

LAW BRIEFING

Winter 2001

Carter Capner Lawyers



CARTER
CAPNER
LAWYERS

BRISBANE
Lvl 18/141 Queen St
(Cnr Albert St)
Brisbane

*SOUTHPORT
Lvl 9 Seabank Building
12 Marine Parade
Southport

*SUNSHINE COAST
Lvl 1-6 Ocean Street
Maroochydore

PHONE: (07) 3210 3444
FAX: (07) 3221 6058
INJURY HOTLINE:
1800 077 310

WEB:
www.cartercapner.com.au

EMAIL:
mailbox@cartercapner.com.au

* By appointment

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WORKCOVER PROFITS AT WORKERS' EXPENSE

We all like to think that we are equal before the law, but are we? Not in Queensland. Say you visit your neighbour at his workplace and while you're talking a load of steel falls on each of you, what will happen?

Well, you will be able to get full Common Law damages determined by an independent judge in court, but your neighbour has third-class rights because he is an employee governed by the WorkCover Act.

This wasn't always the case. Before the 1996 Kennedy Committee of Inquiry we all had access to common-law remedies – at work and everywhere else. Following Kennedy's recommendations, the government changed the WorkCover laws to make it harder to claim compensation.

Carter Capner has been fighting to right this wrong, not in the courts but by lobbying the government. Their most recent success was achieved from the advertisement featured on page 2.

Senior Partner Peter Carter says there was no doubt that five years ago the worker's compensation system needed to be fixed.

"The scheme was on the verge of bankruptcy and was being severely mismanaged," he says, "But, as so often happens, the government picked on the politically weakest party – the workers – rather than their own bureaucrats or employers when they needed money to fix the problem."



Carter says management needed to be tightened up and premiums increased until the scheme had enough assets to cover its liabilities. Instead, the government decreased its expenses by taking away the right to common-law remedies.

"Imagine your car insurer saying: 'Well, we made a loss last year, so until we recover it we are only paying out two-thirds the value of any car accidents'. The authorities would be down on them immediately. But in this case the government was the insurer and they took the easy way out."

As a result of representations made by Peter Carter, Ian Brown and others, the government has promised to roll back some of the

■ CONTINUED ON PAGE 2

CENSORED

The QLD Government mandates
against public discussion of
personal injury compensation

Censored? What's this...

COMMON LAW IS REALLY JUST COMMON SENSE

“Common” can mean many things – ordinary, familiar, frequent, or even inferior – but it has a special meaning when it appears in the phrase “common law”. Before parliaments and written laws, judges had to decide cases brought before them on the basis of the expectations and standards that citizens held in common. Common law has developed as community expectations have developed. One of those developments is the branch of law called *torts* - the basis of personal injury actions.

If you are injured negligently, then you will have an action against the person who injures you. But what is negligence? Negligence rests on the “neighbour principle” which was established in the case of *Donoghue v Stephenson* where Mrs Donoghue bought a bottle of ginger beer with a snail in it and got sick. The judge decided that Mr Stephenson who manufactured the drink must take reasonable care not to do something which a reasonable person could see would injure their neighbour.

Who is your neighbour? According to the learned judge it is “persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

So, you need to be careful that you don’t do things that you should be able to foresee might hurt someone else. And they have to be careful too. Most Australians would see this as just “common sense”.

The tort system not only compensates people who are injured; it deters people from doing things which might cause injury. The fear of being sued makes them take extra care. Remove the tort system and a lot more people would be hurt and maimed in unsafe workplaces, shopping centres and hotels by unsafe products or practices.

The common law has been so useful and successful over so many years you would think that governments would leave it alone. Not so. In recent years our state governments have been persuaded by business to restrict or eliminate many of the fundamental common law rights of Queenslanders at work. This has been done, for example, to keep employers’ insurance premiums low. It means that workers’ rights to fair compensation are severely restricted and reckless workplaces escape being “punished” by a claim for damages.

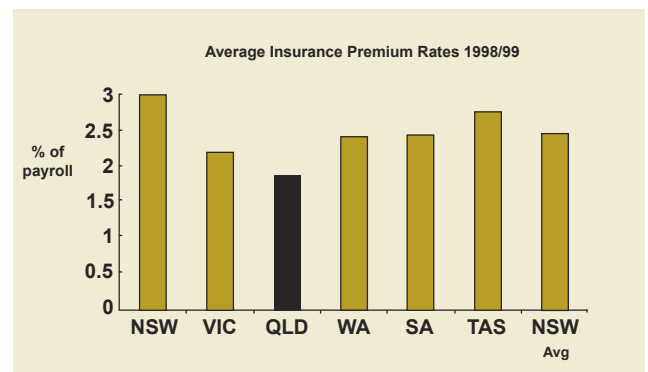
If trends continue common law remedies will be far less available in the future. Carter Capner are fighting these trends by lobbying government and parliamentarians to keep the tort system and defend people’s rights. Common law is part of our way of life. It needs to be preserved for future generations. ■

“THE GOVERNMENT WAS THE INSURER AND THEY TOOK THE EASY WAY OUT”

■ CONTINUED FROM PAGE 1

legislation. Paperwork is a nightmare and some injured workers are missing out on what common-law rights the government has left them because the procedures are too complicated. The Carter Capner newspaper advertisement helped the Minister appreciate the complexities of the system.

According to Peter Carter, much more needs to be done. The maths prove that the government could afford to reinstate access to common-law remedies in workplace injury cases. Yet, despite the government promising to make the change at the past two elections, many barriers to workers’ rights remain.



“WorkCover Queensland made a \$219 million profit last year on net assets of \$500 million,” he argues. “That is a 44% return on capital which is quite outrageous. Who can find an investment anywhere that pays back half of their investment each year?”

Carter says the fund has the lowest premium rate for any state in the Commonwealth.

“It is making its profits by denying Queensland workers rights that Queenslanders not at work and workers in most other states enjoy. What particularly irks me is that at the same time as they are squeezing the genuinely needy they actually boast about lowering the premiums that businesses have to pay. It’s important to me as a plaintiff lawyer not just to win in court, but to make sure that the law is fair to my clients. We won’t be resting until the Government gets its legislation right.” ■

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The QLD Government mandates against public discussion of personal injury compensation

Censored? What’s this...

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EXPERT'S CORNER

With Geoffrey Gunn and Co, Chartered Accountants

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Carter Capner happenings

Ian Brown

Carter Capner Partner Ian Brown recently completed his second year as Queensland president of APLA.

He remains a member of its National Council. He is also a member of the Motor Accident Compensation Advisory Committee, which provides advice to Queensland government on the effective operation of the Qld CTP scheme.

Through that committee, Ian is responsible for resisting many changes which would have seen even worse restrictions on damages than those implemented last October.



Harry Dignan

Harry Dignan has been promoted to Senior Associate. Harry is a major figure in Queensland workplace, motor accident and liability litigation. He also recently assumed the role of in-house director of continuing legal education and training.



Kym Greinke

Kym Greinke's new baby, Zoe, arrived on 1 March. Mother and child are both doing well. Kym remains as a consultant to Carter Capner. We are sure that all her clients wish Kym and daughter all the very best.

Staff Profiles

Chris Gillott

Chris was brought up in Melbourne and completed his schooling in Rockhampton. He studied law at the University of Queensland and undertook articles in Rockhampton.

He was admitted as a lawyer in 1997 and has practised almost exclusively as a personal injuries lawyer since.

Chris is a workplace and motor accident specialist. He is particularly interested in worker's rights and ensuring fair compensation for workplace injuries.

His personal interests include martial arts (holder of 4 black belts in styles as diverse as Zen do Kai, Muay Thai, Arnis/Escrima/Kali and Shoot wrestling), playing guitar, computers, motorbikes, target shooting, fishing, sailing, diving, and travel.



Melanie Busato

Litigation assistant Melanie started at Carter Capner in February 2001 and is in the fifth year of a Bachelor of Arts/Bachelor of Laws course at Queensland University of Technology.

She has helped fight to preserve our flora and fauna now and in the future through the Environmental Defenders' Office.

A big fan of outdoor activities, she grew up in the Northern Territory and enjoys camping, hiking and day trips.



RECENT CASES

(For privacy reasons, names are fictitious.)

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Censored? What's this...

New law bans tow truck and hospital touting

Tow truck operators and hospital personnel can no longer be paid to refer business to lawyers under legislation introduced into Queensland Parliament early last year.

Sophisticated arrangements to channel accident victims to law firms who paid commissions or kick backs to referrers have been controversial for the past 12 months.

Carter Capner motor vehicle injury specialist Ian Brown said accident victims were falling prey to unscrupulous operators when they were most vulnerable.

"It is dangerous to accept a referral from these

situations" Mr Brown said. "Often the law firms involved were not injury specialists but the referral implied they were."

"There is no substitute for genuine endorsements of the experience, reputation and professional expertise of the lawyer a person chooses to represent them in serious injury claims."

Queensland Health has just completed an investigation into this practice at all Queensland public hospitals. While there have been no prosecutions at this stage, new procedures have been introduced to prevent cosy arrangements and kick backs.

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Censored? What's this...

CARTER CAPNER IS QUEENSLAND'S LEADING SERIOUS INJURY LAW FIRM

Look at these milestones:

- Established 1944
- Longest established firm to specialise in personal injury
- Longest established firm to offer "no win no fee"
- One of the highest ratios of accredited specialists of any firm
- Forty-eight years combined experience among all lawyers
- Consistently recognised by peers for excellence
- Actively campaigning against government restrictions on compensation recovery rights



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