



## President's Report



Welcome to the Spring edition of the CommBar newsletter. And let me begin by thanking our editor, Daniel Lorbeer, for putting together another issue of the newsletter. I do hope you enjoy it.

On 24 August 2017 we saw the successful bringing together of the signatories to the CommBar equitable briefing initiative, together with President Maxwell, the Equal Opportunity and Human Rights Commissioner, Kristen Hilton, and CommBar representatives. The roundtable discussion was held in the Old High Court Library and addressed the recent Commission report, experience with the initiative, and the nature of the Commission's involvement going forward. CommBar extends its thanks to those participating for their interest, leadership, and willingness to continue as a focus group and transition their reporting to the Law Council of Australia as part of its national model gender equitable briefing policy. We also acknowledge with thanks the support and engagement of the Commission, Chief Justice Warren and President Maxwell and their State and Federal judicial colleagues. As was observed on the day, it was another good example

of bench, bar and the broader profession working collaboratively and effectively together.

The ABA, Will Alstergren QC and his colleagues are to be congratulated on running a well received, successful conference in London and Dublin in July, which many CommBar members attended, participated in, and enjoyed.

Congratulations are also in order for Judges Michael O'Connell, Douglas Trapnell, Aileen Ryan and Paul Higham, each of whom was recently appointed to the County Court. And it was a warm farewell to Justice Robert Redlich and Judge Graham Anderson, each of whom has retired following long and distinguished careers in the law to date.

Our seminar series continues at pace and speakers and topics remain relevant and strong so we continue to encourage your participation and attendance. In this regard there is an excellent Court of Appeal seminar to be held in November and we have recently been consulted by the Supreme Court regarding its Commercial Court conference to be held in March next year so you will shortly be hearing more about this from the Court.

The most significant news of course is that Justice Anne Ferguson has been appointed as the next Chief Justice of the Supreme Court of Victoria with effect from 2 October 2017. As is well known, her Honour has provided dedicated, talented and distinguished service to the profession and the Court to date and, like Chief Justice Warren, has been a strong and warm supporter of CommBar and its members. We extend our sincere congratulations to Justice Ferguson upon her appointment and wish her a long and satisfying term as the State's twelfth Chief Justice.

And finally, remember to save the date for this year's CommBar annual cocktail function which is to be held at the Federal Court on Wednesday 25 October 2017 commencing at 5.30 pm. Invited guests include hundreds of commercial solicitors, in house counsel and government solicitors and the event always proves to be an excellent night. The Federal Court has been most supportive of CommBar in this

endeavour and we thank Chief Justice Allsop and his judicial colleagues for their ongoing interest and support.

Matthew Connock QC | **President**



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## Banking and Finance

### What have I signed up for? A recent exercise by the Court of Appeal in contractual interpretation

September 5, 2017 · by Cameron Charnley

Where one has a purported deed or a 'heads of agreement' type of document, when might that document be binding and when might it fall short? And when might someone who has not signed the document still be a 'party' to it? [...] [Read More](#) »

## Building and Construction Law

### Appealing a decision of VCAT to the Supreme Court (Trial Division) and Court of Appeal

September 5, 2017 · by Adam Rollnik

This article considers the relevant Acts, Rules and Practice Notes that apply in appealing a VCAT decision, identifies the documents that must be prepared, and provides an overview of the relevant appeal steps [...] [Read More](#) »

### The New Mandatory 'Domestic Building Dispute Resolution Victoria' Scheme

September 5, 2017 · by Suzanne Kirton

In response to years of consumer complaints, the state government has implemented major reform in the domestic building area. Most notable is the introduction of a new mandatory dispute resolution process called DBDRV. This article will briefly explain the new procedure and identify some of its potential failings [...] [Read More](#) »

## Competition and Consumer Law

### Highest penalty awarded for misleading 'free range' claims

September 5, 2017 · by Karen Le Faucheur

On 25 July 2017, the Federal Court ordered an egg supplier to pay a pecuniary penalty of \$750,000 for falsely advertising eggs as "free range" and for engaging in misleading or deceptive conduct in so doing [...] [Read More](#) »

## Corporations and Securities Law

## Related party transactions through managed investment schemes

September 5, 2017 · by Tom Clarke

The Federal Court has given the first substantial guidance into Part 5C.7, which regulates related party transactions made through MISs. The court addressed four discrete questions about the operation of Part 5C.7, but has also left some important questions to be resolved. [...] [Read More](#) »

## Energy

### Uncooperative federalism and the abolition of limited merits review

September 5, 2017 · by Matthew Peckham

The Turnbull Government has introduced a bill to abolish the limited merits review regime under the National Electricity and Gas Laws. The bill is a major departure from the cooperative federalism that underpins the national energy regime, and raises interesting questions about how it will operate in future [...] [Read More](#) »

## Insolvency

### Channel Ten, 'Potential' Administrators and Conflicts of Interest

September 5, 2017 · by Robert Boadle

Does a potential administrator's involvement in pre-administration contingency planning give rise to a conflict of interest, such that the potential administrator should be disqualified from accepting the formal appointment? [...] [Read More](#) »

## Insurance and Professional Negligence

### Section 6 is gone, but what happens next?

August 31, 2017 · by John Tesarsch

Few insurance law issues have caused greater industry concern than the entitlement of third-party claimants to issue proceedings against liability insurers. Legislation recently enacted in NSW may only create further difficulties. [...] [Read More](#) »

## IP and Trade Practices

### Get it right the first time: real trade mark owner can't be subbed into application by assignment

September 5, 2017 · by Sarah Varney

It has been held that only an owner of a trade mark at the time the application is made can apply for registration, and that an applicant for a trade mark which would otherwise be deceptively or confusingly similar because an existing registered trade mark has a reputation which is confined to one State, cannot avoid that consequence by disclaiming the right to use in that State [...] [Read More](#) »

### No need to argue against yourself in a freezing order application – but loss and damage helps

September 5, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Copyright – extension of ex parte freezing order – whether duty of candour requires applicant to identify potential bases to find an implied licence – whether freezing order should cover potential additional

damages [...] [Read More](#) »

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## To be fair, “discrete” and “unitary” disclosure of claimed combinations is not necessary

September 5, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Patents – amendment – application to amend – fair basis – whether “discrete, unitary disclosure” of combinations of features necessary United States Gypsum Company v CSR Building Products Ltd [2017] FCA 595 The applicant... [...] [Read More](#) »

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## Amendment to Cialis patent meets with stiff opposition

September 5, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Patents – amendment – application to amend to avoid inutility claims – applications limited to deletions of positive statements in the specification concerning the utility of the invention – exercise of discretion [...] [Read More](#) »

## Public Law

### High Court resolves outstanding doubts concerning federal jurisdiction

September 5, 2017 · by Mark Hosking

In Rizeq v Western Australia [2017] HCA 23, the High Court had the opportunity to resolve some doubts about the sources of law in federal jurisdiction and about the operation of s 79 of the Judiciary Act 1903 (Cth). [...] [Read More](#) »

## Sports Law

### Issues in Racing: Cobalt, Characters and Courts

Ben Ihle

The Sports Section of CommBar will co-host a CPD and social event with the Sports Section of the LIV. The topic is “Issues in Racing: Cobalt, Characters and Courts”. It will be in the McPhee Room on Level 1, Owen Dixon Chambers East, and be followed by a networking function in the Essoign Club.

**Event Date:** Tuesday, October 31, 2017

**Event Time:** 5:15 pm

## Uncategorised

### Privacy law reform and the new mandatory reporting regime for data breaches: how will it affect you?

September 5, 2017 · by Zac de Kievit

The privacy and data protection regulatory landscape in Australia has seen further recent revision with the formal assent of the Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth) earlier this year. The new law will become operative from 22 February 2018. [...] [Read More](#) »



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