



# HEALTH ALERT

20 March 2017

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## JUDGEMENTS

### Key decisions

16 March 2017 - *(re Dargan) Amaca Pty Limited v Northern Sydney Area Health Service & Ors* [2017] NSWDDT 1 - Dust Diseases – cross claim – mesothelioma – statutory compensation paid to plaintiff by WorkCover Queensland – agreement between WorkCover Queensland and plaintiff that in proceedings against Amaca Pty Limited, plaintiff may retain 20% of proceeds if proceeds less than compensation received – proceedings by plaintiff against Amaca Pty Limited – plaintiff’s proceedings settled for less than compensation received – whether the agreement resulted in plaintiff receiving double compensation – if so, whether Amaca Pty Limited and cross defendants were not “liable in respect of (the) damage” suffered by the plaintiff within the meaning of s 5 Law Reform (Miscellaneous Provisions) Act 1946 (NSW) such that Amaca Pty Limited could not claim contribution from the cross defendants

The plaintiff brought proceedings against the defendants seeking contribution or indemnity in respect of an amount paid in a settlement with Mr Dragan. Dargan contracted cancer from asbestos exposure in the course of his employment at several hospitals. It was uncontested that each exposure caused or materially contributed to the cancer. The asbestos was a product of the plaintiff.

Dargan received compensation from WorkCover QLD, as the Queensland government was responsible for the liabilities of one the hospitals he worked at. The defendants in this proceeding are responsible for the liabilities of the other hospitals he was employed at.

Dargan and WorkCover QLD agreed that he would pursue a claim against the plaintiff, and any proceeds in excess of his statutory compensation would be paid to WorkCover QLD. The plaintiff settled the matter with Dragan and now seeks contribution from the defendants for their liability. The defendants resisted on the basis that Dragan would be doubly compensated if they or the plaintiff were to pay.

The Court held that the plaintiff was entitled to the contribution it sought from the defendants. It concluded that the compensation from WorkCover QLD did not relieve the plaintiff of its liability to Dragan nor did it change the compensation Dragan was entitled to. Further, it disagreed with the argument that Dragan was receiving double compensation because he was required to repay WorkCover QLD and could not hold additional compensation in excess of what he was entitled to.

10 March 2017 - *Sinopoli v Harrison (Human Rights)* [2017] VCAT 355 - Applicant claims that in the delivery of services and in withdrawing services the Respondents unlawfully discriminated against her and victimised her - Applicant directed to produce all her evidence - Respondents then applied for claim to be struck out or dismissed – dismissal appropriate if claim is obviously hopeless or unsustainable – Tribunal’s approach is cautious – insufficient evidence to establish on balance of probabilities that Respondents victimised or unlawfully discriminated against Applicant – other issues raised by the Applicant not covered by the relevant legislation – outside jurisdiction – Victorian Civil and Administrative Tribunal Act 1998 s75 – Equal Opportunity Act 2010 ss 6,7,8,9,103,104

The applicant brought proceedings contending she was discriminated and victimised as a patient by the respondent, a health services provider. The applicant was a patient who was admitted to receive treatment for painful conditions affecting her back, neck and shoulder. The respondent notified the applicant that they would no longer provide services to her and removed her from waiting list for surgery because of the risks both to her health and the success of surgery while she is overweight.

The Tribunal held that there was insufficient evidence to prove that the respondents victimised or unlawfully discriminated against the applicant. It concluded that it would be unlawful to withhold treatment just because someone is overweight. However, it was not unlawful discrimination to refuse medical treatment on the basis of the risks involved or the success of the treatment. Further, the Tribunal emphasised that the applicant’s ability to have surgery at another hospital does not mean that the respondent’s decision to refuse surgery was discriminatory, as this can be explained by a change in the applicant’s circumstances or a different approach used by the new provider.

### New South Wales

15 March 2017 - *NG v Chinese Medicine Board of Australia* [2017] NSWCATOD 36 - PROFESSIONS AND TRADES – Where health practitioner has appealed against conditions placed on her registration – where the Chinese Medical Board concedes an error in imposing conditions and has caused removal of conditions from the Register maintained by the Australian Health Practitioner Regulation Agency – Whether appeal is frivolous or vexatious or misconceived or lacking in substance – Consideration of objects of Civil and Administrative Tribunal Act 2013 (NSW) and of the Health Practitioner Regulation

National Law - whether dismissal of appeal would deny appellant procedural fairness. Where continuation of appeal will not result in a practical outcome.

14 March 2017 - [Evangeline Vandermark v Australian Capital Territory](#) [2017] NSWSC 233 - CIVIL PROCEDURE – cross-vesting – application to transfer proceedings from the Supreme Court of New South Wales to the Supreme Court of the Australian Capital Territory – medical negligence – whether it is in the interests of justice that the proceedings be determined by the Supreme Court of another State – held that the Supreme Court of the Australian Capital Territory the more appropriate venue

### Queensland

15 March 2017 - [Marshall-Holst v Office of the Information Commissioner and Queensland Health \(Metro North Hospital and Health Service\)](#) [2017] QCATA 28 - APPEAL – QUESTION OF LAW – RIGHT TO INFORMATION – DISCLOSURE – where Metro North Hospital and Health Service allowed access to some documents in relation to workplace grievance, but refused access in part and in full to some other documents – where application to apply for external review of the decision to the Office of the Information Commissioner – where application to appeal the Office of the Information Commissioner's decision on external review – whether the Office of the Information Commissioner erred in law – whether disclosure could reasonably be expected to contribute to the administration of justice – whether disclosure could reasonably be expected to reveal the reason for a government decision – whether disclosure of the information could reasonably be expected to reveal that the information was irrelevant – whether disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information

### Victoria

10 March 2017 - [Rachel Fisuns v Mercy Health & Aged Care Inc](#) [2017] VMC 6 - Application to refer medical questions to Medical Panel – previous application on same grounds – whether an abuse of process – Workplace Injury rehabilitation and Compensation Act 2013 – application granted

## LEGISLATION

*As a general rule, this bulletin tracks subsidiary legislation at Commonwealth, but not at state level*

### Commonwealth

17 March 2017 - [Private Health Insurance \(Complying Product\) Amendment Rules 2017 \(No. 1\)](#) F2017L00243 • as made

17 March 2017 - [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2017 \(No. 2\)](#) F2017L00242 • as made

15 March 2017 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2017 \(No. 2\) \(PB 13 of 2017\)](#) F2017L00226 • PB 13 of 2017 as made

15 March 2017 - [National Health \(Claims and under co-payment data\) Amendment \(Extension of exceptional circumstances dates\) Rule 2017 \(PB 24 of 2017\)](#) F2017L00225 • PB 24 of 2017 as made

### Northern Territory

10 March 2017 - [Medical Services Legislation Amendment Bill 2016](#) Assent

## REPORTS

### Australia. Department of Health

Media releases

17 March 2017 - [Coalition tackles local GP shortage head on](#) - Steps towards solving the shortage of GPs in the Woy Woy area have been announced after a public forum was called in response to concerns raised by residents and local GPs.

16 March 2017 - [Dairy industry tackles food and obesity issues](#) - Federal Assistant Health Minister and Minister responsible for food policy, Dr David Gillespie, congratulated Australia's dairy industry for the role it is playing in helping to tackle the nation's obesity challenge.

16 March 2017 - [Minister Gillespie discusses Australia's response to radiological emergencies](#) - Federal Assistant Minister for Health, Dr David Gillespie, attended the Radiation Health and Safety Advisory Council meeting at Victoria's State Control Centre.

#### Consultations

9 March 2017 - [Single Aged Care Quality Framework - Draft Aged Care Quality Standards](#) - The Consultation Paper with a draft set of aged care standards and rationale is attached below for feedback. Closes 21 April 2017.

9 March Single - [Aged Care Quality Framework - Options for assessing performance against aged care quality standards](#) - The Options Paper for assessing service provider performance against the draft aged care quality standards is attached below for feedback. Closes 21 April 2017.

8 March 2017 - [Social and Cultural Determinants of Indigenous Health](#) - The Department of Health is inviting submissions from organisations and individuals on the social and cultural determinants of Aboriginal and Torres Strait Islander health. Closes 30 April 2017.

#### Australia. Health Practitioner Regulation Agency and the boards

15 March 2017 - [Communiqué](#) - The Dental Board of Australia releases its latest communiqué.

16 March 2017 - [Communiqué from the Board](#) - The Physiotherapy Board of Australia releases its latest communiqué.

15 March 2017 - [Newsletter from the Board](#) - The Medical Radiation Practice Board of Australia releases its March newsletter.

15 March 2017 - [Position statement on endangered species and Chinese Medicine in Australia](#) - The Chinese Medicine Board of Australia has released a Position Statement on Endangered species and Chinese medicine in Australia.

14 March 2017 - [Advice to patients about unregistered person who was presenting themselves as a doctor at Werribee clinic](#) - The Australian Health Practitioner Regulation Agency (AHPRA) is investigating an unregistered person who may have consulted with patients from January 2013 to October 2016 from a clinic in Werribee.

14 March 2017 - [Tribunal imposes conditions on enrolled nurse for professional misconduct](#) - A tribunal has reprimanded an enrolled nurse (EN) and placed conditions on her registration after it found she engaged in professional misconduct relating to failures to administer medication.

14 March 2017 - [Nursing and midwifery regulation at work: Protecting the public in 2015/16](#) - A profession-specific annual report summary that looks into the work of the Nursing and Midwifery Board of Australia over the year to 30 June 2016 has now been published.

14 March 2017 - [Regulating health professions in 2015/16: National Board reports now published](#) - Annual report summaries for each of the 14 professions regulated under the National Health Practitioner Regulation Law, as in force in each state and territory, have now been published online.

14 March 2017 - [Pharmacy regulation at work: Protecting the public in 2015/16](#) - A profession-specific annual report summary that looks into the work of Pharmacy Board of Australia (the Board) over the 12 months to 30 June 2016 has now been published.

14 March 2017 - [Transition information for the revised 4+2 internship guideline now available](#) - The Psychology Board of Australia's revised 4+2 guideline will commence on 1 June 2017 together with the revised registration standard for provisional registration.

10 March 2017 - [Communiqué from the Board](#) - The Chinese Medicine Board of Australia releases its latest communiqué.

#### Australia. National Health & Medical Research Council (NHMRC)

16 March 2017 - [2016 NHMRC Standards for Guidelines now released](#) - NHMRC's [2016 Standards for Guidelines](#) have been developed to bring Australia's standards for guidelines up to date and into line with

similar standards internationally. They are applicable to all guidelines containing recommendations for clinical practice, public health and environmental health

15 March 2017 - [Presentation: Women in medical research: designing the future by Professor Anne Kelso AO, NHMRC CEO](#) - International Women's Day Oration, The Florey Institute of Neuroscience and Mental Health, Parkville, Victoria, 10 March 2017

15 March 2017 - [Colorectal cancer guidelines released for public consultation](#) - Cancer Council Australia has released the draft *Clinical practice guidelines for the prevention, early detection and management of colorectal cancer* for [public consultation \(link is external\)](#) (open from 10 March to 8 April 2017). Cancer Council Australia will be seeking NHMRC approval of these guidelines under section 14A of the *National Health and Medical Research Council Act 1992*.

#### **Australia. Pharmaceutical Benefits Scheme**

15 March 2017 - [Drug Utilisation Sub Committee \(DUSC\) Outcome Statement](#) - The Outcome Statement from the February 2017 Drug Utilisation Sub Committee (DUSC) meeting is now available.

15 March 2017 - [Access to Medicines Working Group \(AMWG\)](#) - The communiqué for the Access to Medicines Working Group's 2nd December 2016 meeting is now available.

10 March 2017 - [Confirmed 1 April 2017 prices – 2017 April cycle of Price Disclosure](#) - Confirmed 1 April 2017 prices resulting from the 2017 April Cycle of Price Disclosure have now been published on the Price Disclosure (SPD) web page.

#### **Australia. Therapeutic Goods Administration**

15 March 2017 - [Change Me Herbal Slimming capsules](#) - Change Me Herbal Slimming Capsules pose a serious risk to your health and should not be taken

10 March 2017 - [Prescription medicines: new or extended uses, or new combinations of registered medicines](#) - Added Jardiamet / Jardiancemet, Cubicin and Boostrix

10 March 2017 - [Poster: How are ophthalmic medical devices regulated in Australia?](#) - An overview of the TGA's evaluation process of high-risk ophthalmic devices

10 March 2017 - [Medical devices and IVDs: Cancellations from the ARTG](#) - Cancellation of Atris Pty Ltd - 'pillow' and 'positioning aid system' - ARTG 278775 and 279055

#### **Australian Institute of Health & Welfare**

14 March 2017 - [Northern Territory Remote Aboriginal Investment: Ear and Hearing Health Program—July 2012 to June 2016](#)

14 March 2017 - [Northern Territory Remote Aboriginal Investment: Oral Health Program—July 2012 to December 2015](#)

#### **Australian Commission on Safety and Quality in Health Care**

13 March 2017 - On the Radar – Issue 314 ([PDF 199KB](#)) ([Word 148KB](#))

#### **Australian Capital Territory (ACT). Health Directorate**

15 March 2017 - [ACT Quality in Healthcare Award winners announced](#) - The 2016 ACT Quality in Healthcare Awards were presented tonight to celebrate and honour initiatives that improve the delivery of safe, quality health services to the ACT community. Now in its fifteenth year, the awards recognise leadership and innovation in patient safety across the categories of access and efficiency, consumer participation, innovative models of care, safety and systems support.

10 March 2017 - [Brick Expo 2016 donates \\$65,000 to Centenary Hospital](#) - Minister for Health Meegan Fitzharris today accepted a cheque for \$65,000 from the Brick Expo Committee on behalf of the Canberra Hospital Foundation. "The funds raised as part of this donation will go towards a software and hardware upgrade for ten medical devices in the Birthing Suite. "The upgrade to the Continuous Cardiotocography devices will provide the capability to detect and monitor the mother's pulse and the foetal heart rate concurrently, and will produce much more accurate recordings.

## New South Wales. Ministry of Health

### Media Releases

17 March 2017 - **Independent review into South East Regional Hospital** - NSW Minister for Health Brad Hazzard has announced a far-reaching review into the operation and management of the new South East Regional Hospital at Bega. Associate Professor Michael Reid, an experienced health administrator and former Director General of NSW Health and Queensland Health, will conduct the review supported by Dr Adrian Norwitzke, a neurosurgeon with broad experience across both clinical and business practice.

10 March 2017 - **Bali travellers urged to check for measles symptoms: NSW Health** - NSW Health is alerting recent travellers to Bali to watch for measles symptoms after two people – a Sydney resident and a Brisbane resident – returned to Australia infected with the disease. Both travellers were on Virgin Airlines flights from Denpasar, Bali, to Sydney on two days last week.

14 March 2017 - **Update: Third M chimaera case confirmed in NSW** - A third heart surgery patient in NSW – a man in his 80s – has been confirmed with Mycobacterium chimaera infection following exposure to the rare bacteria from open heart surgery equipment used worldwide. All three M chimaera cases in NSW underwent open heart surgery, which included a valve replacement, at Prince of Wales Hospital in 2015.

## New South Wales. Health Care Complaints Commission

13 March 2017 - **Public warning – Non-evidence Based Weight Loss Programs** - The Commission has determined to make the following public statement and warning under section 94A of the Health Care Complaints Act 1993. The NSW Health Care Complaints Commission has completed its investigation into complaints about services provided by the Medical Weightloss Institute (MWI). While MWI ceased trading on 9 February 2017, the Commission is aware that there are health practitioners formerly associated with the organisation who intend to continue providing the same weight loss protocol previously promoted by MWI and who have approached former clients of MWI to offer the same services under another name.

## Northern Territory. Department of Health

13 March 2017 - **Alcohol Policies and Legislation Review – Have your say** - The Northern Territory Government is seeking to develop an evidence-based overarching alcohol harm reduction strategy, following a review of alcohol policies and legislation. The **draft terms of reference** set out the purpose, governance, consultation process and timing for the review. If you would like to comment on the **draft terms of reference**, please have your say by emailing [AODD.DOH@nt.gov.au](mailto:AODD.DOH@nt.gov.au) by COB 24 March 2017.

9 Mar 2017 - **Telehealth to expand services in Central Australia** - The Central Australia Health Service is once again working closely with the Australian Digital Health Agency (ADHA) to improve Telehealth service delivery in remote Australia.

## Queensland. Department of Health

17 March 2017 - **Closing the gap on health inequality** - Minister for Health and Ambulance Services Cameron Dick today released the Queensland Health Closing the gap performance report 2016.

15 Marc 2017 - **Mental Health Act 2016: the important changes that will affect Queenslanders** - The Mental Health Act 2016 is a new piece of legislation that governs how people with particular mental health conditions are treated in the health system. This Act replaces the Mental Health Act 2000.

15 March 2017 - **Five ways to live longer as a Queensland bloke** - Queensland men are dying younger than their female counterparts, but diet and lifestyle changes might help them buck the trend. Here's the bad news: if you're a bloke in Queensland, you're less likely to be looking after your health than a woman. Statistics show you're going to die about five years earlier than a woman, and that you're 60 per cent more likely to die from cancer. It doesn't end there, either. The same statistics show that you're more likely to be a smoker, and there's pretty good odds that you're drinking too much, eating poorly, and not getting enough exercise.

15 March 2017 - **A new era for STI testing in rural North Queensland** - Rural communities in North Queensland will soon have access to rapid sexually transmissible infections (STI) testing which can deliver results in just 90 minutes.

14 March 2017 - **New unit to support mums experiencing postnatal disorders** - Queensland's first public mother-and-baby mental health unit will open at Gold Coast University Hospital this month.

14 March 2017 - **New initiatives keeping Queensland healthcare workers safe** - Queensland hospitals are now much safer for staff, patients and their families thanks to strong action-based solutions in response to key recommendations from the Occupational Violence Oversight Committee.

12 March 2017 - **Queensland childcare centres can already exclude unvaccinated children** - Childcare centres and preschools in Queensland already have the power to exclude unvaccinated children under Palaszczuk Government laws which came into effect on 1 January 2016.

### **South Australia. Department for Health & Ageing**

March 15, 2017 - **New RAH reaches significant milestone** - The new Royal Adelaide Hospital has reached Technical Completion today, signalling the most important milestone in the project to date. Technical Completion triggers the all-important testing and training period which will run for at least the next 90 days and ensure the hospital is ready for patients. Over the coming weeks every aspect of the new RAH will be tested, stocked and prepared for patients. Once all these activities have been successfully completed and the building is deemed fit for purpose, Commercial Acceptance will be granted.

March 16 2017 - **Media release: Closing the vaccination gap** - The number of South Australian Aboriginal children who are fully immunised is growing with the latest data showing improvements of up to almost 20 percent since 2013. The latest data comes on National Close the Gap Day (March 16), which raises awareness of the life expectancy gap between Indigenous and non-Indigenous communities in Australia and actions to achieve Indigenous health equality by 2030.

### **Tasmania. Department of Health & Human Services**

15 March 2017 - **Getting on with the job of delivering a redeveloped RHH** - After three years in Government we are now building Tasmania's future, and the \$689 million RHH Redevelopment is symbolic of the progress we have made.

14 March 2017 - **Vale Dr John Morris, AO, MBE** - Dr John Morris was an eminent yet remarkably modest Tasmanian, gentle in character and greatly admired by all who had the honour of knowing or working with him. He gave generously of his talents and time to a vast number of medical, community, Christian, scientific, educational and historical organisations during his life – which continued until the day of his passing.

### **Victoria. Department of Health**

16 March 2017 - **More Victorians Saved From Cardiac Arrests** - More Victorians than ever are surviving cardiac arrest with paramedics arriving faster and more bystanders stepping in to save lives, latest data from the Victorian Ambulance Cardiac Registry annual report shows. The 2015/16 report, released today, analyses data from all out-of-hospital cardiac arrests responded to by paramedics.

March 14 2017 - **World-Class Monash Children's Hospital Helping Kids Recover Quicker** - A fun and modern rehabilitation space to help kids recover faster and get back to normal life after illness or injury has been unveiled at the soon-to-be opened \$250 million Monash Children's Hospital.

14 March 2017 - **\$500,000 Age-Friendly Community Grants Announced** - Another five local government areas throughout Victoria have been awarded Age-Friendly Community Grants. Parliamentary Secretary for Human Services Sharon Knight said \$100,000 grants will go to Indigo Shire Council, Corangamite Shire Council, Mildura Rural City Council, Horsham Rural City Council, and Cooyinda Village Inc. to help older Victorians live happier and healthier lives.

### **Western Australia. Department of Health**

Media Releases

16 March 2017 - **Measles warning for Bali travellers** - Western Australians heading to Bali are being urged to make sure they have been appropriately vaccinated against measles, following a recent surge of cases contracted on the island.

13 March 2017 - **New adult case of meningococcal disease** - The Department of Health today reported that an adult had recently been discharged from hospital after being diagnosed with serogroup C meningococcal disease.

### **New Zealand. Ministry of Health**

16 March 2017 - **HISO 10055.3 SNOMED CT Reference Set Development for National Patient Flow** - This draft SNOMED reference set is available for public comment until 13 April 2017.

### **Australian Medical Association (AuMA)**

17 March 2017 - **New Code of Ethics for doctors** - The AuMA has revised its Code of Ethics for doctors for the first time since 2006, to address close personal relationships, and working with colleagues, including bullying and harassment.

16 Mar 2017 - **GREATER GENUINE COOPERATION NEEDED TO SIGNIFICANTLY CLOSE THE GAP** - AuMA President, Dr Michael Gannon, said today that genuine cooperation between all political parties and across all levels of government is needed if Australia is to achieve significant improvements in closing the gap in life expectancy and health outcomes between Indigenous and non-Indigenous Australians.

16 March 2017 - **Redistribution of Medical School Places not sole solution** - The AuMA believes that while Australia now has sufficient medical graduates and medical school places to meet current and future needs, greater funding for prevocational and specialist training places is needed to ensure an adequate flow of fully-trained doctors, especially to rural and remote areas. In a submission to the Department of Health, the AuMA has provided strong comment on the Government's assessment of the distribution of medical school places across the country.

16 March 2017 - **AuMA National Conference Masterclass** - The AuMA invites General Practitioners to hear from world-class speakers, debate contentious issues and connect with peers and other medical professionals to help shape the future of Australian healthcare at the **AuMA National Conference 2017**.

16 March 2017 - **Information for GPs on Medicare Compliance Debts** - The responsibility and management of Medicare Compliance debts moved from the Department of Human Services (DHS) to the Department of Health (DoH) on 1 October 2016. As part of the transition, the DoH has written to those debtors still making payments to the DHS and provided a new invoice and a statement showing payments received.

16 March 2017 - **Nominate now - 2017 AuMA Public Health Awards** - The AuMA Public Health Awards provide well-deserved recognition of the extraordinary contribution doctors and associated health groups make to health care and public health. If you know someone you think deserves to be recognised for their efforts then the AuMA encourages you to submit a nomination

16 March 2017 - **MJA rheumatology meeting considering the controversial** - An upcoming MJA CPD clinical meeting for GPs, *Joint, bone and soft tissue challenges*, will delve into some of the more controversial issues in rheumatology such as surgery versus medicine, biologics and fibromyalgia.

16 March 2017 - **Zostervax vaccine: safety advisory** - GPs are advised that the Therapeutic Goods Administration (TGA) has issued a **safety advisory** that Zostavax should not be used in people who are immunocompromised, following the recent death of a person for whom the vaccine was contraindicated.

16 March 2017 - **Blood pressure quad pill earns closer look: MJA InSight** - GPs may be interested in an article in this week's issue of *MJA InSight* that describes how a novel approach to managing hypertension, by initiating therapy with four well-established blood pressure lowering agents at ultra-low dose, has shown promise in an Australian trial.



## ABOUT US

### Michael Regos



Michael is the head of the DLA Piper health litigation group.

He practises in the areas of health law, insurance law, medical negligence and coronial enquiries. He represents Victorian public hospitals and their insurers, the Victorian Managed Insurance Authority and is the solicitor of choice for Australia's second-largest private health operator.

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