

HEALTH ALERT

5 AUGUST 2013

Cases	2
Australia. Family Court.....	2
New South Wales.....	3
South Australia.....	2
United Kingdom.....	3
Legislation	3
Commonwealth	3
Reports	3
Australia. Department of Health & Ageing	3
Australia. National Blood Authority	4
Australian Commission on Safety & Quality in Health Care	4
Australia Institute of Health and Welfare	4
Australia. Health Practitioner Regulation Agency and the boards.....	4
Australia. National Health & Medical Research Council	5
Australia. Pharmaceutical Benefits Scheme	5
Australia. Therapeutic Goods Administration	5
Australia. National Mental Health Commission.....	6
Australian Capital Territory. Health Directorate	6
New South Wales. Ministry of Health	6
Northern Territory. Department of Health	6
Queensland. Department of Health	6
South Australia. Department for Health & Ageing	7
Tasmania. Department of Health & Human Services	7
Victoria. Department of Health.....	7
Australian Medical Association	7
New Zealand. Ministry of Health	7
United Kingdom. Department of Health	7
United States of America. Department of Health & Human Services.....	7
American Medical Association	7
British Medical Association	8
Canadian Medical Association.....	8

CASES

Australia. Family Court

Re: Jamie [2013] FamCAFC 110

The child concerned, "Jamie", was born male but later diagnosed with childhood gender identity disorder. At first instance, Jamie's parents sought the Court's consent for her to undertake a two stage special medical procedure involving the administration of puberty-suppressant hormones (stage one) and oestrogen (stage two). The judge allowed stage one treatment but felt it premature to make a decision on stage two.

The point of law requiring determination on appeal was whether treatment for childhood gender identity is a special medical procedure that triggers the Court's welfare jurisdiction under the *Family Law Act 1975* (Cth), thereby requiring its consent to be administered and removing parental responsibility over the decision.

The Court determined that stage one treatment is therapeutic rather than a special medical procedure and therefore lies within the field of parental responsibility. As it is a psychological disease, not physiological, the treatment is reversible and does not carry a serious risk if the incorrect decision is made. Consequently, should the treating medical practitioner, child and parents be in agreement as to the treatment, court authorisation is not required.

However, in following *Marion's* case, the Court concluded that their consent is still required for stage two treatment if the child is not deemed *Gillick* competent. Considerable risk exists that the incorrect decision will be made regarding the child's capacity to consent, with severe consequences if this occurs. Therefore, "the question of a child's capacity to consent to treatment which has...irreversible effects...must remain a question for the court."

South Australia

Lenarcik v South Adelaide Local Health Network Inc [2013] SADC 100

The Applicant attended the flinders medical centre emergency department in July 2010. She subsequently made numerous requests under the *Freedom of Information Act 1991* (SA) (the Act) regarding disclosure of pathology results and any treatments received for a bacterial infection during that stay. The accredited freedom of information (FOI) officer of the applicable agency, Southern Adelaide local health network, approved access to her medical record.

An additional request was made for blood test results from a 2001 surgery. The agency responded that it was unable to find any documents in relation to this.

The Applicant appealed the agency's findings on both matters to the South Australian Ombudsman for external review under the Act. He determined that the agency had undertaken a "reasonable" search for both sets of documents requested. An application for permission to appeal to the District Court was therefore made.

The Applicant submitted that, as blood tests were administered, there should be documentation of the results. She sought determination that the information she requested did exist or would reasonably be anticipated to have existed when the surgery took place and had therefore disappeared from the system. Her persistence with gaining this documentation stemmed from its relevance being fundamental to a review of a negligence claim and crucial for correct diagnosis and treatment.

The judge accepted the Ombudsman's findings and refused the application. However, the case serves as a reminder for those in the profession that the documents they write are available for public review and should therefore be notarised and filed accordingly.

New South Wales

Avery v Flood [2013] NSWSC 996

Expert witness conclave - how many conclaves - who should attend.

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District Sydney Local Health District v Macquarie Health Corporation Ltd [2013] NSWSC 970

Practice and procedure - expert evidence - personal responsibility of experts to Court for compliance with timetable for filing of reports. Possibility of costs orders against experts personally.

United Kingdom

Joseph Michael Beech (by his litigation Friend Joanne Mounsey) v Dr A P Timney and Mr A W Paterson [2013] EWHC 2345 (QB)

No causative act of negligence by treating doctors regarding patient's brain haemorrhage.

LEGISLATION

Commonwealth

National Health (highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 4) (No. PB 42 of 2013).

National Health (IVF/GIFT program) Special Arrangement Amendment Instrument 2013 (No. 1) (No. PB 44 of 2013).

National Health (paraplegic and quadriplegic program) Special Arrangement Amendment Instrument 2013 (No. 1) (No. PB 51 of 2013).

National Health (collaborative arrangements for midwives) Amendment Determination 2013.

National Health (listing of pharmaceutical benefits) Amendment Instrument 2013 (No. 9) (No. PB 40 of 2013).

National Health (price and special patient contribution) Amendment Determination 2013 (No. 4) (No. PB 41 of 2013).

National Health (efficient funding of chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 7) (No. PB 43 of 2013).

National Health (listed drugs on F1 or F2) Amendment Determination 2013 (No. 3) (No. PB 46 of 2013).

National Health (pharmaceutical benefits - therapeutic groups) Amendment Determination 2013 (No. 3) (PB No. 47 2013).

National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 49 of 2013).

National Health Act 1953 (pharmaceutical benefits - early supply) Amendment August 2013 - specification under subsection 84AAA(2).

REPORTS

Australia. Department of Health & Ageing

Media releases

1 August 2013 - **Government to increase tobacco excise**. The Government will introduce staged 12.5 per cent increases in tobacco excise over the next four years to battle smoking-related cancer and help return the Federal Budget to surplus in 2016-17.

1 August 2013 - [Government delivers \\$20 million medicine price drop for patients](#). Patients will save around \$20 million per year on the price of 492 brands of medicine, thanks to the Australian Government's pharmaceutical pricing policy, designed to get better value for patients and taxpayers.

31 July 2013 - [\\$19.5 million for new cancer facilities at Chris O'Brien lifehouse](#). The Australian Government has announced an additional \$19.5 million in Government funding to the Chris O'Brien lifehouse project at Royal Prince Alfred Hospital (RPA) in Camperdown.

30 July 2013 - [Young women urged to curve curve for health and wellbeing](#). Young women will learn about breast health awareness through a new education program to be run by the McGrath Foundation and supported by the Federal Government.

28 July 2013 - [Insulin pumps for more kids with type 1 diabetes](#). More than 130 low income families who have a child or children living with type 1 diabetes will be able to afford an insulin pump, following a \$870,000 Federal Government funding increase to the insulin pump program.

28 July 2013 - [Fast - track emergency units for Tasmania hospitals](#). Overcrowding of emergency patients at hospitals in Hobart and Launceston will be reduced with the introduction of new Tasmanian-designed emergency units, the Federal Health Minister, Tanya Plibersek, has announced.

Private Health Insurance (PHI) Circulars

[PHI 49/13 New private \(same day\) hospital information.](#)

[PHI 48/13 New private \(same day\) hospital information.](#)

[PHI 47/13 Private health insurance administration council member re-appointments.](#)

[Australia. National Blood Authority](#)

31 July 2013 - Subcutaneous immunoglobulin governing arrangements now available for hospitals. Requirements for hospitals intending to supply subcutaneous immunoglobulin are now available. [Read more.](#)

[Australian Commission on Safety & Quality in Health Care](#)

[National Safety Quality Health Service \(NSQHS\) standards guide for small hospitals.](#)

29 July 2013 - [On the radar - Issue 137.](#)

[Australia Institute of Health and Welfare](#)

1 August 2013 - [Indigenous early childhood development national partnership agreement: first annual report on health performance indicators.](#)

31 July 2013 - [National definitions for elective surgery urgency categories: proposal for the standing council on health | media release.](#)

26 July 2013 - [Injury of Aboriginal and Torres Strait Islander people due to transport: 2005-06 to 2009-10 | media release.](#)

25 July 2013 - [Young people aged 10-14 in the youth justice system | media release.](#)

[Australia. Health Practitioner Regulation Agency \(AHPRA\) and the boards](#)

29 July 2013 - National Boards set fees for 2013/14. [Read more.](#)

29 Jul 2013 - Media release AHPRA has received a referral from the Australian Crime Commission (ACC), as a result of the ACC's investigation into drugs in sport. [Read more.](#)

25 July 2013 - The medical board releases its latest communiqué. [Read more.](#)

22 July 2013 - National board publishes revised explanatory note and frequently asked questions (FAQ) on title protection. The nursing and midwifery Board of Australia has published a revised explanatory note and FAQ on title protection. [Read more.](#)

25 July 2013 - The psychology board releases Issue 8 of the Connections newsletter. [Read more.](#)

30 July 2013 - Draft accreditation standards and process the Aboriginal and Torres Strait Islander health practice accreditation committee has released draft accreditation standards and process documents for public consultation. [Read more.](#)

30 July 2013 - Draft accreditation standards and process the Chinese medicine accreditation committee has released draft accreditation standards and process documents for public consultation. [Read more.](#)

30 July 2013 - Draft accreditation standards and process the medical radiation practice accreditation committee has released draft accreditation standards and process documents for public consultation. [Read more.](#)

Australia. National Health & Medical Research Council

26 July 2013 - [Members of global alliance for chronic diseases to fund landmark research initiative to reduce impact of diabetes.](#)

Australia. Pharmaceutical Benefits Scheme

1 August 2013 - The [schedule of pharmaceutical benefits](#) was updated and the summary of changes can be found on the new, amended and deleted items page.

Australia. Therapeutic Goods Administration (TGA)

1 August 2013 - [TGA international engagement strategy 2013-15.](#) The TGA international engagement strategy provides the overarching direction for TGA's international engagement for 2013-15 and articulates TGA's key international business priorities: driving the regulatory harmonisation process; establishment of the Australian New Zealand Therapeutic Products Authority (ANZTPA); ensuring the integrity of the supply chain; and delivering regional and global public health responsibilities.

1 August 2013 - [Advisory Committee on the Safety of Medicines \(ACSOM\) meeting statement \(meeting 18, 12 July 2013\).](#) The ACSOM provides advice to the TGA on matters relating to the safety, risk assessment, risk management and other matters related to pharmacovigilance of medicines.

1 August 2013 - [TGA presentations given at the Royal Australian Chemical Institute \(RACI\) Pharmaceutical Science Group seminar, 11 July 2013.](#)

1 August 2013 - [TGA launches online follow up and final adverse event reporting for medical devices.](#) Sponsors and manufacturers of medical devices are now able to update adverse event reports they have submitted to the TGA online.

1 August 2013 - [Medical device incident reporting \(MDIR\) user guide 2013.](#) This document is a user guide for the MDIR system and outlines the initial steps to access the MDIR and then describes how to use the system, with step by step instructions and examples as required.

1 August 2013 - [Frequently asked questions about filling in the adverse event reporting form.](#) Information on completing the adverse event report including answers to frequently asked questions for each section of the report.

1 August 2013 - [Medical device reforms - product names.](#) The medical devices product name proposal as outlined in the TGA blueprint will not proceed at this time.

1 August 2013 - [Regulation impact statement: Changes to premarket assessment requirements for medical devices.](#) Following extensive consultation, the government has agreed to progress a further package of reforms to the way medical devices are regulated.

1 August 2013 - [Inaccuracies in clinical trial statistics reporting for the period 2009-2012.](#) The Therapeutic Goods Administration (TGA) has identified errors in its internal reports of clinical trial numbers for the period 1 July 2009 to 31 December 2012.

1 August 2013 - [Medicines safety update, volume 4, number 4, August 2013.](#)

31 July 2013 - [Australian Regulatory Guidelines for Prescription Medicines \(ARGPM\).](#) Updated guidance is available to replace former appendices 1, 8, 14, 16/17 and 22.

31 July 2013 - [NexGen micro implants - used in knee replacements](#). Consumers and health professionals are advised that Zimmer is recalling from the market for the purpose of relabeling unused stock of its NexGen micro implants.

30 July 2013 - [Evaluation of biosimilars](#). Guidance to assist sponsors in preparing applications for the registration of biosimilars.

30 July 2013 - [Promus element plus monorail everolimus-eluting coronary stent system](#). It has been identified that Promus element plus monorail everolimus-eluting coronary stent systems have been shipped from the Australian distribution centre with incorrect Directions for Use (DFU).

29 July 2013 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#). Added saxagliptin (as hydrochloride).

Australia. National Mental Health Commission

1 August 2013 - [Joint statement on reducing barriers to employment](#).

Australian Capital Territory. Health Directorate

31 July 2013 - [Revamped medical centre opens in Watson](#), Katy Gallagher, MLA.

26 July 2013 - [Calvary hospital intensive care unit goes paperless](#), Katy Gallagher, MLA.

25 July 2013 - [MyHospital data shows Canberra on average for hospital performance](#), Katy Gallagher, MLA.

New South Wales (NSW). Ministry of Health

Media Releases

26 July 2013 - [Ambulance turnaround times improving in NSW hospitals](#).

24 July 2013 - [Minister opens new \\$450,000 pain service for Orange during national pain week](#).

24 July 2013 - [Nurses strike](#).

30 July 2013 - [Application of policies - Newly established NSW health agencies](#).

29 July 2013 - [NSW transitional aged care program guidelines](#).

Information Bulletins

31 July 2013 - [National health and medical research council research staff salary rates 1 January 2013 - IB2013_031](#).

29 July 2013 - [Staff freezing exemptions - delegation to chief executives - IB2013_030](#).

26 July 2013 - [Increases in rates of pay for operational ambulance officers and operational ambulance managers - IB2013_029](#).

Northern Territory. Department of Health

Media releases

26 July 2013 - Robyn Lambley - [Federal Government must move on aged care sanctions](#). The Federal Health Minister must listen to the concerns of key Northern Territory health stakeholders and improve standards in Territory aged care centres so a ban on facilities taking new patients can be lifted.

31 July 2013 - Robyn Lambley - [Plibersek puts politics ahead of territorians](#). Health Minister Robyn Lambley says the Commonwealth's attack on the Territory Government's use of the medi - hotel as an alcohol rehabilitation treatment facility is politically motivated and unwarranted.

Queensland. Department of Health

Media release

24 July 2013 - [Queensland Health responds to documents obtained under response of intervention \(RTI\)](#).

South Australia. Department for Health & Ageing

Palliative care clinical network newsletter July 2013.

Tasmania. Department of Health & Human Services

30 Jul 2013 - **Medical intern training.**

Victoria. Department of Health

Media releases

1 August 2013 - **Site unveiled for Creswick's first ambulance branch.** Work will soon commence on the first ever ambulance station in Creswick, Minister for Health David Davis said today.

31 July 2013 - **Doors open for refurbished community health centre.** The Merri community health service continues to provide quality healthcare to the Coburg community thanks to a \$1.4 million refurbishment officially opened by Health Minister David Davis today.

26 July 2013 - **Stamp of approval for Northeast Health Wangaratta.** Northeast health Wangaratta has come through with flying colours after being surveyed against the new national safety & quality health service standards, Health Minister David Davis announced today.

Transfusion audits 2013.

Building Victoria's prevention effort: children and families - roadmap to 2015.

New Zealand. Ministry of Health

30 July 2013 - **Outcomes framework for preventing and minimising gambling harm - baseline report.**

29 July 2013 - **The well child/Tamariki Ora quality improvement framework.**

Dairies and many other retailers are barred from selling psychoactive substances from today, as a new law comes into force. [Read more.](#)

United Kingdom. (UK) Department of Health

31 July 2013 - **£93 million package of support announced for UK's health industries.**

1 August 2013 - **Government commits £250 million for innovative cancer treatment to save lives and reduce side effects.**

30 July 2013 - **National health service (NHS) friends and family test: giving patients a greater voice.**

United States (US) of America. Department of Health & Human Services

31 July 2013 - **Health and Human Services (HHS) report on accomplishments, new efforts to improve lesbians, gay, bisexual and transgender (LGBT) health.**

30 July 2013 - **Medicare drug premiums remain stable four years in a row.**

30 July 2013 - **HHS, U.S. Department of Agriculture (USDA) and the food industry welcome new guidelines promoting industry participation in foodborne disease outbreak response.**

Australian Medical Association

Greens show leadership on Medicare benefits schedule (MBS) indexation.

Make health star label system mandatory for recalcitrant food industry.

Alert - scrap the cap alliance strategy meeting.

Scrap the cap alliance grows in numbers and determination.

Tobacco tax rise another blow to killer habit.

American Medical Association (AMA)

AMA appreciates continued leadership on reforming Medicare. New legislation approved unanimously by the house energy and commerce committee contains critical elements needed to end the broken

Medicare physician payment system this year and move toward a Medicare program that rewards high-quality care and reduces costs.

British Medical Association (BMA)

Engage with staff to improve care, say doctors leaders.

Context for patient feedback important, says BMA.

BMA seeks seniors' views on contracts.

Decisions needed on outbreak responses.

The consultant contract could be changing.

Support trainees during changeover, BMA urges.

Canadian Medical Association (CMA)

Poverty the greatest barrier to good health, Canadians tell CMA consultation.

ABOUT US

Andrew Forbes



Andrew practices in litigation and administrative law with a particular focus on health. He is recognised for his expertise in health regulation.

Andrew has acted in Commissions of Inquiry and led investigations into health-related incidents, such as the Hendra virus outbreak. He has acted as "counsel assisting" in internal disciplinary hearings and inquiries.

Contact Details

T +61 7 3246 4086

andrew.forbes@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 29, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2013 DLA Piper. All rights reserved.

If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.

[Doc ID 1201544244 | JPS | 07/2013]