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JUDGMENTS

Victoria

[McWhinney v Melbourne Health \[2013\] VSCA 162](#)

This matter concerned an appeal to the Supreme Court from a judgment of the County Court. Before the County Court the appellant argued that Melbourne Health negligently assessed him as meeting the criteria under the *Mental Health Act* (Vic) (the Act) for involuntary admission as a psychiatric patient and that his subsequent involuntary admission was an unlawful detainment. The trial judge found in favour of Melbourne Health.

The appellant appealed, arguing among other things that the trial judge's finding that it was reasonable for Melbourne Health to assess him as meeting the criteria for involuntary admission was "glaringly improbable" and that the trial judge was incorrect in concluding that Melbourne Health had complied with the procedural requirements of the Act.

The Court of Appeal dismissed the appeal, holding that the trial judge's findings with respect to Melbourne Health's assessment of the appellant were not glaringly improbable and plainly open and that there was no evidence that Melbourne Health had failed to comply with the procedural requirements of the Act.

Interestingly, the Court of Appeal found that even if Melbourne Health had negligently assessed the appellant as meeting the criteria in the Act for involuntary admission, it would not necessarily follow that there was no legal warrant for his involuntary treatment. Following *Watson v Marshall* (1971) 124 CLR 621 the Court of Appeal held that such a warrant was provided by mere compliance with the prescribed procedures of the Act, ie completing the forms stating that the appellant met the criteria.

Victoria. Coroners Court

18 June 2013 - [Inquest into the death of Paul Allan Skinner COR-2010-4610](#)

This inquest examined contributing factors into the suicide death of a patient at the Goulburn Valley Health Psychiatric Unit. The deceased was involuntarily admitted displaying depressive symptoms after a previous suicide attempt. He had recently been transferred to the Low Dependency Unit where patient observations were to be conducted every 15 minutes between 10 pm and 7 am. In this case, the Coroner found observations were performed only hourly. On 3 December 2012, between 12 am and 1 am, the deceased committed suicide by hanging.

The coroner identified systemic failures on the part of the hospital, noting that while these issues did not directly cause the death of the deceased, they in no way helped his condition. Specific issues identified by the Coroner were:

- Nursing staff unilaterally reducing clinical observations and signing observations which were not conducted.
- A breakdown in communication between doctors and nurse staff about the frequency of patient observations.
- Failure to remove identified ligature points in high risk patient rooms.
- Inadequate facilities and resources to deal with psychiatric patients.

Based on his findings, the Coroner made specific recommendations to apply to mental health institutions. These included changes to process and documentation requirements of mental health nurses with regard to patient observation in order to improve supervision and accountability. Predominantly, the Coroner recommended that changes to observation schedules only be made after discussion and consideration. Additionally, recommendations were made for the development of a Medium Dependency Unit and provision for occupational therapists to treat high risk patients.

21 June 2013 - [Inquest into the death of Heather Jane Kinder COR-2011-000270](#)

Death by suicide following inpatient treatment.

New South Wales. Medical Tribunal

[Health Care Complaints Commission \(HCCC\) v Saedlounia \[2013\] NSWMT 13](#)

Medical tribunal - breaches of practice and visa conditions by overseas medical graduate - whether unsatisfactory professional conduct - whether professional misconduct - protective orders to include deterrence - practice conditions.

New South Wales. Nurses and Midwives Tribunal

[HCCC v Brown \[2013\] NSWNMT 8](#)

Complaint against a nurse of unsatisfactory professional conduct and professional misconduct. Where particulars and complaint conceded by nurse prior to commencement of hearing. Consideration of appropriate protective orders. Whether suspension of registration or cancellation of registration for 18 months is an appropriate order. Held – Where serious nature of complaints and nurse’s lack of insight require nurse’s registration to be cancelled, and nurse precluded from seeking a review for a period of 12 months from the date of order.

[HCCC v Twomey \[2013\] NSWNMT 6](#)

Complaint against a nurse – crossing professional boundaries - unsatisfactory professional conduct – professional misconduct – non-publication order – protective orders - costs.

New South Wales. Dental Tribunal

[HCCC v Abraham \[2013\] NSWDT 2](#)

Catchwords: dentist - unsatisfactory professional conduct, professional misconduct, inappropriate dentist/employee relationship, aggravated indecent assault, professional boundaries, criminal convictions, dental assistant, breach of conditions.

[HCCC v Roopra \(No. 2\) \[2013\] NSWDT 3](#)

Health practitioner - dentist – conviction for nine criminal offences - aggravated indecent assault victim under 16 years - aggravated indecent assault victim under authority (s61M(1)) *Crimes Act* 1900 – conviction for criminal offences - not a suitable person - unsatisfactory professional conduct – professional misconduct.

South Australia

[Calvary Health Care Adelaide Inc v Price \[2013\] SASC 97](#)

Procedure - discovery and interrogatories - discovery and inspection of documents - production and inspection - grounds for resisting production - client legal privilege - what constitutes - for purposes of or in contemplation of litigation. Procedure - discovery and interrogatories - discovery and inspection of documents - production and inspection - grounds for resisting production - client legal privilege - what constitutes - copies of documents. Procedure - discovery and interrogatories - discovery and inspection of documents - production and inspection - generally - documents in possession of person not a party. Procedure - costs - appeals as to costs - wrong exercise of discretion.

South Australia. Health Practitioners Tribunal

[Shankaran v Nursing and Midwifery Board of Australia \[2013\] SAHPT 3](#)

Nursing: Appeal on documentation against decision of respondent National Board refusing her application for general registration as a nurse in Australia. Appellant incorrectly advised of registration requirements and subsequently given ambivalent reasons for refusal. Later again, appellant was advised of grounds which had not been approved or adopted by the respondent. Appellant regarded by respondent as an applicant from a country other than United Kingdom (UK) whereas she was working as a registered nurse in the UK and ought to have been treated as the latter. Respondent's later expressed grounds of refusal were based upon information never communicated to the appellant at any relevant time and were not based on approved or adopted criteria. In any event appellant had subsequently satisfied those criteria - appeal allowed. Appellant is to be registered subject to certain conditions and further orders - S 52(1)(a) Nursing and Midwifery Board of Australia

Scotland

[Doogan & Anor v NHS Greater Glasgow & Clyde Health Board \[2013\] CSIH 36](#)

The inner house of the Court of session (the Scottish civil court of appeal) ruled last week that two midwives from Glasgow could not be required to delegate to, supervise or support staff on their labour ward who were involved in abortions.

European Court of Human Rights (ECHR)

[Gross v Switzerland \[2013\] ECHR 429](#)

The European Court of human rights has ruled that Swiss guidelines for doctors prescribing lethal drugs were too unclear and therefore breached article 8 ECHR, the right to private and family life. Ms Gross sought a prescription for a lethal drug to end her own life. She has no critical illness, but is elderly and feels that her quality of life is so low that she would like to commit suicide. The Swiss medical authorities refused to provide her with the prescription.

LEGISLATION

Commonwealth

[Private health insurance \(benefit requirements\) Amendment Rules 2013 \(No. 2\).](#)

[Private health insurance \(complying product\) Amendment Rules 2013 \(No. 2\).](#)

[Health insurance \(diabetes testing in Aboriginal and Torres Strait Islander primary health care sites\) Amendment Determination 2013 \(No. 1\).](#)

[Private health insurance \(council administration levy\) Amendment Rules 2013 \(No. 1\).](#)

Victoria

[Assisted Reproductive Treatment Amendment \(access by donor-conceived people to information about donors\) Bill 2013.](#)

REPORTS

Australia. Department of Health & Ageing

Media releases

26 June 2013 - [Aged Care Legislation Passes Both Houses of Parliament](#). Five bills have passed both houses of parliament today marking a historic achievement for the Australian Government's \$3.7 billion *Living Longer Living Better* aged care reforms.

26 June 2013 - [Better Care for Australians with Dementia](#). The Australian Government will provide more funding to support Australians living with dementia, with a focus on better medication management in aged care.

26 June 2013 - [Better Care for Older Australians from Culturally and Linguistically Diverse Backgrounds \(CALD\)](#). The Australian Government will provide funding to sixteen organisations supporting older Australians from culturally and linguistically diverse backgrounds in aged care.

26 June 2013 - [Better care for older Lesbians, Gay, Bisexual, Transgender and Intersex \(LGBTI\) Australians](#). The Australian Government will provide new funding to seven organisations to improve the responsiveness of the aged care system to the needs of LGBTI Australians.

26 June 2013 - [More respite for carers of older Australians](#). Carers of frail older Australians will soon have greater access to support with an expansion of the Australian Government's National Respite for Carers Program.

26 June 2013 - [Positive ageing projects funded](#). The Australian Government will provide funding to support a range of projects focused on promoting a positive message about ageing and supporting older Australians to live well in old age.

25 June 2013 - [Embracing e-health to help close the gap](#). Australian healthcare professionals are urged to embrace e-health to help close the gap in Aboriginal and Torres Strait Islander health and life expectancy, with a new online resource helping to tackle chronic disease.

23 June 2013 - [Statement from Tanya Plibersek on listing of Pharmaceutical Benefits Schedule \(PBS\) drugs](#). The Australian Government has approved the listing of over \$5 billion worth of new drugs and vaccines since 2007.

22 June 2013 - [\\$6.75 million to tackle homelessness in South Australia](#). South Australia will receive \$6.75 million in Federal Government funding to expand accommodation for those who are homeless or at risk of becoming homeless.

Recent updates to the lifesaving drugs program - From 1 July 2013, Gaucher patients treated with Cerezyme[®] (Imiglucerase) will be transitioned to treatment with VPRIV[®] (Velaglucerase), where clinically appropriate. [Read article](#)

[2013-14 Mental Health Nurse Incentive Program \(MHNIP\) session allocations factsheet](#).

Private health insurance circular - [PHI 34/13 Public Hospital information name change - Western Australia \(WA\)](#).

Aged care

26 June 2013 - [Living longer living better aged care reform legislation package](#).

21 June 2013 - [Australian Government response to the Senate community affairs legislation committee report](#).

[Clinical practice guidelines - Antenatal care - module 2](#). Consultation opened: 24 June 2013 - Consultation closes: 30 June 2013 - responsible Area: population health division - The Department of Health and Ageing and an expert advisory committee are currently developing clinical practice guidelines on antenatal care on behalf of all Australian Governments. The guidelines are designed to support Australian maternity services to provide high quality, evidence-based antenatal care to healthy pregnant women. We welcome your comments on any or all sections of Module 2.

[Australian Government response to: before it's too late: report on the inquiry into early intervention programs aimed at reducing youth suicide](#)

National centre for immunisation research and surveillance - School entry vaccination requirements: summary of the evidence - The National Centre for Immunisation Research and Surveillance (NCIRS) - school entry vaccination requirements: Summary of the evidence, provides a summary of school entry immunisation requirements currently in place in Australia and summarises the published evidence on the impact of school entry requirements on coverage rates and disease incidence both in Australia and overseas. [Read article](#)

Post - market review of medicines used to treat asthma in children. The [public submissions](#) addressing the post - market review of PBS medicines used to treat asthma in children terms of reference have now been published. [Read article](#)

Australia. Human Rights Commission

17 June 2013 - [Milestone for Aboriginal and Torres Strait Islander mental health](#). The close the gap campaign today welcomed a significant mental health milestone: the establishment of the Aboriginal and Torres Strait Islander mental health and suicide prevention advisory group. The new ministerial advisory body, co-chaired by Dr Tom Calma AO and Professor Pat Dudgeon.

Australian Health Practitioner Regulation Agency & the boards

25 June 2013 - The dental board releases its latest newsletter. [Read article](#)

27 June 2013 - The medical board of Australia releases its latest newsletter. [Read article](#)

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

28 June 2013 - The pharmacy board of Australia releases its latest communiqué. [Read article](#)

Australian Commission on Safety and Quality in Health Care

[Sample risk analysis: Training needs for basic life support.](#)

24 June 2013 - [On the radar - Issue 132.](#)

Australian Institute of Health & Welfare

21 June 2013 - [Incontinence in Australia - media release.](#)

27 June 2013 - [Trends in hospitalisations due to falls by older people, Australia 1999-00 to 2010-11 - media release.](#)

Australia. National Health & Medical Research Council

27 June 2013 - [New funding partnership to support breast cancer research Australia](#). Therapeutic Goods Administration (TGA).

27 June 2013 - [Advisory Committee on Prescription Medicine \(ACMP\) meeting statement, meeting 291, 6-7 June 2013](#). Added the ACPM meeting statement held on 6 -7 June 2013.

27 June 2013 - [Infuse/LT-Cage Bone Graft Kit](#). Consumers and health professionals are advised that Medtronic, in consultation with the TGA, has initiated a recall of unused stock of multiple lots of its infuse/LT-cage bone graft kit.

27 June 2013 - [Listed medicines: The role of Australia's medicines regulator](#). Different types of medicines are regulated in different ways by the TGA, depending on what they contain and how they are to be used

27 June 2013 - [Consultation: Draft TGA approach to disclosure of Commercially Confidential Information \(CCI\)](#). The TGA is seeking comments from interested parties on the paper, Draft TGA approach to disclosure of commercially confidential information. Closing date: 29 August 2013.

27 June 2013 - [Regulatory compliance framework](#). The Framework provides a high level overview of the TGA's approach to regulatory compliance and is another step in the TGA initiative to increase transparency of its compliance work.

27 June 2013 - [Medical device reforms fact sheet](#). The medical device reforms fact sheet provides information on the four elements the TGA are working on as part of the TGA reforms: A blueprint for the TGA's future.

26 June 2013 - [Documents released under Section 11C of the Freedom of Information Act 1982](#). Added FOI 181-1213 and FOI 206-1213.

26 June 2013 - [Reclassification of hip, knee and shoulder joint replacement implants: advice from orthopaedics working group meeting](#). The TGA and the Medical Technology Association of Australia (MTAA) orthopaedics working group had a joint advisory meeting to discuss common issues sponsors were facing when submitting reclassification transition applications.

25 June 2013 - [Certified product details \(CPD\) - Chemical prescription medicines](#). An updated form is available for sponsors to prepare certified product details (CPD) for chemical prescription medicines when requested by the TGA.

25 June 2013 - [Consultation: Proposal for automatic adoption of new versions of the PIC/S Guide to Good Manufacturing Practice for Medicinal Products](#). The consultation closing date has been extended. Closing date: 12 August 2013.

24 June 2013 - [Consultation: Australian Regulatory Guidelines for Complementary Medicines \(ARGCM\) Part D: Registered complementary medicines](#). The TGA is seeking comments from interested parties on the draft document Australian regulatory guidelines for complementary medicines (ARGCM) Part D: Registered complementary medicines. Closing date: 22 July 2013.

21 June 2013 - [Medtronic paradigm insulin infusion sets](#). Consumers and health professionals are advised that Medtronic has initiated a recall for product correction for its Medtronic paradigm insulin infusion sets.

Australia. Private Health Insurance Administration Council

25 June 2013 - [2012–13 End of year reporting requirements](#).

Australia. National Mental Health Commission

25 June 2013 - [Commission welcomes international consensus on improving physical health](#).

Australia. National Preventive Health Agency

26 June 2013 - [National preventive health research strategy launched](#). The Australian national preventive health agency has today launched the national preventive health research strategy (2013-2018) which will guide knowledge-development for a healthy Australia through application of a collaborative, integrated model of research.

21 June 2013 - [Preventive health research fellowships announced](#). The Australian national preventive health agency is pleased to announce the successful recipients of the 2013 preventive health research fellowship program.

18 June 2013 - [National symposium on smoking and disadvantage](#). A national symposium on smoking and disadvantage has focused on addressing tobacco related disparities in health and well-being across Australia.

Australia. Independent Hospital Pricing Authority

[Pricing Framework 2014-15 is now open for consultation](#).

Australia. National Health Performance Authority

20 June 2013 - [Right care, right patient?](#) Medicare Locals face different challenges in ensuring health care is responsive to the needs of people in their local areas. [Healthy Communities: Australians' experiences with access to health care in 2011–12](#) - [Media materials](#) - [Watch Dr Diane Watson talking about the report](#).

Australian Capital Territory. Health Directorate

25 June 2013 - [Temporary access changes - Pathology building](#). Alternative access to Canberra Hospital's Pathology building from Monday, 24 June to mid - July.

New South Wales. Ministry of Health

Media releases

25 June 2013 - [New era of mental health care in Hornsby](#).

25 June 2013 - [New era of mental health care at Hornsby](#).

24 June 2013 - [Breaking the cycle of homelessness and hospitalisation in NSW](#).

21 June 2013 - [Bondi clinician leading global push to extend life expectancy of people with a mental illness.](#)

21 June 2013 - [NSW Government enacts childhood vaccination reform.](#)

Guidelines

27 June 2013 - [Screening for chronic infections in patients starting chemotherapy or immunosuppressive therapy GL2013_003.](#)

Queensland. Department of Health

Media releases: [Minutes to disclose debate over criminal history checks.](#) Queensland Health will publish future minutes of its criminal history advisory panel to inform Queenslanders about safeguards that protect the public when job applicants present with a criminal record.

South Australia. Department for Health and Ageing

Media releases

27 June 2013 - State of our health report released for feedback - Hon Jack Snelling MP - The Health Performance Council (HPC) has released a draft report about the current health status of South Australians for feedback. [Read article](#)

26 June 2013 - New contract worth \$19.5 million for rural health workforce - Hon Jack Snelling MP - Support for resident GPs and health professionals in country South Australia has been boosted with a further \$19.5 million three-year contract signed between Country Health SA and the Rural Doctors Workforce Agency. [Read article](#)

Tasmania. Department of Health & Human Services

27 June 2013 - [Advocacy for children in Tasmania.](#)

Victoria. Department of Health

Media releases

27 June 2013 - [Come to the table over ambulance dispute: Davis.](#) The ambulance union should enter genuine negotiations to resolve the paramedic pay dispute, Health Minister David Davis said today.

23 June 2013 - [Victoria's hospitals to be short-changed millions on health funding.](#) The Federal Government has confirmed it will short-change Victoria's public hospitals by \$368 million in Commonwealth cuts over the next three years, Health Minister David Davis said today.

21 June 2013 - [New Korumburra ambulance station officially opens.](#) Health Minister David Davis together with Acting Premier and Member for Gippsland South Peter Ryan today officially opened Korumburra's new \$900,000 ambulance station.

21 June 2013 - [Mobile Intensive Care Ambulance \(MICA\) single responders hit the road in Bairnsdale.](#) Health Minister David Davis today launched a new ambulance MICA single responder unit in Bairnsdale.

21 June 2013 - [Australia-first model for refugee health.](#) In an Australian-first, a triage and orientation system for refugees and asylum seekers is being rolled out across Victoria thanks to a \$22.2 million investment by the Victorian Coalition Government.

21 June 2013 - [MICA single responders hit the road in Sale.](#) Health Minister David Davis together with Acting Premier and Member for Gippsland South Peter Ryan today launched a new ambulance MICA single responder unit in Sale.

27 June 2013 - [Coalition Government delivers 117 mental health nurse scholarships.](#) The Victorian Coalition Government has delivered 117 scholarships over this year for mental health nurses to undertake further study and training, Minister for Mental Health, Mary Wooldridge announced today.

21 May 2013 - [Safety improved for women in mental health care](#). The Victorian Coalition Government has allocated \$76,000 to improve the safety of women in mental health care at Mildura base hospital, Minister for Mental Health Mary Wooldridge announced today.

[Nominate a volunteer for 2013 Victorian Senior of the Year Awards - closing July 19.](#)

25 June 2013 - Emergency care - [winter access planning symposium](#).

Western Australia. Department of Health

Media release

25 June 2013 - [Mosquito borne disease risk continues in Kimberley and Pilbara](#).

27 June 2013 - [OD 0440/13](#) - Development of arrangement A billing procedures - Area health services are requested to develop procedures / guideline on Arrangement A billing for implementation in their respective area health services.

United Kingdom. Department of Health

[Department of Health response to the spending review](#).

[Inaugural conference highlights key role of nurses and midwives in improving health and wellbeing](#).

[Organisations commit to supporting staff facing domestic violence](#).

[The silent scandal of patient safety](#).

[Achieving parity of esteem between mental and physical health](#).

[Expert body given responsibility to look at the benefits medicines bring to wider society](#).

[Winterbourne view hospital: Department of Health review and response](#).

[National health visitor plan: progress and future implementation](#).

[Nursing and midwifery contribution to public health](#).

Canada. Health Canada

27 June 2013 - [Minister Aglukkaq launches public consultation on plasma donations](#).

OECD

26 June 2013 - [Briefing note for OECD health data 2013: How does Australia compare](#).

Australian Medical Association (AMA)

[AMA calls time on flawed general practitioner \(GP\) super clinics scheme](#).

[AMA steps up campaign against self-education expenses cap](#).

[Improved contract for GP after hours care](#).

[Fair decision from fair work commission](#).

British Medical Association

27 June 2013 - [Doctors condemn force feeding of hunger strikers](#).

27 June 2013 - [Call to ban sale of June food in hospitals](#).

27 June 2013 - [Doctors declare care quality commission \(CQC\) not fit for purpose](#).

26 June 2013 - [Call to retain whistle-blowers' clause](#).

26 June 2013 - [Evidence needed for proposed working pattern changes](#).

26 June 2013 - [Doctors not to blame for fitness to work failure](#).

26 June 2013 - [Reduction of abortion time limit rejected.](#)

24 June 2013 - [Doctors back right to anonymity when using social media.](#)

Canadian Medical Association (CMA)

26 June 2013 - [CMA reaches out to Alberta MDs in wake of floods.](#)

24 June 2013 - [Ottawa throwing roadblocks in way of supervised injection sites: CMA.](#)

24 June 2013 - [CMA monitoring impact of Calgary's flood as annual meeting nears.](#)

21 June 2013 - [CMA denounces new medical marijuana rules.](#)

ABOUT US

Kerry Hogan-Ross



Kerry's professional indemnity practice includes claims against solicitors and doctors.

She has acted for directors and professionals in large civil Supreme and Federal Court proceedings and in several high profile inquiries, including the HIH Royal Commission and the Bundaberg Hospital Commission of Inquiry. She represents hospitals, nurses and doctors in coronial inquiries and represents doctors in response to Health Care Complaints Commission and Medical Counsel complaints.

Contact Details

T +61 2 9286 8326

kerry.hogan-ross@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

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