

BOOK REVIEW

AUSTRALIAN MEDICAL LIABILITY **2ND EDITION**

**BY BILL MADDEN AND JANINE
MCLWRAITH**

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The aims of the second edition of *Australian Medical Liability* are clearly set out in the introductory chapter. The book is ‘intended as a practical reference, source book and commentary for legal practitioners interested in the law of medical negligence’.¹ The book also states what it does not do; it does not purport to be a ‘substitute for professional legal advice on an individual matter and, indeed does not cover all aspects of the relevant law’.² This is valuable information and sets the parameters for what the audience, primarily legal and medical practitioners, should expect from this book.

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¹ Bill Madden and Janine McIlwraith, *Australian Medical Liability* (LexisNexis Butterworths, 2nd ed, 2013) 4.

² *Ibid.*

The book is divided into five parts (A–E) and comprises 19 concise chapters. The book covers duty, breach, causation, defences, and special category situations involving medical liability.³

The first chapter of the book provides a concise introduction to the *Review of the Law of Negligence: Final Report*,⁴ known as the ‘Ipp Report’ after its author, Justice David Andrew Ipp. Chapter 1 also discusses the key recommendations of the Report and provides a table illustrating the relevant statutory provisions governing standard of care and professional negligence in each Australian state and territory. This table proves to be useful to the reader as a quick reference point, meeting the aims of the book stated earlier.

Part B of the book (entitled ‘Duty’) comprises five chapters (2–6). Each chapter is well structured and includes an introduction and significant signposting to other relevant chapters.

The use of tables to identify and illustrate cases of importance in Australia is welcome and works very well. By way of example, chapter 2 provides a chronological table of key decisions and important determinations from the case law relevant to informed consent in Australia.⁵

One of the most attractive aspects of Part B is the wide range of issues that it covers. In particular, chapter 3 explores duties pertaining to medical treatment borne by specific persons and institutions such as reception staff, medical centres and ambulance services.

Chapter 4 concerns ‘Duties to non-patients and third parties’. A wide range of possible duties owed to ‘third parties’ are discussed, ranging from those owed to employers to those owed to sexual partners of patients. In addition, details of relevant case law are provided. In this chapter, again, the authors provide an easily accessible quick reference table detailing the relevant statutory provisions concerning ‘the scope of liability’ in each state and territory.⁶

Part C of the book turns to ‘Breach and Defences’ and comprises eight chapters (7–14).⁷ Chapter 7 considers the ‘breach’ of duty in informed consent cases, picking up from chapter 2 (‘Duty and informed consent’).

³ Ibid 19.

⁴ *Review of the Law of Negligence: Final Report*, September 2002 <http://www.amatas.com.au/assets/ipp_report.pdf>.

⁵ Madden and McIlwraith, above n 1, 22–3.

⁶ Ibid 73.

⁷ Ibid 105–267.

Chapter 9 is of considerable importance to those reading or purchasing this text as a reference book. This chapter provides an abundance of case law examples considering breach of duty in treatment cases. The case examples cover a range of issues from breach of duty in medical cases of delayed diagnosis and misdiagnosis of medical conditions to breach of duty issues raised by cosmetic surgery. The case examples succinctly detail the facts of the cases and the courts' decisions. The authors relay the key facts of the cases without the use of technical medical terms, with the result that the case examples are clear and easy to understand. Where relevant, short excerpts from case judgments are also included. In addition, chapter 9 provides case examples of breach of duty in treatment cases relating to contraception and gynaecology, and through to birth trauma and neonatal care.

The remaining four chapters of Part C discuss possible defences to a breach of duty. Chapter 10 efficiently considers special protections available to public hospitals. In addition, it provides a simple table detailing statutory provisions governing involuntary psychiatric treatment.⁸ Although the book is a handbook, chapter 14 provides a detailed examination of statutory provisions and case law relating to the defence of contributory negligence.

The penultimate part of the book (Part D) considers the element of causation in informed treatment cases. Chapter 17 examines the seminal case of *Tabet v Gett* concerning loss of chance in recent times in Australia. This chapter, with its discussion of loss of chance and the outcome of the High Court's decision in the case, will be of particular benefit to both medical and legal professionals.

The final part of the book concerns 'special categories' and usefully discusses wrongful birth claims and intentional torts (trespass actions) in an informative yet compact two final chapters.

Although this is a handbook, each chapter of this text contains substantial case references, case examples and relevant excerpts from legal judgments. In addition, the layout and structure of the book, and its comprehensive use of tables to provide an overview of relevant cases or statutory provisions across all states and territories, are commendable. This is the 'go to' text for both quick reference purposes and for succinct legal decisions, where a detailed, and often lengthy case judgment is not required.

⁸ Ibid 224–5.