

### INSIDE

Rent reviews for retail shop leases ..... 2

Pool fencing - owners' & tenants' responsibility 2

Compensation for family members left out of a Will ..... 2

Client service across generations 3

Should we warn about sharks in Qld? ..... 4

Mortgage stress tips ..... 4

### Peter Carter buys back the farm

Peter Carter has bought out his law firm partners to become once again, the sole owner of Carter Capner Law. The deal was finalised in February.

"It's a great feeling to have the Carter Capner business back in family hands," says Peter of the change.

The Carter Capner Group was founded by Peter's father Ted as Richardson Carter & Co in 1944. From 1956 it was renamed Carter Capner & Co. The name Carter Capner Law was adopted in 2007.

"I made a decision to put my time into helping clients get results rather than doing all the admin work that a partnership requires," says Peter.

Peter wishes his former partners well. "It was great to work with such talented people," he says. "And it's very pleasing that the Carter Capner group has produced so many top quality lawyers over the last decade."

Carter Capner Law will continue to deliver cost-effective legal services to small business, individuals and families.

Carter believes that in the current economic environment, clients will be looking closely at the benefits their lawyer offers.

"Clients are looking for more value in professional services. Our own LawSpace portal provides valuable extra client benefits at no additional cost," he says.

## Legal win for air travellers

The mid-air incident involving Qantas flight 72 from Singapore in October highlighted the urgent need to update Australia's international passenger compensation regime.

About 70 Perth-bound passengers were injured, 20 of them seriously, when the aircraft abruptly pitched nose-down and rapidly descended 650 ft. After returning to the assigned altitude of 37,000 ft a second pitch-down episode of about 400 ft occurred.

Carter Capner Law has been campaigning for over 5 years to get the Federal Government to ratify a 1999 international convention that raises passenger compensation limits that were last set 2 years ago.



In June, the federal government passed enabling legislation and Australian international passengers have finally got the benefit of the changes from 24 January 2009.

Senator Nick Xenophon supported our call with a motion proposed in the Senate.

We are now campaigning to gain the same benefits for Australian domestic air passengers. We are urging state and federal governments to adopt the compensation levels in the Montréal Convention for domestic Australian air travel.

**What do you think? Tell your MP via our website [www.cartercapner.com.au/advocacy/](http://www.cartercapner.com.au/advocacy/)**

## Efficient, immediate & transparent: Stay connected thru LawSpace

After a year in development, Carter Capner Law will soon officially launch its revolutionary online members-only portal - LawSpace.

LawSpace delivers password protected live data and documents relating to client transactions and litigation.

If you are a private client you can enjoy these immediate benefits:

- monitor and track your case or matter progress online 24/7;
- other members involved in the transaction (e.g. real estate agent, barrister) can, with

your consent, have access to the same online data - which means less delay and no confusion;

- your transaction file is online and continuously accessible;
- convenient permanent online access to your Will, Trust deeds etc.

"It's terrific value-add for clients," said development team leader Chris Kilpatrick. "It's something that very few other law firms can offer."

LawSpace is already operating for conveyancing. It will be launched for all other practice areas in April.



# Legal

## Rent reviews for retail shop leases

When the Retail Shop Leases Act ("RSLA") was recently amended, combination and capped rent review provisions that were in common use but of questionable legitimacy, gained validity.

### Combination reviews

The RSLA now specifies that a combination of 2 or more of CPI, fixed percentage and fixed sum increases are valid if they are combined to form a "single basis of review". For example, a rent review provision that provides for "CPI plus 5%" is valid. Likewise a provision that rent for year 3 is "\$150,000 per annum plus the annual CPI increase" is legitimate.



Warren Wood

A review combination including market rent is also valid, for example "market rent plus CPI".

The combination methods must be a "single basis of review" and cannot be multiple methods from which the landlord or anyone else may choose.

### Fixed percentage increases

Fixed percentage reviews must be of the "base rent".

Clearly a provision that says "rent in year 2 will be 105% of the first year's rent" is safe because the initial rent is always specified in a dollar amount in the lease. But what about "rent in year 3 is 105% of the rent in year 2"? This provision is open to question if, as in most leases, the year 2 rent is not actually specified in a dollar amount.

### Rent escalation caps

"CPI or 5%, whichever is the lesser" is now clarified under the RSLA to be legitimate but a provision "CPI or 5%, whichever is greater" remains an invalid rent review provision in a retail lease.

**For all leasing enquiries call Peter Carter or Warren Wood on 1300 LAW LAW (1300 529 529).**

## Compensation for family members left out of a Will

Generally a person may leave their estate to any person or charities they choose but if their close family or dependants will suffer hardship as a result of being overlooked or inadequately provided for, court action may be taken so that family members or dependants receive a benefit.

Intending applicants must give the personal representatives or executors written notice of their intent of application within 6 months of the date of the deceased's death. Applicants must then commence legal action within 9 months of the date of death although the court has power to grant an extension of time in some cases.

Any family member can bring an application but the likelihood of success depends on what would be fair and proper in all the circumstances including the net value of the estate, the applicant's personal position and needs, the personal position and needs of other children and dependants and the conduct of all parties.



Peter Carter

**Carter Capner Law conducts estate claims throughout Australia. For enquiries, call Peter Carter on 1300 LAW LAW (1300 529 529).**

## Pool fencing - owners' & tenants' responsibility



Under the Queensland pool fencing laws owners must ensure that a compliant fence is in place and maintained.

Different technical regulations as to standards, height and position apply depending on when a pool was built.

If a pool building application was lodged on or after 1 October 2003, the owner must ensure a cardiopulmonary resuscitation (CPR) sign is displayed at the pool.

Tenants who rent a home with a pool are legally responsible for ensuring that the gate is not kept open and that there are no objects that would allow children access to the pool.

If a tenant buys a portable pool that requires pool fencing around it, the owner must ensure the pool has a fence around it.

If a substantial portion of a pool fence is demolished or removed, it must be replaced with a new fence. The new fence must comply

with the current pool fencing standards, not the standard that applied at the time the original fence was built.

If only a small part of the existing fence has fallen into a state of disrepair, it may be repaired to the same standard that applies to the existing fence.

## Wills on-line

Clients can now view their Wills, Powers of Attorney and other important documents on-line through LawSpace.

We hold more than 2,000 items in our safe custody facility some dating back as far as 1940.

On-line access to documents is password protected. All clients and former clients are eligible to free LawSpace membership and can register online.

Do you have any items like a Will in our safe custody? Click on "email safe custody" to send your query or call Jasmy Carr on 1300 LAW LAW (1300 529 529). We will need to ask you security questions to verify your identity.

After registering for LawSpace you can view and print the documents on-line 365/24/7.

You can also request updates to Wills, Powers of Attorney and other arrangements by email.

Call to let us know if any item we are holding is no longer current or if a family member has died. Providing us with this information ensures that our safe custody documents are up to date.

**Need a new Will or need one updated? Need an enduring Power of Attorney? Email mailbox@cartercapner.com.au or call Warren Wood now on 1300 LAW LAW (1300 529 529).**

# ease

## Carter Capner Law Happenings

The CCL team let their hair down at a recent holiday function. Great to see everyone enjoying themselves!

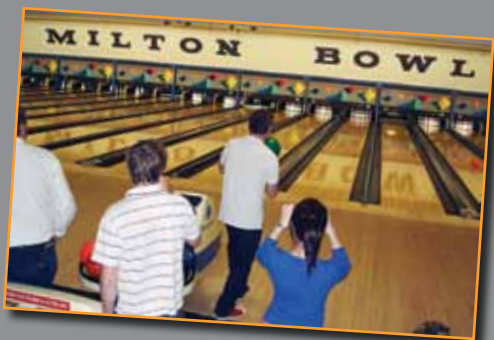


### On the air

Thanks to all who have provided feedback on our Shane Webcke TV ad. Reaction to the ad and our association with Shane has been overwhelmingly positive!

If you haven't seen the ad, it can be viewed on YouTube.

Some of you may also have heard managing partner Peter Carter on Brisbane or regional radio endorsing Yellow Directories. Let us know what you think of the ads!



### Style with the pins

With their technical prowess, Joseph, Raelene, John, Jo and Owen rocked into first place with a team score of 1098 pins across two games in our recent social club bowling night. While the other teams lagged behind in pins they made up for it in fun!

## Client service across generations

A few months after my family migrated to Brisbane from the U.K. in 1951, my parents purchased a house lot in Enoggera and consulted Ted Carter for the conveyancing.

Once a week at lunchtime I walked across Queen St from where I worked on the Brisbane "Telegraph", to Ted's modest law offices in what used to be the Old Town Hall Arcade, to make weekly payments of about £1, towards the house purchase legal costs - my first contact with the Carter law firm.

My parents were extremely grateful for Ted's generosity and that of others including Mr Diamond of Diamond's Furniture at Newmarket. Their kindnesses helped us survive those hard early days of migration.

Over the years my parents upgraded their lifestyle as their financial situation improved and they bought and sold other houses using Carter Capner.

After I married in 1965, I never thought of using anyone else. In the 43 years since then Carter Capner has conducted a lot more business for my husband and I - nine property purchases, eight sales plus a variety of other matters, some mundane and some unusual.

I recall the time we discovered, after signing a contract for acreage, that the "neighbours" had mistakenly built their house on our



land. We went through with the purchase but there were plenty of legal tangles for Carter Capner to unravel with the neighbour and their mortgagee, the National Bank.

On another occasion Ted surprised us when he turned up at our business in Surfers Paradise - he was "down for the weekend" - to collect a large overdue customer account for us. Armed with the details, Ted marched over to the debtor's opulent office and returned an hour or so later with a cheque to us for payment in full!

Most memorable, for all the wrong reasons though, was a lawsuit Peter Carter and barrister Michael White took for us to the Supreme Court against our house builder. The case lasted 3½ anxious years (and a large space in the Carter Capner filing system). In a great triumph for Peter and for us, we recovered the full costs of construction and demolition, interest and legals.

We couldn't possibly thank the Carter Capner team enough for all their care and attention over the years. The continuity between our family and the firm has meant a lot to us and still does.

Where did all those years go? - Jude H. (Satisfied Carter Capner Group client for 56 years)



Queen Street, Brisbane circa 1960

### Your personal on-line document repository — Permanent on-line access 24/7!

Have you ever had to spend hours calling your lawyer, or accountant to locate important documents?

Our clients now have FREE password-protected access to their documents via LawSpace.

Send us your leases, trust

deeds, company constitutions, contracts etc so they can be included in your on-line view.

Gone are the days of "Where the heck is our signed copy of that lease!"

**E-mail or call Peter Carter on 1300 LAW LAW (1300 529 529) to arrange.**





## REFER A FRIEND

IT'S SIMPLE... just refer any friend or colleague and if they sign on for a major transaction with us...

WE WILL PAY YOU \$100 JUST TO SAY THANKS!!

And for smaller transactions, we will pay you \$50!

You can download and fax or email a referral details sheet, or complete the details online on our website. Or phone the details to 1300 LAW LAW (1300 529 529).

Conditions apply. See online .

## iPod Nano competition



Haven't logged on to LawSpace yet? Find your 6 character reference on the address label of this newsletter. Click on the LawSpace logo on our website homepage. Click on "Apply Now" and complete your details. We will email your password and you're set to go.

If you complete an online survey or testimonial, you will go in the draw to win one of five iPod Nanos! Competition ends 20 April 2009 - Good luck!

Email [lawspace@cartercapner.com.au](mailto:lawspace@cartercapner.com.au) or call the LawSpace Helpdesk on 1300 72 02 96 if you have any technical questions. .

## iPod winners

Thank you to the 466 people who submitted entries for our last iPod Shuffle draw by updating their contact details!

Congratulations to the following winners who each received an iPod Shuffle: *Allen Woodmass, Thomas Schenholzer, Dion Johnson, Wendy Korschenko and Peter Hall.*

Additional draw winners who each received a Teac DV200 DVD player were *Peter Janstrom and Linda Lazarus.* .

## Should we warn about sharks in Qld?

Three attacks in popular surfing areas on the Australian east coast in January 2009 and three more in Sydney in February have reignited the debate about warning signs for sharks.



North QLD beach warning

All victims survived but they follow 2008 shark fatalities in Western Australia (December) and Ballina (April).

Following two fatal attacks in Gold Coast canals and lakes in December 2002 and February 2003, Queensland authorities panned calls for shark warning signs.

Then in January 2006, Sarah Whiley died on North Stradbroke Island at a protected beach after

a shark attack.

All the Queensland attacks and those at Ballina, Sydney and Wollongong are believed to have been by bull sharks which are reported to be prevalent in turbid water and around river estuaries.

If bull sharks are known to populate certain areas, then should warning signs be erected at those locations? Scientists at Gold Coast's Sea World believe shark warning signs are sensible.

Authorities at other popular tourist destinations for example, Hawaii, erect shark warnings. Queensland councils already erect warning signs for crocodiles and stingers.



Warning on the Island of Maui in Hawaii

**What do you think? Send a letter to your local newspaper or your MP through the advocacy section on our website: [www.cartercapner.com.au/advocacy/](http://www.cartercapner.com.au/advocacy/) .**

## Mortgage stress tips

- Contact your lender before you miss a payment, to work out a repayment schedule. Banks must follow a code that requires them to be understanding of borrowers' circumstances in a default situation.
- If the only option is to sell, it is better to control the sale yourself by appointing your own real estate agent. Statistics suggest mortgagee-in-possession sales yield prices 15% - 20% lower than voluntary sales.
- Superannuation can, with the approval of APRA (Australian Prudential Regulation Authority), be released in financial emergencies. This includes a pending mortgagee in possession sale of a principal

place of residence in circumstances of severe financial hardship.

- Income protection insurance will provide income replacement in the event of illness. Check your policy and contact the insurer if you think you qualify.

Statistics show only a small percentage of people who fall behind in their mortgage payments have their homes repossessed. Most recover with the assistance of their lender.

**For further information on early release of superannuation, contact your fund or APRA on 1300 131 060. .**

- conveyancing & leasing
  - business contracts & disputes
  - wills & estates
  - compensation
  - aviation
- [www.cartercapner.com.au](http://www.cartercapner.com.au)



**HEAD OFFICE:**  
Level 18 - 141 Queen Street Mall  
Brisbane QLD 4000

**POSTAL ADDRESS:**  
GPO Box 1860, Brisbane QLD 4001

**TELEPHONE:**  
1300 LAW LAW (1300 529 529)

**FACSIMILE:**  
(07) 3221 6058

**EMAIL:**  
[mailbox@cartercapner.com.au](mailto:mailbox@cartercapner.com.au)

**DOCUMENT EXCHANGE:**  
DX151 Brisbane

# Legal



*Rachell Flores*

## **CENSORED**

The QLD Government mandates  
against public discussion of  
personal injury compensation

Censored? What's this...



## CENSORED

The QLD Government mandates against public discussion of personal injury compensation



Joseph Wheeler

## CENSORED

The QLD Government mandates against public discussion of personal injury compensation

## CENSORED

The QLD Government mandates against public discussion of personal injury compensation



Censored? What's this...

*continued overleaf*