

**Carter  
Newell**  
*LAWYERS*

**Medical Malpractice Gazette**



2nd 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

2023, 2022, 2021, 2020, 2019, 2018, 2017, 2016 (edns) Best Lawyers in Australia

2022, 2020, 2019, 2018 **Finalist** Lawyers Weekly Australian Law Awards - Insurance Team of the Year

2022, 2021, 2020, 2019, 2017 **Finalist** Lawyers Weekly Australian Law Awards - Construction & Engineering Dispute Resolution Team of the Year

2022, 2020, 2019 **Finalist** Lawyers Weekly Australian Law Awards - Law Firm of the Year

2022 **Finalist** Lawyers Weekly Australian Law awards - Employer of Choice

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

2022, 2020 **Excellence Award** 2019 **Winner** 2017, 2016 **Finalist** Australasian Law Awards – Law Firm of the Year (1 to 100 lawyers)

2022, 2021 Chambers and Partners - Asia-Pacific: Insurance Defence in Australia

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, 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

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

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

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### **8** *State of Queensland v Masson* [2020] HCA 28

*Consideration of the standard of care owed by a paramedic*

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*A medical practitioner was charged with domestic and family violence offences. Consideration of determinations and whether a Tribunal should accept the agreed statement.*

## Failure to comply

### **16** *Psychology Board of Australia v Wilkinson (No 2) (Review and Regulation)* [2020] VCAT 1431

*A psychologist failed to comply with audit and supervision conditions imposed by Tribunal.*

## Failure to diagnose

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*A radiologist was held not liable for breaching their duty of care to the plaintiff by failing to diagnose a spinal defect evident in radiological images.*

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## Failure to advise

### **22** *Makaroff v Nepean Blue Mountains Local Health District* [2021] NSWCA 107

*A Hospital was found to have breached its duty of care to the plaintiff/appellant by failing to inform her of the urgency of an orthopaedic review*

## Negligent treatment

### **24** *Miller v Jones (No. 6)* [2020] NSWSC 736

*A doctor was found to have breached his duty of care to the plaintiff by negligently performing a graft for a torn ACL. The matter was to be determined according to French laws of negligence.*

### **26** *East Metropolitan Health Service v Ellis (by his next friend Christopher Graham Ellis)* [2020] WASCA 147

*During birth, a baby suffered brain damage caused by the hospital's negligence. The Court of Appeal upheld the trial judge's decision and found that causation can be inferred provided the inference reaches the requisite standard of proof.*

### **30** *Dean v Pope* [2021] NSWDC 670

*The defendant succeeded in arguing that his assessment, treatment, and management of the plaintiff's presenting symptoms, to the extent disclosed to him, was supported by peer professional opinion.*

# From the Partner



It is with pleasure that we publish the second edition of our Medical Malpractice Gazette featuring a number of noteworthy cases from within the healthcare sector.

The most common types of claim that we currently see are claims for damages for personal injury allegedly caused by or during treatment or from an alleged

failure to properly diagnose, and complaints to the Australian Health Practitioner Regulation Agency (AHPRA).

In light of the range of personal injury plaintiff firms that pursue personal injury claims on a speculative basis, there is a risk to any participant in the healthcare industry that they may be required to incur significant defence costs defending a claim (whether or not it has merit), and that a claim that has merit may result in substantial damages.

We also see claims for unfair dismissal, adverse action, sexual harassment and bullying, which can be costly and disruptive.

We are therefore actively involved

in assisting insurers and brokers to ensure their insureds understand these risks and that any claims are resolved as quickly and cost effectively as possible.

As a premier legal firm with one of the largest insurance practices in Australia, we are confident that this edition will be a useful resource for our readers. We welcome your feedback and any suggestions you may have for future editions ([feedback@carternewell.com](mailto:feedback@carternewell.com)).

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*Leading Medical Negligence & Malpractice Lawyers (Defendant) – Doyle's Guide*



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