

***Carter
Newell***
LAWYERS

Injury Liability Gazette



14th edition

Our mission is to be recognised as a premier provider of specialist legal services across Australia and internationally by being the best we can be for our clients and ourselves.

Carter Newell Lawyers is an award winning specialist law firm providing legal advice to Australian and international corporate clients in our key specialist practice areas of:

- Insurance
- Construction & Engineering
- Energy & Resources
- Corporate
- Commercial Property
- Litigation & Dispute Resolution
- Aviation & Transport
- Planning & Environment
- Workplace Advisory

Within each of these core areas we have dedicated experts who are committed to and passionate about their field and have extensive experience and knowledge.

Awards

2022, 2021, 2020, 2019, 2018, 2017, 2016 (edns) Best Lawyers in Australia

2021, 2019 **Winner** Australasian Lawyer – Employer of Choice

2021, 2020, 2019, 2018, 2017, 2016, 2015 Leading Professional Indemnity Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018, 2017, 2016, 2015 Leading Defendant Public and Product Liability Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018, 2017, 2016, 2015 Leading Defendant Medical Negligence Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018, 2017, 2016, 2012 Leading Energy & Resources Law Firm – Doyle’s Guide

2021, 2020, 2019, 2017 **Finalist** Lawyers Weekly Australian Law Awards - Construction & Engineering Dispute Resolution Team of the Year.

2021, 2018 **Finalist** - Lawyers Weekly Australian Law Awards - Energy & Resources Team of the Year

2021 5-Star Insurance Law Firm - Australasian Lawyer and Insurance Business Australia

2021, 2020 Leading Planning & Development Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014, 2012 Leading Construction & Infrastructure Litigation (Back-End Construction & Contentious Construction) Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018 Leading Corporate Law Firm – Doyle’s Guide

2021, 2020, 2019, 2018, 2017, 2015 Leading Australian Aviation Law Firm – Doyle’s Guide

2021 Chambers and Partners - Asia-Pacific: Insurance Defence in Australia

2020 **Excellence Award** 2018, 2016 **Finalist** Australasian Law Awards – Employee Health & Wellbeing Award

2020 **Excellence Award** 2019 **Winner** 2017, 2016 **Finalist** Australasian Law Awards – Law Firm of the Year (1 to 100 lawyers)

2020 **Excellence Award** 2019 **Winner** 2018, 2017, 2016, 2015 **Finalist** Australasian Law Awards – Insurance Specialist Firm of the Year

2020, 2019 **Finalist** Lawyers Weekly Australian Law Awards - Law Firm of the Year

2020, 2019, 2018 **Finalist** Lawyers Weekly Australian Law Awards - Insurance Team of the Year

2019, 2018, 2017, 2015, 2012 Leading Commercial Litigation & Dispute Resolution Law Firm – Doyle’s Guide

2019 Leading Queensland Front End Construction & Infrastructure Law Firm – Doyle’s Guide

2018, 2016 **Winner** 2017, 2015 **Finalist** Australasian Law Awards – State / Regional Firm of the Year

**Doyle’s Guide to the Australian Legal Profession*

Contents

Damages

4 **Saul v Machalek & Anor [2020] QDC 69**

A motorcycle stuntman who suffered a serious injury to his right leg when he was knocked from his bicycle by a car had his damages assessed at just over \$100,000.

8 **Tauri By His Tutor Carmelle Skipper v Janlin Circuses Pty Ltd T/As Stardust Circus (No 3) [2020] NSWSC 1918**

The Supreme Court ordered the defendant to pay over \$1.8 million to the plaintiff for head injuries suffered when he fell through a gap in audience seating at a circus at 18 months old.

Occupiers' Liability

12 **Krickovic v The Star Pty Ltd [2019] NSWDC 594**

A casino's system for inspection and cleaning was found to be unsuitable and to have caused a man to slip on a puddle and sustain injuries while at the premises.

Sports & Recreational Activities

14 **Marks v Skydive Holdings Pty Ltd [2021] VSC 21**

A woman was injured during landing in a tandem skydive but failed to establish that the heavy landing was the result of turbulence or a failure by the instructor to exercise due care and skill when landing in wind.

16 **Nihill v Vivien's Model and Theatrical Management; Lehaneur [2020] NSWDC 131**

A modelling agency was not liable for a woman's injury suffered when she was walking to a rock pool for a photoshoot on the basis that it was a dangerous recreational activity.

20 **Powell v JFIT Holdings Pty Ltd t/as New Dimensions Health and Fitness Centre [2020] NSWDC 264**

A gym was found liable for a back injury suffered by a member who lifted a heavy weight off the floor to clean the area before commencing her exercise regime.

24 **Singh v Lynch [2019] NSWSC 1403**

The Court found that an injury sustained during a horse race was the materialisation of an obvious risk of harm.

State & Local Authorities

26 **State of Victoria v Kozarov [2020] VSCA 301 (appeal from Kozarov v State of Victoria [2020] VSC 78)**

The Court overturned a decision allowing a claim for pure psychiatric injury suffered by a lawyer at the Victorian Office of Public Prosecutions while working in the sexual offences unit.

Workplace Law

30 **Allied Pumps Pty Ltd v Hooker [2020] WASCA 72**

The Court of Appeal upheld a trial decision that it was reasonably foreseeable that an employee would suffer injury after being startled by an alarm going off unexpectedly.

32 **Davies v Whitehaven Coal Mining Limited [2020] NSWCA 219**

A mine worker successfully argued that a modified machine engine created an unnecessary risk of slipping when refuelling.

36 **Giles v State of Queensland [2020] QDC 332**

A firefighter who suffered PTSD following his attendance at a fire where eleven people were killed failed to establish negligence by his employer in caring for his wellbeing.

38 **Welsh v Boutique Venues Pty Ltd [2020] QDC 18**

A restaurant worker received modest damages for burns suffered when she was retrieving a tray containing hot water from an oven that was above her eye level.

From the Partner



Carter Newell's 14th edition Injury Liability Gazette outlines some recent decisions relating to damages, occupiers' liability, sports & recreational activities, state & local authorities and workplace law.

Compiled by our Property & Injury Liability Team, this succinct

resource examines cases relevant to insurance professionals and highlights, to insurers and insureds alike, key risks regularly faced.

Of particular note is the decision relating to *Giles v State of Queensland* [2020] QDC 332, which examines a nervous shock claim against an employer in the context of emergency services. The decision in *Kozarov* also considers pure psychiatric injury in an employment context, being one of a number of decisions in recent times to consider this issue.

While claims involving employees are typically covered by statutory policies, with employers increasingly moving to flexible workforces through, for example, labour hire arrangements, employment claims are becoming

increasingly relevant to public liability insurers.

It is also interesting to see what the courts in some of these decisions regard as a dangerous recreational activities, and the obligations on service providers arising out of those activities.

As a premier legal service provider with one of the largest insurance practices in Australia, with teams in Brisbane, Sydney and Melbourne, we are confident this edition of the Injury Liability Gazette will be a useful resource for our readers.

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Special thanks for the contribution of Lucy Harris and Kate Watson-Brown.

We welcome your feedback and any suggestions you may have for future editions (feedback@carternewell.com). Previous editions and accompanying publications can be found at our website: www.carternewell.com.

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