



HEALTH ALERT

15 February 2016

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JUDGMENTS

Western Australia

8 February 2016 - *Martin V Minister for Health [2016] WADC 15* - Mr Martin presented to the Armadale-Kelmscott Memorial District Hospital (AKH) for treatment of septic arthritis. During treatment, an attempt was made to insert a PICC line to administer antibiotics, and it is from this he alleges the injury stems. After complaining of his injury to AKH, approximately two weeks later he presented at Fremantle Hospital (FH) and raised the same concerns. Over three months after the original incident, Mr Martin received an ultrasound and surgery but full use of his hand and arm was not restored. He did not claim the insertion of the PICC line was negligent or incorrect, but rather that there was a systemic failure to identify the need for and carry out the corrective surgery earlier, and accordingly the Minister for Health (Minister) was identified as the relevant defendant.

The Minister submitted that the time between the incident and surgery was appropriate for the injury and would be accepted by colleagues outside AKH and FH as competent professional practice. The Minister also stated that Mr Martin's multiple pre-existing conditions meant that, even if there was a failure of the system, the loss is attributable to his illness not the failing. The court rejected this, finding that there was no problem with capacity to treat correctly but a failure to investigate. There should in fact be an emphasis on investigation where new symptoms could be the result of pre-existing conditions, in order to guarantee ruling out existing potential explanations. Mr Martin was awarded almost \$450,000.

Commonwealth. Federal Court

5 February 2016 - *Applied Medical Australia Pty Ltd v Minister for Health [2016] FCA 35* - Applied Medical Australia (AM), a manufacturer and supplier of medical devices for surgical procedures, objected to a decision by the Minister for Health (Minister) not to approve AM's application to lower the minimum group benefit amount applying to certain medical devices. The submission by AM was essentially that there has been an inaccurate grouping of laparoscopic devices, which attract a high minimum benefit, and endoscopic, the minimum benefit of which is significantly lower. The application by AM was to alter the benefit paid for more than 10,000 listed items. AM argued the Minister had rejected the application unreasonably and without reference to evidence or relevant considerations.

The court found that several grounds of objection raised by AM in relation to the denial of its application did not apply. AM contested that the decision had been made without adequate evidence, yet the court held there had been an evidence-based reasoning process applied by the decision-maker and this process had simply been misread. AM also argued that the decision was so unreasonable that no decision-maker could be said to have exercised it appropriately within their power. This was rejected on the basis that the Minister has broad powers to reject benefit price alterations and that AM had failed to establish its assertions as to why benefit should be changed. AM also said that the decision-maker considered irrelevant factors, but this was dismissed due to the number of listed items that would be affected, and therefore wide-ranging factors and stakeholders were relevant.

5 February 2016 - *Maiocchi v Royal Australian & New Zealand College of Psychiatrists (No 4) [2016] FCA 33* - HUMAN RIGHTS – proceedings under s 46PO of the Australian Human Rights Commission Act 1986 (Cth) – allegations of direct and indirect discrimination under s 9 of the Racial Discrimination Act 1975 (Cth) relating to applicant's training as a psychiatrist – allegations made against applicant's supervisor and director of training – applicant's burden to establish allegations to the Briganshaw standard not discharged – application dismissed

New South Wales

10 February 2016 - *Quach v New South Wales Health Care Complaints Commission [2016] NSWCA 10* - ADMINISTRATIVE LAW – judicial review for jurisdictional error – decision of New South Wales Civil and Administrative Tribunal (NCAT) to deregister medical practitioner – whether NCAT properly constituted by appointment of acting judge of District Court as a member – whether judicial member had conflict of interest – whether denial of procedural fairness by NCAT's questioning of witnesses or accepting opinion evidence of general practitioner – whether apprehended bias disclosed by

various procedural rulings of NCAT – significance of practitioner failing to exercise right of appeal – no ground of review made out – proceedings dismissed

8 February 2016 - [Health Care Complaints Commission v Ghannoum \(No.2\) \[2016\] NSWCATOD 17](#) - Medical practitioner- stage 2 decision – prescribing drugs, medical records, breach of conditions of registration, health problems - extensive conditions imposed.

South Australia

8 February 2016 - [Inquest into the death of Patricia Ann Fidge](#) - Findings into the death of Patricia Ann Fidge

8 February 2016 - [Inquest into the death of Janet Marie Ford](#) - Findings into the death of Janet Marie Ford

United Kingdom

11 February 2016 - [Ireland v Secretary of State for Health \(Sued As South Tyneside NHS Foundation Trust\) \[2016\] EWHC 194 \(QB\)](#)

2 February 2016 - [Forge Care Homes Ltd & Ors v Cardiff & Vale University Health Board & Ors \[2016\] EWCA Civ 26](#)

LEGISLATION

Commonwealth

8 February 2016 - [My Health Records Rule 2016](#) F2016L00095 as made

8 February 2016 - [My Health Records \(Opt-out Trials\) Rule 2016](#) F2016L00094 as made

South Australia

9 February 2016 - [Health and Community Services Complaints \(Budget Report\) Amendment Bill 2015](#) - passed with amendments

11 February 2016 - [South Australian Public Health \(Notifiable and Controlled Notifiable Conditions\) Variation Regulations 2012](#) - commence 18 February 2016

Victoria

10 February 2016 - [Health Complaints Bill 2016](#) - second reading

9 February 2016 - [Drugs, Poisons and Controlled Substances Amendment Bill 2015](#) - passed both houses

Western Australia

12 February 2016 - [Mental health service \(approval for electroconvulsive therapy\) Order 2016](#)

REPORTS

Australia. Department of Health

Media releases

11 February 2016 - [Greater Choices in Home Care](#) - Older Australians will have greater choice and control over their aged care services under proposed changes to aged care legislation.

11 February 2016 - [HBF premium announcement welcome](#) - Private health insurer HBF announces they will be resubmitting a lower premium for their members.

10 February 2016 - [Landmark medicinal cannabis legislation introduced today](#) - The Australian Government will introduce landmark legislation providing the "missing piece" for Australian patients and their doctors to access a safe, legal and reliable supply of medicinal cannabis products for the management of painful and chronic conditions.

9 February 2016 - [Australia's organ and tissue donation and transplantation rates improve in 2015](#) - Australia has continued its improvement in organ and tissue donation and transplantation with a record year in 2015.

5 February 2016 - [Prostheses reform a priority for cheaper health premiums](#) - The Australian Government will look to make thousands of medical devices ranging from pacemakers to pins and plates more affordable and accessible for patients in a move that will also reduce pressure on private health insurance premiums.

Current Issues

[Genetically Modified \(GM\) Techniques](#)

[Review of the implementation of the national reform agenda on organ and tissue donation and transplantation](#)

[Labelling for fish and seafood](#)

[Funding for stroke support](#)

[Private Health Insurance Consultations 2015/16](#)

[Tobacco Excise](#)

Private Health insurance Circulars

4th February 2015- [PHI 07/16 - February 2016 Prostheses List critical dates](#)

Consultations

[IMAP Tranche 16 Chemical Assessments - For Public Comment](#) - You are invited to comment on the outcomes of Inventory Multi-tiered Assessment and Prioritisation (IMAP) Tranche 16 assessments of the human health and environmental impacts of industrial chemicals. IMAP assesses the impacts of previously unassessed industrial chemicals listed on the Australian Inventory of Chemical Substances (AICS). Runs from 5 February 2016 to 5 April 2016

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

9 February 2016 - [Newsletter from the Osteopathy Board](#) - The Osteopathy Board of Australia releases its latest newsletter.

8 February 2016 - [Adelaide forum invitation for practitioners, students and stakeholders of Chinese Medicine](#) - The Chinese Medicine Board of Australia invites practitioners, students and stakeholders of Chinese medicine to attend an information forum being held at Adina Apartment Hotel Adelaide Treasury on Monday 22 February 2016.

8 February 2016 - [Newsletter from the Board](#) - The Medical Radiation Practice Board of Australia releases its February newsletter.

8 February 2016 - ["Fake nurse" ordered to carry out community service](#) - A Victorian woman has pleaded guilty to falsely claiming to hold registration as a nurse.

5 February 2016 - [Communiqué from the Board](#) - The Optometry Board of Australia releases its latest communiqué.

[Australia. Therapeutic Goods Administration \(TGA\)](#)

12 February 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Lenalidomide (Revlimid) and Dabigatran etexilate (Pradaxa)

11 February 2016 - [Veletri consumables kit](#) - recall - small risk of infection due to potential contamination

10 February 2016 - [Zhong Hua Niu Bian tablets](#) - safety advisory

10 February 2016 - [Advertising and endorsements](#) - information for advertisers about misrepresenting products as TGA/government approved

10 February 2016 - [Natural Model capsules](#) - safety advisory

10 February 2016 - [Updates to the list of designated orphan drugs](#) - added Migalastat hydrochloride (GALAFOLD)

8 February 2016 - [Updating medicine ingredient names](#) - next steps for sponsors

5 February 2016 - [Interim impact assessment of the Therapeutic Goods Administration annual charge exemption \(ACE\) scheme](#) - The Interim impact assessment of the TGA's ACE scheme, December 2015 is now available.

Australian Institute of Health & Welfare (AIHW)

12 February 2016 - [Hospitalised injuries in Aboriginal and Torres Strait Islander children and young people: 2011–13](#)

12 February 2016 - [Media release: Indigenous children and young people more likely to be hospitalised due to injury](#)

11 February 2016 - [Trends in serious injury due to road vehicle traffic crashes, Australia: 2001 to 2010](#)

Australian Commission on Safety and Quality in Health Care

On the Radar – 8 February 2016 – Issue 259 ([PDF 292KB](#)) ([Word 291KB](#))

Australian Capital Territory (ACT). Health Directorate

5 February 2016 - [Pre-packaged Salad Leaves – Product Recall](#) - ACT Chief Health Officer, Dr Paul Kelly today advised the community to be aware of an outbreak of salmonella gastroenteritis in Victoria.

New South Wales (NSW). Ministry of Health

Media Releases

8 February 2016 - [Roundtable delivers hospital security action plan](#) - Health Minister Jillian Skinner today endorsed a 12-point action plan to improve security at all NSW public hospitals following a roundtable of health stakeholders and union representatives in Sydney

10 February 2016 - [NSW welcomes progress on national scheme for controlled cultivation of medicinal cannabis](#) - NSW Minister for Medical Research Pru Goward has congratulated the Commonwealth Government on introducing legislation to establish a national licensing scheme for the controlled cultivation of cannabis for medical and related scientific purposes into federal parliament today

Policy Directives & Guidelines

12 February 2016 - [Feeding Difficulties in Children - A Guide for Allied Health Professionals](#)

Queensland. Department of Health

11 February 2016 - [Big boost to new Townsville nurses](#) - 113 nursing graduates from across the state are due to start work in the Townsville Hospital and Health Service over the next few weeks, as part of the Palaszczuk Government's commitment to boosting frontline services.

10 February 2016 - [Mackay innovation to save time visiting doctor](#) - An app that will streamline check-in processes for patients at medical clinics – and potentially reduce waiting times – has received funding through the Palaszczuk Government's Advance Queensland Knowledge Transfer Partnerships program.

6 February 2016 - [Second case of Zika virus confirmed in Queensland](#) - A child who first presented at hospital on Thursday night has been confirmed as the second case of the Zika virus in Queensland this year.

South Australia. Department for Health & Ageing

5 February 2016 - [1000 jobs created as Modbury Hospital transformation begins](#) - Residents in the north and north eastern suburbs are a step closer to having greater access to rehabilitation and elective surgery procedures near home, with construction of a new multi-million dollar facility underway. Health Minister Jack Snelling said the \$32 million project will be undertaken by 30 SA companies and will create

1,000 jobs throughout construction, with around 130 workers expected to be on site at any given time. He also said the upgrade will ease the travel burden often felt by locals who require rehabilitation services.

Tasmania. Department of Health & Human Services

9 February 2016 - **Gift of Life** - Receiving lifesaving organ transplants not only saves lives, but it transforms families by providing an optimistic future to look forward to. The Hodgman Liberal Government wants to acknowledge the generosity of the nine Tasmanian donor families who provided consent for their loved ones to donate their organs in 2015. These are courageous decisions and do not go unnoticed. This translates to Tasmania achieving a donation outcome of 17.4 donors per million population, the national figure is 18.3 per million. DonateLife Tasmania received a record number of 49 donor referrals in 2015, representing a 5 per cent increase on 2014. Of those, 80 per cent of these referrals were for potential organ donors, with 20 per cent for independent eye donors.

6 February 2016 - **Additional elective surgeries** - The Hodgman Liberal Government is continuing the work rebuilding Tasmania's health system. We have invested a record amount in our health system, but to get better outcomes more needs to be done. With the economy growing and the Budget coming back under control, we can now invest the dividends of this into the core business of government, such as health. This week 56 additional Tasmanians underwent elective surgery as a result of the opening up of new theatres opening on Monday and an increase in existing theatres capacity. At the Launceston General Hospital's two new theatres, 41 additional surgeries have taken place including ENT, plastics, urology and general surgery. Including this activity, it is expected that 1000 additional procedures will be performed at LGH this financial year.

5 February 2016 - **Access to 'Flu Vaccine** - The Hodgman Liberal Government is committed to Tasmania having the healthiest population in Australia by 2025. The annual impact of influenza is significant in Tasmania with 1434 'Flu notifications reported last year. Apart from the impact it has on individuals, the 'Flu puts pressure on our GPs and public hospitals, results in lost productivity and some sections of the community are at particular risk of contracting the virus.

5 February 2016 - **Preventative health consultation** - The Hodgman Liberal Government is committed to Tasmania having the healthiest population in Australia by 2025. Tasmania's high rates of chronic disease and health risk factors like smoking, obesity, poor nutrition, low physical activity levels and risky alcohol consumption mean this is an ambitious but very important target. In December, I released the Healthy Tasmania Five Year Strategic Plan – Community Consultation Draft. The Consultation Draft outlines that smoking and obesity will be priorities. We have already received strong community feedback to the proposal to raise the minimum legal smoking age to either 21 or 25.

Victoria. Department of Health

11 February 2016 - **More Turnbull Cuts Hit Victorian Hospital Patients** - Victorian hospitals are facing a further \$73 million in cuts from the Federal Liberal Government, in a direct attack on Victorian patients and their families. The cuts, which will hit Victorian hospitals and patients in March, are the result of an accounting trick that has changed the way Canberra calculates health activity funding.

10 February 2016 - **Honouring Victoria's Top Health And Medical Researchers** - Victoria's most talented emerging medical researchers will be honoured at the 2016 Premier's Awards for Health and Medical Research. Premier Daniel Andrews today called for nominations for the awards, which recognise the amazing achievements of health and medical researchers in the early stages of their career.

ABOUT US

Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies. Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL. Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

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