



President's Report



This is my last President's Report.

A new Executive Committee headed by Matt Connock QC, Wendy Harris QC, Stewart Maiden and Luke Merrick has taken over. CommBar is fortunate that such high quality people are prepared to take on these roles. I thank them, and wish them all success in progressing the activities of CommBar.

I take this opportunity to record my thanks to all those members who have contributed to the activities of CommBar in many and various ways.

I particularly record my thanks to the past and current members of the Executive Committee with whom I have had the privilege of working.

The office holders during my time: Stewart Anderson QC, Senior Vice-President, Caroline Kirton QC, Junior Vice-President and Convenor (2012-2014), Wendy Harris QC, Junior Vice-President and Convenor (2014-2016) and Ian Percy, Treasurer, have provided me with rock solid support. I thank them.

I have relied heavily upon the selfless Ian Percy. Ian exemplifies the esprit de corps essential to a proper functioning group of people.

Philip Crutchfield QC | Immediate Past President



Commercial Bar Association of Victoria
www.commbar.com.au

Room 2116, Owen Dixon Chambers West | 525 Lonsdale Street | Melbourne 3000, Australia

T +61 3 9225 7242 **F** +61 3 9225 7623 **E** pdcrutchfield@vicbar.com.au

Quotes of Note

The moment a person forms a theory, his imagination sees in every object only the traits which favour that theory. Thomas Jefferson

No problem can be solved until it is reduced to some simple form. The changing of a vague difficulty into a specific, concrete form is a very essential element in thinking. J.P. Morgan

Beware of the person with nothing to lose. Italian Proverb

O Lord, help me not to despise or oppose what I do not understand. William Penn

There is no indispensable man. Franklin Delano Roosevelt

ADR

Arbitration: Temporary stay of related court proceedings

September 7, 2016 · by Albert Monichino QC

In exceptional circumstances, a court exercising its inherent jurisdiction will temporarily stay its proceedings pending the hearing and determination of a related arbitration between one of the parties to the court proceedings and a [...] [Read More](#) »

Banking and Finance

Lender's power to seek summary dismissal of a claim not straightforward in the case of alleged penalties

November 24, 2016 · by Andrew Kirby and Kieran Hickie

The Supreme Court of Victoria has partly granted an application by a financier, Equity-One, for summary dismissal of a claim brought against it by a borrower/guarantor. The [...] [Read More](#) »

Building and Construction Law

Insolvency Set-Off ousts Contractors' Right to Summary Judgment in the Construction Industry

November 23, 2016 · by Bridget Slocum

It has been held that automatic set off under s 553C of the *Corporations Act 2001* (Cth) precludes companies in liquidation from taking advantage of the summary progress payment regime under the *Building and Construction Industry Security of Payment Act 2002* [...] [Read More](#) »

Building and Construction Industry Security of Payment Act: Assessment of construction work and its value

November 25, 2016 · by David J McAndrew

The validity of an adjudication is conditional upon the adjudicator performing the statutory task of assessing the amount of construction work and its value. In the same case, judicial review in relation to the adjudicator's alleged incorrect finding of an [...] [Read More](#) »

Changes to the Domestic Building regime in Victoria

November 28, 2016 · by Suzanne Kirton

In response to years of consumer complaints, the state government is implementing major changes in relation to domestic building contracts and disputes in Victoria. Practitioners need to be aware of the new procedures and requirements [...] [Read More](#) »

Competition and Consumer Law

Contract Hampered by Unfair Term

November 24, 2016 · by Justin Wheelahan

Edelman J's decision in *ACCC v Chrisco Hampers* [2015] FCA 1204 provides guidance on how courts will approach the unfair contract term provisions of the ACL [...] [Read More](#) »

Will outlawing “concerted practices” succeed where outlawing “price signalling” failed?

November 25, 2016 · by Simon Marks QC

The Commonwealth parliament is in the process of passing a law in relation to concerted practices, largely following the Harper Review recommendations on that topic. Was [...] [Read More](#) »

Equity

Knowing receipt versus money had and received: what did the High Court mean in *Farah Constructions*?

November 23, 2016 · by Jeremy Whelen

Undaunted by the High Court's decision in *Farah Constructions*, the New South Wales Court of Appeal has breathed life into common law claims for money had and received, holding that they can coexist with claims arising in circumstances covered by [...] [Read More](#) »

The Lost Trust Deed

November 23, 2016 · by Robert Boadle

What should a trustee do if the trust deed governing the trust cannot be found? On what terms does the trustee hold the property? This short article considers these questions [...] [Read More](#) »

Insolvency

Insolvency practitioners' remuneration: NSW Court of Appeal weighs into the controversy

November 24, 2016 · by Sergio Freire

A five-member bench of the New South Wales Court of Appeal recently heard argument in an appeal from a decision by Justice Brereton dealing with a liquidator's remuneration claim [...] [Read More](#) »

IP and Trade Practices

Blue with competitor about use of yellow has Chemist Warehouse seeing red

November 28, 2016 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Misleading and deceptive conduct – trade indicia – “get up” of pharmacy chain – use of primary colours, especially yellow – appeal primarily against findings of fact [...] [Read More](#) »

Thirsty (but not misled) folk want beer, not explanations

November 28, 2016 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Trade Marks – passing off – misleading or deceptive conduct – Pacific Ale – groundless threats
[...] [Read More](#) »

“You shall not pass” – summary judgment for Tolkien copyright infringement. And in other news...

November 28, 2016 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Copyright – infringement of the Lord of the Rings “One Ring Inscription” – summary judgment
[...] [Read More](#) »

Mud thrown, but threats not justified

November 28, 2016 · by The Hon Peter C Heerey AM QC, Tom Cordiner SC and Alan Nash

Patents – damages for unjustified threats – person aggrieved – calculation of damages
[...] [Read More](#) »

Public Law

Chosen by the people: High Court dismisses challenge to suspension period of Electoral Roll

November 22, 2016 · by Roshan Chaile

In *Murphy v Electoral Commissioner* [2016] HCA 36, the High Court dismissed the plaintiffs’ challenge to provisions of the *Commonwealth Electoral Act 1918* (Cth) (the Act) which prohibit certain amendments to the Electoral Rolls beyond the legislated time for [...] [Read More](#) »

When the content of procedural fairness can be reduced to ‘nothingness’

November 24, 2016 · by Sarah Zeleznikow

The Court of Appeal has found that a failure to disclose the “substance” or “gist” of confidential information relied upon when making an exclusion order under the *Racing Act 1958* (Vic) will not necessarily constitute a breach of procedural fairness [...] [Read More](#) »

Uncategorised

Defamation update: Are hurt feelings a trivial matter?

November 23, 2016 · by Sally Whiteman

To what extent are a defamation plaintiff’s hurt feelings relevant to the defence of triviality? On 20 October 2016, the majority of the Queensland Court of Appeal in *Smith v Lucht* [2016] QCA 267 definitively answered this question: the plaintiff’s [...] [Read More](#) »



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