



HEALTH ALERT

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JUDGMENTS

New South Wales

12 February 2014 - [Prince v Malouf \[2014\] NSWCA 12](#)

The parties are both ear, nose and throat (ENT) surgeons. Dr Prince was the sole ENT Visiting Medical Officer at Grafton Base hospital. Dr Malouf briefly operated there as an locum surgeon. The hospital subsequently arranged for Dr Malouf to undertake further operating lists.

The dispute related to Dr Prince sending letters which Dr Malouf claimed were defamatory of him. Some were to administrative persons at the hospital, others to ENT patients on its waiting list. Some were also copied to the hospital's insurer, Dr Malouf's insurer (UMP) and the Australian Medical Association (AMA).

At trial Dr Malouf was successful in part (the judge finding only the patients' letter defamatory) and he was awarded \$138,500 in damages. Dr Prince appealed and Dr Malouf cross-appealed for his unsuccessful claims.

The Court of Appeal agreed that the letter to the patients contained imputations that Dr Malouf presented a danger and did not provide adequate post-operative care. Unlike the trial judge, however, the Court also found that the imputation that Dr Malouf could not be trusted to provide proper treatment was also conveyed.

It upheld the trial judge's decision that the publication of all letters and copies (except to the AMA) took place under the 'common law qualified privilege' defence. It also agreed Dr Prince was not actuated by malice except for the letter to UMP. The trial judge's orders were set aside, Dr Malouf was awarded \$20,000 for the letters to AMA and UMP, and ordered to pay back \$118,500.

12 February 2014 - [Tanious v Dedousis \[2014\] NSWSC 51](#)

Procedure - requirement of pleadings - whether amended statement of claim should be struck out - whether amended statement of claim discloses reasonable cause of action - whether amended statement of claim is an abuse of process.

13 February 2014 - [Green v Healthscope Limited t/as The Hills Private Hospital \[2014\] NSWSC 43](#)

Practice and procedure - service of statement of claim - where statement of claim served after time for service expired - application made for extension of time for service - whether good reasons had been advanced for an extension - whether explanation advanced for the failure to make the application prior to the expiry of the statement of claim.

Practice and procedure - service of statement of claim - where statement of claim served after time for service expired - application made for extension of time for service - where defendant filed a notice of appearance following service out of time - whether filing of notice of appearance constituted a waiver of objection to service - whether service deemed to have been effected.

12 February 2014 - [Borg v Ramsay Health Care trading as North Shore Private Hospital Pty Limited \[2014\] NSWSC 37](#)

Torts - negligence - causation - pre-existing injuries evidence - credibility - video surveillance - disclosure to plaintiff.

7 February 2014 - [A \(by his tutor Brett Collins\) v Mental Health Review Tribunal \(No 4\) \[2014\] NSWSC 31](#)

Mental health - forensic patient - Mental Health Review Tribunal - review of the case of a forensic patient - application for leave to appeal from Tribunal determination - application limited to question of law - detention, care and treatment of forensic patient in mental health facility - forced medication by depot injection.

Queensland

29 November 2013 - [Medical Board of Australia v Rosenbaum \[2013\] QCAT 722](#) (published 10 February 2014)

A complaint was made about a cosmetic surgeon's treatment of a patient following a breast augmentation, mini-abdominoplasty and liposuction. After surgery, the patient was discharged from his clinic and taken to a hotel. That evening, her mother called the doctor requesting he attend the hotel as the patient was unwell. The doctor attended and released an abdominal binder. He had no medical equipment and did not take her blood pressure. The doctor instructed her to remain in bed and attend his clinic the next morning. Upon attending the clinic, the doctor administered intravenous fluids and monitored her. That afternoon he called hospitals enquiring about bed availability, as he did not have any existing arrangements for admissions in the event his patients encountered complications following surgery. The doctor accompanied the patient to hospital by taxi. She had surgery the following day.

The doctor and the Board agreed he placed the patient at risk by keeping her under observation at the clinic before referring her to hospital when she had prolonged hypotension and tachycardia. It was accepted the doctor engaged in conduct of a lesser standard than that which might reasonably be expected of him by the public or his professional peers. The Tribunal ordered conditions be imposed on the doctor's registration, including that he must not perform procedures requiring anaesthesia above local anaesthetic unless performed in a licensed facility, that the Board be allowed to inspect his patient records to monitor compliance, and that he must notify all colleagues he practises with of these conditions.

6 December 2013 - [Nobleta v Medical Board of Australia \[2013\] QCAT 730](#) (published 10 February 2014)

Practice and procedure – directions – where the parties filed an application for directions – where the parties sought an order changing the date to which a stay operated – where the parties sought an order that the hearing date be vacated – where no documents filed in support – whether the Tribunal should make an order in the terms sought.

12 February 2014 - [Investigation into the death of Karen Willis](#). Coroners: Asian herbal weight loss medication, Slimming Factor, Sibutramine, cardiac issues.

Commonwealth

12 February 2014 - [Yu Chun Zhong v Royal Melbourne Hospital & Ors \[2014\] HCASL 9](#)

Special leave application to appeal against orders made by the Court of Appeal of the Supreme Court of Victoria, refusing the applicant leave to appeal from an interlocutory ruling below.

LEGISLATION

Commonwealth

6 February 2014 - [National Health \(Weighted average disclosed price - main disclosure cycle\) Amendment Determination 2014 \(No. 1\)](#) F2014L00137 • PB 8 of 2014 as made.

13 February 2013 - [Therapeutic Goods Amendment \(2013 Measures No. 1\) Bill 2013](#). Third reading.

Queensland

13 February 2014 - [Work Health and Safety and Other Legislation Amendment Bill 2014](#). Introduced by: J P Bleijie MP. Stage reached: Referred to Committee on 13 February 2014. [Bill Exp Note Explanatory Speech](#).

REPORTS

Australia. Department of Health & Ageing

12 February 2014 - [Minister Lauds 50 Years of Independent Expert Advice](#). The Australian Government has paid tribute to the work of a committee of eminent health experts.

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

13 February 2014 - The national Boards have published revised guidelines and codes of conduct, and a new social media policy, which come into effect from mid-March. [Read Article](#)

12 February 2014 - The nursing and midwifery Board of Australia has published a media release on the new model for assessing internationally qualified nurses and midwives. [Read Article](#)

11 February 2014 - The medical radiation practice Board of Australia has released its first communiqué for 2014. [Read More](#)

10 February 2014 - The Board has released its policy for CPD and Recency of practice in ultrasound. [Read More](#)

7 February 2014 - Details of decision-making powers delegated by national Boards to national committees, state and territory boards, and AHPRA will now be published on the AHPRA website. [Read Article](#)

Australia. National Health & Medical Research Council (NHMRC)

12 February 2014 - [NHMRC - funded research among Australia's best](#). Research funded by the NHMRC significantly outperformed other Australian health and medical research between 2005 and 2009, a new report has found. Measuring Up 2013 is the latest analysis of the publication output of NHMRC funding and the first to directly compare NHMRC linked research with other Australian health and medical research. Performance was measured by the number of journal publications generated by research and the number of times those publications were cited by other researchers. [Read Article](#)

13 February 2014 - [Measuring research impact – a necessary challenge](#). In Australian health and medical research, NHMRC receives many more great research ideas than we are able to fund. And so, we assess and rank applications based on merit, and largely, the merit of an idea is judged according to its ability to have impact. But measuring impact in any area of research is an inherently difficult task. This challenge formed the foundation of discussions this week at the Research and Impact Assessment Symposium hosted by Philip Campbell, editor-in-chief of nature. [Read Article](#)

Australia. Therapeutic Goods Administration (TGA)

13 February 2014 - [Minister lauds 50 years of independent expert advice](#). The Australian Government has paid tribute to the work of a committee of eminent health experts.

13 February 2014 - [Otto Bock Aerius/Aerial and Aerius/Aerial Active wheelchair cushions](#). Routine testing has found that the foam within these cushions becomes more flammable after it has been washed.

13 February 2014 - [Australian regulatory guidelines for biologicals \(ARGB\)](#). Updated Appendix 4 to improve guidance and remove information duplicated in TGO 88.

12 February 2014 - [Fifty years of independent expert advice on prescription medicines](#). Highlights a number of the significant achievements of the Australian Drug Evaluation Committee and its successor, the Advisory Committee on Prescription Medicines (ACPM).

12 February 2014 - [First harmonisation activity completed](#). New Zealand changes paediatric dosage instructions for paracetamol and ibuprofen to align with Australia.

12 February 2014 - [Educational materials](#). Want to know more about how we regulate the therapeutic goods that you use, travel with, prescribe or supply? View our educational materials.

11 February 2014 - [Market research: Informing TGA education and communication activities](#). In 2013, market research was conducted to assist in the development of targeted and effective educational materials and improve our communication strategies and practices.

10 February 2014 - [Advisory Committee on Prescription Medicines \(ACPM\)](#). Updated ACPM members.

7 February 2014 - [Orphan drugs](#). Added Olaparib.

Australian Institute of Health & Welfare

7 February 2014 - [Improving early childhood outcomes for Indigenous children the focus of new Clearinghouse paper.](#)

Australian Commission on Safety and Quality in Health Care

10 February 2014 - [On the Radar – Issue 161 \(116KB\).](#)

10 February 2014 - [Advisory A13/07: Advice provided to accrediting agencies on non applicable actions.](#)

13 February 2014 - [National Inpatient Medication Chart \(NIMC\) audit system user guide](#) and [NIMC audit spreadsheet.](#)

New South Wales. (NSW) Ministry of Health

Media Releases

10 February 2014 - [NSW Government on target to meet hospital beds commitment.](#)

11 February 2014 - [Babies to benefit from new resuscitation cots at Maitland hospital.](#)

Policy Directives & Guidelines

10 February 2014 - [Incident management policy PD2014_004.](#)

Information Bulletins

11 February 2014 - [Notification of Obsolete Policy Directive - PD2010_025 IB2014_005.](#)

Northern Territory. Department of Health

12 February 2014 - [Robyn Lambley - Ban on smoking in cars with children.](#) The Country Liberals Government has made yet another landmark decision to boost the health of Territorians, and has moved to ban smoking in cars carrying children under 16.

Queensland. Department of Health

14 February 2014 - [Mackay's magnetic resonance imaging \(MRI\) one step closer.](#) Mackay base hospital has received 1000 litres of liquid helium for its new MRI machine.

14 February 2014 - [Queensland Ambulance Service \(QAS\) issues reminder on calling triple zero.](#) Following a spate of recent dangerous incidents, QAS has issued a reminder about what (not) to do in a medical.

13 February 2014 - [Queensland a leader in medical research.](#) Read about some of the exciting medical research projects currently underway in Queensland.

13 February 2014 - [Computer game technology helps patients.](#) Researchers at the Royal Brisbane and Women's hospital are using computer game technology to help Queensland burns patients and stroke victims significantly improve their mobility and quality of life.

11 February 2014 - [Raise money for research and host a high tea.](#) Host a PA high tea in March and help raise much needed money for medical research.

11 February 2014 - [Facebook forum on settling babies a hit.](#) A Queensland Health facebook forum on sleeping and settling babies has proved a hit, with dozens of parents asking questions.

11 February 2014 - [Redcliffe Hospital hits elective surgery targets.](#) Redcliffe hospital patients requiring urgent elective surgery are receiving the treatment they need faster than ever before.

11 February 2014 - [Report delivers cure for sick system.](#) A report into the conduct of Queensland Health doctors detailing serious issues relating to workplace attendance, treatment and billing practices has been referred to the Crime and Misconduct Commission.

10 February 2014 - [Dental waiting lists improved](#). Oral health staff across the state have significantly reduced oral health waiting lists.

10 February 2014 - [First Mackay resident to have electronic record](#). A newborn baby was the first Mackay resident to have their medical record electronically scanned and stored.

7 February 2014 - [Mental health workshops for drought affected](#). Communities affected by drought in Queensland can access mental health support workshops.

6 February 2014 - [Radiotherapy services officially opened on the Gold Coast](#). Radiotherapy services on the Gold Coast were officially opened this week.

6 February 2014 - [New doctors welcomed at Longreach](#). A raft of new medical talent has commenced work at Longreach.

South Australia. Department for Health & Ageing

13 February 2014 - New community health precinct for the South Coast Construction of a new \$10 million community health care precinct, which will deliver primary health, mental health and rehabilitation services to the South Coast, is underway. [Read Article](#)

13 February 2014 - Extra support for people with Parkinson's disease. A re-elected State Labor Government will expand the Government's support for people living with Parkinson's disease. [Read Article](#)

11 February 2014 - Opposition changes their mind and backs Government's changes to Patient Assistance Transport Scheme (PATS). The Liberal Opposition has endorsed the Government's changes to the PATS after back flipping on its vague \$1 million promise within the space of 12 days. [Read Article](#)

Tasmania. Department of Health & Human Services

11 February 2014 - [Expression of Interest Clinical Advisory groups \(CAG\) Convenors - Clinical Advisory Groups - Summary](#).

Victoria. Department of Health

13 February 2014 - [Illness linked to Torquay cafe investigated](#).

14 February 2014 - [New Melton ambulance branch opens its doors](#). Minister for Health David Davis today officially opened the new Melton ambulance branch to cater for the growing number of paramedics working in Melton 24 hours a day.

14 February 2014 - [Supporting patients to be smokefree](#). Seven Victorian hospitals will take part in a highly practical pilot program, led by Alfred Health, designed to increase support for every patient to quit smoking.

12 February 2014 - [Victorian Coalition blocks Labor's death tax](#). Victorians have been spared the additional cost of a GST on burials that was set to come into effect from today, Minister for Health David Davis has announced.

11 February 2014 - [Coalition to boost school entry immunisation rates](#). The Victorian Coalition Government is setting an ambitious new target to have 95 per cent of children fully immunised before they start school.

February 2014 [Health Victoria](#). The Department of Health's monthly publication.

Western Australia. (WA) Department of Health

Operational Directives (OD)

13 February 2014 - [OD 0499/14](#) Inter-hospital transport arrangements for Department of Veterans' Affairs (DVA) entitled persons.

13 February 2014 - [OD 0498/14](#) Identification of DVA entitled persons. This operational directive outlines the identification of the DVA entitled persons who access admitted and non-admitted services in publicly funded hospitals across WA.

13 February 2014 - [OD 0497/14](#) hospital transfer policy for DVA entitled persons from public to private hospitals.

13 February 2014 - [OD 0496/14](#) This operational directive outlines the requirement for all DVA entitled persons to sign the DVA patient election form on admission or during the course of their hospital stay.

12 February 2014 - [OD 0495/14](#) This operational directive outlines the billing arrangements between WA and the DVA for pharmaceuticals, nursing home type patient (NHTP) contribution for ex-Prisoners of War (POW) and Victoria Cross (VC) recipients and post discharge services provided to entitled persons.

12 February 2014 - [OD 0494/14](#) This operational directive outlines the arrangement for the provision of aids or equipment, home assessment and home modification for DVA Entitled Persons. This arrangement covers admitted patients on discharge and non-admitted patients.

6 February 2014 - [OD 0493/14](#) Allocating and reporting mental health legal status in specialised mental health services. Mental health legal status is reported locally in WA to monitor trends in the use of compulsory treatment provisions under the mental health legislation in WA hospitals and community health care facilities. It is also reported to the Australian Government in the mental health care and admitted patient care national minimum datasets and affects allocation of Australian refined-diagnosis. Related groups which are used in activity based funding/management.

This OD is to provide direction on accurate allocation of mental health legal status based on the *Mental Health Act 1996* (the Act) orders/forms.

The aim of the OD is to outline the requirements of specialised mental health services to reduce the amount of errors and provide guideline for consistent recording and reporting mental health legal status across Western Australian specialised mental services.

6 February 2014 - [OD 0492/14](#) This operational directive outlines the requirements for the management, measurement and reporting of loss of Schedule 8 and Restricted Schedule 4 oral liquid medicines

United Kingdom. Department of Health

14 February 2014 - [Sir Stuart Rose to advise on National Health Scheme \(NHS\) leadership.](#)

13 February 2014 - [Government fires starting pistol to tackle physical activity.](#)

13 February 2014 - [Joint committee on vaccination and immunisation \(JCVI\) updates on the use of Bexsero meningococcal B vaccine.](#)

10 February 2014 - [Jeremy Hunt: message to NHS staff one year on from Francis report.](#)

United States of America. Department of Health & Human Services

13 February 13 2014 - [Nations commit to accelerating progress against infectious disease threats.](#)

12 February 2014 - [Enrollment in the health insurance marketplace increases by 53 percent in January.](#)

11 February 2014 - [Eight in 10 uninsured Latinos may qualify for Medicaid, CHIP or lower costs on monthly premiums in the Health Insurance Marketplace.](#)

Australian Medical Association (AuMa)

13 February 2014 - [AuMA President, Dr Steve Hambleton, 4ZZZ Brisbane, Queensland hospital contracts](#) Transcript., Subject: Queensland Hospital Contracts. [Read more](#)

14 February 2014 - [Public hospitals struggling to meet demand and targets as Federal funding declines.](#) AuMA Public Hospital Report Card 2014. [Read more](#)

13 February 2014 - [Doorstop AuMA public hospital report card 2014.](#) Doorstop public hospitals under pressure and struggling to meet targets. [Read more](#)

12 February 2014 - [Doctors across Queensland vote to reject contracts](#). AuMA President, Dr Steve Hambleton, said today that opposition to the Queensland Government's proposed individual contracts for Senior Medical Officers (SMOs) is spreading across the State and growing stronger. [Read more](#)

12 February 2014 - [Leadership and partnerships needed to close the gap](#). The AuMA today commended the Prime Minister on the personal drive and commitment to improve the lives of Indigenous Australians outlined in his Closing the Gap Report, and welcomed the Government's new target to end the gap between Indigenous and non-Indigenous school attendance. [Read more](#)

7 February 2014 - [AuMA urges Queensland doctors to reject dodgy contracts](#). AuMA President, Dr Steve Hambleton, is urging all Queensland hospital doctors to reject Queensland Government contracts in their current form and is calling on the Queensland Government to return to the negotiating table in good faith to reach a fair and balance agreement. [Read more](#)

British Medical Association (BMA)

13 February 2014 - [BMA seeks general practitioner's \(GP\) experiences of networks](#). GPs are being asked to share their experiences of working in networks or federations.

12 February 2014 - [MPs back BMA call for more women in science](#). More effort should be made to retain women in scientific careers, says a report.

11 February 2014 - [More trusts agree to extra two days of leave](#). More trusts are offering an extra two days of annual leave to their staff.

11 February 2014 - [Doctors leaders hail car smoking ban](#). The BMA has hailed a parliamentary vote to ban smoking in cars carrying children as "an important step forward."

10 February 2014 - [Speed up reforms of older-people care, watchdog urges](#). The reform of care for older people must accelerate if it is to succeed, Scotland's public spending watchdog has warned.

7 February 2014 - [Doctors asked about own mental health](#). The BMA is encouraging doctors to share their attitudes to their own mental health for a United Kingdom study.

Canadian Medical Association (CMA)

12 February 2014 - [CMA welcomes federal budget's action on dementia, smoking](#). Although health care was far from a major item in a 2014 federal budget that focused on debt reduction, the CMA says it is pleased that some "targeted" spending will tackle areas of growing concern within medicine, particularly the country's looming dementia epidemic.

10 February 2014 - [There's a CMA connection in Sochi](#). There was a CMA connection in Sochi, Russia, when the Winter Olympics began on 7 February. Lucie Boileau, the CMA's senior adviser for communications and public outreach, will be handling media relation duties in Russia as part of the media-management contingent for the Canadian Olympic Committee.

7 February 2014 - [Online treasure trove of clinical tools free for CMA members](#). Here's another way physicians can make the most of their membership in the CMA — simply sign on with **AccessMedicine**, which is packed with over 75 full text and fully searchable textbooks, a massive multimedia library and an integrated drug database.

American Medical Association

13 February 2014 - [AMA continues forceful advocacy to stop ICD-10 implementation](#). Citing new cost estimates that could reach nearly triple those of previous projections, the AMA on Wednesday issued a letter calling on United States (US) Department of Health and Human Services Secretary Kathleen Sebelius to reconsider the mandated adoption of the new code set, currently scheduled for 1 October. Read more in AMA Wire™ about the new cost study and the AMA's letter to Secretary Sebelius.

13 February 2014 - [Burnout higher among med students, residents than their peers](#). Medical students and residents are more likely to be burned out, depressed or fatigued compared to similarly aged college graduates pursuing other careers, according to recent research from the Journal of the Association of American Medical Colleges.

12 February 2014 - [States take on opioid abuse, but legislation not always sound](#). As opioid overdoses continue to hit the headlines, states increasingly are looking for ways to curb drug abuse - but these approaches by non-medical professionals can mean both positive results and harmful effects for patients. Such is the case with legislation under consideration in Ohio.

10 February 2014 - [AMA pledges strong support for Medicare reforms to improve nation's health care for seniors](#). Legislation would repeal SGR and modernize health care delivery and payment.

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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