

# Macrossan & Amiet Solicitors: news update

June 2008 Issue 3

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## The Macrossan & Amiet Charitable Foundation

The trustees of the Macrossan & Amiet Charitable Foundation will soon be considering funding applications for the 2008/2009 financial year.

### What is the Macrossan & Amiet Charitable Foundation?

The Foundation is a charitable trust from which annual donations are made to local organisations to assist with community projects, or to help fund local charities.

The Foundation began when Macrossan & Amiet celebrated its 100th birthday and wanted to do something that would honour its founders and would also give something back to the community that had supported it over the last century.

As a result, on 1 July 1995 the Foundation was born.

Since then, distributions from the Foundation have continually provided substantial assistance to the local community.

During the 2007/2008 financial year, the Foundation distributed more than \$13,000 of much-needed funds to the following organisations:

- Australian Red Cross
- Bucasia Kindergarten Assoc. Inc.
- Community Accommodation & Support Agency Inc.
- KidsCan Limited
- Mackay Chaplaincy

### Applications for Funding in the 2008/2009 Financial Year

Independent trustees administer the Foundation and decide how funds should be distributed.

To apply for funding, all organisations have to do is complete an application form and outline the purpose for which the desired funding would be used.

The application form can be downloaded from the Macrossan & Amiet website at [www.macamiet.com.au/download/application-for-funding.doc](http://www.macamiet.com.au/download/application-for-funding.doc). Alternatively, contact the Foundation's Secretary, Damian Carroll, on (07) 4944 0333.

In order to be eligible to receive a distribution from the Foundation, organisations must be endorsed as an income tax exempt charity or as a deductible gift recipient.

The trustees will be considering all applications at their next Annual General Meeting in the second week of July. Completed applications should be forwarded to Damian Carroll at Macrossan & Amiet's Mackay office by 30 June 2008.

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## News



In November 2007, the Federal Government introduced amendments to the *Superannuation Industry (Supervision) Act 1993 (Cth)*, the key legislation governing the rules and regulations for superannuation funds in Australia.

By Stephen Hayles

# Super funds can borrow money

The amendment that has generated the most interest in legal and financial planning worlds is the insertion of a new section 67(4A), which opens the way for superannuation funds to borrow money.

Until the changes were introduced, there had been a long-held policy argument against allowing superannuation funds to borrow money – superannuation funds, which are essentially retirement savings, should not be allowed to involve themselves in ‘high risk’ activities such as borrowing money to invest.

Those in the superannuation industry, however, found ways to avoid the money-borrowing prohibition and devised methods of circumventing the law, in particular by way of installment warrants.

When the Australian Taxation Office began to make noises about cracking down on this sort of activity in 2007, the Federal Government decided to review the

restrictions on superannuation funds borrowing money after consultation with the industry.

Section 67(4A) is the result of the consultation and essentially legalises the practice of using installment warrants previously questioned by the Australian Taxation Office.

Superannuation funds, including self-managed funds, can now acquire assets via installment warrants where the asset is held on trust and the fund acquires only a beneficial interest in the asset.

The fund, however, has the right to acquire the legal ownership of the asset through payment of installments. The restrictions placed on the type of assets that may be purchased by a superannuation fund remain.

The law is very complex and if purchases are not structured correctly it could result in double stamp duty on certain assets or they could be in breach of the law.

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### Donations to the Foundation

In order to sustain and increase the Foundation’s contribution to local charities and community projects, the Foundation relies on donations from people interested in lending a helping hand to those who need it.

Macrossan & Amiet has donated more than \$140,000 to the Foundation since its inception and many other generous donors have also helped to build up the funds available for charitable distributions.

Macrossan & Amiet therefore calls

all readers to consider contributing to the Foundation. If each client donates just \$10 annually, the Foundation’s fund would grow by more than \$25,000 a year, giving the Foundation the ability to help even more local organisations.

To make a donation, please contact Damian Carroll on (07) 4944 0333. All donations are tax deductible and any money donated will be a direct contribution to the capital of the Foundation, as all its administration costs are covered by Macrossan & Amiet.

### Founders of Macrossan & Amiet Solicitors, 1895

Vince Macrossan  
Bill Amiet  
Stan Amiet  
Fred MacNish

### Trustees of the Macrossan & Amiet Charitable Foundation

Deirdre Comerford  
Richard Deguara  
Peter Faust  
Clifford Flor  
John Formosa  
Beryl Neilsen  
Gene Paterson  
Gordon White

## In the spotlight...

Macrossan & Amiet would like to take a few minutes to recognise one of the leading developers of real estate in the Whitsunday region and, more importantly, one of its valued clients.

The son of a builder, Bill Sharpe had a hammer and nails in his hand from age seven. At 15, he began a carpentry apprenticeship and at 23 he became the youngest certified builder in Queensland.

Growing up in Victoria, Bill moved to Queensland in his early 20's. He worked constructing homes on the steep slopes of Mt Tamborine on the Gold Coast Hinterland, while raising a young family.

In 1994 Bill discovered Airlie Beach. Like so many locals, he fell in love with its charm and has never left.

Almost immediately, Bill identified an incredible opportunity to build on elevated land above the town centre (now Golden Orchid Drive) with its sea and island views. At the time, Airlie Beach had no upmarket accommodation and Bill identified a niche market developing resort-style holiday apartments – resorts such as Waters Edge, Mediterranean, Toscana Village and Pinnacles Resort and Spa.

Macrossan & Amiet has been involved with Bill's recent projects including Azure Sea, Searene and now 'Waterson's'. Given the number of more expensive units on the market Bill has identified a need for more affordable units to be made available within Airlie Beach. His latest development

'Waterson's' has been developed to respond to the high demand from this sector of the market.

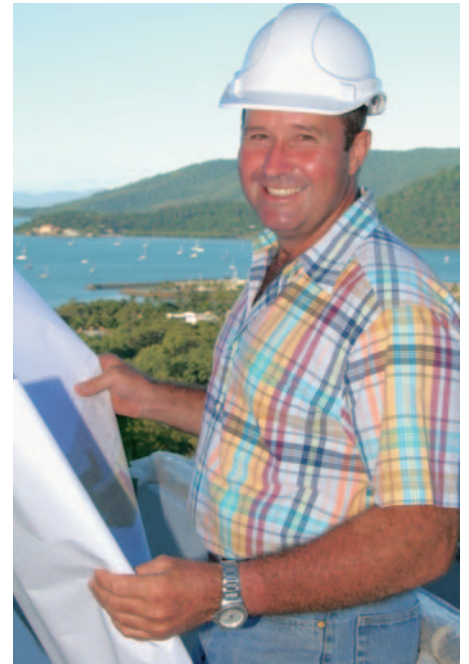
"As we well know, property prices in Airlie Beach have experienced extreme gains in recent years, making it hard for people looking to enter the market," Bill said. "I have designed Waterson's to be an affordable yet attractive option for the first-time buyer where they don't have to lose out on quality or location."

Waterson's will be located on Waterson Way in the heart of Airlie Beach and will comprise eight one-bedroom and four twin-key apartments.

Bill has won a number of awards including receiving one of the highest accolades in the industry, the Master Builders' National Home Builder of the Year, for his private residence in Mandalay Bay. The house is a tribute to Bill and his wife Kirsty's attention to detail and sense of style and flair.

Bill Sharpe has been instrumental in the success of Airlie Beach in its transition from a backpacker dominated market to one which is now more up-market and family orientated. Bill has been a pioneer in the property market in the Whitsunday region and the 'flow on' effects of his success have been a significant contributing factor to the development of Airlie Beach.

## News



Developer Bill Sharpe

## Feature



Access to water is an important consideration when purchasing and selling rural properties. To ensure rights are not lost during the transfer process it is important to consult your solicitor to avoid being left high and dry.

By Stephen Hayles

# Water entitlements in Queensland

The State Government, through the Department of Natural Resources and Water (NRW), manages access to water through a system of water entitlements.

These entitlements include water licences and water allocations. This article will focus on the operation of water licences in Queensland. Next month's newsletter will focus on water allocations in Queensland.

## Water licence

A water licence is an entitlement granted by the Department of Natural Resources to an owner of land, which is required for the use of water from a watercourse, lake or spring for purposes such as:

- Stock or domestic water on lands that do not adjoin a watercourse, lake or spring
- Irrigation
- Industrial use
- The storage of water behind a weir
- Underground water
- The storage of water in excavations that are within or connected to a watercourse

A water licence is issued for a

certain period and contains conditions that must be met by the licensee. Such conditions could include:

- Requirements to monitor how much water is taken
- Threshold flow conditions that must be met before water can be taken
- The maximum rate at which water may be taken
- The maximum volume of water that can be taken in a period
- Limitation on the location from which water may be taken.

## Sale of water licences

In circumstances where the owner of land sells a property to which a water licence attaches, the licence will be transferred by the Department of Natural Resources to the new owner upon registration of the transfer of the land title.

However, the transfer of water licence becomes a more tricky issue where the water licence attaches to several lots of land and one of those lots is to be sold to a new owner.

In other circumstances, where a water licence attaches to several



**Example 1:** If a licence is issued for three lots owned by Mr Bloggs to allow access to a bore on lot 2 and he sells all three lots to a new buyer, then the water licence is transferred to the new buyer upon registration of the transfer of the land title.

<b>Lot 1</b> Mr Bloggs sold to Mr Buyer	<b>Lot 2</b> Mr Bloggs sold to Mr Buyer Bore X	<b>Lot 3</b> Mr Bloggs sold to Mr Buyer
<b>Water Licence applies to all three lots which are now owned by Mr Buyer</b>		

**Example 2:** Mr Bloggs retains lot 1 and sells lots 2 and 3 to a new buyer. Upon the transfer of lots 2 and 3 occurring, the water licence issued for all three lots is cancelled.

<b>Lot 1</b> Owned by Mr Bloggs	<b>Lot 2</b> Mr Bloggs sold to Mr Buyer Bore X	<b>Lot 3</b> Mr Bloggs sold to Mr Buyer
<b>Water Licence would be cancelled for all three lots and an application for a new licence is required</b>		

lots of land and one or several of these lots is to be sold to a new owner, the water licence will be cancelled.

In this case, it is in the buyer's interest to ensure that the seller makes an application to the Department of Natural Resources so that a new licence is allocated for the land from which the water is obtained.

If this does not occur then the transfer of the single lot of land will result in the termination of the water licence and the buyer will need to make an application for a new licence to be issued.

This process can take some time (up to 90 days in most instances) and there is no guarantee that a new licence will be issued.

Similarly, if Mr Bloggs was to retain lot 2 on which the bore is situated and sell lot 3 he would be required to undertake the same application to the Department of Natural Resources to ensure a new water licence is allocated to the land he is retaining.

For further information on water licences contact your solicitor at Macrossan & Amiet.

shayles@macamiet.com.au



## Time out with Alison Woodward

Alison Woodward is one of Macrossan & Amiet's newest recruits, having started with the firm as a trainee solicitor in early 2008.

As a trainee solicitor, Alison will complete a 12-month traineeship supervised by the partners of Macrossan & Amiet.

Alison will also complete supplementary training through the College of Law. The traineeship will give Alison exposure to a variety of areas of law, however, she is particularly interested in Family and Criminal Law.

Alison grew up in Ipswich and was active in the community through her involvement with a local choir.

After completing High School, Alison continued her education at Griffith University, Brisbane.

In December 2007, Alison graduated from Griffith University with a Bachelor of Commerce and Bachelor of Law.

When not at work, Alison likes going to ballroom dancing classes.

## Feature



Imagine receiving an e-mail from a Nigerian banker. He tells you a wealthy client, with the same surname as you, has died without any surviving family. If a relative isn't found, the money, in the millions, will be paid to the government. To avoid this, he will transfer the money to you. You will then transfer him back his share, a modest 30 or 40 per cent.

By Greg Smart

# If it sounds too good to be true...

It's a tidy way to make a few million dollars. Unfortunately, the only people making money are the criminals sending the e-mails in the first place. According to some estimates, the Nigerian 419 scams are a \$2 billion (US) a year industry. These scams are, unfortunately, successful and very much alive today.

The sophistication of the scams has increased. The scammers are sending letters, rather than e-mails, on reasonably authentic looking letterhead. It makes sense from a business point of view – it's worth investing some money to look professional in order to take a piece of a \$2 billion pie.

The scams these days usually do not involve Nigerian bankers but are almost always based on the Nigerian Model. The characteristic will be that someone in a position of trust or authority will require your assistance to move a large amount of money offshore urgently. They will normally assure you that the plan is 100 per cent legal and carries no risk to you.

Scammers are able to make money from these letters in two ways. The first is that you might provide sufficient details of yourself to allow them to access your bank account or commit identity theft. The second is that after corresponding with the scammer for a short time, you will be asked to supply funds to cover a bank charge, stamp duty or other fees and charges that form obstacles to the payment of the money.

Scam e-mails and letters generally have the following traits:

- The offer will normally sound fraudulent (i.e. transfer money to you by posing as somebody's relative) and yet the sender will guarantee it is 100 per cent legal
- Poor spelling
- The scammers will normally request correspondence by fax or e-mail
- The e-mail address provided will normally be a free service such as Hotmail, Gmail or Yahoo, despite the author apparently working for a reputable firm, business or government department
- The letter or e-mail will often not be personally addressed, although the envelope might be

Another variant is the International Lottery scam. You receive an authentic looking notice advising that you have won millions in an international lottery, whether you purchased tickets or not. Again, you will be required to pay a fee to release the funds.

The Australian Government watchdog 'FIDO' website contains further information about recognising a scam. The site can be found at [www.fido.gov.au](http://www.fido.gov.au).

If you receive correspondence that looks like a scam, it probably is. The best thing you can do is throw it in the bin. If you are considering responding, then make an appointment with your solicitor first.

And always remember – if it looks too good to be true...it probably is.

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## Feature



Experience is a hard teacher, she gives you the test first then the lesson. If there is anything good that can come from the recent floods it is the lessons we learn in dealing with issues such as insurance claims and what has been covered in our insurance contracts.

By Stephen Willis

## Experience is a hard teacher

The majority of home insurance contracts do not include a clause for damage caused by 'floods'. By standard definition in these contracts, a 'flood' means the overflowing of a natural watercourse. Mackay was very lucky in that the water inundation was not widely found by insurance companies to mean a 'flood' but rather was found to be 'rain water runoff' (a more common insurance clause).

The simple fact was that insurance holders were able to argue that the Pioneer River did not break its banks and 'flood' residential properties.

The difference between 'flood' and 'rain water runoff' lies in the fine print definitions where the distinction can be found by asking where did the inundating water come from?

If the water came from the broken banks of a river then it would be flood water, however if it came from public roadside gutters or from drains normally dry then it would be rainwater runoff.

Emerald on the other hand was not so lucky and many insurance companies would not pay for damages due to their finding that the water was classified as 'flood'.

Unfortunately for them the inundating water came from a dam, which overflowed into the river and in turn overflowed into residential properties.

Things become pedantic when there is both water from overflowing rivers or creeks and rainwater run off. The position is that insurance companies will pay

up when damage was caused by rainwater with subsequent further damage caused by flood waters. However, they may not pay when damage was caused by a mixture of rainwater and flood water.

Another trap people find themselves in is in relation to rental insurance. The landlord should have insurance for the rented premises, however he or she would not have insurance for the tenant's personal property.

Rental insurance is those policies that cover the insured against theft, fire and flood damage to personal property and costs incurred while the premises are being repaired.

In the event that a claim is made and the person has to move out for a period of time while the residence is being repaired, some policies do not cover the costs of storage of your household items and only pay for the rent expenses.

In the event of a dispute between the policy holder and the insurance company, the policy terms and conditions will normally have a procedure for resolution of disputes. If still unsatisfied, the next step would involve referring the dispute to the Insurance Ombudsman, who has powers to make a binding determination on some insurance companies.

It is important when choosing your home insurance to read the fine print and to know exactly what will be covered.

Existing policy holders should also check their policies.

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## Last word



Kylie Davies

### Contact us

For further information about the services offered by Macrossan & Amiet Solicitors please contact your nearest office:

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# New office one year on

As I am pondering issues that should be drawn to the attention of our clients in our new-look newsletter, it occurs to me that our new Cannonvale office has now been open for more than a year.

Time has flown and at least once a week, if not more, I have clients comment to me on how impressed they are with our new office and how easy it is to access.

It is no coincidence that relocation to our new office has resulted in an increase in productivity of 20 to 30 per cent. We believe that this is purely the result of better facilities, increase in space and improved efficiencies in areas such as telecommunications, client accessibility and staff satisfaction.

Not only is our office bigger and better but we think it is also well equipped to handle the future needs and the progressive development of the Whitsunday Region.

We believe that the services

offered by our office are commensurate with those that might be found in any large regional facility.

Of course, all this could not have been achieved without the ongoing support of our clients.

We believe that we are now more equipped to handle all of our clients' needs and we look forward to being able to service our clients efficiently and professionally in the future.

Having said all that, I had better make sure I get this article to the printers so I can get this newsletter out efficiently!

Until next time,

Kylie  
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