



President's Report



The year continues apace and plenty has been happening within CommBar, including: direct briefing presentations; much work and numerous meetings relating to various equitable briefing initiatives; meetings with President Maxwell regarding appellate processes and advocacy training; advocacy teacher training for CommBar members; participating in the Australasian Institute of Judicial Administration's Innovation and Excellence in Courts Conference hosted by the Supreme Court; engaging with the VLRC regarding litigation funding; providing input to the Department of Justice and Regulation regarding its review into the Open Courts Act; assisting the Sports Law Section with issues relevant to its members; exploring the possibility of a conference being held in Hong Kong in 2018; sponsorship of INSOL's International World Conference; and other CommBar related activities.

We extend our warm congratulations to his Honour Judge Woodward who was appointed to the County Court earlier in May, to the Honourable Justice Lee who was appointed to the Federal Court in March 2017, and to Caroline Kenny QC, who was very recently elected as President of the Chartered Institute of Arbitrators (CI Arb) Australia. On the flip side, we saw the Honourable Justice Jessup's retirement from the Federal Court and we acknowledge his Honour's outstanding and selfless contribution to the law throughout his distinguished legal career.

Finally, but most significantly, on 30 March 2017 the Honourable Chief Justice Marilyn Warren AC announced that she will be retiring with effect from 1 October 2017. As Jennifer Batrouney QC observed, Chief Justice Warren has served the State, the law and the Supreme Court with distinction and her Honour's term as Chief Justice has been one of extraordinary achievement. It may also be observed that her Honour has always been an unwavering, warm, generous and enthusiastic supporter of CommBar and its members, and we look forward to acknowledging and thanking Chief Justice Warren more formally later in the year as the curtain closes on her term as an outstanding Chief Justice.

I hope you enjoy the newsletter and that many of you have the opportunity to attend the upcoming Australian Bar Association conference in London and Dublin, remembering of course that one of our own, Will Alstergren QC, is the ABA's capable President.

Matthew Connock QC | President



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Overheard!

One judicial officer was recently recorded in transcript as having said: “*I should say, unless you really want me to I don't go to trials.*” We are reliably informed that his Honour in fact said that he does not normally robe for trials, but perhaps one might be forgiven for identifying with the sentiment as recorded, from time to time.

ADR

Arbitration: when a final award is not final

March 20, 2017 · by Albert Monichino QC

Arbitrator rendered an award styled “Final Award” that failed to deal with an issue referred to arbitration. Aggrieved party applied to have the issue determined by the Supreme Court. [...] [Read More](#) »

Banking and Finance

Contract: Amendment or replacement?

April 27, 2017 · by Albert Monichino QC

Parties to a contract enter into a further contract by which they vary the original contract terms. Is the effect of the second contract to bring the first contract [...] [Read More](#) »

Building and Construction Law

Quantum meruit or damages?

May 31, 2017 · by Kenneth Oliver

VCAT has ordered the owners to pay a builder \$660,526.41 by way of a quantum meruit following the termination of a building contract; a sum which was “considerably more” than the builder might have recovered in a damages claim under the contract [...] [Read More](#) »

The construction of contracts – ambiguities and Codelfa

Adam Rollnik and Daniel Briggs

Adam Rollnik and Daniel Briggs will present a CPD seminar on **31 October 2017 from 1.00 – 2.00 pm** in the Neil McPhee Room titled: “The construction of contracts – ambiguities and Codelfa”.

Civil Procedure

Supreme Court of Victoria embraces the use of technology assisted review

May 29, 2017 · by Andrew P. Downie

A December 2016 decision of the Supreme Court of Victoria and a January 2017 practice note on the use of technology in the Court have shown the Court’s acceptance of technology assisted review as an appropriate method of discovery [...] [Read More](#) »

The Harman Obligation: Policy, Procedure and Punishment

Paul Hayes

Paul Hayes will be presenting a CPD seminar on Tuesday, **20 June 2017 at 5.15pm** in the McPhee Room on level 1 of Owen Dixon East. The seminar is entitled: "The Harman Obligation: Policy, Procedure and Punishment". Further details can be obtained from the Bar Office.

Class Actions

Court of Appeal clarifies lead plaintiffs' authority to settle class actions

May 31, 2017 · by Bridget Slocum

The Victorian Court of Appeal has ruled that a settlement deed containing releases and acknowledgements beyond the scope of common issues in the Great Southern class action is binding upon group members, despite the High Court's holding that representative [...] [Read More](#) »

Competition and Consumer Law

Lit up! E-retailers of e-cigarettes fined for misleading conduct

May 30, 2017 · by James Davaris

The Federal Court found that three online retailers and their directors had engaged in "serious" contraventions of the Australian Consumer Law for misleading Australian consumers as to the health benefits of e-cigarettes [...] [Read More](#) »

Energy

Border controls?: South Australian and Commonwealth responses to the energy crisis

May 31, 2017 · by Tom Clarke

The supply and wholesale price stresses in Australia's gas and electricity market has prompted some remarkable recent interventions by government. This article considers new South Australian powers to intervene in the national [...] [Read More](#) »

Insolvency

Into the twilight zone: Corporate insolvency amendments, and the disappearing act of section 511 (et al)

June 2, 2017 · by Raini Zambelli

Seeking directions from the Court in the period 1 March to 1 September 2017 – what are liquidators and administrators to do? [...] [Read More](#) »

Insolvency Law Update – Re Amerind Pty Ltd (receivers and managers apptd) (in liq) [2017] VSC 127

June 1, 2017 · by Hamish Austin QC

Justice Robson has delivered his decision on an application by receivers and managers for directions as to, among other things, their obligations to pay preferential [...] [Read More](#) »

Fixing insolvency practitioners' remuneration: a uniform national approach

March 22, 2017 · by Sergio Freire

As noted in a previous post about the Sakr case^[1], the worth of the work done by a liquidator can be calculated in various ways, including by [...] [Read More](#) »

International Law

"Stay of enforcement" encompasses judicially ordered stay and statutory bar

May 30, 2017 · by Simon Lee

Is a "stay of enforcement" of a judgment within the meaning of s 15(2) of the Foreign Judgments Act brought about by s 58(3) of the Bankruptcy Act? [...] [Read More](#) »

IP and Trade Practices

But for the grace of section 223 go I: licences for would-be patent infringers

May 31, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Patents – extension of time to extend term – licences to exploit during period of extension of time application and beyond - H. Lundbeck A/S v Commissioner of Patents [2017] FCA 56 [...] [Read More](#) »

Mud thrown over failure to link assessed damages with threats of litigation

May 31, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Patents – unjustified threats – damages – ultimate findings unsupported, and contradicted by, evidence at trial - Australian Mud Company Pty Ltd v Coretell Pty Ltd [2017] FCAFC 44 [...] [Read More](#) »

Muddy waters clarified: date for recovery for patent infringement commences from date of grant

May 31, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner QC and Alan Nash

Patents – innovation patents – divisional application – infringement – date from which a patentee is entitled to relief – whether from date of parent patent or date of grant of divisional patent [...] [Read More](#) »

Property and Probate

So bad it's good: dodgy drafting gets the job done

May 31, 2017 · by Sarah Varney

In this recent decision, the landlord got the benefit of a dubiously worded outgoings clause. The High Court gave full effect to the parties' commercial intent to hold that commercial [...] [Read More](#) »

Public Law

What a difference a Day makes: the High Court on disqualifying pecuniary interests of parliamentarians

May 31, 2017 · by John Maloney

In Re Day [No 2] [2017] HCA 14, the High Court determined that Mr Bob Day had an indirect pecuniary interest in an agreement with the Commonwealth, and was thereby disqualified from being chosen or

sitting as a senator [...] [Read More](#) »

Sports Law

Implications of Agricultural Societies Council of NSW v Christie [2016] NSWCA 331

Adrian Anderson

Adrian Anderson will lead a luncheon discussion hosted by the Sports Law section of CommBar in the offices of VicBar at level 5 of ODE. The topic is private disciplinary tribunals; the requirements of natural justice and the relevance of apprehended bias. Please RSVP to Kim Hines kimberley.hines@vicbar.com.au by 7 June 2017.

Event Date: 09/06/2017

Event Time: 01:00 pm

Intellectual Property and Major Events - 14 August 2017

Elle Nikou and Natalie Hickey

At 5.15pm on Monday 14 August 2017, Elle Nikou and Natalie Hickey will present a CPD on ambush marketing and the protection of intellectual property rights at major events, in particular, major sporting events.

Issues to do with Racing - 31 Oct 2017 (LIV Networking Function to follow)

At 5.15pm on 31 October 2017, the Sports Law Section will partner with the Sports Section of the Law Institute of Victoria to present a CPD in the field of Racing, followed by a networking opportunity over drinks. Further details will be provided closer to the time.



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