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The Virtual Truth

Tipping point for Great Barrier Reef

Coral cover halved, lower two thirds seriously degraded

January's election has elevated the management of the Great Barrier Reef to a top 3 issue of major concern for Queenslanders.

Saturation adverts and polling booth turn-outs by several not-for-profits running "Save our reef" campaigns turned the spotlight on damage claimed to be likely from planned coal mines and port developments.

With just enough science supporting their claims, activists effectively capitalised on spectacular seascapes and turtle pics to become a major influence in many polling contests.

Greenpeace, GetUp, WWF, Save our Reef, Bob Irwin, and even Nemo himself all lined up to take aim at coal, LNG, port development and agriculture - all of which they see as creating further perils for the delicate reef ecosystem.

At the same time as federal environment minister Greg Hunt and foreign minister Julie Bishop were – as unobtrusively to Australian media as they could - frantically lobbying the World Heritage Committee to not list the reef as "endangered" as threatened.

Hunt made his second covert dash to the feet of UNESCO chiefs in Europe in three months during the final week of the election campaign - at the same time the conservationists launched the all-out assault against the LNP's pro-development policies.

At the forefront of the activist's claims of potential future damage are nine new mega coal mines - some already approved, others to be fast-tracked - in the Galilee Basin, further west but roughly parallel to the Bowen Basin that has been mined for coal since the 1970s.

Future risks are not the only thing that the WHC is concerned about.

Hunt's "state" report in January 2014 glossed over important details over the Abbot Point dredge spoil dumping-at-sea which his department had already approved. And he provided unconvincing evidence of any turnaround of existing degradation.

Federal Environment Minister Greg Hunt

The WHC was unimpressed. In June it issued its own report card on the loss of half the coral along the reef's 2,300km length and the serious degradation of the lower two thirds below Cooktown.

"Significant loss of coral cover has reduced underwater aesthetic value of inshore reefs in the southern two-thirds," it reported and noted coral cover declined from 28% to 13.8%.

The minister's dash to Europe preceded his further compliance report demand-

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Buyer's $300k Hilton win in condo deception claim

The heart of the gillter strip is back on the move

Most buyers would have been more circumspect than the New Zealand couple who signed up for a $930k off-the-plan purchase of a Hilton Surfers Paradise apartment in July 2009, after lapping up the sales spin that "it would be worth $1.1 million when the building was complete" and would command "$1000 a night at 80% occupancy".

Paul Goode and Christine Barber forked out their $5k holding deposit on the spot during a holiday visit to the glitter strip, for "the last two-bedroom apartment available at that price" in the Orchid Tower.

The next day, the (un-

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Behind the ballot-box backlash

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Kate Bosworth in academy award nominated *Still Alice* about early onset Alzheimers

Queensland's true life version p 7

Want to see more?

The UNCENSORED Qld News TRUTH is available FREE in web and mobile versions to registered users. Scan to go.

DOING DRUGS?
TENANCY CANCELLED ON "LANDLORD'S BELIEF"

Rihanna: passionate about cannabis decriminalisation

Procedures for termination of residential tenancies must be strictly observed no less so than in the case of "serious" breaches involving the use of the rented premises for illegal activity.

But under *Residential Tenancies and Rooming Accommodation Act* (RTRAA) the landlord need only "form a reasonable belief" that the home or unit has been so used and there is no requirement that such illegality be proved eg by way of a police prosecution.

Housing Commission tenant Robert Turnbull was given a "notice to leave" – which for a "serious" breach need only allow a 7 day period – after being charged with possession of boxed-up drug lab equipment found on the premises during a police raid in June.

Notwithstanding the absence of a conviction, the Department of Housing wasted no time by also issuing a "first and final strike notice" on 7 July that required him to vacate the unit he had occupied since August 2010.

Turnbull refused, prompting an application by the Department to QCAT that relied on RTRAA s 290A and the police charge as the foundation for its "reasonable belief" of a clandestine activity.

He defended the application on the basis the boxes belonged to someone else; he "was not 100% sure of their contents"; and that the presence of the equipment in the rental unit was not an "activity".

QCAT ruled on 28 August that he must move on and a further application for a "stay" on 12 September was refused. In the absence of notification required by 22 September that he intended to pursue an application to seek leave to appeal – despite notifying that he proposed to appeal the stay refusal – the proceedings were terminated.

Turnbull then went higher, to the Court of Appeal which ruled it had no jurisdiction.

"No appeal lies to this court from the decision of the adjudicator. Any appeal must be to the appellate division of QCAT."

As at the date of the Court of Appeal hearing, Turnbull's prosecution for the alleged offence had not been determined.

By the numbers

16 Qld road deaths in Jan 2015, compared to 20 in Jan 2014

223 Qld road toll for 2014, 271 in 2013

Loan fraud: Owner impersonated on mortgage sign up

A buoyant property market is seeing a surge in home lending mainly through mortgage brokers.

But as three Victorian brokers face charges of scamming the big four banks with false credentials on up to 600 home loans totalling $200 mil, the spotlight is once again being shone on prudent lending practices.

In one recent example, it was even alleged that that the so-called borrower who signed up his mortgage in a solicitor's office was an imposter.

The borrower denied signing the documents or ever having even met the solicitor.

Permanent Custodians sued solicitor Phillip Symonds and all three borrowers – siblings Tony, David and Charbel Geagea over a loan Tony had arranged for the June 2003 purchase of a $2.9 million development and in which he instructed Symonds to act.

The borrowers settled the lender's claim by payment of $300k with the law firm persisting with their defence, denying all fault.

On request from broker Yes Home Loans, Symonds sent it a copy of the buy contract. Yes then made a loan application in all three names.

The loan documents were in due course sent for execution. At a meeting in Symonds' Sydney office, signatures were purportedly affixed on behalf of Tony and David. Symonds IDed the signers by way of drivers' licences and witnessed their signatures. He also certified he had given them legal advice.

When Permanent demanded arrears from the siblings, David denied signing the documents or ever attending the meeting.

Permanent sued Symonds for failing to properly ID the borrowers and for witnessing for another mortgagor - not present because he was behind bars – but whose signature was already on the documents.

It failed to prove the solicitor had been negligent on those grounds.

But by signing the authorisation to the lender's solicitors instructing how to pay the loan funds, the court ruled he had impliedly represented that he had authority on behalf of them all.

So notwithstanding Tony Geagea's "wrongful, tortious and criminal behaviour", judgment was entered against Symonds and his law partners for Permanent's loss and costs of the ten day trial.

The court left open the law firm's entitlement to itself claim against Yes Home Loans – against whom he provisionally assessed 33% responsibility because it failed to adequately ID the borrowers in the first place and represented to Permanent that Symonds acted for all three – and of course, against Tony Geagea, as the architect of the debacle.

Najam Shah (pictured), Manija Zayee and Aizaz Hassan charged over mortgage broking fraud

Fatal traffic crash, Mt Larcom, December 6

At around 2.45am a car travelling on the Bruce highway 5km north of Mount Larcom, collided with a pipe on the road and burst into flames. It is believed the pipe had fallen off a truck just prior to the crash. Both the driver and passenger were pronounced dead at the scene.

Fatal traffic crash, Buaraba, December 13

A 3 yr-old girl died in a collision between two vehicles travelling on the Gatton Esk Rd near Buaraba Creek Rd. A 25 yr-old female was airlifted to RBW, while a 24 yr-old male was ambulanced to PAH hospital with serious injuries and a 4 yr-old boy was ambulanced to Gatton Hospital both with non-life threatening injuries.

Fatal traffic crash, Pomona, December 18

A 59 yr-old woman from Gympie has died following a two vehicle traffic crash in the southbound lanes of the Bruce Highway. At around 5.45pm policed were called about trees across the highway and found the crash upon arrival. The woman was pronounced dead at the scene.

Serious traffic crash, Goondiwindi, December 22

At 11.45pm a 17 yr-old man was on the highway at Yelarbon changing a flat tyre. Another vehicle stopped to assist and a truck struck both. He and a 39 yr-old woman were flown to PA Hospital with serious injuries. A 15 yr-old girl and 13 yr-old boy were taken to Goondiwindi Hospital. The truck driver was unharmed.

Serious traffic crash, Elanora, December 26

A 33 yr-old Nerang man is in hospital following a pile-up after exiting Boab Street onto Ironbark Street when it lost control and collided with a parked vehicle and then a tree. The driver sustained serious injuries and was transported to Gold Coast University Hospital.

Serious traffic crash, Townsville, December 26

Around 7.15pm police intercepted a squad bike carrying 2 passengers. The bike evaded police and collided with a barbed wire fence. The 44 yr-old male rider sustained serious neck injuries and was transported to Townsville Hospital. The 30 yr-old passenger sustained facial injuries and an 11 yr-old was unharmed.

FIREYS DEFEND NARANGBA MISTAKES

The blaze at the Narangba chemical plant in August 2005 was the biggest and fiercest most of the fire officers had seen. It destroyed the factory and several warehouse buildings.

Twelve fire crews attended streaming massive quantities of water into the inferno.

The water combined with the chemicals to precipitate an environmental catastrophe not only on the site itself but also on neighbouring land.

Having to contend with the destruction of its building, production line & stock, the business owner Hamcor Pty Ltd was also issued with Environment Protection Authority notices to remediate the contamination at a cost more than $9 million, "many times the value of the land before the fire".

Unless the contamination is removed, the land cannot be put to any use whatsoever.

Hamcor's owners Terry Armstrong and Don Hayward sued the Fire Service alleging that it was negligent to attempt to extinguish a chemical fire with water rather than to allow it simply burnout.

It was the unanimous view of the experts for both the plaintiff and the State, that there was no point in applying water to extinguish the fire.

That was because of the extremely high temperature at which chemical fires burn. In the words of one of the experts: "No amount of water would have put that fire out. No amount of water whatsoever".

Justice Jean Dalton ruled that the fire service did owe a duty to take reasonable care not to damage to property when acting to combat a fire and that the resulting damage was, in this instance, foreseeable.

But the plaintiff had further hurdles to clear under the civil liability act including proving that the actions of the service were – in addition to being negligent – "so unreasonable that no other fire authority could consider them reasonable".

In Her Honour's view, the "unreasonableness" that the plaintiff had to prove was at a far higher level than mere negligence. "In my view these words require the kind of unreasonableness which invalidates, or makes improper, the act or omission as an exercise of statutory power."

Her Honour was satisfied that the presence of several senior and many other experienced officers who did not intervene to stop the application of water, was suggestive that such strategy was not so unreasonable.

"Had the breaches complained been of the magnitude of required by CLA section 36, it is inconceivable that no officer would have averted to them and stopped them".

She also ruled the *Fire and Rescue Service Act* bestowed immunity on the fire officers when their actions are "pursuant to the Act" as was the case at Narangba.

After a 15 day trial all the plaintiffs' claims were dismissed and they were ordered to pay costs. The plaintiffs had conducted earlier proceedings which went all the way to the Court of Appeal but which also did not go the way that they had hoped.

An appeal against Justice Dalton's rulings will be heard later in 2015.

Fire engulfs Narangba factory in a 2013 blaze

Cruise Ship incident log

14 January 2015, Oasis of the Seas, Royal Caribbean, Mexico

A 22-yr-old passenger fell overboard near Cozumel while on a seven night cruise to the Western Caribbean. The man was only rescued when a Disney Cruise Line crew member spotted him in floating in the water several hours later. The crew deployed a lifeboat and rushed him to shore for treatment. Disney's "Magic" happened to be sailing in the same vicinity.

28 December 2014, Norman Atlantic, Greece

The crew issued a distress signal after a fire started in the lower deck of the vessel broke out about 44 NM northwest of Corfu. Strong winds, heavy seas and cold temperatures made it extremely difficult for rescuers to reach the vessel carrying 500 passengers & crew and more than 200 vehicles. 11 passengers are confirmed dead and a dozen still unaccounted for.

27 December 2014, Prins Richard, Scandlines, Denmark

A German passenger aboard the Prins Richard

fell overboard into the Baltic Sea north of the island Fehmarn. The ship was en route from Puttgarden in Germany to Rodby in Denmark. After a three search aboard the vessel, a search and rescue mission was launched out to sea. The passenger is yet to be located.

20 December 2014, Holland America, Holland America Line, Cayman Island

A 35 yr-old passenger cruising the Caribbean with his wife and child died while snorkelling at a beach near George Town. Police and paramedics were alerted of the body after his wife reported him missing. He was pronounced dead on arrival at the Cayman Island Hospital.

11 December 2014, Insignia, Oceania Cruises, Barbados

Three people died and three crew members were severely burned after a fire broke out in one of the ship's four engines. All 600 passengers and 400 crew cruising from Bridgetown Barbados to St. Vincent were evacuated on its arrival at nearby Port Castries in St Lucia. The vessel will re-enter service on March 22 from Singapore.

UBER ALLES?

Back seat conversations

Rebecca McDonough

Uber – the worldwide ride sharing service powered only by smartphone app and user evangelism – represents the epitome of information-age business disruption set to consign taxi and limousine businesses to a museum display.

2009	Year founded by Travis Kalanick and Garrett Camp
US$10 bil	Expected revenue by year end 2015
20%	The company's take on every trip
200	Cities worldwide where in operation
US$40 bil	Current company worth

Taxi owners are not the only ones threatened by the rapid emergence of consumer driven efficiencies that include no licence fees, no expensive in-car equipment, lower travel costs and no cash handling.

Equipment suppliers, payment providers and governments are all heavily invested in maintaining the status quo.

Queensland's Taxi Council warns passengers risk their own safety through "unlawful, unsafe and uninsured" ride-sharing and advertises as much on Brisbane CBD electronic billboards.

"You simply don't know who is behind the wheel," according to TCQ chief executive Benjamin Wash. "Taxi drivers undergo daily criminal checks, but rideshare drivers don't".

Uber claims to conduct extensive police and criminal record checks on drivers before they are permitted to operate, but its system has many additional features – all decidedly new age, highly efficient and at almost zero additional overhead – that provide a real safety benefit for users.

Request a ride at the tap of a button and get the price up front. Track the driver's route and ETA. See a pic of your driver, details of their car and their rating before they arrive. When the ride ends, payment is taken care of by your credit card through the app. An emailed receipt showing all the ride details is received immediately.

You couldn't get more consumer-friendly than that.

But Queensland's Taxi Council warns passengers Uber is a poor quality alternative to the conventional taxi service.

So let's compare some riding experiences…

Cab Driver #1
Airport pick-up to New Farm $36. The driver was friendly and asked about our trip. Minutes after set-down, my friend realised his phone had been left behind. A call to the taxi company to notify details of the trip was frustrating. After 20 minutes on hold, the dispatcher said they were not in touch with drivers and suggested we call back on Monday. The phone was not found.

Cab Driver #2
Fortitude Valley to Ascot $14.80. It's 2.30am and I spot a cab, tap on the window to wake the sleeping driver. The trip passes silently until I pay and bid goodnight to my silent chauffer.

Cab Driver #3
New Farm to Fortitude Valley $7.80. My driver takes a call for the duration of the trip.

Timothy, Uber Driver #1
New Farm to Highgate Hill $14. Timothy knows a lot about Uber. He's been driving since September and has followed all developments. He told us about the history of Uber, kindly warned us about the upcoming fare surge and wished us a wonderful evening.

Waheed, Uber Driver #2
West End to New Farm $13. Waheed was finishing up his Master's Degree and gave me some travel tips on visiting India (don't go in June, Goa is a must-see and learn a little of the language).

Brendan, Uber Driver #3
Hamilton to West End $18. Brendan just graduated and was new to Uber. Brendan was extremely patient with his jovial and loud passengers - changing the music and offering mints and bottled water. He even wished happy birthday to my friend.

The future of Uber in Queensland is uncertain - in September 2014 Premier Campbell Newman issued a cease and desist order to the company. What is certain is that Uber offers an efficient and customer focused alternative to an expensive and less than perfect taxi system.

Uber: no expensive in-car equipment

For a start, passengers can star-rate their driver. (Drivers also do the same as regards their passengers.) Any driver whose rating dips lower than three stars is let go.

The Uber app also notifies passengers before a car's arrival of its make, model & registration no, and the driver's name, mobile number & most importantly, star rating. The rider then has the option of declining the ride and an alternative can be requested.

Perhaps we will see conventional taxis adopt these measures before long.

For the time being though, it seems that both systems offer reasonably extensive measures to ensure passenger safety.

What of the "uninsured" claim? This vague assertion appears to suggest that passengers will be denied third party insurance cover if they are involved in an accident.

But a closer look at Queensland's long-standing CTP system shows this is not the case. All vehicles are covered and all Uber passengers will likely be covered as well in the same way as they would be if involved in a taxi accident.

What may be a problem for Uber drivers is that their car might strictly be required to be registered in the taxi category and a higher CTP premium paid. Registering the car as a private transport vehicle but using it as part of a ride service may constitute an offence.

Law firm launches compensation tool

February 1 marked the launch of Carter Capner Law's custom tool to give online shoppers greater insight – in seconds – into the actual results they can expect to receive from a compensation claim.

The Compensation Calculator allows people enquiring about compensation to input a loss scenario into data fields and view an immediate compensation report.

According to Legal practice director, Peter Carter, "Every claimant has two questions when approaching a law firm."

"They want to know if their claim is worth pursuing and an estimate of the outcome.

The calculator responds to those exact questions in the comfort of the user's home, immediately."

The law firm has been developing the tool for 12 months. It employs algorithms to currently respond to 11 different claim type queries.

The tool also features sliders that allow users to vary their data inputs to see a 'range' of estimates that could apply to their claim.

"What people often don't know is that time limits apply to all claims," Carter says. "The instantaneous output from the calculator speeds up the commencement process to prevent time barriers applying. Users can start their claim immediately, or get a second opinion in just a few clicks."

A further 12 claim type algorithms are in production. Until they are deployed, a lawyer will respond to a user's query in real time.

To access the calculator, users should visit the Carter Capner Law homepage and click on the Compensation Calculator tile!

Stage winner Richie Porte (Aus) on the podium

Tour Down Under draws local talent

CCL Cycling's Bartholomew Lee led a field of 3 in a Santos Tour Down Under sideline event from 18-25 January.

Team members each cycled an average of 800kms over the week long event on much the same routes from Adelaide through the Barossa Valley as the World Tour professionals.

It included the Bupa Stage 4 of the Tour on 23 January from Glenelg to Mount Barker over 151 kms. With 2,353m of cumulative altitude gain, Bart says that was the most challenging stage.

Other rides included Norton Summit, Mt Lofty, Gorge Rd, Corkscrew Rd and Willunga Hill.

"South Australian drivers are much, much better than in Brisbane," says Bart. "They are alert for cyclists and very patient."

CCL Cycling (Strava.com/clubs/cclcycling) is open to all Queensland riders. Member benefits include regular rides, monthly awards and a subsidised Castelli team kit.

Each month Carter Capner Law gives away two GBP £20.00 and one GBP £50.00 Wiggle gift voucher to members of the Strava "CCL Cycling" club.

November winners:
- Darren Francis (random draw)
- Barry Turp (random draw)
- Lance Rathbone (most kms)

December winners:
- Kevin Witt (random draw)
- Martin T (random draw)
- Danny Graves (most kms)

January winners:
- Jeremy Aitken (random draw)
- Barry Turp (random draw)
- Ben King (most kms)

Bart Lee & fellow CCL Cycling member Ben King on Mt Barker

Pilot training & experience potential air safety deficits

Lion Air, an Indonesian low cost carrier lost this jet on approach to Bali in 2013

The current generation of low-cost carriers has created a new market in air travel. Air Asia in Malaysia, Ryanair in Europe and Jetstar & Tiger in Australia are classic examples.

But do the cheap fares offered by "no-frills" airlines – and the different standards implicit in their "low cost" business model - pose air safety risks for travellers?

From the point of view of the safety regulators, the answer is a resounding NO. All airlines must strictly comply with the same rigorous safety standards, they say.

What other factors might create potential airsafety deficiencies?

The distinguishing feature of the LCC business model is its low cost structure. As we all know, the airline charges extra for legroom, refreshments, baggage, blankets and movies.

Also imperative to the model are rapid ground turnarounds, limited or no baggage transfers to connecting flights and engaging staff in multiple roles.

Lugging heavy baggage to a boarding gate at the extremity of the terminal carries an outside chance of injury as do stairs - as opposed to aerobridges - for embarking and disembarking.

Employees with multiple roles - flight attendants also working as gate agents and for aircraft cleaning – opens up crew fatigue as an issue.

But the greatest factors that may affect aircraft safety are training and experience levels on the flight deck.

LCC flight crews are recruited under much lower pay scales and (usually) with vastly less flight experience, than their colleagues performing the same role in a legacy airline like Qantas or Singapore Airlines.

Pilots recruited for First Officer training by some LCCs have logged as few as 1,000 hours.

They then must fund their own training upgrade and aircraft-type conversion (at a cost of up to $100k) through the carrier's own training organisation or a third party contracted to the carrier.

Legacy airlines typically have a minimum requirement of 3,000 hours with 1,000 hours on commercial jets.

With a LCC, a pilot can gain a command (captain) in as few as 5 years with less than 5,000 jet aircraft hours

At the other end of the spectrum, the typical time to command for young pilots at a legacy airline is 10 – 12 years and at least 10,000 hours jet time.

Richard de Crespigny – a captain with 35 years and 30,000 hrs aeronautical experience – who guided his heavily damaged Qantas A380 Airbus to a safe emergency landing at Singapore Changi airport in November 2010, is on record as saying it was only his flight hours those of the other pilots coincidentally in the cockpit that night, that saved the aircraft.

AirAsia Flight 8501 which crashed in bad weather in the Java Sea in December en route to Singapore was captained by a 20,000 hour pilot with more than 6,000 on the Airbus A320 itself.

An estimated 500,000 new pilots will be needed over the coming decade to replace those retiring and to fill 350,000 new flight deck positions – mostly for Low Cost carriers – to cope with the worldwide growth of the industry.

AirAsia cabin attendant among those tragically killed on flight 8501

The tourist's A-Z guide

Queensland's laws & legal traps

■ **De facto relationships**

Australian law recognizes such relationships as the equivalent of a legal marriage. A couple living together will be taken to be "de factos" if their intention is to do so as man and wife. Whether or not such a "common law" marriage is taken to exist for the purpose of exercising legal rights, is usually dependent on the length of their relationship.

In a case where the status of a couple is unclear, the circumstances of their co-habitation are examined. A couple is not regarded as de factos only because they have a common residence. Other relevant factors are the length of the relationship; the degree of financial dependence; ownership of joint property; their degree of mutual commitment; children; and public projection of themselves as a couple.

■ **Debt**

A debt is a fixed sum of money due to another or a sum that can be calculated eg by reference to a contract. Money borrowed from a bank (by a debtor) is a debt due to the bank (creditor). Debts can be recovered by simple legal process on proof by the creditor that the debt has not been repaid within the specified time for payment.

Creditors also have the legal right to interest on unpaid debts.

■ **Marriage equality**

Same sex couples cannot legally marry in Australia but enjoy the same legal rights for other purposes as legally married couples (See De facto relationships).

Marriages involving a citizen of some countries that allow them – for example the UK - can be legally performed in their Australian consular offices.

Overseas (and consular) marriages of same sex couples are not recognised in Australia.

Same sex couples cannot legally adopt a child in Queensland.

Queensland's Relationships Act facilitates 'Registered Relationships' between unrelated, unmarried same sex couples. The process simply requires the loding of forms and payment of fees to the state's Births Deaths and Marriages registry. Registration of a same sex relationship does not confer rights additional to a same sex couple already in a de facto relationship but may assist in cases of doubt, of establishing the existence of such a relationship.

■ **Notifiable diseases**

State health authorities perform a community disease prevention role. A number of health conditions are required to be 'notified' by health workers to state and federal authorities. They include: AIDS; Ebola; Dengue Fever; Lyssavirus (borne by bats); Hendra Virus; SARS; Meningococcal disease; Avian influenza; Measles and HIV.

■ **Watercraft**

A licence is required for the operation of a motor-powered (over 6hp) pleasure boat. To operate a jetski, an additional personal watercraft license is also required.

Unlicensed drivers may operate a recreational boat or jetski if a licensed driver is aboard supervising and can take immediate control in case of trouble. They are not permitted to conduct towing operations eg waterskiing, wake boarding or tube riding.

Anyone over 16 yrs may apply for a licence after meeting medical requirements and participating in a training course conducted by an authorised training provider.

■ **Will**

A will is a testament by which a person directs how his or her assets are to be dealt with upon their death.

Any adult (18 yrs and over) of sound mind can make a will. It must be in writing, dated and signed by the person (the testator) and be witnessed by two adults persons who must see the testator sign and sign as witnesses in each other's presence. A person receiving a benefit under the will (beneficiary) should not be a witness.

Informal wills can sometimes be approved by a court.

Legal advice should be obtained from a solicitor who will prepare the will according to the person's preferences.

A will is revoked if you make a new will or get married unless it was made taking into account a pending marriage.

Upon divorce, any benefit in favour of a former spouse is invalided unless the will makes clear the benefit was intended regardless.

If the absence of a will, assets are distributed according to the rules of 'intestacy'.

■ **Vehicle safety**

In Queensland a certificate of roadworthiness - called a safety certificate -is needed when a registered vehicle is offered for sale (except to a spouse or estate beneficiary) or when re-registering an unregistered vehicle. This applies to cars, vans, motorcycles, trucks and trailers.

Vehicles that are unregistered or are sold or traded to licensed motor dealers do not need a safety certificate.

continued next edition

Home sick for abroad

Jorgia White

Bula! Anyone who has ever travelled to Fiji knows a week in this spectacular country feels less like a holiday and more like a home away from home.

If it's not the beautiful locals greeting you and ensuring every part of your stay is perfect, it's probably the spectacular sunsets.

Staying in the midst of the tranquil Coral Coast we were in the perfect spot to experience everything that Fiji has to offer.

The Fiji Hideaway Resort and Spa bids a luxurious escape that doesn't shy away from the cultural experience that tourists know and love.

The drive to the resort passes through numerous villages that display a way of life very different to our own. Resort guests may visit the local primary school, which I can easily say was a highlight of our holiday.

The activity list is extensive with adventure and relaxation to suit any age group.

The scenic Mamanuca islands are nearby. We set off by boat to enjoy the snorkeling but when we arrived, we were surprised with much more. A gourmet Fijian style lunch on a secluded island surrounded by crystal clear water which boasted the most beautiful coral reef that I had ever seen – perfection is an understatement.

If relaxation is what you require but your sense of adventure also needs to be satisfied, the Fijian Islands is your go to destination.

On returning home you'll even feel home sick with a beautiful sadness from leaving the most kind hearted people and tranquil place that you may ever come across.

Fiji is an experience like no other and nothing substitutes experience.

Five tips and tricks for a carefree holiday –

1. Stop trying to connect to the Wifi – It's hard not being able to make everyone on your friends list jealous but wait. Soak up every last second without distraction!
2. Don't forget your reef shoes! They weren't kidding when they called it the coral coast.
3. Take the primary school kids your hand-me-downs, big or small: their faces lighting up is unforgettable.
4. Apply sunblock always! Doing anything with sunburn is very uncomfortable and mountain climbing is the worst.
5. Step outside your comfort zone. Do something you feel uncomfortable about doing you won't regret it!

Fiji: resorts are spectacular, relaxation is sublime

Dementia Will fight

Son sues to stop $$ for ex

Still Alice: Kristen Stewart (left) plays patient Julianne Moore's rebellious daughter and Kate Bosworth's sister

Jim Jones made application to the Supreme Court for the alteration of his wife's will to prevent their daughter-in-law gaining an interest in her $4.5 million Gold Coast property in the divorce proceedings against their son.

The application was brought under the Succession Act for an order authorising the son's benefit be held on trust – rather than as an outright gift to him.

Jenni Jones had Alzheimer's disease and lacked legal capacity to make a new will herself.

Jim and Jenni had been married for 55 years and he made the application in his capacity as her attorney under an enduring power of attorney dating back to 1992.

Her will had been written in June 1998.

The "change of circumstance" relied on to support the application was the separation in May 2014 of the son as beneficiary and his wife, the respondent to the application.

The court was urged to alter the will to prevent the asset being treated as property of the marriage to which the estranged wife may lay claim.

It accepted that the change proposed by the codicil was "an alteration that the testator would have made if she had testamentary capacity".

This was particularly so given that she had always said that the money she had inherited from her parents that was invested in the property "should remain in the family".

But evidence from the solicitor who prepared the will was that he had advised her about the availability of a testamentary trust and how it would have protected such asset in the event that was now unfolding.

Justice Peter Flanagan was not prepared to make an order that would have such an impact on the property available to be considered in family court proceedings.

However on appeal, three appeal judges ruled that the alteration should be made.

An order was also made supressing the identity of the testatrix to whom we have given the fictional identity of Jenni Jones.

In *The Descendants* George Clooney played the lawyer with the wisdom to resolve differences among disparate beneficiaries

Aircraft Accident Log

29 December 2014, Cessna 172, Tasmania, Private flight

A single engine aircraft carrying a 61 yr-old photographer shooting pics of Sydney to Hobart race boats near Port Arthur and his 29 yr-old pilot died when the aircraft collided with water. The crew of race yacht Mistrall witnessed and reported the crash to Hobart Race Control. The wreck and bodies were retrieved several days later.

28 December 2014, Airbus A320, Air Asia, Indonesia, International Passenger flight

The Airbus A320 was en-route from Surabaya-Juanda Airport to Singapore. Due to bad weather the flight crew requested clearance to climb to a higher altitude, minutes later loosing radio contact. The aircraft crashed 80 NM southeast off the Pulai Belitung Island. All 162 occupants were killed. The wreck has been located.

8 December 2014, Embaraer EMB-500, Sage Aviation, USA, Private flight

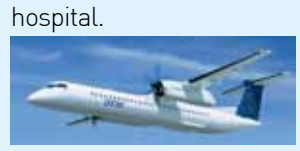
The twin engine aircraft was on its final approach to runway 14 at Montgomery County Airport in Maryland when it crashed into onto a house and burst into flames, one kilometre short of touchdown. All three occupants were killed and three people inside the house died as a result of the impact.

2 December 2014, Piper PA-31-350, Ferg's Air Charter, Charter flight, Bahamas,

The twin engine aircraft carrying 10 passengers and 1 crew member was en-route from the Governor's Harbour Airport to Nassau-Lydne International Airport when the pilot informed the air traffic control about technical problems and alerted passengers. The aircraft crashed into the sea 550 feet off Clifton Pier. A 77 year old passenger died and all ten other occupants were rescued.

10 November 2014, Air Canada Jazz, Bombardier Q-400, Domestic Passenger flight

The aircraft departed Calgary for Grande Prairie with 71 passengers and 4 crew members but made an emergency landing at Edmonton. A propeller blade dislodged and crashed through a cabin window at row seven striking a female passenger in the head. The aircraft made a safe landing and the injured woman and two others were rushed to hospital.



25 August 2014, Robinson R22 helicopter, cargo flight

Two Robinson Helicopters were en route from Yeeda to Springvale ferrying goods when they stopped at Leopold Downs, within the Kimberley region of Western Australia. One Pilot was about 10NM ahead and arrived at Springvale 40 minutes after last light, but the pilot of the second helicopter did not arrive as expected. The wreckage was found early the next morning around 25 NM west of Springvale and the pilot was pronounced dead at the scene. It is believed the pilot did not hold a night visual rules rating and inadvertently crashed into terrain.

Editorial

PETER CARTER

Behind the ballot-box backlash

At the heart of the contest: Kate Jones and few supporters were ubiquitous in Ashgrove

The state's January election was an object lesson in voter behaviour.

It demonstrates that the canniness of the electorate should never be underestimated.

And considering the enormous swing from the opposite direction less than three years earlier, it demonstrates voters are hugely dissatisfied with what's on offer from the two major protagonists.

The power of democracy and the ineptitude of its institutions are thus on simultaneous display.

What factors lay at the root of the disaffection that energised the Queensland electorate?

Topping the list was the palpable distrust of Campbell Newman himself. An outsider who took an arguably opportunistic tilt of the state's top job was initially seen as a breath of fresh air.

But consigning 20,000 public servants to the unemployment list - done with unconcealed glee - revealed a nasty side of which voters were forever wary.

The axing of income of replacement for 1,500 or so injured workers each year – without so much as a debate and in the absence of any economic case to do so - likewise sent a chill down the spine.

Picking unnecessary fights with the judiciary and parliamentary committees left more distaste in the mouths of many from the middle of the road.

The refreshing outsider was suddenly a bullying intruder.

To be sure, federal blunders played a major role given Newman's ideological brotherhood with Tony Abbott.

The GP co-payment, tertiary fee deregulation, unemployment & pension changes, the resurrection of Work Choices and the uproar over Prince Philip's knighthood, all paved the way for Labor to have a disaster-free coast into polling day.

The Canberra newscycle drowned out much of what the LNP had to say and deflected attention from Labor's policy wasteland.

Newman's vulnerability in his own seat was a plus for the opposition. Denial even of facing up to the question of who would lead the party should Ashgrove fall, was more a sign of tactical weakness than of strength. It painted the LNP as deluded when that mantle should squarely have sat on Labor's shoulders.

The incumbents' only standout success was its bikie laws. But their introduction was so inept and the legislation itself so clumsy, that they produced more negative sentiment than positive that (extraordinarily) resounded until election day.

That Newman and his Attorney General were consigned by the party's PR machine to the darkest corner of the room in the 6 months per-poll, speaks volumes of the missteps taken in their first two years of office.

The sluggish economy – caused by decline in mining investment; below average household spending; high Australian dollar; and persistent depressed consumer sentiment - was mostly outside the government's control.

Add to that the collapse in the oil price and slashing of forecast LNG and coal royalty revenues, the much vaunted economic turnaround was still too far over the horizon to create any impression on swinging voters.

But in voters' eyes, the economic conditions were as much a product of Abbott and Newman austerity. Job losses, compensation cuts and program windbacks applied a negative multiplier on the revenue side that smashed small business who faced the worst trading conditions for more than a decade.

Given all that background, the promised cash splash trumpeted in the 10 days leading up to the vote sounded to many, just a bit too hollow. And inconsistent with the need for the cutbacks - that led to the stubborn and hurtful downturn - in the first place.

Great Barrier Reef conservation was also a major issue with Labor's labelling of the incumbents as irresponsible in managing our greatest natural asset, very effective. Although only partly valid, their claims rang true in the eyes of many especially in the context of the "endangered" status controversy and the headlines that couldn't be stopped despite conservative best efforts.

The major difference between the parties was that of asset sales. The basis of its "strong plan" for debt reduction and infrastructure spending, it was a positive for the LNP mostly for the party faithful but also to many swing voters.

Labor's stance against was an emotional appeal. The loss of voters' assets and the prospect of higher prices being charged by private owners resonated with many but probably only those already inclined to tick the ALP box.

The single leaders' forum during the campaign demonstrated that Newman could articulate his message far better than his opponent – and that he had something to say.

That said, his message – because of overwhelming federal distraction - generally rated little higher than background noise. The "strong team, strong plan" tag - despite its constant repetition - simply didn't get through as well as it should have.

Anastacia Palasczuk - it must be said - campaigned well. Her (unexpected) photogenics almost compensated for her nervous (appalling) public speaking.

With so many others – GetUp, WWF, unions, articulate federal MPs, ACF, retired crimefighters – doing the talking for her, Palasczuk's inability to deliver vocally, mattered less than it ordinarily would.

Given the uneven distribution of the backlash, local factors also played a role.

The reef was obviously a major issue for many seats in the north.

Federal opposition leader Bill Shorten's last-minute dash to Iraq was a potential seat-winner for Townsville and no doubt produced a positive response elsewhere.

Did the election timing play to the incumbent's favour? Probably not. Had the campaign been longer Labor would have eventually suffered embarrassments of its own and allowed the LNP to cling to more seats.

Annastacia Palaszczuk - a valiant effort in spite of media gaffes reminiscent of Sir Joh

"Annoying" shadows not sufficiently offensive to justify tree removal order

Palm trees are in abundance due to Brisbane's subtropical location

Silver Birch Close at Eight Mile Plains was the setting for the latest tree removal dispute, this time concerning eight metre high palms.

Kevin Merrett filed his QCAT application after discussion with neighbour Stephen Turner failed to yield a satisfactory solution.

The application was on the grounds that the palms constituted a safety risk in cyclonic weather and that they were infested with white ants.

Arborist Anthony Cockram inspected the site and reported that the four Alexandra palms and the Bangalow Palm were in good condition and because of their modest canopies were unlikely to topple even in extreme wind conditions.

Turner had already removed the single palm that was implicated in the white ant infestation and a tree fern – not the subject of the application – that was casting some shadow.

In such circumstances tribunal member professor Adrian Ashman concluded there was no likelihood of the remaining trees causing damage to land or property in the forthcoming 12 months.

But Merrett also alleged the palms obstructed sunlight to a substantial and unreasonable extent on an ongoing basis to his home.

He produced photographs and a "sunlight diagram" in support of his plea that tribunals should order the palms be trimmed to a maximum height of 2.5 m.

Prof Ashman accepted the palms did cast shadows over the patio during winter mornings, but the tribunal was not prepared to accept that they were either significant or unreasonable.

Neither was pruning was a solution as any topping of the palms was "tantamount to their destruction".

Noting that "palm trees are in abundance on many residential blocks given Brisbane's subtropical location" the claim for removal should be dismissed as "in no way could the shadows be considered as overwhelming or oppressive so as to justify the destruction of trees."

This was especially so "given that the patio area is fully covered and that shading occurs for relatively short periods in the year".

Builder's $650k off-the-plan 'hardship'

A $5k deposit was all that the developer required for each of the three lots signed up off-the-plan in September 2012 to builder Pacific Homes.

The deal required the developer to connect sewerage and water to the lots in a subdivision south of Mackay prior to settlement but specified that phone, electricity and broadband might only be connected after, at a time decided by the relevant utility.

When the plan registered in January 2014, the developer gave notice requiring completion in the specified 90 days allowed, in April.

That date came and went, with no cash forthcoming from Pacific. The seller promptly began specific performance proceedings in the Mackay District Court.

In their defence, Pacific and director Paul Dingle claimed the "due date for settlement hadn't actually arrived" by operation of oral terms agreed between him and real estate agents O'Riley and Booth.

Dingle asserted an understanding that notwithstanding the written terms, settlement would only follow the connection of electricity and phone so as to facilitate the on-sale of the blocks as a house and land package. Because the connections had not been made settlement was not yet required and there was no default for the court to consider.

Arrangements between developers and builders to commonly allow the latter to on-sell to the builder's buyer and the prior connection of services is also a commonplace requirement.

What troubled His Honour Judge Stuart Durward though was that the alleged oral terms were completely at odds with what had been recorded in writing.

Regardless that the absence of utility connections would make it virtually impossible for the builder to effect a contemporaneous resale to its customer, the contract specified that settlement was not dependant on such prior work being done.

Given that the parties had been legally advised, the court could only assume that the written contract superseded any prior negotiations.

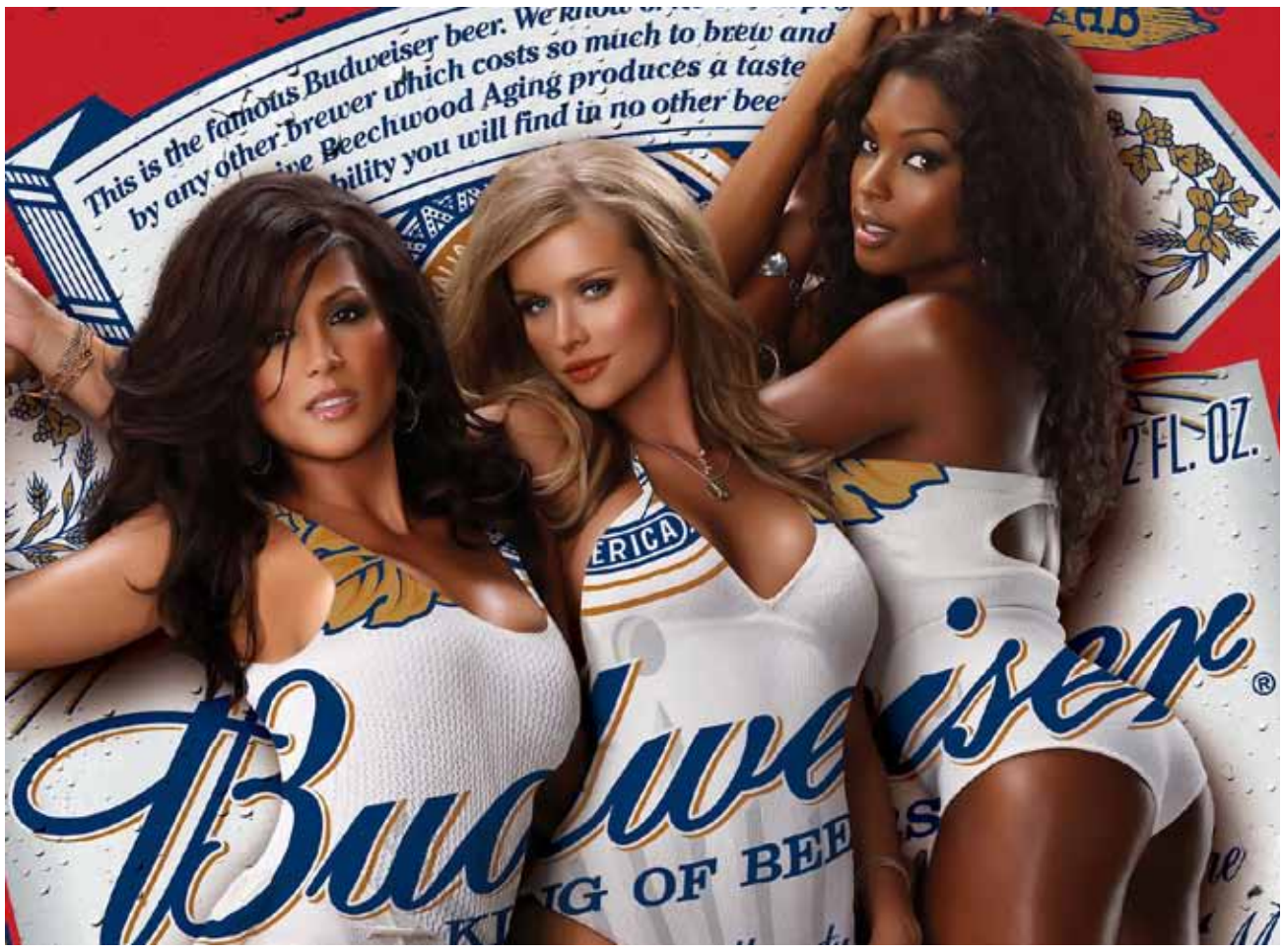
The Waters Ooralea estate, Mackay

Pacific also asserted that specific performance was inappropriate given that neither it nor director Dingle had any financial capacity to effect settlement. They contended the court should instead, order payment of damages for any loss on resale.

Notwithstanding the production of financial evidence supporting their impecuniosity, the judge declined to allow their claim of "hardship" and made the order that the developer sought.

Pacific and Dingle are required to complete the three contracts and pay the outstanding $650k, within 60 days of the judgment.

Misleading conduct claimed on north-side agency sale



Misleading: Brewer was sued for implying increased attention from opposite sex

When Bryan Reinhardt sold his Ray White agency business to Martin Millard in November 2006, the deal envisaged the merger of the two businesses and Reinhardt staying on for a "minimum of two years" as an employee.

Base price for the agency sale of $40k was to be adjusted up to take into account any deductions for contingencies that arose on the rent roll sale to separate buyer, Your Property Solutions.

Milliards' company paid $85k to incorporate the agency into his Harcourts group while the rent roll sold in the region of $335k.

The business sale contract included a restraint of trade (non-compete) obligation on Reinhardt's part but omitted the employment provision.

A Real Estate Industry Individual Workplace Agreement (IWA) was prepared but lacked essential details - the commission split for one – which was finally settled at 68% to Bryan and 32% to Harcourts.

The IWA was finally signed in March 2007 but far from specifying a minimum period of two years engagement, it classified Reinhardt as a "regular casual" who could be terminated or who could resign with just one week's notice.

Millard claimed to have signed the IWA on those terms in a last gasp effort to commit Reinhardt to his employment obligation, believing the 2 year understanding would prevail.

When Reinhardt made it clear he wouldn't stay for the duration, Millard sued, alleging misleading or deceptive conduct on his colleague's part.

He won the first round in the Federal Circuit Court which ordered Reinhardt to pay $80k to compensate Millard for the absence of his services over the period.

On appeal to the Federal Court, Justice Steven Rares ruled that because Millard had engaged solicitors to prepare the contracts, the absence of the employment provision in the business contract indicated it had not been a critical term.

Put another way, it could not be said that the two-year service provision was a crucial element of the deal on which Millard had relied.

Such conclusion was even more compelling given that Millard had settled the transaction without any employment terms having by then been finalised, the judge decided.

That the IWA was only entered into many months after the transaction itself finalised and given that it allowed for termination on one week's notice, "it was beyond reasonable comprehension that Millard had relied on the representation as something on which he had based his decision to buy Reinhardt's agency".

The court re-assessed payments made and re-calculated the sum that was due to Millard by Reinhardt as just $2k.

No order for costs was made against either party for either the trial or the appeal.

Landlord gets second chance to bump up rent

In June 2013 Surfers Paradise tenant Amricama wrote to the managing agent requesting "an early determination" of fair market rent, as per its entitlement under the *Retail Shop Leases Act,* so as to decide "rental affordability" before formally exercising its option.

Correspondence ensued but no agreement was reached. The tenant then applied to QCAT for a rental determination for it's five year renewal from 1 May 2014, but in the course of the mediation mandated by that process, the parties agreed to appoint a valuer to assess the rent.

Acting on behalf of the landlord, Red Carpet Real Estate knew that CBRE's Graeme Smith – the expert who had been selected – was not a specialist retail valuer and therefore not someone who could decide "fair market rent" in a retail lease dispute situation.

Smith's assessment in March 2014 of fair market annual rent at $160k plus GST and outgoings prompted the tenant to exercise the option immediately following its receipt.

Obviously disappointed with the outcome of the valuation, the landlord instructed Red Carpet to challenge the valuation on grounds that Smith did not hold the "specialist retail" qualifications as required by the RSLA.

Amricama sought court orders that it had validly exercised its option to renew the lease and that the rent payable was that as determined by Smith according to the agreed process.

It contended that it was not necessary to follow the RSLA rent valuation method because it had already been determined via an agreed method by the jointly appointed valuer. It pointed out that the operative provisions in the lease did not mandate determination by a specialist retail valuer.

Supreme Court Justice Glen Martin dismissed this argument noting that RSLA specifies that a provision of the Act prevails over anything in the lease and thus the specified method was required to be followed.

"As Mr Smith was not a specialist retail valuer, his valuation was not a determination of current market rent and the tenant can not rely on it for the purposes of the renewed lease".

The tenant failed in its application and rent will have to be re-determined, this time by an appropriately qualified valuer, so that the lease for the extended term can be finalised.

Can mall tenants sustain rents as numbers decline?

Fatal traffic crash, Cunnamulla, December 27

At around 8.30am two vehicles travelling west on Adventure Way collided head on. The 23yr-old male driver of one vehicle and a 78 yr-old female passenger of the other were pronounced dead at the scene. The driver of the other vehicle was airlifted to PA Hospital with serious injuries.

Fatal crash, Bundaberg, January 1

One man died and five others were injured following a two car collision at the intersection of Branyan Street and Woondooma Street at around 8.50pm. The injured have been transported to Bundaberg Hospital with non-life threatening injuries.

Serious traffic crash, Coomera, January 1

At around 12.50pm, a car travelling along Foxwell Road lost control and crashed into an oncoming vehicle. A 25 yr-old man was transported to Gold Coast University Hospital in a serious condition.

Fatal traffic crash, Nerang, January 1

At around 6pm a car was travelling northbound between the Smith Street and Nerang exits when the car crashed and flipped. The driver and sole occupant of the car, a man in his 60's was pronounced dead at the scene.

Serious traffic crash, Nerang, January 3

Around 9.30am a car and a motorcycle collided near a roundabout on Price Street. The 50 yr-old male rider was thrown from his bike transported to Gold University Hospital in a serious condition.

Fatal traffic crash, Morayfield, January 4

At 8.50pm a pedestrian was struck by a car on the Bruce Highway near Uhlmann Rd. The 27 yr-old female pedestrian died at the scene and the driver of the vehicle was unharmed.

Law firm bucks fitout incentive refund deal

When enticing a law firm to sign up in November 2010 for premises at Montpelier Road Bowen Hills, the owner offered incentives to the tune of $1.2 million – documented separately – but like the lease, supported by directors' guarantees.

With the tenant's demise before the halfway mark of the seven-year term, the new owner sued its lawyer directors under their personal guarantees in the incentive deed.

At stake were allowances the original owner had "confidentially" granted for abatement of the $770k annual rent and a $15k annual "signage fee"; and a fit out contribution.

The guarantors contended though the net effect of the deal with incentives accounted for, reflected what the market commanded and the parties had agreed. Any clawback that yielded the landlord a "windfall" was penal and therefore unenforceable.

The landlord – whose buy price was presumably arrived at by reference to the higher yield – argued that the repayments were merely "restitutionary".

In examining the events that triggered the obligation to repay, Justice Jean Dalton noted they included some circumstances of lease termination irrespective of the tenant being in breach – indicative of the provisions not being penal - for example if it came to an end by reason of a natural disaster; "or the tenant going into liquidation in circumstances where it does not promise to prevent that".

Rejecting the landlord's assertion it claimed only contractual sums due upon the occurrence of a specified event, the court took the view that "the bargain between the parties as evidenced by the combined terms was that the tenant would pay the abated prices for rent and signage fees on condition that the landlord paid for the fit out".

The clawback provisions "sought to give the landlord an advantage which it would not have if the lease were performed according to its terms".

Boosting rental yields with fitout incentives to set off against high rents may become a thing of the past

They went much further than restoring the landlord to a pre-contractual position.

The incentives reflected prevailing market conditions as at the date of the lease and the corollary, that re-payments required over and above such sums, reflected a higher rent that the landlord "might have obtained had market conditions been better."

Thus the provisions were unenforceable: "The repayment clauses were wholly penal in operation, providing for significant sums to be paid over and above damages which would be payable to the landlord at common law for breach of contract," which would in any event, be an adequate remedy.

In a decision that has major ramifications for Queensland's commercial leasing and property investment industries, the landlord's claim was dismissed and judgment entered for the guarantors with costs.

Owner sues agent for tenants' damage

Entry condition report not returned

A North Lakes owner – stymied in collecting the cost of damage from evicted tenants because of the absence of a condition report – has sued the managing agents for failing to ensure the condition report was completed.

James Shedden's claim to QCAT was rejected for the very reason that the tribunal could not verify the condition of the home when it was rented in October 2012, before the date of his purchase in August 2013.

Managing agent Brisbane Property Market, had completed the report and provided it to the tenants at the beginning of the 12 month lease. But it was never returned.

Shedden turned on the agent, claiming it "should be held responsible for the situation and any losses" namely the cost to him of repairs that QCAT refused to allow.

His second QCAT claim sought the recovery of the cost of various repairs, plumbing, landscaping restoration and carpet cleaning for a total of $2.7k.

The second time round, the tribunal made the point that although there is a requirement for an agent or owner to conduct a condition report and give a signed copy to the tenant, there is no compulsion on the tenant to either sign it or return it.

"Nobody can force a tenant to sign an entry condition report. That is simply not provided for in the RTAA."

What Brisbane Property Market should have done however was to keep an unsigned copy of the report on file for at least one year after the conclusion of the tenancy as provided by RTAA s 65.

Tribunal member John Bertelsen ruled that such breach did not mean the agent should be liable.

The mere fact the condition was not completed, was insufficient to draw a conclusion that the agent ought to bear responsibility for the damage caused by the tenants when it couldn't be proven when the damage occurred.

Brisbane Property Market succeeded in defending the claim.

Perfect entry conditions

Recent Results

from Carter Capner Law

Broadbeach $600k dispute

Brian's and Li's retirement was descending into financial turmoil after the daughter to whom they had lent substantial funds a decade earlier refused to repay. Fortunately they were able to prove that the $600k Broadbeach Waters home she purchased in 2008 with their funds of $300k, was to be owned by her but "on trust" for them. They applied to the court for a declaration to that effect based on evidence from the Southport solicitor that handled the buy. Because the CBA holds a first mortgage, they must now effect a sale of the property to recover the loan monies due.

Sibling quarrel

Three brothers were left a $1.2 mil property under their father's will. Following a construction accident in 2012 in which he died, one was permitted to move into the home with his family, on condition he keep up mortgage repayments, insurance and rates. Tension arose when it was discovered those payments were neglected and the BCC and Suncorp both threatened recovery action against all three as joint trustees under the Will. Unable

to agree to a resolution, the two siblings issued their own court action demanding the sale of the property and distribution of the proceeds. With the assistance of an experienced mediator, they were able to agree to the sale on the basis the occupying brother pay the outstanding debts from his estate share.

Agent sues on cattle sale

A Bundaberg real estate agent was due more than $64k as commission of the 2012 sale of a cattle property near Gayndah. Mike meticulously signed up the sellers but in a tough market, needed twice to extend his 3 month exclusive agency term. He worked his database, and signed up a deal but it fell through. When Mike discovered it had later been purchased by one of the prospects he had canvassed. Further investigation revealed his prospect had signed up without any agent, shortly after his sole agency expired. Mike issued court proceedings against the seller to recover his commission based on the premise that Mike had introduced the buyer to the property during the period of his agency. Mike's claim settled for $32k.

Bitter over $100k coffee franchise

For hardworking franchisees, the success of their business also depends on the quality of the franchisor's brand, systems and goods. In most cases, an investor also places reliance on representations made by franchisor – about the likely takings of the business - before even entering into a franchise. Milena's decision to buy into a coffee van franchise was based on representations of a "guaranteed income" and that the business would sell "100 cups / day". It just didn't happen and Milena struggled to sell a quarter of that number. Her claim was resolved for $80k.

Sharp TPD claim

Jack was travelling north on the Carnarvon at Orange Hill when his vehicle rolled and he was thrown out. He ended up stuck in a barbed wire fence and has no memory of the incident. Aged 42, at time of injury Jack was diagnosed with a traumatic brain injury and his doctors certified him totally disabled for work as a Petroleum and gas plant operator. Jack received a Total Permanent Disability (TPD) and other benefits of $54k.

SEEN and HEARD

with Harriet Persse
@hpersse

Les
Petrie

City- What did you think of the state election being called when most people were still on holidays?

"So that there was no time for anyone else to have input. With the economy bound to fall after March he knew now was the time to do it and the sale of assets will actually go through. The healthcare system is a major concern of mine, he has cut back on so many disability services."

Connor
Kangaroo Point

"Some kind of conspiracy I don't trust any kind of government."

Alex
Capalaba

"To rush the decision making especially for young people as a lot of thing go over their heads and they may go with info around them rather than having time to look into it."

Keith and Charlotte
Waterford West and Chanland Park

Keith: "Yes, things are already going the way I want them to"

Charlotte: "Yeah, I have some classes that I am going to enjoy more"

Are you optimistic about 2015 being a better year for you personally than last year?

Suzanne
Regents Park

"Yeah, Both the kids are going to school and my youngest is starting prep"

Che
Margaret River, WA

"Yes, I have plans, I know what I want to do and I have a lot of support from people."

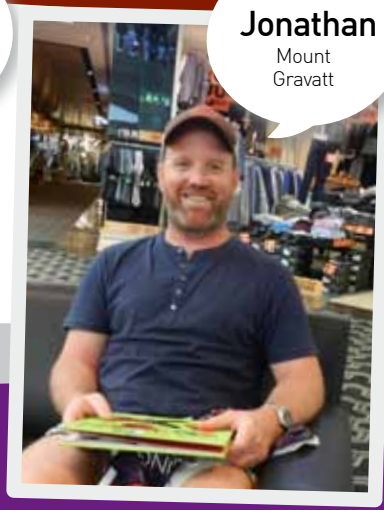
Do you think the Great Barrier Reef is at risk from mining expansion and associated port development?

Mack
Carindale

"I think it's a bad thing because of the effect it will have on the marine life and the reef itself."

Toni
Bellmont

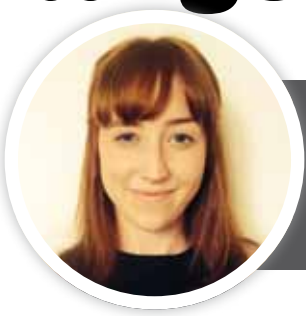
"I hate it. I grew up on the Great Barrier Reef and lived there for 30 years. I think it would be a tragedy if Adani got the contract and the point was extended."



Jonathan
Mount Gravatt

I'm totally against it. I think it's an absolute disgrace. It's one of the natural wonders of the world. It's all about big business and political agenda."

Where the best burgers are in 2015



Rebecca McDonough

The classic American burger is a newly discovered mainstay on the menus of many fashionable Brisbane eateries.

With its arrival comes the dilemma of deciding who dishes up the best burger?

Your dutiful correspondent took to the task of exploring the city's leading bespoke burger joints to sample their patties, buns, pickles & condiments - and interview owners and patrons, to help solve this mouthwatering quandary.

Ben's Burgers | Fortitude Valley

Ben's Burgers, nestled in Winn Lane Fortitude Valley has been known to sell out its kitchen in a matter of hours. The menu offers just three burgers and does not allow any alterations (tomato dodgers beware). I opted for the Classic, which sits inside a glossy brioche bun and was the clear leader in this competition. The generous beef patty was smothered in American cheese with just the right amount of ketchup, mustard, lettuce, tomato, onion and pickles. The burgers are reasonably priced. The burger, fries and beer combo is good value. Try Ben's on a lazy Sunday afternoon to round off your weekend.

5/5 Burgers

Greaser | Fortitude Valley

If you venture to Greaser, chances are you'll walk straight past and have to ask for directions at least once. The bluesy music, drinks and bar menu are American inspired and the walls are covered in vintage photographs and ad posters. The Cheeseburger here comes with a side of chips (added bonus and especially delicious). The bun is a sweet brioche roll and is slathered in ketchup and mustard and filled with crunchy iceberg lettuce, onion, tomato and pickles. The beef patty is thick and very tasty. This burger will satisfy all of your American food cravings. The music can be a little loud and the bar can get a little rowdy, meaning Greaser slides into 2nd place and I recommend it for starters on a Saturday night out.

4 / 5 Burgers

Carolina Kitchen | Coorparoo

Carolina Kitchen is an old timer on the Brisbane burger scene and has had ample time to perfect its classic American Cheeseburger. The owner hails from North Carolina and really knows his southern fare. A line of hungry patrons often snakes out the door onto Macaulay Street. Finding a table can be a challenge, but the burgers are definitely worth the wait. The CK Cheeseburger features a thin beef patty, melted yellow cheese, mustard, ketchup, diced onion and a layer of coleslaw. A bargain at $10, you may want to spend the coins you saved on their New York

Ben's burgers, Winn Lane Fortitude Valley

Chilli Cheese Fries or a slice of Pumpkin Pie. Carolina Kitchen is a perfect spot for a Saturday lunch adventure. Just make sure you get there before 12.30 to avoid the crowds.

4/5 Burgers

Red Hook | Brisbane City

Red Hook sits on Gresham Lane, between Adelaide and Queen Streets and offers excellent New York style street food. The atmosphere at Red Hook is a little more upscale and quieter than the other eateries, making it good choice for a Friday afternoon burger and beer. The Cheeseburger here is decidedly good, offering a dense patty, rich cheese, a sesame bun and a pickle on the side. But it didn't particularly stand out in flavour. There are lots of other menus choices and my pick is the lobster roll.

3/5 Burgers

Taking home what's left of your meal – what's the law?

It's routine in the USA even at the finest establishments. Diners box up their leftovers, or – to encourage a generous tip - their waiter does it for them.

Lunching the next day on the remains of the previous evening's feast is a treat, not to mention a real money saver.

In Australia, the practice has never been encouraged. Such a request nowadays is usually met with a rebuke. Take-home morsels are forbidden, says the server: "We are not licensed for takeaway".

What exactly are these rules to which officious wait staff refer?

Is there even a need for a takeaway licence in the first place?

In Queensland, state law (The Food Act) sets out licencing requirements for businesses that prepare and serve non-packaged food. The term 'takeaway' is not defined in the Act or regulations and in common usage, boxing up leftovers does not come within the ordinary meaning of 'takeaway'.

What if the waiter is correct and the practice is "takeaway"?

There are 14 categories under which an owner can apply for a council permit – including delicatessens and bakeries - the relevant ones for our discussion being "Café/restaurant" and "Takeaway food premises".

If both categories are selected, the permit will cover both. That is why many restaurants offer both dining-in and take-out.

There is no additional cost for selecting both options, so why – you may ask – does your restaurant's permit not include 'take away'?

Answer: the business owner simply didn't select it as an option.

Is there any other prohibition on the practice?

State law is enforced by a local authority permit system and fees are charged based on the size of the establishment.

State and local authority rules also require operators must observe the Food Safety and Hygiene Code, a federal law.

None of these laws specifically prohibit the taking home of restaurant leftovers.

While restaurants/cafes are exempt, caterers who deliver food off-site must also participate in a local authority food safety system for which they pay an additional permit fee.

But the absence of this additional permit is no bar to taking home part of a served-up dish. As explained on the BCC website, "Simply delivering food to customers, [even] pizza delivery, is not considered catering as it does not involve serving."

Perhaps our waiter's anxiety lies with a fear that the food may become contaminated after leaving the eatery, because perhaps the packaging is "inadequate" or it is below serving temperature.

But our over-anxious waiter is on shakey ground there.

Our conclusion is that there is no legal impediment to any Queensland restaurant or café offering this add-on service for customers if it wants to.

Perhaps for "peace of mind" owners could require diners to box up the remains themselves and place stickers on take-home boxes to say: "We accept no safety responsibility for food removed from premises".

Those restauranteurs who prefer to keep up their ban may be well advised to add a disclaimer to their menus: "Food supplied is for consumption on premises only and must not be removed".

Which message would you prefer to see as you sit down to a hopefully enjoyable feast?

Having your meal and keeping (some of) it too

Life after death on social media – It's virtually real

Julia Wighton

The pursuit of immortality certainly isn't a recent obsession. Achieved by a handful of Greek gods, promised by religions and optimistic scientists, and taken for granted by jellyfish, it has been lusted after by mortals for centuries.

In 2015, we may finally be able to achieve eternal life...through social media.

Of Facebook's 1.3 billion users, nearly 3 mil die each year. So there are more than 30 million 'ghost' profiles on Facebook, the majority of which aren't accessible by anyone and are simply collecting virtual dust.

In the past few years there's been increasing chatter in the tech world about the possibility of life after death online.

Social media encapsulates nearly every moment and stage of contemporary life (even babies are personified before birth through ultrasound photos and pregnancy videos).

So why wouldn't the next step be posthumous activity?

Web entrepreneures are now clambering to offer users a range of digital afterlife services with one to suit nearly everyone's price point.

LivesOn's call to action is 'When your heart stops beating, you'll keep tweeting'; data is collected from your personal twitter feed to create new tweets 'from the grave'.

DeadSocial will schedule public messages to appear across your networks and 'extend your digital legacy using the social web'.

Even Facebook features a memorial tool, which turns your profile into a virtual shrine where friends can share photos and post public goodbyes.

The list goes on.

The popularity of 'digital legacy' services is not without controversy.

From a legal perspective, social media accounts are personal, for the exclusive use of the account holder. Facebook has recently defended a lawsuit over its policies that prevent family members from accessing accounts of loved ones after death.

Just as we strive to present the best version of ourselves day to day, a deceased will want to make sure only their best features are memorialised online.

Do we really want to be thrust into eternal online afterlife?

The question is divisive, and the answer usually depends on the circumstances of the user's death and their legacy.

Was I prepared for my death or was it an accident? Will I be immortalised as a 75 year old or a 25 year old? Was I really liked by my peers? Will I do something deplorable just prior to death?

Death is the ultimate end to control, and immortalising ourselves on public forums opens the door to posthumous comment and criticism, the censorship of which is impossible.

Many relish the chance to reach out from the grave, but it's trickier for those on the receiving end.

For some, a message from the ghost of a friend or family member might act as a poignant nod to their memory, akin to discovering an old letter. For others, seeing a tweet published by a late friend or family member might be positively unnerving.

So, the better question is not to ask whether we want to be immortalised, but rather whether those left behind want to be hounded by our digital spirit for all eternity.

After all, aren't some things better left unsaid?

MCFLY'S 2015 HAD NO PHOTO ENVY

Ellie Grounds

At the dawn of 2015 – the year to which Marty McFly was propelled forward by 30 years – there are still no hover boards or flying cars.

And although being short changed on the promises heralded in *Back To The Future* is a real downer for many, it goes without saying that technology has drastically altered our world.

The scriptwriters obviously had no inkling the most profound alteration to human behaviour in their 30 year time warp would be something far more nerdy than flying cars: social media. That and body ink.

After all, how could they have known that the currency of the cool kids in 2015 is the Instagram "like"?

Nor that we would evolve into a band of inoffensive extroverts disseminating billions of "status" updates about the most trivial events of our usually mundane lives.

Above all they did not forsee that platforms like Instagram would tap the primitive compulsion to publicly exhibit just about anything to all the world or in some cases, just to 'friends' and their 'friends'.

In McFly's 1985 photographs served the purpose of commemorating good times; visual memories in hard-copy form, but always subsidiary to the event itself.

Nowadays with Instagram the ultimate game changer, the photo has become the main event. And exhibitionism has become the tool to master one's tribe.

What's the point in 2015, of eating the delicious smashed avo or hiking four gruelling hours to view a remote mountaintop sunrise if you can't share (read: brag) to your 'friends'?

Gone is the spontaneity of the incidental Kodak moment. Now photo opportunities are planned out to the nth degree. We routinely endanger safety – not to mention our precious communication devices at risk of being dunked in sea or snow - all for the perfect pic.

We are the Comparison Generation, measuring our lives by what our friends are doing, and Instagram has become the status measure not to mention the year-round holiday card not only to up-date but also to big-up.

According to Dr Axel Bruns, Professor in Media and Communications at QUT, the phenomenon is "a shift towards a more real-time method of sharing experiences".

"As everyone does it and everyone is seeing everyone else's updates, there is a certain amount of, perhaps, competition," he says.

We see 'friends' eating out at that hot new bar, climbing Machu Picchu or getting into Harvard and think "I must do that".

We must do it so we can post photos so we can stay abreast. And so the cycle of (photo) envy continues.

Professor Bruns believes such a culture has the capacity to instil anxiety: "Am I going to the right places? Are my experiences as good as theirs?"

"You're much more aware of what everyone in your social circle is doing," he explains.

But as we get jelly over the fabulous holidays, exciting adventures or jaw-dropping outfits, remember we are seeing only the highlight reel.

Life doesn't have a filter. The 'blooper' photos - stuck at the office at 9pm or trying to coerce a screaming baby back to sleep at 3 – are not revealed.

Just like Marty McFly, are we caught up in a world of make believe?

Buyers win ...
continued from page 1 »

named) sales agent escorted the pair along a "well-trodden path" to a local lawyer whose distinction appeared to be that he had authored a "buyer's guide" for the tower but which – given its absence of cautionary advice – "might as well have been prepared for the developer".

Without reading the pile of papers, nor having anything in them drawn to their attention, they duly signed the contracts and associated items for the unit and furniture buy.

Reality struck when their post-construction inspection of August 2011, made it obvious that the two bedder apartment could never achieve anything like $1,000/night rental.

They refused to settle notwithstanding finance was available, claiming through their new lawyers, they had been induced into the contract by misleading and deceptive conduct.

Twelve months later – after the developer re-sold the unit at $620k having received a mere $3.9k rent in the meantime – it sued the buyers who defended the claim for the re-sale loss on the basis of the sales agent's inducements.

The developers made no attempt to justify the representations that Goode and Barber both claimed had been made but instead flatly denied anything of the sort had been said at all.

Judge John McGill found that all three representations had been made and that the developer was caught by the agent's conduct in that "she had ostensible authority to make such statements".

As to whether the buyers had relied on other information rather than the agent's statements – an issue that has been the Achilles heel for other get-out-of-contract litigants – "there was no evidence that they in fact made any other investigations," ruled His Honour.

"Astute investors might well been sceptical about the reliability of something that they were told and have made other investigations, but these defendants were obviously not astute".

Judge McGill reserved his most scathing remarks for the solicitor to whom they had been referred by the agent to act on their behalf and the real estate office that handled the re-sale.

He doubted that the solicitor – unnamed in the judgment and who was not in court to defend himself – "made any sort of attempt in a meaningful way" to protect the interests of the buyers.

"On any view of the matter, the solicitor meeting consisted of nothing more than some enquiry into their capacity to pay the price and the mechanical process of signing the contracts".

"The fact that they had the 'benefit 'of 'independent 'legal advice" was irrelevant" to the issue of the buyers' reliance on the agents' statements because "there was no evidence of anything said or done that had the effect of interfering with the buyers reliance on what they had been told by the salesperson".

The developer also contended, the contract clearly negated all sales representations. But Judge McGill ruled a "no representations provision" cannot "whitewash" misleading or deceptive conduct in fact engaged in.

If that were not the case, he added, "real estate agents could mislead and deceive to their hearts content and the developers who employ them could still take the benefit of the resulting contracts".

The court ordered the contract be voided ab initio and ordered the return of the deposit.

Other litigants in Gold Coast off-the-plan contract disputes have been able to convince a court that misrepresentations have occurred in sales but have failed when it came to proving 'reliance', ie that the agent's statements alone were the clincher in securing their decision as to whether or not to sign up.

The hallmark of this case among so many other GFC-related terminations is that the "foolish and naïve" buyers did no significant research of their own and did not have – at least according to the judgment – effective legal representation . They also waited to be sued by the developer rather than taking on an arguably higher burden of being a plaintiff.

Probably not so "foolish" after all.

Hilton Surfers Paradise - The property wheel is turning

Reef damage ...
continued from page 1 »

ed by the WHC before making a final decision this June.

The UNESCO say on how Queenslanders treat its own natural assets comes from the same rules that preserve other natural wonders for future generations, including Australians.

The international treaty imposes on us a legal obligation to preserve the reef.

South Africa and Zambia have the same obligation as regards Victoria Falls, as does the USA for the Grand

UNESCO's headquarters in Geneva

Canyon. Australia's only way of avoiding its legal obligation is to disavow the treaty.

Hence the concern from Hunt et al and the epiphany he claims the Australian government has having undergone, when it comes to reef preservation.

But his 'last chance' February 2015 report to the WHC deciders has already undermined by Queensland scientists.

The critical defect is the absence of any positive improvement in pollution from agricultural nutrients, despite more than $35 million being allocated for that purpose.

Unnamed Queensland (state employed) scientists claim the state's laissez-faire "control" over farm chemical run-off is to blame for it being a top two factor causing the degradation.

Coral formations are not the only casualty. Estrogen from farm chemicals has recently been discovered interfering with barramundi and coral trout populations to their likely serious detriment.

Both governments are concerned the imminent

Like motherhood, who can argue against a healthy Barrier Reef?

vote could damage the region's $5.2 billion tourism industry but at the same time are loath to impede any form of development be it a port, mine or LNG plant.

Climate change is the least of the harmful agents working to diminish the natural wonder's beauty. But the perceived opposition of both governments to attenuation measures - according to their pro-development credentials - gives a freekick to the anti-development cause.

The election transcended debate beyond being simply concerned with the dumping of Abbott Point dredge spoil and the claim that the 'dry' dumping alternative – into a portion of a wetland conservation area – is equally harmful.

Evolving from the poll is a full volume, multi-factorial, multi-protagonist and multi-state tsunami playing out from George St to Geneva. And it has been placed firmly in the forefront of Queensland voters' consciousness.

The GBR covers an area of 348,000 km2 and is comprised of 2,500 individual reefs and over 900 islands.

No other World Heritage property contains its biodiversity of over 1,500 species of fish, 400 corals, 4,000 molluscs, 240 bird species, plus enormous diversity of sponges, anemones and crustaceans.

But with two thirds of its length no longer pristine as at the time of induction onto the World Heritage Register in 1981 and many sea life species already endangered, the GBR's world beating status will be toppled if the WHC remains unmoved by Hunt's frantic manoeuvring.

More to the point, the reef ecology has reached tipping point. Real solutions must be found.

Big Mac makes meal of $1.4 mil rebate fight

McDonald's were due to be returned their cost of construction when the Benalla restaurant opened its doors in December 2007 shortly after the landlord had received an advance from Bendigo Bank to repay the chain's build costs.

But the lease that was finally signed in February 2008 – in the same form as had been annexed to the Agreement to Lease - contained no reference to reimbursement obligation and also contained an obligation to pay rent "without any deductions", ie. a "no set off" clause.

Unfortunately McDonald's delayed in seeking reimbursement until August 2008, by which time the ownership of the site had changed.

Bendigo notified the company of its refusal to honour the terms of Agreement for Lease to which it had given no consent.

It also contended that McDonald's was not entitled to set off any rent etc under the lease by reason of the no set-off provision it contained.

The Supreme Court of Victoria found in Bendigo's favour on the basis that the no set-off provision had been contained in both documents and was an important feature of the transaction. Nor was there any equitable right of set-off law or equitable lien.

On appeal, the appeal judges considered "the two documents cannot simply be rolled together".

The covenant in the Agreement for Lease to reimburse construction costs could not be considered to have been imported into the lease itself by mere implication and its covenants were personal and did not "touch and concern the land and do not run with the land".

To hold otherwise would be unduly prejudicial to the bank who had no idea its advance hadn't been paid to McDonalds until earlier litigation against the seller came to the lender's notice in June 2009.

McDonald's failed in its attempt to hold the mortgagee liable for its $1.4 mil investment with no remedy left to the burger giant, given the landlord itself is defunct.

Big mac is synonymous with big business

Owner's sells elsewhere before exclusivity ends

Agent sues for comission

Does a poor auction turnout entitle the seller to terminate an exclusive agency before its due date?

That question confronted Ray White Surfers Paradise in relation to Hope Island sellers who also alleged conduct which contravened PAMDA.

Damian and Roxanne Chadwick had enlisted RW to sell their $2.75 mil Beechwood Drive home by auction by way of a 60 day exclusive starting 5 May 2012 in the context that they suspected Westpac would repossess the property on 30 June, if it hadn't been sold sooner.

As their 31 May auction came and went without success, complaints of unsatisfactory marketing emerged.

Agent Sean Kaddatz was, they claimed, directly responsible for grossly under-value offers by having talked the property down by notifying potential bidders that repossession was imminent.

Whites had also failed to provide them with "weekly reports, offers, activity, valuations and feedback from potential purchasers" and had advised them to withdraw their property from auction due to unrealistic price expectations.

The Chadwicks' solicitor notified Ray White of those complaints by letter of 28 June – just days before the exclusive appointment was to expire – at the same time advising that Westpac had entered into possession as a result of which the exclusive agency was thus "at an end".

The following day an interstate purchaser – who had inspected the property in May through Hum & Fea Real Estate – signed a $2.7 mil offer to buy, which the sellers duly accepted.

Sometime later RW discovered that Melissa Panepinto had been the buyer and that a competitor, not Westpac, was responsible for the sale.

Their lawsuit for the commission was defended by the allegation that PAMDA s 135 (1) had not been complied with in that the agency had not discussed the various matters referred to therein including the consequences of the property being sold by a third party during the period of an exclusive agency.

QCAT adjudicator Christine Trueman ruled – against the "concise, structured but at times inconsistent evidence" of the sellers -that Kaddatz had provided the relevant warnings by following a checklist and that the exclusive agency appointment was valid.

She was also incredulous "that following a termination letter on 28 June, they were able to arrange a sale in one day". It was clear, in her view, that Ms Panepinto inspected and made a signed offer during the exclusive appointment period.

In circumstances where the deficiencies in service were denied by agency head Andrew Bell, the tribunal ruled that – although the sellers were genuinely unhappy with the marketing performance – such conduct did not constitute a breach entitling termination of the exclusive agency agreement.

The total commission of $29k exceeded the jurisdiction of the tribunal. The Chadwicks were ordered to pay Ray White $25k – the maximum extent of the tribunals jurisdiction – plus interest and filing fees.

Hope island marina