- **ANZ Banking Group:** in relation to the provision of a construction loan facility to the Macfarlane Burnet Institute for the Alfred Centre Stage 2 Development.
- **Ashe Morgan Winthrop:** in relation to a range of structured financing transactions involving the provision of mezzanine debt, preferred equity and/or equity, including for the Ashe Morgan Residential Apartment Fund.
- **Bank of Scotland:** advising BOS International (Australia) in relation to:
 - the restructuring of the \$100 million revolving facility to Babcock & Brown Residential Partners; and
 - the restructuring of \$700 million in corporate and asset-level debt to a listed real estate investment trust.
- **Fridcorp:** in relation to negotiations of senior and mezzanine debt facilities for the construction of the Elm Apartment Project in South Melbourne.
- **Orchard Funds Management:** acting on behalf of borrowers regarding the renegotiation and restructuring of \$550 million in corporate and fund debt facilities.
- **R Corporation:** in relation to the negotiation of senior and mezzanine debt facilities for the development of the 'Clara' residential project in South Yarra.
- **UBS:** in relation to the negotiation and provision of strategic advice as part of the debt restructuring for Galileo Japan Trust.
- **Visy:** in relation to:
 - the refinancing of Visy's bilateral facility arrangements for its Global Manufacturing Group; and
 - the project finance for the expansion of the Tumut Kraft Mill, which was completed through a \$400 million commercial syndicated facility and a US\$86 million export credit agency (ECA) facility.

Commercial & corporate

- **ACP Magazines, Ninemsn and 3P Learning:** in relation to the \$20 million sale by ACP Magazines and Ninemsn of a 50 per cent interest in 3P Learning to a US venture capital firm.
- **Boart Longyear:** acting for the underwriters—Goldman Sachs JBWere, Macquarie Capital Advisers, RBS Equity Capital Markets (Australia) and Merrill Lynch International (Australia)—in relation to Boart Longyear's successful \$756 million capital raising.
- **Carsales.com.au:** in relation to its IPO and listing on the ASX. The IPO included:
 - a new capital raising;
 - an offer by several significant existing shareholders of some of their shares; and
 - an opportunity for smaller existing shareholders to sell-down their shares into the IPO.
- **Gyrocam Systems:** acting for some sellers in the sale of Gyrocam to Lockheed Martin Corporation.
- **Nufarm Australia:** in relation to the company's \$300 million equity capital raising.
- **Plenary Group:** in relation to the establishment of the \$100 million Flagship Property Fund and seeding the fund with a combination of assets from Plenary's development of the Melbourne Convention Centre and various Seven Network property assets.
- **Ramsay Heath Care:** acting for the underwriter, Goldman Sachs JBWere, of Ramsay Heath Care's successful \$220 million capital raising, which involved an institutional placement of 22 million new shares.
- **SEEK Limited:** in relation to:
 - the facilitation of an off-market purchase of a 10 per cent interest in the leading South-East Asian employment website, JobStreet;
 - the acquisition of a 30 per cent interest in Brasil Online Holdings, owner of two leading Brazilian employment websites, Catho Online and Manager Online, with Consolidated Press Holdings Limited investing along side SEEK and acquiring a 5 per cent interest in Brasil Online Holdings;
 - a \$120 million secondary offering, including the institutional placement of 26.7 million ordinary shares, a share purchase plan and top-up offer; and
 - the acquisition of the remaining 50 per cent share of Think Education Group, valued at \$42.5 million.

Litigation & dispute resolution

- **DKHS,** a major Swedish homewares manufacturer: in an action for misleading and deceptive conduct brought by Bodum. The proceedings relate to the importation into, and distribution within, Australia of coffee plungers.
- **Moose Enterprise:** in relation to international disputes regarding a children's toy, including a US product liability class action, personal injury claims and distributorship litigation in Canada.
- **Specialty Fashion Group:** in proceedings against 19 parties arising from the fraudulent misappropriation of \$16.6 million by one of its senior employees.
- **TPI Enterprises:** on behalf of Jarrod Ritchie and TPI Enterprises in relation to the successful defence of Supreme Court proceeding brought by GlaxoSmithKline, alleging breaches of confidence and fiduciary duty.
- **Trevor Kennedy:** in relation to ASIC investigations into Offset Alpine Printing.
- **Richard Pratt:** in relation to the defence of Richard Pratt against criminal charges instigated by the ACCC. In 2005, Mr Pratt was accused of lying to ACCC investigators during its investigation into cartel behaviour in the cardboard box industry and was charged with four counts of giving false or misleading evidence. In April 2009, all charges against Mr Pratt were dismissed.
- **Various business leaders:** in the defence of claims brought by regulatory authorities against a number of high-profile business people, including Wallace Cameron.

Property & development

- **Bensons Property Group:** in relation to the acquisition and development of the 'Elvera' residential project in Lygon Street, Brunswick.
- **Fridcorp:** in relation to the acquisition of land for the development of the 'lilli' office and apartment project in South Yarra.
- **Growthpoint Properties Australia Trust (previously Orchard Industrial Property Fund):** in relation to the negotiation and documentation of the debt refinance for, and all property related aspects of, the restructure and refinance of the property trust.
- **Henroth Investments,** a Sydney-based private investor: in relation to the acquisition of a 50 per cent interest in Shell House, 1 Spring Street, Melbourne.
- **MAB Corporation:** in relation to the acquisition, development and retail leasing of the University Hill project in Bundoora.
- **Phileo Australia:** in relation to the acquisition of 303 Collins Street, Melbourne.
- **R Corporation:** in relation to the development of the 'Clara' residential project in South Yarra.
- **Ubertas Group:** in relation to the development of the 'Rhapsody' apartment building, 568 St Kilda Road, Melbourne.

Reconstruction & insolvency

- **ANZ Banking Group:** in relation to the informal workout of Babcock & Brown's financing difficulties.
- **BOS International (Australia):** in relation to the receivership of Record Realty, an ASX-listed property fund to which BOS is the principal lender. This has also involved receivers being appointed to subsidiaries of Record Realty.
- **Investec:** in relation to an appeal to a Supreme Court decision regarding the scope of the obligations of the receivers of Glodale, appointed by Investec, in relation to the sale of the mortgaged property.
- **Liquidators of Timbercorp:** in relation to the effect of the Timbercorp group's insolvency on the managed investment schemes operated by Timbercorp. This highly complex matter involves 35 managed investment schemes, with over 18,000 investors who have invested approximately \$2 billion into the schemes.
- **US note holders in Centro:** in conjunction with Bracewell & Giuliani—a US law firm—on behalf of unsecured noteholders in Centro, in relation to the corporate workout of the group's financial difficulties. This has involved the development and execution of a stabilisation plan that involved the creation of a hybrid debt instrument.
- **US note holders in Elders:** in conjunction with Bracewell & Giuliani on behalf of private placement note holders in Elders in relation to the restructuring of the notes and other debt, which was facilitated by a capital raising and asset sales.
- **1st Technology,** a US-based technology licensing company: in cross-border insolvency proceedings subsequent to Betcorp ceasing its operations in the US following the introduction of internet gambling legislation.

Taxation

Arnold Bloch Leibler regularly acts in the tax affairs of Australian senior corporate leaders and major companies and advises a large proportion of the families and individuals included in *Business Review Weekly* magazine's 'Rich 200' list. The majority of the firm's tax work is highly confidential and specific details of our clients or their tax matters are never disclosed, as very few matters in which the firm is involved are in the public domain.

The firm's formidable knowledge of taxation and its experience in dealing with, and its access to, the highest ranking tax officials, ensure that the firm adds value when acting for clients. Arnold Bloch Leibler advises clients in relation to tax disputes, tax audit processes and the tax implications of a wide range of business transactions, including structuring issues, financing, acquisitions and divestments. The firm also advises clients in relation to ATO's high wealth group structure questionnaires, and provides advice and practical assistance where clients are involved in cross-border transactions.

Arnold Bloch Leibler is a leading firm in advising and establishing Private Ancillary Funds (PAFs), which are trusts to which tax deductible gifts can be made to create an accumulated capital base from which donations can be made over a number of years. To 30 June 2009, the firm has established over 50 PAFs with a combined capital base of more than \$600 million.

Wealth management

Arnold Bloch Leibler's wealth management practice advises entrepreneurs, high-level executives and large family businesses on issues of wealth management protection and transfer, as well as succession planning for both private and business assets. The firm offers specific expertise in structuring and restructuring family businesses, drawing on the firm's deep knowledge and experience in taxation, stamp duty, trusts and the *Corporations Act*.

Technology & intellectual property

- **Industry Fund Services (IFS):** in relation to:
 - the review of television commercials, print advertising and standard call centre letters regarding its 'Compare the Pair' campaign; and
 - two trademark applications that have been opposed by both Superfund Unternehmens-Beteiligungs-AG (an Austrian entity) and Statewide Superannuation.

The firm also advises generally in relation to the protection of IFS' intellectual property.

- **International Brand Management:** in relation to the protection of the company's registered trademarks. Recently, the firm acted to protect the registered trademark of Lonsdale Sports.
- **Telstra:** as a member of its panel of external legal advisers, Arnold Bloch Leibler provides specialist, strategic advice to Telstra on a broad range of issues, including intellectual property, dispute resolution, trade practices and other industry-specific issues that arise in the telecommunications sector.
- **Tempo Holidays,** an Australian-based specialist on-line leisure travel booking company: in relation to the legal aspects of the development of this booking platform and the sale of shares to Indian travel firm, Cox and Kings India.
- **Yay Dezines,** a wholesaler of children's furniture and related goods: in relation to its successful opposition to an application by Lufthansa seeking the removal of the registered trademark 'Off the Wall by tamara'.

Trade practices

- **Chris Corrigan:** in Federal Court proceedings commenced by the ACCC regarding alleged anti-competitive arrangements between Patrick Corporation and P&O. The ACCC case against Mr Corrigan was dismissed in July 2009 with no penalty or order against Mr Corrigan.
- **JB Hi-Fi:** in an ACCC investigation in relation to an alleged market sharing agreement with a potential competitor in connection with JB Hi-Fi's expansion into a new geographic market. The matter was resolved by agreement without the client paying any penalties.
- **Nufarm:** in proceedings brought by the ACCC, and in related New Zealand Commerce Commission proceedings, in respect of an alleged international cartel in the timber treatment industry.
- **Visy:** in relation to:
 - the defence of the company and senior officers in the largest cartel prosecution in Australian history, which involved allegations of cartel conduct in the cardboard box industry;
 - proceedings brought by Cadbury Schweppes against Amcor and Visy in relation to alleged anti-competitive conduct regarding the supply of cardboard, PET plastic bottles and aluminium cans; and
 - a class action commenced by Jarra Creek Central Packaging Shed against Amcor and Visy on behalf of purchasers of corrugated fibreboard packaging seeking damages and other relief for losses suffered as a result of alleged cartel conduct by Amcor and Visy.
- **Training and compliance programmes:** Arnold Bloch Leibler is involved in developing and delivering trade practices and compliance programmes and training for some of the largest companies in Australia. The firm's programmes, which are tailored to meet clients' individual needs, assist businesses to minimise their risk of breaching the *Trade Practices Act* and remedy any breach that may have occurred.

Workplace advisory

- **Australian Mines & Metals Association:** in relation to various policy and labour relations matters concerning its members in the resources sector, including the award modernisation of various federal and state industrial awards for both the mining and the oil and gas industries.
- **Bilfinger Berger Services (Australia):** in relation to its labour relations strategy for the delivery of engineering construction projects and maintenance services.
- **Coote Industrial:** in relation to its labour relations strategy for businesses acquired on the east coast of Australia in the rail, rail maintenance and automotive industries. These acquisitions involved the implementation of a new enterprise agreement strategy for the businesses, and managing industrial action and picketing.
- **REpower Australia:** in relation to the development and implementation of a workplace relations strategy to deliver the second stage of the Portland Wind Energy Project.
- **Slater & Gordon:** in relation to the industrial relations and employment consequences of Slater & Gordon's acquisition of various legal practices in different states of Australia.
- **Strategy One Human Resources and others:** in relation to WorkCover premium issues faced by employers such as labour hire businesses dealing with white and blue collar operations, and by management services consultancies, regarding the appropriate assessment of their industry, activities and premium rates.

Other developments

Awards

In March 2009, Arnold Bloch Leibler was presented with the *BRW* Client Choice Award for delivering the best value to clients out of all professional service firms in Australia. These awards are based on independent research to identify the best Australian professional services firms as rated by clients across various categories.

Public policy contributions

Arnold Bloch Leibler is actively involved in public policy advocacy and law reform and recently prepared a submission to the Senate Standing Committee on Legal & Constitutional Affairs in relation to the *Foreign Evidence Amendment Bill 2008*.

Knowledge contributions

Arnold Bloch Leibler has written chapters for *Anti-Cartel Enforcement Worldwide*, a publication by Cambridge University Press, and has written on the topic of competition policy for Berkeley University and *The Public Competition Enforcement Review*.

The firm has also written chapters for *The International Comparative Legal Guide to: Corporate Governance 2009*.

University appointment

In September 2008, Peter Seidel, partner and head of the firm's public interest law practice, was appointed as an Adjunct Professor in the School of Law at La Trobe University. In this role, Peter advises the law school on the development of its law courses and ways to strengthen the link between La Trobe University and the legal profession in Victoria. He also supports La Trobe's public interest law programme by advising on its development and teaching.

New partner appointments

Lisa Ashcroft was appointed partner in July 2008 and in 2009 relocated from Melbourne to join Arnold Bloch Leibler's Sydney office.

Andrew Silberberg joined the firm's Sydney office in February 2008 as partner in our commercial team.

Jonathan Milner, member of the Sydney's litigation team, was appointed partner in July 2009.

In brief

An analysis of Arnold Bloch Leibler's 2008/09 contribution to pro bono work reveals:

- averaged across the firm, each fee earner carried out over 70 hours of public interest law work—twice the voluntary target of the National Pro Bono Resource Centre;
- 6,945 hours were spent on public interest law work;
- the firm undertook the financial equivalent of \$2.5 million of public interest work; and
- pro bono advice was provided to over 150 Indigenous, Jewish, environmental, welfare, health and general not-for-profit causes and organisations.

Giving back to the community and a strong commitment to pro bono work have always been at the core of Arnold Bloch Leibler's culture and identity.

An analysis of the firm's pro bono public interest law commitment for 2008/09 revealed that, averaged across the firm, each of Arnold Bloch Leibler's fee earners carried out over 70 hours of public interest law pro-bono work.

In 2007, the National Pro Bono Resource Centre introduced a voluntary minimum pro bono target for each Australian law firm to commit, on average, 35 hours per lawyer per year. As one of the founding signatories to the voluntary target, Arnold Bloch Leibler is proud to achieve double this aspirational target.

Other results from the 2008/09 analysis revealed that 6,945 hours were spent on public interest law work by Arnold Bloch Leibler's lawyers, the financial equivalent of \$2.5 million of public interest work.

Arnold Bloch Leibler provided a very broad range of legal services to its public interest law clients in areas such as: general commercial law; administrative/refugee law; native title; racial discrimination and human rights complaints; property; and taxation law.

As an illustration of Arnold Bloch Leibler's public interest law work in 2008/09, the firm provided pro bono services in the following long-running matters:

- In 2006, Arnold Bloch Leibler lodged a landmark complaint with the Australian Human Rights Commission on behalf of the **Indigenous people of Wadeye** in the Northern Territory, seeking an official apology and remedial funding for the prolonged under-resourcing of their education. It is alleged that Governments have discriminated against the people of Wadeye for 30 years by grossly underfunding their education. Conciliation of the complaint continues.

- Arnold Bloch Leibler has been acting for some years for the **estate of Rolah McCabe** in proceedings brought by British American Tobacco (BAT), which has sought to stop the estate from using alleged confidential documents to apply to reinstate a judgement for damages given in favour of Mrs McCabe in 2002. In the landmark case, a Victorian Supreme Court judge found BAT had deliberately destroyed thousands of internal documents and its defence of that proceeding was struck out. With Arnold Bloch Leibler's support, the estate's indefatigable efforts to achieve justice continue.

In 2008/09, Arnold Bloch Leibler provided continuing pro bono legal advice to a vast range of important Indigenous, cultural, religious, environmental and general not-for-profit organisations, including:

- **Australian Conservation Foundation:** by assisting it with the rollout of its Northern Australian Programme and the development of the exciting EcoTrust concept in Northern Australia.
- **The Burnet Institute**, which aims to reduce the impact of serious infectious diseases: in relation to all legal aspects of its Romp fund and profile raising initiatives in Melbourne and Brisbane.
- **First Nations Foundation**, which aims to enable Indigenous people to make confident and informed decisions about their financial wellbeing: through support to the 'My Moola' programme and drafting key agreements with banks and credit unions.

- **Insight Education Centre for the Blind and Vision Impaired:** due to the closure of the Vision Australia Education Centre at the end of 2009, a group of individuals and concerned parents have formed Insight, an independent education centre for the blind and vision impaired. This is a not-for-profit organisation, with private and government funding, which will fill the gap left by the closure. Since Insight's inception, the firm has provided a broad range of legal advice, including incorporating Insight as a company limited by guarantee, providing various workplace relations and taxation advice, and establishing various funds to support the education facilities and future students and teachers.

- **Jewish Aid Australia**, which acts as a connection point for all Australian Jews who are passionate about participating and assisting in humanitarian projects locally and abroad: generally and in its successful efforts to be granted tax deductible status.

- **The Public Interest Law Clearing House**, a not-for-profit organisation that is committed to furthering public interest law, including pro bono referral services: in relation to obtaining ATO endorsement for the company as a tax concession charity and be granted tax deductible status.

- **Wantok Musik Foundation:** through the creation of recording contracts for Wantok artists and expos for the promotion of Indigenous Australian and Melanesian musical talent to the world.

Arnold Bloch Leibler has also helped other clients secure important tax concessions, including: Athletics Australia Foundation; the Australian Book Review; Centre for Policy Development Limited; Dhungalla Kaella Foundation; Habitat Restoration Fund; MusiCares Australia; and PBS 106.7FM.

In 2008/09 over 150 Indigenous, Jewish, environmental, welfare and health and general not-for-profit causes and organisations were represented by Arnold Bloch Leibler's public interest law practice, including: AFL Ladder Project; Australia-Israel Scientific Exchange Foundation; Australian Environmental Grantmakers Network; Blake Napier Limited; Brighton Hebrew Congregation; Caulfield Hebrew Congregation; Children's Cancer Institute; Elwood Talmud Torah Congregation; Fifteen Foundation; Greening Australia; Hadassah Australia; Jewish Holocaust Centre; Jewish Museum of Australia; Jewish National Fund; Koorie Heritage Trust; Living Trees Project; Make-A-Wish; Mizrahi; Moriah College (Sydney); Murray Lower Darling Rivers Indigenous Nations; Peter MacCallum Cancer Foundation; Reconciliation Australia; Rotary Club of Richmond; Stephanie Alexander Kitchen Garden; Thamarurr Development Corporation; The Climate Institute; Voiceless; Yachad Accelerated Education & Work Readiness Project; and Yorta Yorta Nation Aboriginal Corporation.

In the 2008/09 financial year, as in all years, we did our very best to honour our relationships with our public interest law clients and to continue to go shoulder-to-shoulder with them when it mattered most. In many cases, the public interest law work we carried out in 2008/09 for a number of clients often shared a common feature—success for their cause, or one step closer to it, after years of struggle to achieve it.

Being part of a movement working towards systemic change for the better is one of the unique rewards for us in a firm that is deeply committed to our clients' causes.