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Leading the way in injury compensation

CC Opens Door to the Law

Carter Capner took to the stage in May as one of the centrepieces for Queensland Law Society's Law Week 2003 – Your Door to the Law.

THE QLS asked Carter Capner to carry on the traditional law week Queen St Mall event. With the help of the Downtown Brisbane events team, our lawyers enthusiastically designed a legal advice clinic for the lower stage area.

City shoppers and others who planned visits to the mall just for the event, were given no-cost legal help in personal injury, family law, real estate, commercial law, wills and estate planning in advice booths set up in the mall.

Radio station B105 personality, Peter Buckley was the clinic MC.

Law Week is a national event and according to



Hayley Woodgate and Lisa Hulcombe ready to greet legal advice clinic clients in Queen Street Mall

senior partner Peter Carter, "The *Your Door to the Law* theme was an invitation to the public to take some ownership of the law."

"Laws are made by parliament theoretically for the benefit of citizens," Carter explained. "The public must feel that they are part of the law making process and that legal remedies are understandable and are accessible to them."

"Lawyers have an obvious role to play in helping citizens re-claim ownership of law making and the legal process and Law Week is an excellent opportunity for law firms to front-foot this challenge."

In the words of Downtown Brisbane events director, Patricia Cuppaige, "many of the 10,000 people who passed through the mall during the Law Week advice clinic now have a better understanding of the positive role lawyers can play. The clinic was a huge success – a big help in humanising the justice system." ■

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The QLD Government mandates against public discussion of personal injury compensation

Censored? What's this...

Consumer-bashing frenzy gains pace

THIS YEAR has seen the second wave of permanent changes to injury compensation laws for the benefit of temporary conditions in the insurance market. The changes deliver a stunning victory to insurers in their campaign to reduce claims by up to 80% but still be allowed to gouge huge premiums from policy holders.



Following on the *Personal Injuries Proceedings Act 2002* that came into force in July 2002, the *Civil Liability Act 2003* was passed by the Queensland Parliament on 3 April. It relates to all injuries (except those under WorkCover) that occur from 2 Dec 2002.

(continued) p.6

Inside

Scammed investors' hopes up	2
Property deductions disallowed	2
Court reverses dumb law	2
Shouder injuries are a pain	3
HIH Report damning	3
Carter Capner Happenings	4
Recent Cases	5
Anti-consumer frenzy	6
How good is your will?	6

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Investment property deductions disallowed by ATO

Clients who own investment properties should seek advice from their accountants about the amount of depreciation they can claim or have already claimed on their investment property following a recent Small Taxation Claims Tribunal decision.

THE Tribunal found that the owner of an investment property had over claimed depreciation on a number of items. This was despite relying upon a quantity surveyor's depreciation report of the type that are often provided by developers to investors in new properties.

The effect of the disallowance means that investment property owners may be required to amend their Income Tax Returns and repay money to the ATO. It is also understood that following this decision the ATO has decided to conduct random audits



of investment property owning taxpayers.

If you are considering purchasing an investment property, ask your accountant to confirm the amount of depreciation allowable, and of course seek an independent valuation. ■

*This comment was provided by
Geoffrey Gunn & Co, Chartered
Accountants*

WorkCover Rules

WorkCover Queensland raised \$546 million (up 31%) in premium revenue last year. Its net assets now stand at \$2.163 billion.

AS with all insurers, its investment income plummeted by nearly \$200 million as a result of "a poor investment climate".

One of the most notable features in the WorkCover Annual Report was the paltry sum paid – 0.6% of the total cost of claims – to reimburse injury victims for their legal costs.

This shows the bite of anti-employee laws made in 1996 which reversed the long-standing rule that employers and their insurers should pay a portion of the legal costs of persons disabled as a result of safety breaches. Despite being urged by pro-consumer groups, the Beattie government has refused to reverse these laws.

WorkCover continues to denigrate injured workers through their one sided, heavy-handed approach to claims handling. This can also be seen in the annual report where some types of serious injury are trivialised eg disabling back injuries are still classed as a "strain/sprain". ■

Court reverses pretty dumb law

THE High Court of Australia has reversed a long standing rule that reduced compensation paid to widows of negligence victims if they were considered pretty enough to remarry.

The court awarded Teresa de Sales (39 yrs) additional damages to cover the 25 percent reduction applied when she won her case for the 1990 drowning death of her accountant husband Frank.

Judging that times had changed, the High Court justices ruled by a narrow majority of 4-3 that a discount to widows' compensation according to their perceived prospects for remarriage was outdated and no longer part of Australian law.

"There is no sound basis for assuming that factors such as appearance, education or job prospects will affect a person's chance of financially beneficial re-marriage in a predictable manner," said Chief Justice Murray Gleeson. "Concepts of marriageability can be dangerously misleading."

The Court said however, that if there was evidence that a new relationship had in fact been formed, then whether or not this has financial advantages or disadvantages should be considered. De Sales has not remarried and is raising two children as a single mother. ■



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HIH Lesson: Citizen reps needed on APRA board

The report into the \$5.3 billion collapse of HIH published in April contains close to 1000 adverse findings against those involved.

INSURANCE and financial industry regulators, the Australian Prudential Regulation Authority (APRA) and the Australian Securities Investment Commission (ASIC), were criticised for failing in their duty to the public. The Commission heard that APRA ignored warnings of HIH's imminent downfall while ASIC denied any responsibility for the insurer's failings.

Referring to the widespread insurance practices of arbitrary claims denial and stonewalling, partner Ian Brown said, "The enquiry demonstrates the callous nature of the industry."

As for the failures of the watchdogs Brown said, "This disaster must never be repeated. There is a strong case that APRA has been captured by the industry and that there must be direct consumer representation at board level." ■



CARTER CAPNER HAPPENINGS

CC IN THE COMMUNITY



Staff were eager to get involved in the boardroom wrapping party

ALAWYER'S first duty is to the client. We also have a public duty.

Carter Capner takes this public duty seriously. Every year we provide support, funding and services to a number of worthwhile community groups and causes.

Last year our support went to charities such as the B105 Christmas Appeal, Farmhand Appeal and the Bali Victims

Appeal, with our major event being the gift giving at the Friends of Brain Injured Children Christmas Party. *Friends* subsidises the cost of therapy programs for parents whose children have suffered a tragic brain injury as a result of birth trauma, road accidents etc.

Every Carter Capner staff member purchased and wrapped a gift for each one of 36 children.

TIME TO SMILE!



MEET Belinda Van Elswyk our Administration Supervisor. Belinda co-ordinates the smooth flow of work in

our reception, word processing, document production and records sections. She oversees a staff of 6 and a throughput of up to 6,000 documents and correspondence items each week. Belinda also maintains our client database, conducts training and is in charge of consumable replenishment. And she still has time to smile!

CC SPONSORS AMPUTEE SUPPORT GROUP!

CARTER CAPNER has sponsored amputee Peter Qualischefski to fly to America to learn new technology. American amputees have a better quality of life due to the techniques and training to

which they have access. Peter will bring his new skills to Australia so that similar groups can learn from the extensive American knowledge and resource base. As several of our clients have lost limbs through serious accidents, the knowledge gained by Peter will be widely beneficial. Carter Capner supports providing a better quality of life for amputees throughout Queensland.

CC BOWLING BONANZA

THE pins at Milton Bowl were not prepared for the style and pizzazz of the Carter Capner all-star bowling team in March.

With our bowling arms pumped and our shoes polished, the teams of five sent the pins flying. Partner Ian Brown stunned the crowd with his top score of 158 while we all enjoyed the fun... and the catering!



Our pin pals in action at Milton Bowl

Congratulations!

HARRY DIGNAN has been appointed a partner. Harry was admitted as a lawyer in 1994 and started at Carter Capner as an associate after several years with other major personal injury firms. He was appointed a senior associate and team leader last year and has enormous experience in the increasingly complex personal injury field. He is an Accredited Personal Injury Specialist and a member of the APLA WorkCover liaison committee.



SECRETARYS' & ADMIN PERSONNEL DAY



The top-performing CC admin team out to lunch

A CHAMPAGNE lunch was just what the boss ordered in April for our hardworking admin staff who comprise the engine room at Carter Capner. The Jorge restaurant provided a contemporary setting to show our appreciation to this enthusiastic team. And our delightful receptionist Clare Parsons has been nominated for the title of Junior Secretary of the Year. We are anxiously awaiting announcement of the finalists!

OUT OF HOURS

CC lawyers have been at the forefront of battles over the last year to protect Queenslanders from even harsher laws that insurance, medical and business groups have been pushing for. **Ian Brown** helped lead the consumer position in negotiations with the Attorney General Department. **Harry Dignan** was involved with a review of the WorkCover Act. **Judy Teitzel** has made submissions to and held meetings with Fair Trading. **Peter Carter** helped coordinate the Insurance Reform Campaign.



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One of the changes exempts operators of dangerous recreational activities from responsibility for injuries caused by their reckless conduct even though they are in the best position to cheaply avoid the risks to patrons. Other provisions will have the effect of letting people who maim children, off the hook.



John Howard preserves the social fabric of big business.

“Never in our wildest imagination could we have thought politicians would have caved like they did,” says partner Harry Dignan. “We are particularly concerned about how the laws discriminate against young people.”

“People who are injured after consumption of

alcohol can be presumed in all cases to be substantially at fault for their own injuries. Hotels and clubs can line up the drinks for patrons and will have no responsibility for safety even in overcrowded and dodgy premises.”

Dignan is also concerned about public area injuries. “Rather than

encouraging local authorities to design and construct safe facilities and roads, the new law exempts them from accountability to the public except in a very few situations.”

The Trade Practices Amendment (Personal Injuries and Death) Act 2003 was introduced into

Federal Parliament on 27 March. This law strips away consumer protection laws that apply to injuries caused by reckless businesses that have been in force for a quarter century.

“Winding back these laws does nothing to encourage safety or reduce the annual cost of avoidable injuries which nationally is estimated at over \$15 billion,” argues Dignan.

The changes result from the insurance industry convincing governments that it is reasonable to shift the cost of recklessly caused injury from the law-breaker to the victim and taxpayer. That’s good for insurance companies but a disaster for everyone else. Our already struggling public hospital and welfare systems will be placed under enormous extra pressure.

Describing the changes as “regressive” ACCC chairman Professor Alan Fels said “Those campaigning to change the Trade Practices Act and to wind back other consumer rights ignore the basic premise that law reform should promote public welfare. It should not promote the interests of narrowly focused groups at the expense of ordinary people.”

The new laws also bring a new procedural regime that will triple the delay in getting to court and more than double costly documentation. According to Dignan, “the additional cost of compliance and rectification is estimated in the first year alone at over \$100 million to be borne by Queensland consumers.” ■

Bicycle Injuries Roll On

In recent years greater attention has been paid to the provision of bike lanes and shared use paths to increase cyclist safety.

Helmets – compulsory since the early '90s - have also improved safety. They are credited with the drop in the number of fatal accidents - from 80 to 100 a year to about 40 to 60. Australian Transport Safety Bureau research indicates that helmets have also reduced brain injuries by 60%.

Despite this, there are a growing number of bicycle injuries on Queensland roads with about 1500 cycling cases presenting to hospitals each year.

Most car accidents involving adult cyclists are caused by the motorist while, most of those involving child bikers are caused by the child probably due to young children’s lesser appreciation of road rules and conditions.

As a rule of thumb, most children of 4 or 5 years have the motor skills needed to mount and balance a bicycle. A child under 6 should not ride in the street, and depending on your locality, probably shouldn't venture far until about 9 or 10 years. ■



STATISTICS

- 60% of those injured were school age (5-14)
- Male female ratio was 2:1
- Fractures were most common injury (26%)
- Lower arm injuries were the most common site (30%) followed by head or face (22%)
- Around half of the injuries occurred on a roadway and 17% on a footpath or bikeway
- Most injuries occurred at the weekend and between 3pm and 6pm
- Only 7% involved a collision with a motor vehicle

How good is your will?

Like never before, all Australians need to ensure the best use of income, assets (and injury compensation payments) to create wealth for future needs and the proper tax-effective distribution of that wealth to our families.

SMALL business operators also need to minimise the chance that assets are attacked by disgruntled business associates or customers.

Tax effective strategies with complementary will arrangements and testamentary trusts can be used to ensure that wealth passes efficiently to the intended recipients and that the transfer takes place at the intended time. Structures can be employed to protect assets from family disputes, spendthrift beneficiaries and their creditors.

All clients should consider their current will and ask:

- are there different classes of beneficiaries eg a partner and children of different relationships?
- has the distribution of superannuation been specifically provided for?
- is there reason to quarantine the benefit of any beneficiary from the potential claim of a spouse or creditor?
- have the benefits to my children been maximised by tax effective means?
- can my current assets be better protected from external claims?
- am I taking advantage of available tax strategies to build additional wealth now?

For a consultation regarding estate planning and wealth creation, contact Peter Carter on 3210 3409. ■



This newsletter is distributed to clients of and suppliers to the firm or upon request. These are general observations on some aspects of the topics referred to. Changes to law and practice will occur from time to time. Readers should seek specific legal advice in each particular instance. For further copies, telephone (07) 3210 3444.

** Consultations by appointment