



### President's Report



It is my first report since being elected and I wish to acknowledge and thank the members of the Executive who retired from office late last year. Philip Crutchfield QC provided excellent leadership and set a fine, and at times warmly colourful, example. And having borrowed Philip's shoes and filled the toes with photocopying paper in a shoeless panic before court a few years ago, I speak from experience when I say they are big shoes to fill.

Philip rightly spoke at the AGM of Ian Percy's outstanding contribution and properly acknowledged the first class work and support of Anna Robertson, Stewart Anderson QC, Caroline Kirton QC, and Albert Monichino QC. It ought not to be lightly forgotten that Albert served on the Executive for 22 years, which surely must be a record that will stand forever.

The year to date for CommBar has been a busy one. The organisation of seminars with the Federal Court, Supreme Court and Monash and Melbourne Universities is well in hand with further updates to follow shortly. The equitable briefing policy working group is in the process of organising a round table for participants and others in conjunction with a broader event so as to continue to build on that excellent initiative. New Practice Notes have been digested and feedback has been provided to the Commercial Court at the recent Commercial Court Users Group meeting. In the Court of Appeal, Maxwell P and some of his judicial colleagues held an effective session earlier this week in which feedback was sought and willingly received by the Court regarding civil applications and appeals, including in relation to the new practice note, streaming of proceedings, time limits and other matters. CommBar appreciates the opportunity to participate in such sessions.

In the Federal arena, two respected former CommBar members were warmly welcomed to the Bench in February; Justice O'Callaghan to the Federal Court of Australia and Judge Kelly to the Federal Circuit Court. In addition, Chief Justice Allsop kindly welcomed and acknowledged the appointment of the new silks with an informal drinks function with his judicial colleagues in chambers on 23 February 2017. Such occasions are appreciated and enjoyed, and well illustrate the unique and important relationship between Bench and Bar.

We continue to work closely with the Bar Council representatives and Sarah Fregon and her colleagues, and there are a number of initiatives where collaboration is ongoing, including a direct briefing initiative and the exploration of a possible conference in Hong Kong in 2018. A good example of such collaboration is the work undertaken together to allow CommBar to recover a substantial refund of VAT paid by it in connection with the London Conference, and I acknowledge the tireless efforts of Ian Percy and Caleb Jansen in this endeavour.

Appointments have also resulted in change in the leadership of the Public Law and Civil Procedure Sections of CommBar. Rowena Orr QC has been appointed as Chair of the Public Law Section and Mark Robins QC is the new Chair of the Civil Procedure Section. I thank each of them for taking on these roles and for their ongoing contribution. It is also timely to remind all Section Chairs that if there are material matters they would like to bring to the attention of the CommBar Executive for its consideration, the door is always open and in the first instance they can be directed to CommBar's capable Convenor, Luke Merrick.

And most recently the Department of Justice and Regulation has advised me that the Hon Frank Vincent AO QC has been appointed to conduct a review into the Open Courts Act 2013 and is seeking to engage with CommBar and others regarding that review.

So the year is certainly looking interesting on the CommBar front and the CommBar Executive wishes all its members an interesting and satisfying 2017 legal year.

**Matthew Connock QC | President**



**Commercial Bar Association of Victoria**  
[www.commbar.com.au](http://www.commbar.com.au)

Room 2111, Owen Dixon Chambers West | 525 Lonsdale Street | Melbourne 3000, Australia

T +61 3 9225 7242 E [mattconnock@vicbar.com.au](mailto:mattconnock@vicbar.com.au)

## Quotes of note

"The Iron Chancellor, Otto von Bismarck, is reputed to have observed that if you like sausages or laws, you should not see either being made. The enactment of s 26C demonstrates the truth of that observation." *Registrar of Firearms v Marksman Training Systems Pty Ltd* [2016] SASCFC 72, [295] (Stanley J).

## Building and Construction Law

### Security of Payment update: NSWCA rules out judicial review for non-jurisdictional error of law

February 17, 2017 · by Kylie Weston-Scheuber

In the middle of last year, a case in New South Wales in relation to the *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payment Act) caused ripples through the construction industry. Emmett AJA found that, contrary to the [...] [Read More](#) »

## Class Actions

### Class Actions: the not-so-final frontier

January 25, 2017 · by Bridget Slocum

The interplay between the Anshun principle and class actions has finally been examined in detail by the High Court, in *Timbercorp Finance Pty Ltd (In Liquidation) v Collins and Tomes* [2016] HCA 44. [...] [Read More](#) »

## Competition and Consumer Law

### Game over: overseas video game retailer ordered to pay \$3 million for misleading Australian gamers

February 27, 2017 · by James Davaris

The Federal Court ordered an American video game giant to pay a \$3 million penalty for misleading Australian consumers in a decision that sends a strong message to overseas traders to comply with the Australian Consumer Law [...] [Read More](#) »

## Energy

### Movements at COAG: Limited merits review and gas pipeline access arbitration

February 27, 2017 · by Tom Clarke

Among the numerous challenges with which Commonwealth and State/Territory energy ministers are presently confronted, the COAG Energy Council is progressing reforms on two contentious aspects of energy regulation [...] [Read More](#) »

## Equity

### Distributions from a Mixed Trust Fund

February 27, 2017 · by Robert Boadle

What is the appropriate method of distribution to competing trust beneficiaries whose funds have been mixed? This short article considers this question following the decision in *Hannan v Zindilis* [2016] VSC 723 [...] [Read More](#) »

## Insolvency

### Federal Court clarifies the scope of stays under the Model Law on Cross-Border Insolvency

February 27, 2017 · by Stewart Maiden

In *Suk v Hanjin Shipping Co Ltd* [2016] FCA 1404, the Federal Court (1) provided guidance on how courts are to determine what stay arises upon recognition of foreign main proceedings under the *Cross-Border Insolvency Act 2008*; and (2) demonstrated that [...] [Read More](#) »

### Missing directors and company registers: winding up a company as trustee of a shareholder

February 27, 2017 · by Nicole Papaleo

Winding up a company when you are the trustee in bankruptcy of the sole director and shareholder can be more complicated than you think [...] [Read More](#) »

### Forge and the \$44m fail

March 1, 2017 · by Raini Zambelli

A recent decision of the New South Wales Court of Appeal serves as a timely reminder of the costly consequences of failing to register a PPSR security interest in leased goods [...] [Read More](#) »

## IP and Trade Practices

### Second bite of the cherry upsets the apple cart for PINK LADY marks

February 27, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Trade marks – exclusive trade mark licence “in perpetuity” – implied terms – whether implied term that licence extends to replacement versions of licensed marks – whether implied term that marks be re-assigned if licence is breached – admissibility of extrinsic material [...] [Read More](#) »

## Post mortem of black box tracking product licence reveals no ambiguity

February 27, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Computer software – exclusive licence – construction – ambiguity in payment provisions – extrinsic evidence – commercial sensibility [...] [Read More](#) »

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## Radiologist's choice of trade mark not so insightful

February 27, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Trade marks – opposition – substantially identical – reputation – use of similar marks in different States – infringement – defences – good faith use of own name – revocation – inherent adaptability to distinguish [...] [Read More](#) »

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## ABC Radio's proposed rebranding receives a poor reception in Adelaide

February 27, 2017 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Trade marks – interlocutory injunction – whether serious question to be tried – whether actual non-monetary harm needs to be shown [...] [Read More](#) »

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