



President's Report



Summer is upon us as we near the end of another legal year. Hopefully the year has been interesting and satisfying for all CommBar members and its close will allow for some well-earned rest and recreation. As we know, time away from the demands of practice is vital to remaining refreshed and engaged for the work period that inevitably follows.

Since the last newsletter we formally farewelled Chief Justice Warren and welcomed Chief Justice Ferguson. CommBar's relationship with Chief Justice Ferguson was already well developed through her Honour's time on the Commercial Court and the Court of Appeal, and that important relationship will now be built upon as her Honour leads the Supreme Court as Victoria's twelfth Chief Justice.

We congratulate Kristen Walker QC on her appointment as Solicitor-General for Victoria, Justice Richard Niall on his appointment to the Court of Appeal, and Justice Simon Steward on his appointment to the Federal Court of Australia.

We also congratulate Chief Judge Alstergren upon his appointment as the Chief Judge of the Federal Circuit Court and as a Judge of the Family Court of Australia. His Honour was a tireless contributor to the Bar and we wish him well in his new and interesting judicial role.

Expressions of interest in attending a conference in Hong Kong later in 2018 have been strong and so we are exploring this further with VicBar and the Hong Kong Bar. I acknowledge with thanks the continuing energy and endeavour of Paul Hayes SC in connection with this initiative.

The CommBar drinks event was held at the Federal Court on 25 October 2017 and the feedback has been most positive so we can expect to see this event continue next year and thereafter. Chief Justice Allsop welcomed CommBar members and guests with his customary warmth and we are most grateful to his Honour and his judicial colleagues for hosting the event at the Federal Court.

Other recent CommBar activities have included seminars and conferences, Law Reform Commission engagement on contingency fees, participating in a review of the County Court Rules, appointment of some new Section Chairs, engagement with President Maxwell and the Court of Appeal in an advocates for change initiative, and a review of the CommBar website.

Most recently we have seen the appointment of the new silks and CommBar congratulates all new members of senior counsel, noting also that it was pleasing to see CommBar members well represented among the appointees.

CommBar's AGM was held on 30 November 2017 and the Executive now comprises Matt Connock QC (President) Wendy Harris QC (Senior Vice President), Luke Merrick (Junior Vice President and Convenor), Stewart Maiden SC (Treasurer), Nick Hopkins QC, Paul Hayes SC, Claire Harris SC, Meg O'Sullivan, Oren Bigos, Elizabeth Boros, and Gabi Crafti. Kieran Hickie is Honorary Secretary.

To the retiring members of the Executive, Caroline Kenny QC, Kathleen Foley, Andrew Downie and

Caryn Van Proctor I extend my sincere thanks on behalf of CommBar for their outstanding contribution during the period each has been a member of the Executive. I also extend my thanks to Georgia Douglas who is retiring from the role of Honorary Secretary after three years of exemplary service.

On behalf of the Executive Committee of CommBar I wish all CommBar members a safe, relaxing and enjoyable summer break.

Matthew Connock QC | President



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ADR

Arbitration: What standard of review (prima facie, full or something in between)?

November 29, 2017 · by Albert Monichino QC

The Full Court of the Federal Court of Australia adopts (guardedly) the 'prima facie' approach standard of review to applications for stay of court proceedings brought in the face of an arbitration agreement, bringing [...] [Read More](#) »

Trust dispute no bar to arbitration

October 18, 2017 · by Albert Monichino QC and Adam Rollnik

Arbitration – scope of arbitration agreement – whether a dispute as to an alleged breach of trust constitutes a “matter” within the scope of an arbitration agreement – proper approach to construction of arbitration [...] [Read More](#) »

Banking and Finance

Slip sliding away: application of the 'slip rule' to correct bank's order for possession

December 1, 2017 · by Brian Kennedy

This recent decision illustrates how a broad approach to the slip rule allowed the bank to amend its order for possession, despite the same error appearing in the description of the security property on a notice sent under the mortgage [...] [Read More](#) »

Evidence of matters in company books and records under s 1305 – displacing the presumption

December 1, 2017 · by Kieran Hickie

Section 1305 of the Corporations Act is an important tool for practitioners in debt and loan recovery. The section provides that books and records of a company are (1) admissible, and (2) prima facie proof of any matter recorded therein [...] [Read More](#) »

Building and Construction Law

Determining statutory duties in domestic building contracts

December 1, 2017 · by Daniel J Briggs

In this recent decision the Court of Appeal considers builders' duties under domestic building contracts to an undisclosed principal and owner, and the parties' ability to limit the scope of the statutory warranties under [...] [Read More](#) »

Premature payment claims under the Building & Construction Industry Security of Payment Act

December 1, 2017 · by David J McAndrew

Victorian cases establish that a statutory payment claim is not invalid by reason of it being served before a reference date. These authorities are likely to be revisited in the light of recent decisions of the High Court [...] [Read More](#) »

Civil Procedure

Plaintiff must properly plead its claim against concurrent wrongdoers

December 1, 2017 · by Kylie Weston-Scheuber

A recent decision by Vickery J addresses the practice of “piggybacking” by a plaintiff in the proportionate liability context. The decision means that a plaintiff bringing a claim against a concurrent wrongdoer [...] [Read More](#) »

Energy

The Montara oil spill class action: crossing borders and extending time

December 1, 2017 · by Tom Clarke

A Federal Court class action, brought on behalf of Indonesian seaweed-farmers, nudges the outer bounds of the Australian class action regime – both geographically and temporally. [...] [Read More](#) »

Equity

Fiduciary relationships in corporate groups – Full Federal Court extends equity's reach

November 2, 2017 · by Jeremy Whelen

The Full Federal Court held that an employee owed fiduciary obligations not only to his employer (an established category of fiduciary relationship), but also to a subsidiary of his employer. The Court considered when fiduciary [...] [Read More](#) »

Insolvency

Winding up: perfected security interests registered on the PPSR and funds held post-DOCA termination

December 1, 2017 · by Reegan Grayson Morison

Funds remaining in a company after a DOCA is terminated may still constitute collateral for a perfected security interest registered on the PPSR if the security deed is drafted in appropriate terms. [...] [Read More](#) »

Safe Harbour laws commence operation and ipso facto laws pass into law

September 25, 2017 · by Stewart Maiden SC and Nicole Papaleo

Introduction The Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017 (Cth) was finally passed by the Senate on 12 September 2017. The Bill will insert provisions into the Corporations Act [...] [Read More](#) »

Sports Law

Doping in Sport: What you do? Or Who you know?

December 1, 2017 · Ben Ihle

The WADA Code prohibits athletes from associating with others who are serving a doping ban, or otherwise been sanctioned for conduct that would constitute a violation under the Code. Do we now live in an age [...] [Read More](#) »



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