



**14 OCTOBER 2013**

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

## JUDGMENTS

### Commonwealth

8 October 2013 - [Faye Mason v Military Rehabilitation and Compensation Commission \[2013\] AATA 717](#)

Compensation - Military rehabilitation and compensation - claim for compensation for dependants of deceased member - member suffered from hypertension – member died from sudden cardiac death during a service approved football match – whether death was a service death - whether member received appropriate clinical treatment of hypertension from RAAF medical staff – no material contribution - decision affirmed.

### New South Wales

4 October 2013 - [Lange v O'Carrigan \[2013\] NSWDC 183](#)

In August 2011, the plaintiff underwent left total hip replacement surgery performed by the defendant, a specialist orthopaedic surgeon. She experienced post-operative lengthening of her left leg, a rare but recognised complication of which she was warned. Six weeks post operatively remedial surgery was performed to correct this and the size two femoral stem component was replaced with a size one. The plaintiff claimed damages alleging negligence from both surgeries.

With the benefit of hindsight, the defendant conceded he had made an intra-operative mistake when he selected the size of the femoral stem, although he followed all intra-operative checks. He maintained, however, that the selection was a reasonable decision at the time.

The plaintiff failed to show that this clinical judgment was foreseeably and avoidably wrong. On a prospective analysis, it was made in the clinical setting through a process of reasoning and judgment. It was not simply an accidental or mistaken selection. The defendant had exercised reasonable care and skill.

Regarding the remedial surgery, the defendant's reason for recommending it was that if the lengthening was not corrected, the plaintiff faced worsening pain and distress, and she was already not coping. Although the timing of the surgery was debated, being six weeks after the first surgery, the judge concluded the defendant had acted with reasonable care and skill in the situation.

It was also established from the expert evidence that he had acted in a manner that was accepted widely as competent professional practice. Judgment was therefore for the defendant.

4 October 2013 - [Haleem v Douglass Hanly Moir Pathology \[2013\] NSWADT 217](#)

Doctor (Dr) Haleem complained to the anti-discrimination Board that Douglass Hanly Moir Pathology (DHMP) had discriminated against him on the ground of his Indian race when he attended for a helicobacter pylori breath test. The President of the Board declined the complaint because of its lack of substance. Dr Haleem therefore sought leave from the Administrative Decisions Tribunal to hear it. He was required to prove that it was fair and just for the complaint to go ahead.

Under s 19 of the *Anti-Discrimination Act 1977* (NSW) it is unlawful for a service provider to discriminate against a customer on the ground of their race by refusing to provide a service or by providing it on unfavourable terms.

Dr Haleem complained his wait at DHMP was excessive, stating that although he was in abdominal pain, the receptionist allowed a patient who had arrived after him to be seen first. The receptionist was also "very firm and negative" towards him. Dr Haleem further complained that the pathology collector treated him in a rude and racist manner and refused to administer the test. DHMP denied any discrimination, arguing that Dr Haleem had been behaving in an aggressive, disruptive and racist manner.

The Tribunal determined that, apart from the fact that a service was refused, Dr Haleem could not prove the factual basis for his other allegations. The evidence presented overwhelmingly favoured DHMP's version of events, which meant the only apparent reason for refusing the service was Dr Haleem's own behaviour. Leave was denied.

## LEGISLATION

### Commonwealth

**National health (listing of pharmaceutical benefits) amendment instrument 2013 (No. 12) (No. PB 69 of 2013)** F2013L01768 • PB 69 of 2013 as made • 3 October 2013.

### Northern Territory

**Mental Health and Related Services Amendment Bill 2013** - Introduced 9 October.

## REPORTS

### Australia. Department of Health & Ageing

Media releases

10 October 2013 - **\$15 million for peak water safety bodies to save lives**. The Australian Government will invest \$15 million over five years to support the nation's lifesavers and swimming teachers to prevent drowning deaths.

10 October 2013 - **Abbott Government commitment to mental health**. The Minister for Health, the Hon Peter Dutton, MP announced the first Australian Government actions to progress mental health as a key priority area.

26 September 2013 - **Transcript of official opening of Canberra hospital's expansion of emergency department and intensive care unit**.

### Private Health Insurance (PHI) Circulars

9 October 2013 - **PHI 63/13 Private (same day) hospital information - name change**.

2 October 2013 - **PHI 62/13 New hospital information**.

2 October - **PHI 61/13 Closure (revoke) of public hospital information**.

1 October 2013 - **PHI 60/13 Changes to second-tier eligible hospitals**.

1 October 2013 - **PHI 59/13 Amendment to the private health insurance (benefit requirements) rules 2011**.

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

11 October 2013 - The Podiatry Board and AHPRA publish their 2013/14 health profession agreement. [Read More](#)

9 October 2013 - Seeking qualified and experienced parties to review the registered nurse standards for practice. The nursing and midwifery Board of Australia (NMBA) is seeking suitably qualified and experienced parties to review the registered nurse standards for practice. [Read More](#)

9 October 2013 - Seeking qualified and experienced parties to review models of supervision for privately practicing midwives The NMBA is seeking suitably qualified and experienced parties to undertake a review of privately practicing midwives models of supervision. [Read More](#)

8 October 2013 - Nursing & midwifery Board Fee cut for final year students applying for registration to practice. [Read More](#)

8 October 2013 - The occupational therapy Board and AHPRA publish health profession agreement. [Read More](#)

8 October 2013 - The osteopathy Board and AHPRA publish health profession agreement. [Read More](#)

8 October 2013 - Registrant update - The physiotherapy Board releases its latest newsletter. [Read More](#)

8 October 2013 - The physiotherapy Board of Australia releases its latest communiqué. [Read More](#)

8 October 2013 - The Chinese medicine Board and AHPRA publish health profession agreement. [Read More](#)

8 October 2013 - The medical radiation practice Board of Australia has released its latest communiqué.

[Read More](#)

7 October 2013 - Final year students can go online now to apply for registration as a chiropractor, dental practitioner, osteopath, physiotherapist, podiatrist, Chinese medicine practitioner or occupational therapist before they graduate. [Read More](#)

7 October 2013 - Final year students can go online now to apply for provisional registration as a medical practitioner before they graduate. [Read More](#)

7 October 2013 - Fourth year psychology students seeking provisional registration with the psychology Board of Australia can apply online now. [Read More](#)

7 October 2013 - Students who will soon graduate after completing the Aboriginal & Torres Strait Islander Board's approved program of study can go online now to apply for registration. [Read More](#)

7 October 2013 - The Chinese medicine Board of Australia has issued its infection prevention and control guidelines for acupuncture practice. [Read More](#)

7 October 2013 - The Chinese medicine Board of Australia releases its latest communiqué. [Read More](#)

4 October 2013 - The Board has issued an update about the status of retired doctors with limited registration (public interest - occasional practice). [Read More](#)

4 October 2013 - The psychology Board of Australia releases its latest communiqué. [Read More](#)

#### **Australia. National Health & Medical Research Council**

4 October 2013 - [Minor amendments to the clinical practice guidelines for the management of overweight and obesity in adults, adolescents and children in Australia \(2013\)](#).

#### **Australia. Therapeutic Goods Administration (TGA)**

11 October 2013 - [Invacare power wheelchairs](#). It has been identified that there is a wiring defect in the joystick of a small number of wheelchairs.

11 October 2013 - [Mefloquine hydrochloride \(Iariam\)](#). The product information (PI) and consumer medicine information (CMI) for the anti-malaria drug mefloquine hydrochloride (Iariam) have recently been updated to include new information about the potential for visual disturbances.

10 October 2013 - [Pain-killers containing dextropropoxyphene - Di-Gesic and Doloxene](#). New conditions on the registration and supply of dextropropoxyphene-containing pain-killers Di-Gesic and doloxene will take effect from 10 October 2013.

10 October 2013 - [Advisory committee on biologicals \(ACB\) meeting statement, meeting 3, 19 September 2013](#).

10 October 2013 - [HeartSine PAD 300/PAD 300P public access defibrillators \(semi-automated\)](#). Owners and people responsible for HeartSine PAD 300/PAD 300P public access defibrillators are advised that Aero Healthcare, in consultation with the TGA, undertook a recall for product correction of some of these devices in November 2012.

10 October 2013 - [Oral ketoconazole \(Nizoral\) 200 mg tablets](#). Consumers and health professionals are advised that Janssen-Cilag (Australia), in consultation with the TGA, is deregistering and discontinuing supply of oral ketoconazole (Nizoral) 200 mg tablets, commencing 1 December 2013.

10 October 2013 - [Frequently asked questions about the new over the counter \(OTC\) business process \(commenced April 2013\)](#). Updated frequently asked questions and answers on the new OTC business process.

9 October 2013 - [Advisory committee on medical devices \(ACMD\)](#). The ACMD meeting for 22 November 2013 has been postponed.

9 October 2013 - [Australian public assessment reports for prescription medicines \(AusPARs\)](#). Added ezetimibe + atorvastatin as calcium, tadalafil, micafungin (as sodium), glycopyrronium (as bromide).

4 October 2013 - [Section 9D instruments](#). Approval under subsection 9D(3) of the *Therapeutic Goods Act 1989* - forms for prescription medicines applications.

4 October 2013 - [Approval of form in which information sufficient for determination of applications made under section 23 of the Therapeutic Goods Act 1989 for the registration of therapeutic goods](#). Approval under paragraph 23(2)(b) of the *Therapeutic Goods Act 1989* - forms for prescription medicines applications.

4 October 2013 - [Approval of forms for applications under section 23 of the Therapeutic Goods Act 1989 for registration of therapeutic goods](#). Approval under subsection 23(1) of the *Therapeutic Goods Act 1989* - forms for prescription medicines applications.

4 October 2013 - [Advisory committee on the safety of medicines \(ACSOM\) meeting statement, meeting 19, 13 September 2013](#).

4 October 2013 - [Biomedical telemetry equipment](#). Medical device sponsors, hospitals and health professionals are advised that changes to radio frequency (RF) spectrums in Australia could affect a small number of biomedical telemetry devices used in hospitals.

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

4 October 2013 - [Mental health services in brief 2013. Mental health services in Australia media release](#).

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

8 October 2013 - [On the radar - Issue 147 \(92KB\)](#)

16 October 2013 - [Free public lecture: Shared decision making - Building on research to help it happen in practice](#) Professor France Légaré.

#### **Australia. National Mental Health Commission**

8 October 2013 - [Shining a light on culturally and linguistically diverse \(CALD\) communities](#).

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

4 October 2013 - [Improvements in elective surgery waiting times for the ACT](#), Katy Gallagher, MLA.

#### **New South Wales. (NSW) Ministry of Health**

##### Media Releases

11 October 2013 - [NSW health alert - Three new cases of measles](#).

9 October 2013 - [Central Coast patients and staff give thumbs up to new hospital menu](#).

9 October 2013 - [Local patients return to independent living](#).

9 October 2013 - [New services improving patient care in the Hunter](#).

8 October 2013 - [New specialist hand clinic benefits local patients](#).

3 October 2013 - [Health Minister turns the first sod on Peak Hill multi-purpose service \(MPS\) project](#).

3 October 2013 - [Schematic designs launched for Lachlan health service project](#).

3 October 2013 - [Parkes hospital chemotherapy unit now complete](#).

2 October 2013 - [Main works set to begin at Hornsby Ku-Ring-Gai hospital](#).

2 October 2013 - [Health Minister applauds progress of Dubbo hospital redevelopment](#).

10 October 2013 - [World mental health day 2013](#).

1 October 2013 - [Mental health month 2013 launched](#).

#### Policy Directives & Guidelines



10 October 2013 - [Health assessment of children and young people in out-of-home-care \(clinical practice guidelines\)](#) GL2013\_010.

#### Information Bulletins

10 October 2013 - [Foodborne listeriosis control in health care institutions](#) IB2013\_039.

1 October 2013 - [Pension based scale of fees - Health Services Act 1997](#) IB2013\_038.

30 September 2013 - [Lead apron allowance](#) IB2013\_036.

30 September 2013 - [Dispensing of medicines requiring child-resistant packaging](#) IB2013\_037.

#### Northern Territory. Department of Health

11 October 2013 - [Robyn Lambley - Early wins for alcohol mandatory treatment](#). More than 100 problem drinkers have been referred to the alcohol mandatory treatment system in its first quarter of operation.

10 October 2013 - [Robyn Lambley - Little acts, big impacts for mental wellbeing](#). Territorians are marking mental health week with events across the territory carrying the theme, little acts: big impacts.

10 October 2013 - [Robyn Lambley - Work set to begin on \\$50 million bush clinic upgrades](#). Remote health centres across the territory will receive more than \$50 million to provide better services for people living in the bush.

#### Queensland. Department of Health

10 October 2013 - [More surgery and shorter waits for Darling Downs residents in 2012-13](#). Health Minister Lawrence Springborg has commended the Darling Downs Hospital and Health Service (DDHHS) Board on its performance against national benchmarks in its first year as an independent body.

9 October 2013 - [Health board plan for Torres Strait–Northern Peninsula](#). Minister for Health, The Honourable Lawrence Springborg Queensland's devolved administrative network of health services may soon be complete, following a strong response to a call for expressions of interest in a local board to serve the Torres Strait and the northern Peninsula.

7 October 2013 - [\\$5 million helipad for Rockhampton hospital](#). A \$5 million helipad will be built on top of the \$160 million Ward Block development nearing completion at the Rockhampton Hospital, Minister for Health Lawrence Springborg announced today.

7 October 2013 - [Communities make a difference for mental health](#) Minister for Health, the Honourable Lawrence Springborg Queensland's whole-of-government approach to mental health and substance misuse combined with widespread community input is delivering better outcomes for patients and their families.

#### South Australia. (SA) Department for Health & Ageing

10 October 2013 - [New health hub for mothers and children to open in the north](#). Mothers and children in Adelaide's north will soon be cared for in a brand new, state-of-the-art women and children's health hub at Lyell McEwin hospital.

4 October 2013 - [SA patients receiving surgery quicker](#).

#### Tasmania. Department of Health & Human Services (DHHS)

10 October 2013 - [Vaccination in Tasmania - the real point](#).

11 October 2013 - [Fleet reduction leads to national environment award for DHHS](#).

9 October [Royal redevelopment website](#).

#### Victoria. Department of Health

10 October 2013 - [Major milestone for the new royal Victorian eye & ear hospital](#). The Victorian Coalition Government is putting the final pieces in place as it gets set for the redevelopment of the iconic royal Victorian eye and ear hospital.

10 October 2013 - **Pilot projects to target those most at risk of blindness.** People at risk of eye disease in four areas across Victoria will be targeted in new pilot programs to be rolled out by the vision initiative, Minister for Health David Davis announced today.

10 October 2013 - **Coalition Government reforms Victorian alcohol and drug treatment services.** More than 24,000 Victorians needing treatment for alcohol and drug dependency will receive better coordinated and streamlined services as a result of significant reform of the community-based treatment sector announced today by the Minister for Mental Health Mary Wooldridge.

9 October 2013 - **Works on new ambulance station at Leopold under way.** Minister for Health David Davis and Member for South Barwon Andrew Katos today marked the start of construction works on a new \$1.9 million ambulance station at Leopold.

9 October 2013 - **Jamie's ministry of food kitchen turns one.** The Minister for Health has congratulated the community of Geelong for getting involved in healthy cooking with more than 1,750 people enrolling in nutritious cooking classes over the past year.

8 October 2013 - **New Numurkah hospital making clear progress.** The old Numurkah hospital site has been cleared, paving the way for construction to start on the new, state of the art \$18.3 million hospital for the Numurkah community.

8 October 2013 - **New \$65.6 million Echuca hospital taking shape.** Construction of Echuca's new \$65.6 million hospital is rapidly taking shape with construction on time and on budget, Minister for Health David Davis said today.

8 October 2013 - **New Charlton hospital takes a leap forward.** Minister for Health David Davis today visited Charlton to inspect construction works on the new \$22.7 million hospital.

8 October 2013 - **Four projects to boost services at Swan Hill hospital.** Four exciting redevelopment projects are set to significantly revamp hospital, aged care and community rehabilitation services at Swan Hill hospital.

7 October 2013 - **Tenders now open for \$15.1 million expansion of services at sunshine hospital.** A major expansion of services at sunshine hospital has begun with tenders called as part of the \$15.1 million project to deliver additional critical care services, five additional labour delivery rooms and future capacity for cardiology services, the Minister for Health David Davis announced today.

7 October 2013 - **Mental health week keeps focus on improvement.** Mental health week is a time to assess the improvements made in the acceptance of people with mental ill health and monitor and celebrate continued progress, Minister for Mental Health Mary Wooldridge said today.

4 October 2013 - **Tenders open for Ballarat base hospital's new helipad.** Minister for Health David Davis today announced that tenders are now open for a new helipad and car park at Ballarat base hospital.

4 October 2013 - **Construction soars on new \$1 billion Victorian comprehensive cancer centre (VCCC) project.** The new \$1 billion VCCC project has started to soar upwards with construction works hitting street level.

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

6 October 2013 - **Fiona Stanley hospital (FSH) unveils high-tech medical equipment.**

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

4 October 2013 - **Mortality and demographic data 2010.**

11 October 2013 - **Purchasing guidelines for the new model for supporting disabled people.**

#### **United Kingdom. Department of Health**

10 October 2013 - **Norman Lamb: "Mental and physical health: one agenda" conference.**

10 October 2013 - **National children and adult services (NCAS): countdown to conference.**

10 October 2013 - **Review of national health scheme (NHS) staff engagement launched.**

9 October 2013 - [G8 dementia summit – last chance to comment on dementia research.](#)

9 October 2013 - [Healthcare efficiency through technology expo.](#)

4 October 2013 - [£3.6 million competition for innovative ideas for kidney care.](#)

#### **United States of America. Department of Health & Human Services**

8 October 2013 - [Florida consumers have significant choice and lower than expected premiums in the new health insurance marketplace.](#)

#### **Australian Medical Association (AMA)**

10 October 2013 - [AMA calls for mental health promotion in the workplace.](#)

#### **British Medical Association (BMA)**

11 October 2013 - [Tighter tobacco regulation moves a step closer.](#)

10 October 2013 - [Health levy will increase bureaucracy, warns BMA.](#)

10 October 2013 - [Longer-term planning needed to relieve NHS pressure.](#)

9 October 2013 - [Doctors leaders urge against DNA testing measures.](#)

8 October 2013 - [Call to improve safety of emergency medicine.](#)

7 October 2013 - [Government lobbying bill assurances fail to allay BMA fears.](#)

7 October 2013 - [Fighting for a right to care.](#) Migrant access to healthcare is under threat as the government tables plans on eligibility.

4 October 2013 - [Child mortality study reveals impact of chronic conditions.](#)

#### **Canadian Medical Association (CMA)**

4 October 2013 - [CMA salutes provinces, territories for their emphasis on seniors' care.](#)

7 October 2013 - [Brazil under fire for importing Cuban MDs.](#)

10 October 2013 - [More than one in six new specialists can't find work: Royal college.](#)

#### **American Medical Association**

9 October 2013 - [Quality of patient care drives physician satisfaction; Doctors have concerns about electronic health records, study finds.](#)

9 October 2013 - [Sentinel lymph node \(SLN\) surgery after neoadjuvant chemotherapy in breast cancer.](#)



## ABOUT US

### Mark Williams



Mark is a partner in the Litigation and Regulatory team at DLA Piper.

Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

Mark also acts for the regulators of the medical and other health professions.

### Contact Details

T +61 8 6467 6015

[mark.williams@dlapiper.com](mailto:mark.williams@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](mailto: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](mailto: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](mailto: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](mailto: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](mailto:sydney@dlapiper.com)

[www.dlapiper.com](http://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](http://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](mailto:michael.regos@dlapiper.com).