

Editors' Note

And just like that, we're here. The final edition of the *Communications Law Bulletin* for 2018.

It's been a game-changing year in our areas of law, and we have labelled this edition a special "disruptor" edition. In keeping with that theme, we have spoken with and received contributions from some of our best and brightest - and most disruptive - young lawyers. CAMLA President, **Martyn Taylor** interviews CAMLA Young Lawyers Chair **Katherine Sessions** about #younglawyerperspectivesaboutthelegalprofession. **Immy Yates** interviews young barrister **Maddie Hall** about her experience recently moving to the media bar. **Erika Ly**, President of The Legal Frontier NSW, comments on how disruptive technologies are likely to change the profession. And we catch-up with an old friend, former Young Lawyers Chair **Sophie Ciuffo**, in-house at Viacom NYC, about young lawyers travelling abroad early in their careers.

We publish **Anna Belgiorno-Nettis's** article which won the CAMLA Young Lawyer essay competition, in which she asks whether the *Broadcasting Reform Act* gives up on democracy. Minters' **Karla Nader** discusses EU antitrust actions against **Google** and **Amazon**, and her colleague **Kosta Hountalas** comments on the EU Directive for Copyright in the Digital Single Market. Our friends at Corrs, **Richard Leder** and **Sanjay Schrapel** write about the right to privacy in light of **Sir Cliff Richard's** claim against the **BBC**, as well as litigating **defamation claims in the Federal Court**. We have a piece from former CLB-editor **Valeska Bloch** and her colleagues at Allens about the right to hack back. **Kate Simpson** considers international non-compete clauses within employment contracts, and Ashurst's **Julie Cheeseman** reports on the **Wagner** judgment.

Just since the last edition, so much has happened in this space. **Geoffrey Rush's** defamation claim against **The Daily Telegraph's** publisher, Nationwide News was heard in Sydney's Federal Court. **Rebel Wilson's** application for special leave to appeal the 90% reduction in her award of damages was rejected, meaning that the Court of Appeal's decision that forced the actress to repay \$4.1 million worth of damages is upheld. And **Chris Gayle** was awarded \$300,000 in defamation damages. This all, as NSW Attorney-General Mark Speakman releases the terms of reference to guide the national **defamation reform** process.

The ACCC and then **Fairfax's** shareholders approved the **Nine** merger, meaning the end of the publisher's 177-year-old history

as an independent entity. It is expected that the new company, called Nine, will begin operations on 10 December 2018.

Meanwhile in the USA, the **White House** revoked press credentials for **CNN's Jim Acosta** after a tense exchange at a news conference, causing CNN to seek emergency restraining orders, effectively reinstating the correspondent's access. **Fox News, NBC, The New York Times, The Washington Post**, and the **Associated Press** filed an amicus brief in support of CNN. The Judge ruled in support of CNN, temporarily restoring access, with further hearings to continue.

SCOTUS discussed the issue of cy pres awards in an internet privacy case involving **Google**. Essentially, class action lawsuits that would involve negligible awards for each member of the class sometimes direct the not-negligible total award to third parties that act in the class's interests, for example a charity. In this case, the \$8.5 million settlement was proposed to be directed in large part to organisations that promote internet privacy, rather than to millions of Google users whom the plaintiffs were to have represented in the class action.

Speaking of class actions, **Maurice Blackburn** is launching a case against **Uber** on behalf of more than a thousand taxi and hire car drivers, operators and licence holders, in the Victorian Supreme Court.

Britain referred **Facebook** to Ireland's **Data Protection Commission**, regarding Facebook's targeting functions and techniques that are used to monitor individuals' browsing habits, interactions and behaviour across the internet and different devices.

Data privacy in Australia has recently focused on the controversial online medical records system. Australians had until 15 November 2018 to opt out of the **My Health Record** system, but the opt-out period was extended until 31 January 2019, following several issues on the website. And then there's the **encryption laws**.

With all that happening in the background, it's perhaps no surprise that we've been busy here at CAMLA. We had our **AGM** on 27 November 2018 at Baker McKenzie, and we're open for entries for the 2019 **CAMLA Essay Competition** (details inside). Enjoy your summer, and we look forward to seeing you in 2019!

Victoria and Eli

Federal Court jurisdiction to hear defamation claims

Section 19 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) establishes when the Federal Court is vested with original jurisdiction to hear a matter. It is a superior court of record and a court of law and equity,³ and by virtue of Section 39B of the *Judiciary Act 1903*

(Cth), the Federal Court is seen as a court of general jurisdiction in civil matters.⁴

The decision in *Crosby* confirmed that the Federal Court has jurisdiction in 'pure' defamation matters. In a paper, delivered in 2006, Justice Rares flagged that the Federal Court has jurisdiction to hear any pure defamation matter in circumstances where:

- the publication involves, and the defence raises, the implied constitutional freedom of communication on government and political matter; or
- there is an interstate (or international) publication, (there is an argument that s 11(5) of the Uniform Acts engages s 118 of the Constitution, such as

³ Section 5(2), *Federal Court of Australia Act 1976* (Cth).

⁴ Justice Steven Rares, 'Defamation and the Uniform Code' (Speech at the Media Law Conference, Marriott Hotel Sydney, 26 October 2006).