



President's Report



Welcome to the Winter edition of the CommBar newsletter. The sharp-eyed amongst you will have observed that I am not Matt Connock QC, as his Honour was when the last President's report was published! The news of Matt's appointment to the Supreme Court of Victoria was most welcome, although from a selfish point of view, the Court's considerable gain is certainly CommBar's loss. His Honour's contribution to CommBar, particularly in the role of President, was generous and unflagging. He built considerably on the foundation laid by his predecessor, Phil Crutchfield QC, continuing the close engagement which our organisation has enjoyed with the Courts, solicitors, academia and other colleagues. As reflected in the excellent speeches at his standing-room-only welcome, his Honour exemplified the maxim, 'if you want something done, give it to a busy person'. We wish him well in his new role.

Under the CommBar Rules, a vacancy in an office-bearer's position is to be filled by the Executive until the next AGM. At the Executive meeting on 26 April, I was elected President of CommBar, and Nick Hopkins QC was elected Senior Vice-President. I welcome Nick to the role, and look forward to working closely with him and the other members of the Executive over the balance of the year.

The year has passed swiftly, and the commercial Bar has been busy. The Financial Services Royal Commission has not only occupied many of our members, but has ensured that opportunities have been created in other pending matters. It has been extremely pleasing to see the talents and strengths of so many CommBar members prominently on display.

There have been several new judicial appointments aside from Connock J since our last newsletter. Melinda Richards SC and Kevin Lyons QC have been appointed to the Supreme Court, while Justice Quigley has been elevated to the position of President of VCAT. We have also farewelled Justices Weinberg, Forrest, Judd and Vickery in recent times. I would encourage members – particularly more junior members – of CommBar to attend welcomes and farewells when they are held. They are an important rite of passage for members and former members of the Bar, and a wonderful way to absorb some of the history of our college.

Our members have responded well to CommBar's promotion of the Melbourne University Law School mentoring program. Of course, many of you are not new to the program, and can testify to the rewards that flow both ways from the mentoring relationship. For mentees – both JD and international Masters students – who participate in the program, it offers an invaluable insight into legal practice and the opportunity to establish an enduring professional and personal connection with a (more) experienced practitioner. But, having participated in the program since its inception, I can certainly confirm that the chance it provides to engage with the next generation of lawyers is a net sum gain for the mentor.

Of course, mentoring is not an activity restricted to formal programs like the one established by MULS. It is an important institutional feature of the Bar generally and the commercial Bar in particular. I encourage our more senior members to foster connections with, and to offer the benefit of their

experience to, more junior colleagues; conversely, those who are newer to the commercial Bar should not hesitate to reach out for guidance from those with more years under their belts.

We have a busy CPD program shaping for the balance of the year, but there is always room for more! I encourage section heads to think proactively about seminar opportunities, and our members to participate actively in the program (not just when 31 March is looming!). I hope you already have 21 and 22 September in your diary for the Hong Kong conference, and 15 to 17 November for the ABA conference which will be held in Sydney.

Finally, for those CommBar members planning a mid-year break, I hope it will be safe, enjoyable and rejuvenating ahead of a busy second half of 2018.

Wendy Harris QC | President



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Overheard!

In *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* [2018] FCA 751, Beach J subjected the use and abuse of the “f***” word and its various derivatives to close scrutiny (at [937]):

Fifth, let me now say something concerning the vernacular of the traders. And it concerns the use of the “f***” word and its various derivatives. There is little doubt that linguistic Darwinism has favoured the English language. And part of its natural advantage springs not only from its capacity to either create vocabulary or unashamedly appropriate it from elsewhere, but its subsequent diverse and rich deployment. The “f***” word and its use by the traders in the present context is a classic example. It has been used as both a transitive and intransitive verb. It has been used in an active sense and a passive sense. It has been used in the past tense and the future tense. It has been used as an adjective. It has been used as a noun including as a verbal noun. Someone even tried to use it as an adverb. Occasionally it has been deployed not in any context that a formal grammarian would encourage, but simply to reflect an emotional response. Sometimes disappointment or exasperation, sometimes pleasant surprise or even admiration. Sometimes criticism, sometimes positive reinforcement. Even more occasionally, it has been used to indelicately communicate the thought that caution was being thrown to the wind. Clearly, the “f***” word and its derivatives are not terms of art in the finance industry. Nevertheless, their use in otherwise polite conversation appears to have been well understood by the colourful interlocutors

- Submitted by Lynton Hogan.

ADR

Court review of an arbitrator’s preliminary jurisdictional ruling: de novo or appellate review?

May 31, 2018 · by Albert Monichino QC

The Supreme Court of Victoria’s Arbitration List judge has confirmed that the appropriate standard of review by a court of an arbitral tribunal’s preliminary ruling on jurisdiction is a de [...] [Read More](#) »

Review of ‘competence’ decisions under s 16(9) of the CAA by Courts – hearing de novo

May 31, 2018 · by Kieran Hickie

Arbitral tribunals have the ‘competence’ to make rulings on their own jurisdiction under s 16 of the CAA (and Model Law). However, within 30 days after the ruling, a party can seek a [...] [Read More](#) »

Arbitration award upheld – no real unfairness or practical injustice

May 10, 2018 · by Adam Rollnik

The Queensland Court of Appeal upholds an arbitrator’s award despite procedural missteps – no “real unfairness” or “practical injustice” [...] [Read More](#) »

Building and Construction Law

Contractual time bars and claims for damages for misleading or deceptive conduct under s 236 of the ACL

May 31, 2018 · by David J McAndrew

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Revised payment claims under the Security of Payment Act may be invalid

May 31, 2018 · by Ken Oliver

A “revised” payment claim, for a different sum, served one day after another payment claim had been served was invalid because it was held to be a second payment claim and therefore [...] [Read More](#) »

Court upholds VCAT decision on quantum meruit claim – builder’s windfall gain

May 17, 2018 · by Adam Rollnik

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Adjudication determination quashed by Supreme Court for failure to give adequate reasons

March 29, 2018 · by Adam Rollnik

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Corporations and Securities Law

Victorian Court of Appeal dismisses ASIC's appeal in AWB case

May 31, 2018 · by James Claridge

The Court of Appeal dismissed an appeal by ASIC in proceedings brought against Peter Geary, a former officer of the Australian Wheat Board. The proceedings related to payments [...] [Read More](#) »

Energy

Disclaiming an insolvent company's environmental obligations: the case of Linc Energy Ltd (in liquidation)

May 31, 2018 · by Matthew Peckham

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Equity

Insolvent corporate trustees: some questions finally answered

April 16, 2018 · by Daniel Lorbeer

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Insolvency Law

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Building on another's work: copyright infringement of architectural designs

May 31, 2018 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

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Can you dig it? Patentees keep the best method to themselves

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Sports Law

Mediation in Sports Disputes

May 31, 2018 · Peter Agardy

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