

## President's Report



Since the last CommBar newsletter of December 2014, there have been a number of changes to the CommBar Section Chairs and Office Holders. An updated list of Section Chairs and Office Holders is available on the CommBar website: [www.commbar.com.au](http://www.commbar.com.au)

A number of long serving Chairs have retired: John Glover, Caroline Kirton QC, Glenn McGowan QC and Tony Nolan QC. On behalf of the Executive I thank each of them for their service to CommBar.

Two new CommBar Sections have been established: Class Actions and Energy. The officeholders are as follows:

### **Class Actions Section**

<i>Chair</i>	Lachlan Armstrong SC
<i>Deputy Chair</i>	Anna Robertson
<i>Seminar Coordinator</i>	Robert Craig
<i>Monitor</i>	Kate Burke

### **Energy Section**

<i>Chair</i>	Sam Horgan QC
<i>Deputy Chair</i>	Peter Gray QC
<i>Seminar Coordinator</i>	Tom Clarke
<i>Monitor</i>	Catherine Dermody

The Chairman of the Bar and I have each had meetings with the Deans of Melbourne and Monash Law Schools. We are keen to continue to build on the excellent relationships we have with these Law Schools. The organisation of seminars in conjunction with the Law Schools is encouraged.

CommBar has assisted in the organisation of a number of events in connection with the visit of The Honourable Justice Damaseb (the Deputy Chief Justice of Namibia). Included in these events was a CPD seminar consisting of a panel made up of Justice Damaseb, Hollingworth and Sifris JJ and Fiona McLeod SC. It was chaired by Paul Hayes and moderated by Dr Josh Wilson QC, followed by drinks at the Essoign Club. Thanks are due to Rudi Cohrsen, Dr Josh Wilson, Paul Hayes and Caryn Van Proctor for their work in organising these events.

On Wednesday 25 February 2015 a joint seminar organised by CommBar and Monash Law School was held at Monash University Law Chambers, with the topic "Australia - A vital commercial hub in the Asia Pacific Region". The seminar was chaired by Professor Bryan Horrigan, Dean, Faculty of Law, Monash University. The Honourable Chief Justice James Allsop AO Federal Court of Australia, The Honourable Chief Justice Marilyn Warren AC Supreme Court of Victoria, Jim Peters QC, Chairman, Victorian Bar and Katie Miller, President, Law Institute of Victoria all participated in the seminar.

This was an inaugural seminar involving the Federal Court of Australia, the Supreme Court of Victoria, the Centre for Commercial Law and Regulatory Studies, the Monash Law Faculty, Victorian Bar, CommBar, Law Institute of Victoria and Judicial College of Victoria.

The speakers discussed the importance of Australia as a major legal centre for commercial disputes in the Asia Pacific region including the challenges for Australian commercial courts and arbitral institutions in a regional justice system. As was noted on the night, one way of attracting this work to Australia is for parties to draft clauses selecting an Australian city as the venue for an arbitration arising out of a contractual dispute. The seminar was a great success.

A reminder that any member of CommBar is invited to organise a seminar. Bookings can be made online. Seminars should be organised in consultation with the relevant Section officeholders.

**Philip Crutchfield QC | President**



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## Quotes of Note

*The most important thing in communication is to hear what isn't being said.* Peter F. Drucker

*Every man has his secret sorrows which the world knows not; and often times we call a man cold when he is only sad.* Henry Wadsworth Longfellow

*Nobody is ever convinced by argument... they just think up new reasons for maintaining old positions and become more defensive.* Louis L'Amour

*The history of our race, and each individual's experience, are sown thick with evidence that truth is not hard to kill and that a lie told well is immortal.* Mark Twain

*We discover in ourselves what others hide from us, and we recognize in others what we hide from ourselves.* Vauvenargues

*One should always play fairly when one has the winning cards.* Oscar Wilde

*If you want to know the truth, free yourself from all thoughts of personal profit, and then make your decision.* Leo Tolstoy

## Publius

### Headlines

Publius is a great admirer of intellectual property lawyers. The other day he was chatting to his friend Justice Anon (a descendant of the well-known poet).

Justice Anon mentioned that his colleague Justice Annabelle Bennett had dismissed a claim for breach of copyright in its headlines: *Fairfax Media Publications Pty Ltd v Reed International Books Australia Pty Ltd* (2010) 189 FCR 109.

Justice Anon said:

Her Honour certainly ain't lax,  
She's really stuck it up Fairfax.  
Her Honour says: "I must insist  
That copyright does not subsist  
In headlines, and especially ones  
Containing rather feeble puns."

Publius

## Forthcoming Events and Updates

### **CONSTRUCTION LAW: Building Dispute Practitioners Society**

18 March 2015

*Discussion evening: New Conditions of Contract – AS 11000*

*RACV Club Level 2, 501 Bourke Street, Melbourne 6:30 pm*

*Speaker: Professor Ian Bailey SC*

Professor Ian Bailey SC, Chair of the Standards Australia Technical Committee MB-010, General Conditions of Contract, will present a paper on AS 11000.

The Technical Committee MB-010 has prepared a new General Conditions of Contract, to be known as AS 11000: General conditions of contract. This is intended to replace AS 2124 and AS 4000. Changes include revisions to the good faith requirement and revisions to bring the contract into conformity with the Security of Payments Acts across Australia.

## Arbitration & ADR

### What is an “arbitration”?

Tuesday, 24 February 2015, by Albert Monichino QC

Are proceedings before the AFL Anti-Doping Tribunal an “arbitration” for the purposes of the Commercial Arbitration Act 2011 (Vic) such that ASADA is entitled to subpoenas pursuant to section 27A of the Act requiring witnesses to attend and produce documents before the Tribunal?

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## Asia Practice

### Young Asian barristers series pt II

Tuesday, 9 December 2014, by Dr Josh Wilson QC

This is the second in a four part series of interviews between CommBar and some of the Asia Practice Section’s up-and-coming members who explain something about their backgrounds and how life at the Bar for a person of Asian heritage throws up challenges.

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## Banking & Finance

### Forged mortgage and loan documents give rise to a mortgage which secures nothing

Tuesday, 24 February 2015, by Andrew Kirby and Kieran Hickie

Justice Hargrave has declined to follow the earlier decision of Justice Pagone in *Solak v Bank of Western Australia Ltd* [2009] VSC 82. The cases involved the construction of a registered “all monies” mortgage which included a forged mortgage document and a forged loan agreement. Justice Hargrave followed New South Wales Court of Appeal decisions in holding that the mortgage effectively secures nothing because the underlying loan documents had been forged.

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## Building & Construction Law

### [Appeal against \\$1.8 million judgment in favour of domestic building insurer fails as appeal point not raised below](#)

Tuesday, 24 February 2015, by Ken Oliver

The New South Wales Court of Appeal has refused leave to add a ground of appeal against a judgment that the director of a building company and his wife indemnify an insurer for over \$1 million paid out to home owners, as the appeal point on which the appellants now sought to rely was not raised before the primary judge.

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## Civil Procedure

### [Vexatious Proceedings Act 2014 \(Vic\): the three tiers of litigation restraint](#)

Tuesday, 9 December 2014, by Andrew P. Downie

The Vexatious Proceedings Act 2014 (Vic) (the “Act”) commenced on 31 October 2014, and repeals the previous single-tier system for dealing with vexatious litigants in (the then) s21 Supreme Court Act 1986 (Vic).

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## Class Actions

### [What connections between a lawyer and a litigation funder are appropriate in class actions and other litigation](#)

Tuesday, 24 February 2015, by Anna Robertson

Circumstances in which lawyers who are connected with litigation funders and stand to benefit from a contingency fee arrangement (either directly or indirectly) – will be restrained from continuing to act in order to protect the integrity of the judicial process and the due administration of justice.

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## Competition & Consumer Law

### [Unconscionable Purchasing?](#)

Friday, 27 February 2015, by Dr Richard Scheelings

The ACCC recently won a resounding victory against Coles in an action for statutory unconscionability. Coles is one of the two large supermarket retailers in Australia. Now the ACCC’s sights are set on the other large retailer: Woolworths.

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## Energy

### [Hazelwood Mine Fire Inquiry Report](#)

Wednesday, 25 February 2015, by Tom Clarke

Overview of the inquiry’s findings and recommendations regarding fire risk management and response at the Hazelwood mine.

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## [Australian Energy Regulator obtains first civil penalty orders](#)

Wednesday, 25 February 2015, by Tom Clarke

Civil penalties and compliance orders awarded against Snowy Hydro for breach of National Electricity Rules regarding dispatch in the wholesale electricity market.

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## [ACCC enforcement actions against energy retailers – misleading discount representations](#)

Wednesday, 25 February 2015, by Tom Clarke

Update on the ACCC's latest civil penalty actions against energy retailers under the Australian Consumer Law.

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## Equity

### [High Court finds settlement between one co-surety and lender does not affect other co-surety's right to claim contribution in equity where contribution disproportionate](#)

Wednesday, 25 February 2015, by Brian Kennedy

The decision of the High Court of Australia confirms and explains the application of the equitable doctrine of contribution between co-sureties. It provides a helpful summary of the law in respect of co-ordinate liabilities and the nature of covenants not to sue, all of which should be kept in mind by co-sureties when settling recovery proceedings brought against them by a lender.

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## Insolvency Law

### [Timing is everything- Operation of Section 588FL Corporations Act 2001 \(Cth\)](#)

Wednesday, 25 February 2015, by Andrea L. Mapp

Application of Personal Properties Securities Act 2009 (Cth) and the operation of section 588FL and section 588FN of the Corporations Act 2001 (Cth).

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## Insurance & Professional Negligence Law

### [High Court clarifies when section 54 of the Insurance Contracts Act 1984 \(Cth\) is enlivened](#)

Wednesday, 25 February 2015, by Jamie Richardson and Harry Forrester

Insurance — Exclusion of liability under insurance contract – Whether restrictions or limitations were inherent in the claim – Whether Insured's claims outside the scope of policy – Construction of section 54(1) of the Insurance Contracts Act 1984 (Cth).

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## IP & Trade Practices

### [Dallas Buyers Club LLC sues ISPs in Australia to identify "pirate" downloaders](#)

Tuesday, 2 December 2014, by Warwick A. Rothnie

Last month, Dallas Buyers Club LLC was reported to have started that process. It has commenced proceedings against various telcos and ISPs seeking preliminary discovery from them of the identities of their customers who were using IP (as in Internet Protocol) addresses at times Dallas Buyers Club LLC says illegal copies of the film were being downloaded from those addresses.

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## Sports Law

### [Is a Domestic Sporting Tribunal hearing a Commercial Arbitration?](#)

Wednesday, 25 February 2015, by Elizabeth Brimer

Croft J was asked to consider whether a hearing before the AFL Anti-Doping Tribunal was a “domestic commercial arbitration” pursuant to the Commercial Arbitration Act 2011 for the purpose of issuing subpoenas to compel third parties to give evidence or produce documents.

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