

Welcome to another compelling instalment of Northern Focus.

1 April, 2009 represented a significant milestone for Mackey Wales Law on a multitude of levels. It marked the 30<sup>th</sup> anniversary of Peter Mackey's admission as a lawyer and the 25<sup>th</sup> birthday for the firm he established back in 1984.

It also signalled exactly 2 years since Patrick Sutton and I joined Peter as equal partners of the present day firm. Those two years have been the most challenging of our careers but also by far the most enjoyable and rewarding.

Thanks to all of you for your ongoing support and of course thanks to the Mackey Wales Law team, who continue to make raving fans out of our clients, both new and long standing. We look forward to more of the same in our next 25 years.

As always, we love hearing from you, so if you have any feedback, please don't hesitate to **contact us**.

**Ross Greatrex**

## HORROR STORY – DE FACTO RELATIONSHIPS

How much do you really love your son's new live-in girlfriend or, for that matter your pride and joy's new tattooed love interest? Enough that you think it's fair that they walk away with half a million dollars in the event of your beloved son's or daughter's untimely demise....leaving you to pay the funeral expenses? Read More....



*Look what the cat dragged in...*

Consider this scenario:-

- Carl, 21 is in a volatile relationship with Roberta. They have been living together for about 2 years when Carl tragically and suddenly dies in a car accident.
- In the months leading up to Carl's death, he tells his family about his intentions to leave the violent and manipulative Roberta. Carl even opened bank accounts in his own name in preparation for his departure. Carl had told his family how he was going to be free and was looking forward to a fresh start.
- Carl loved his mother Barbara very much and always said that if he died he would look after her financially and use his super fund proceeds to cover all funeral costs as well as give her the life she always deserved.
- Carl finally worked up the courage to tell Roberta the relationship was over. Shortly after, Carl left in a state and was involved in the car accident which claimed his life.
- Carl did not have a Will. According to Succession laws, Carl and Roberta were considered to be in a 'de facto' relationship. Roberta denied that she and Carl had broken up before his death.
- Under the rules of intestacy, Roberta is entitled to the whole of Carl's estate, which wasn't much in the way of assets.
- Carl's superannuation fund trustee also used its discretion to pay the whole of the death benefit to his de facto spouse.
- Roberta refused to reimburse Barbara for Carl's funeral expenses as the death benefit did not fall within the estate. Roberta lived it up for the next 5 years until the money dried up. Barbara spent exactly the same period of time paying for Carl's funeral.

The end result from these events clearly did not reflect Carl's wishes. There are a number of ways Carl could have avoided this situation and given effect to his intentions. Firstly, Carl could have completed a Binding Death Benefit Nomination with his super fund nominating his estate as the beneficiary. The \$500,000.00 would have then been paid directly to his estate.

Secondly, if Carl had made a Will, documenting his intention to leave either all or at least a percentage of his estate to his mother, his wishes could have been carried out. Carl's funeral costs would have been paid before any distribution was made to beneficiaries of the estate.

The simple lesson to be learned here is that it's never too early to make a Will or consider your estate planning requirements. A simple live-in relationship with a little time under its belt can lead to serious adverse and unexpected consequences for the family in the event of death of loved ones.

There is no better time than now to make sure you and your adult children visit Mackey Wales Law for their Wills and other estate planning requirements.

## **FINALLY, TAX SAVINGS FOR LANDLORDS**

If anticipated changes to the Land Tax Act (Qld) are implemented shortly, as expected, Queensland's commercial landlords will, for the first time in history be entitled to pass on the burden of land tax to their tenants. Read more.....

Land tax is imposed by the State Government on the unimproved value of all land owned by each person or company as at midnight on each 30 June. Whilst most mums and dads are largely immune from the effects of land tax because a person's principal place of residence is exempt, residential and commercial property investors are often the people most seriously affected.

Landlords have always been prohibited from passing on the cost of land tax to commercial tenants but the Land Tax and Taxation Administration Amendment Bill (Qld) (that's quite a mouthful isn't it...) aims to remove the prohibition for leases pertaining to industrial premises, commercial offices and certain retail premises not falling within the jurisdiction of the Retail Shop Leases Act.

It is important to note that residential leases will not be affected by the proposed changes.

If these amendments are enacted, they will take effect from 30 June this year. Existing leases and options exercised under a pre-existing lease will not be subject to the new laws.

Clients negotiating leases in the lead up to 30 June 2009 should consider their position in view of the proposed changes. What I mean here is that prospective landlords and tenants should consider whether it would be more advantageous to enter into a lease before or after the proposed changes take effect, depending on which side of the fence you sit.

Land tax is a great impediment to those who own commercial and residential properties in Queensland and these changes will represent a welcome relief for such owners, but commercial tenants will be the big losers.



Commercial tenants = biggest losers

## CERTIFICATES OF CLASSIFICATION

Recent changes to the Building Act 1975 will have a genuine impact on commercial property owners, requiring them to be more prudent in the management of their investments. Read more.....

Certificates of Classification must now be clearly displayed as near as possible to the building's main entrance.

Where Certificates are issued after 1 July 1997 but before 22 April 2008, owners have until **23 April 2009** to comply with the display requirement. Certificates relating to new buildings must be displayed immediately.

It is common for a Certificate to restrict the use of a building. Where this occurs, the owner must ensure that the restriction is complied with. This obligation extends to ensuring that the owner's tenant also complies with the Certificate. It is therefore important for commercial property owners to make certain their leases reflect the requirements or restrictions noted on the Certificate. It may even be the case that owners, or more likely property managers, of commercial buildings are now required to monitor a tenant's use of the building to ensure they comply with the Certificate.

It is important to note that owners are not bound by this obligation if they have a reasonable excuse. What constitutes a reasonable excuse will turn on the facts of each situation but we can't think of one. The maximum penalty for non-compliance of display of Certificates is \$12,375. Only time will tell how seriously local authorities scrutinise owners of buildings.

When purchasing commercial properties, buyers should ensure that special conditions are included making the Contract subject to them being satisfied with a review of the Certificate and the current use of the property. This will assist buyers to better realise an adequate return on their investment and give them confidence that the present use of the building conforms to what is permitted by the Local Authority.



This article is classified M  
for Mature Audiences

## **STAFF PROFILE – Peter Mackey**

1 April 2009 marked the 30<sup>th</sup> anniversary of Peter Mackey's admission as a lawyer as well as the 25<sup>th</sup> birthday for Mackey Wales Law. I recently elicited some reflective thoughts from Peter on his illustrious legal career to date.

**1. You began your career in the late 1970's. How has the North Queensland legal profession and landscape changed during your 30 years?**

Most people are concerned and angry with escalating high levels of regulation in all areas of law and with trends by governments to regulate basic business activities. Although there is always cause for concern, anger is futile. One needs to acknowledge that regulation is a process for employing a huge number of people and "specialisation" in legal areas has developed as a consequence of complicated regulatory processes.

It has been pleasing to see the maintenance of professional standards and professional attitudes within the Profession and the District Law associations can take much of the credit. The quality of mainstream legal services in major regional centres has remained at least as high as that available in capital cities. Most lawyers however, although tactically proficient, have failed to recognise the benefits of strategic thinking and as a consequence, many firms have failed to develop skilled team structures in each of their advertised work areas.



**2. Tell us about the early days of your career**

I was fortunate to serve a legal apprenticeship of 5 years with a Brisbane law firm after 3 years at university. My starting salary was \$15.00 per week and I developed an extreme conservative streak after losing \$50.00 on a horse which ran last shortly after commencing my employment. Most law students and young solicitors commence their employment with unqualified confidence and arrogance before they transition to a state of usefulness and value to their clients. My path was no different.

**3. What prompted your decision to move from partnership at Connolly Suthers and become a sole practitioner at age 30 in 1984?**

I actually commenced practice as a sole practitioner in early 1979 before becoming a commercial partner with Connolly Suthers. In 1984 there was a group of well established legal firms operating in Townsville and there was a huge opportunity to establish Queensland's first boutique law firm which would provide only commercial law and deceased estate services. No court litigation, dispute, criminal law or family law services were provided and that specialisation still continues today.

**4. What are the greatest challenges you've faced in your legal career?**

Not taking work home from the office was a huge challenge in earlier years and that embargo often led to 3am and 4am starts and finishes. Even today, all staff are encouraged to leave work at the office and have a full life outside the office. The consequence of that process is that staff are refreshed and able to maintain high levels of client service which is critical to our business model.

**5. What is your main focus at Mackey Wales Law these days?**

The firm has always followed its own path in isolation to other legal practices but that process requires an overall awareness of extrinsic conditions and every member of our team understands the meaning of "*Client Service*".

Recent statistics indicate that we are involved in approximately 25% of residential property transactions occurring in Townsville and the provision of legal training and skills even for our non-lawyers continues to be a primary focus. Client file management and the development of unique systems to enhance client service and work flow continue also as areas of primary focus.

The firm has enthusiastically supported Patrick this year in his role as President of the North Queensland Law Association and it is rewarding to see both my partners Patrick and Ross embracing strategic approaches to clients' needs and practice management.

**6. What have been the greatest achievements in your life so far?**

Greatest achievements personally include the enjoyment which I continue to receive from my family and the achievements of my kids, my continuing association with entertaining friends, the diversity of activities outside law, professional positions which I have held, having the best support team in Australia and staying away from publicity.

**7. What would you like the future to hold?**

As for the future? People might question my sanity if I told you. It won't be just cooking pizzas for friends.