

HEALTH ALERT

2 DECEMBER 2013

Judgments.....	2
Commonwealth	2
Victoria	2
Australian Capital Territory.....	3
New South Wales	3
Legislation	3
Commonwealth	3
Queensland.....	4
Reports	4
Australia. Department of Health & Ageing	4
Australia. Health Practitioner Regulation Agency and the boards	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.....	6
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	6
New Zealand. Ministry of Health	7
United Kingdom. Department of Health.....	7
United States of America. Department of Health & Human Services	7
Australian Medical Association	7
British Medical Association	7
American Medical Association	8

JUDGMENTS

Commonwealth

22 November 2013 - [Australian Nursing and Midwifery Federation v Eastern Health \[2013\] FCAFC 137](#)

The Australian Nursing and Midwifery Federation (Union) appealed the decision of a primary Federal Court judge that the terms of the relevant enterprise agreement (Agreement) did not require Eastern Health to pay a uniform allowance to employees subject to that Agreement.

Eastern Health does not provide a uniform to most of those employees but they are required to comply with a dress code. Historically, it paid its employees a uniform allowance regardless of whether they were required to wear a uniform.

The Union argued that the plain words of the Agreement required a uniform allowance where one was not provided by Eastern Health and that this construction of the Agreement was supported by a common understanding between the parties. It further submitted that Eastern Health's dress code fell within the definition of a 'uniform' in the Agreement.

Eastern Health submitted that "absent the requirement to wear a uniform, any basis for the payment of a uniform allowance does not exist." It also argued that the Union's construction ignored the common understanding of an "allowance", which Eastern Health contended was an additional payment based on a requirement connected with the employees' service.

The Court of Appeal concluded that the ordinary meaning of the terms of the Agreement supported the construction favoured by the primary judge. It held that the purpose of a uniform allowance was to "compensate employees for having to provide their own uniforms" and Eastern Health's dress code did not amount to a 'uniform' as defined in the Agreement.

27 November 2013 - [Durani v Minister for Immigration and Border Protection \[2013\] FCA 1264](#)

Migration – interlocutory application by applicant for an interim injunction for release from immigration detention pending the determination of his substantive application – applicant seeking judicial review of the Minister's decision under s 501A of the *Migration Act 1958* (Cth) to set aside a decision of the Administrative Appeals Tribunal and cancel his skilled visa – whether the Court has power to grant such an injunction – consideration of scheme in s 189 and s 196 of the *Migration Act* for the detention of unlawful non-citizens.

Victoria

27 November 2013 - [Inquest into the death of Andrew Gilmore COR 2009 002564](#)

Andrew Gilmore was injured following a knee to the abdomen and underwent a laparoscopic distal pancreatectomy at the Alfred Hospital. His post-operative course was uncomplicated and he was discharged into the "Hospital in the Home" (HITH) program eight days post-surgery. The program operates on the basis that the patient is still an inpatient except for being at home.

Two days later, Andrew awoke with significant pain and vomiting which improved following analgesia being administered by a HITH clinician. The next day he again woke in pain and his mother was advised to call the hospital if medication did not settle him. He continued to deteriorate and, after a number of calls with the hospital, an ambulance was dispatched. Andrew collapsed before it arrived and could not be resuscitated. Cause of death was intra-abdominal haemorrhage.

Coroner Parkinson determined that the discharge timing was reasonable but commented on the HITH program, noting that its setting means a lower level of attendant care and observation, and places much responsibility on relatives. She found that, in Andrew's case, the process was fraught with mixed messages and uncertainty because of a breakdown in communication between the hospital and family, and the hospital staff assessing Andrew by telephone being unfamiliar with his case. "Delegation of responsibility to a lay person to make an assessment of a worsening condition...is not ideal management."

The Coroner could not conclude whether earlier intervention or hospitalisation would have prevented Andrew's death but made a number of recommendations to improve the program.

Australian Capital Territory (ACT)

28 November 2013 - [*Psychology Board of Australia v Fox* \[2013\] ACAT 75](#)

Occupational discipline— Health practitioners – disciplinary matter relating to psychologist – *Health Practitioner Regulation National Law (ACT) Act 2010* (National Law) – whether the draft statement of particulars before the Tribunal is limited by the scope of notice given to the practitioner under *section 184* of the National Law – whether allegations could be amended in the tribunal – meaning of ‘matter’ in the National Law – nature of an allegation – absence of provision in the National Law permitting the amending of an allegation in the Tribunal – whether referral to the tribunal under the National Law is an application made to the tribunal under *section 10* of the *ACT Civil and Administrative Tribunal Act 2008*.

21 November 2013 - [*Medical Board of Australia v Khalil* \[2013\] ACAT 76](#)

Occupational discipline – Health practitioner – general practitioner - professional misconduct - romantic and sexual relationship with patient – provision of receipts for claims for reimbursement from Medicare – tribunal approval of terms of agreement – reprimand – suspension of registration for nine months – conditions imposed on return to practise – requirement to work in a group general practice – supervision, mentoring and psychological treatment.

New South Wales

28 November 2013 - [*McLellan v Savicky* \[2013\] NSWSC 1756](#)

Cross vesting - application to transfer proceedings to Victoria - cross vesting principles - balance of convenience - prejudice to parties - place of alleged tort - whether it is in the interests of justice that the proceedings be transferred to Victoria.

27 November 2013 - [*Nair-Smith v Perisher Blue Pty Ltd \(No 3\)* \[2013\] NSWSC 1736](#)

Costs - offer of compromise - *Uniform Civil Procedure Rules 2005* (UCPR) r 20.26 - compliance with UCPR - UCPR r 42.15A - whether Court should order otherwise - whether plaintiff succeeded on relevantly different case to that under *UCPR 42.1* - whether Court should make some other order - costs incurred by late amendment of statement of claim - delay and inefficiency of plaintiff in prosecuting claim.

21 November 2013 - [*De NAVI v Nursing and Midwifery Board of Australia* \[2013\] NSWNT 24](#)

Appeal against refusal of national Board to renew the registration of a nurse or midwife.

25 November 2013 - [*Australian Vaccination Network Inc v Department of Finance & Services* \[2013\] NSWADT 266](#)

Merits review - direction to Australian Vaccination Network Inc to adopt a new name - whether name is unacceptable because it is misleading, undesirable or suggests a connection with government.

LEGISLATION

Commonwealth

26 November 2013 - [*National Health \(Price and Special Patient Contribution\) Amendment Determination 2013 \(No. 7\) \(No. PB 75 of 2013\)* F2013L02007 • PB 75 of 2013 as made.](#)

26 November 2013 - [*National Health \(Price and Special Patient Contribution\) Amendment Determination 2013 \(No. 7\) \(No. PB 75 of 2013\)* F2013L02007 • PB 75 of 2013 as made.](#)

21 November 2013 - [*Health Insurance \(Diagnostic Imaging Services Table\) Regulation 2013* F2013L01979 • SLI 2013 No. 247 as made.](#)

21 November 2013 - [*Health Insurance \(General Medical Services Table\) Regulation 2013* F2013L01980 • SLI 2013 No. 248 as made .](#)

21 November 2013 - [*Health Insurance Legislation Amendment \(Various Measures\) Regulation 2013* F2013L01982 • SLI 2013 No. 250 as made.](#)

26 November 2013 - [Health Insurance \(Pathology Services Table\) Regulation 2013](#) F2013L01978 • SLI 2013 No. 249 as made.

26 November 2013 - [National Health \(Pharmaceutical Benefits - Therapeutic Groups\) Amendment Determination 2013 \(No. 4\) \(No. PB 77 of 2013\)](#) F2013L02010 • PB 77 of 2013 as made.

26 November 2013 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2013 \(No. 7\) \(No. PB 76 of 2013\)](#) F2013L02008 • PB 76 of 2013 as made.

Queensland

20 November 2013 - [Disability Services \(Restrictive Practices\) and Other Legislation Amendment Bill 2013](#) Referred to Committee ([Explanatory Note](#)).

REPORTS

Australia. Department of Health & Ageing

Media releases

25 November 2013 - [Australia's organ donation reform an emerging international success story](#)
Australia is forging ahead with its national organ donation reform program and gaining recognition and praise from international experts at the 2013 Organ Donation Congress.

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

22 November 2013 - The Nursing and Midwifery Board of Australia releases its latest newsletter. [Read article](#)

25 November 2013 - The Psychology Board and AHPRA publish their 2013/14 health profession agreement. [Read article](#)

25 November 2013 - The Medical Board of Australia releases its latest newsletter. [Read article](#)

27 November 2013 - The Osteopathy Board of Australia releases its latest newsletter. [Read article](#)

28 November 2013 - Today the Optometry Board approved and published a revised accreditation standard for post-graduate ocular therapeutics. [Read article](#)

29 November 2013 2013 - The Pharmacy Board releases its latest newsletter. [Read article](#)

Australia. Therapeutic Goods Administration (TGA)

29 November 2013 - [Orchestra and Orchestra Plus programming devices when used with Reply and Esprit pacemakers](#). Health professionals are advised that Sorin Group Australia, in consultation with the TGA, has issued a hazard alert to applicable cardiologists and hospitals regarding a potential problem when Orchestra and Orchestra Plus programming devices are used with Reply and Esprit pacemakers.

28 November 2013 - [Regulatory and Technical Consultative Forum for medical devices \(RegTech Forum\)](#). The Regulatory and Technical Consultative Forum for medical devices (RegTech) page has been simplified and condensed.

28 November 2013 - [Consultation: Draft over the counter \(OTC\) medicine monographs for topical imidazole antifungals, topical nasal decongestants and pholcodine](#). The TGA is seeking comments from interested parties on three draft OTC medicine monographs. Closing date 10 January 2014.

28 November 2013 - [Documents released under Section 11C of the Freedom of Information Act 1982](#). Added FOI 233-1213 document 3.

27 November 2013 - [Advertising cosmetic injections](#). A brochure containing information on advertising cosmetic injections and complying with therapeutic goods legislation.

27 November 2013 - [Australian eye and tissue sector: Funding arrangements extended to 30 June 2015](#). Funding arrangements to meet the direct regulatory costs associated with implementation of the TGA's Biologicals Regulatory Framework have been extended to 30 June 2015.

27 November 2013 - [TGA presentation given at the vaccines adjuvants workshop, QUT Institute of Health and Biomedical Innovation, 16 October 2013](#). The presentation summarises global regulatory guidelines for nonclinical studies of vaccines, including new adjuvants and adjuvanted vaccines, in support of clinical trials and registration.

27 November 2013 - [TGA presentation given at the Vaccine Development Forum, 29 October 2013](#). The presentation summarises global regulatory guidelines for nonclinical studies of vaccines, in support of clinical trials and registration.

26 November 2013 - [Recall: Children's Panadol baby drops syringe](#). This update provides further specific information about the recall of children's Panadol baby drops being undertaken by GlaxoSmithKline (GSK), in conjunction with the TGA, for a misaligned dosing syringe that could lead to accidental overdoses.

26 November 2013 - [Pain-killers containing dextropropoxyphene - Di-Gesic and Doloxene](#). On 7 November 2013 the TGA approved variations to the Product Information (PI) documents for Di-Gesic and Doloxene.

26 November 2013 - [Dextropropoxyphene - questions and answers](#). Questions and answers on pain-killers containing dextropropoxyphene.

25 November 2013 - [TGA key performance indicators: Our indicators and reporting measures](#). Eight KPIs have been endorsed by the Australian Therapeutic Goods Advisory Council following consultation with the TGA-Industry Consultative Committee.

Australian Institute of Health & Welfare

29 November 2013 - [Nursing and midwifery workforce 2012 media release](#).

28 November 2013 - [Seclusion rates in mental health facilities media release](#).

27 November 2013 - [Media release: HPV vaccine reduces cervical abnormalities that are precursors to cervical cancer](#).

25 November 2013 - [National performance indicators to support neonatal hearing screening in Australia](#).

Australian Commission on Safety and Quality in Health Care

22 November 2013 - [Commission awarded two Prime Minister's Awards for Excellence in Public Sector Management](#).

25 November 2013 - [On the Radar – Issue 154 \(136KB\)](#).

Australia. National Mental Health Commission

27 November 2013 - [Political courage needed to lead genuine mental health reform and end entrenched disadvantage](#).

28 November 2013 - [Sign up to the seclusion and restraint declaration](#).

Australian Capital Territory. Health Directorate

28 November 2013 - [Maternity model of care demand review](#) Consultation has commenced on the response to the ACT Centenary Hospital for Women and Children – Maternity Model of Care and demand review.

28 November 2013 [Review confirms Canberra hospital maternity services safe and effective](#).

27 November 2013 - [Seclusion and restraint reduction forum](#). The Forum will be streamed live and will be available on demand 24 hours after the Forum has ended.

27 November 2013 - [Hypocritical Hanson hedges his bets on elective surgery waiting lists](#).

25 November 2013 - [Vote now](#). Your vote could win the Newborn Intensive Care Foundation a \$20,000 donation.

25 November 2013 - [Model of care for secure mental health unit to deliver hope and support.](#)

New South Wales. Ministry of Health

Media Releases

27 November 2013 - [Australian first as rapid testing for HIV pops up in Darlinghurst.](#)

28 November 2013 - [Mates tackling suicide.](#)

Policy Directives & Guidelines

27 November 2013 - [Medication handling in NSW public health facilities](#) PD2013_043.

Information Bulletins

22 November 2013 - [Notification of Osolete Policy Directive PD2006_034.](#)

27 November 2013 - [Personal Health Record \(Blue Book\) - Process for ordering replacements.](#)

Northern Territory. Department of Health

22 November 2013 - [Robyn Lambley - Health practitioners honoured at excellence awards.](#) The Territory's Aboriginal and Torres Strait Islander health practitioners were in the spotlight tonight as Health Minister Robyn Lambley presented the profession's top award at a special ceremony at Parliament House.

Queensland. Department of Health

22 November 2013 - [Clinical review awards Gold Coast a clean bill of health.](#)

26 November 2013 - [Improved services for HIV testing.](#)

26 November 2013 - [\\$22 million Emergency Department and endoscopy unit opens.](#)

27 November 2013 - [Better management helps Queensland Health \(QH\) to connect patients.](#)

South Australia. Department for Health & Ageing

26 November 2013 - [Snake bites on the rise.](#)

29 November 2013 - New agreement to boost South Australian health care Hon Jack Snelling MP South Australian patients and health care providers will benefit from a major new agreement that will further cement the state's growing reputation as a leader in health research. [Read more.](#)

Tasmania. Department of Health & Human Services

27 November 2013 - [Risks of obesity during pregnancy highlighted.](#)

Victoria. Department of Health

25 November 2013 - [Expectant mothers benefit from greater support for more birthing options.](#)

22 November 2013 - [Heroic Victorians honoured for saving lives.](#)

Western Australia. Department of Health

Media Releases

25 November 2013 - [Leaders appointed at Fiona Stanley hospital.](#)

25 November 2013 - [WA Health staff to assist in the Philippines.](#)

28 November 2013 - [Final stage of Queen Elizabeth II multi-deck car park open.](#)

Operational Directives (OD)

27 November 2013 - [OD 0476/13](#) *WA Health System Wide Policy Documents (Operational Directives and Information Circulars) Policy*. This Operational Directive supersedes the Operational Directives and Information Circulars Operational Directive (0001/06). It sets out the principles for the endorsement of WA Health system-wide policy documents and information dissemination. It provides:

- definitions of policy document types for WA Health which are consistent with those applied within the HealthPoint policies database
- a template for standardised policy documentation
- delineation of roles and responsibilities in respect of policy development, implementation and review
- clear policy document review requirements.

1 December 2013 - [OD 0477/13 Pressure Injury Prevention and Management Policy](#) . This policy was developed to establish a consistent and evidence-based approach to pressure injury prevention and management across WA Health in accordance with the Australian Commission on Safety and Quality in Healthcare's National Safety and Quality Health Service Standard 8.

New Zealand. Ministry of Health

26 November 2013 - [Ministry launches new rest homes website](#). A new website launched today will make it easier for New Zealanders to find rest home information, including audit reports. [Read more](#).

United Kingdom. Department of Health

28 November 2013 - [Independent review of standardised packaging for tobacco](#).

27 November 2013 - [NHS Innovation Challenge Prize for Dementia: winners announced](#).

26 November 2013 - [Livestock-associated Meticillin Resistant Staphylococcus Aureus \(MRSA\) found at a farm in East Anglia](#).

26 November 2013 - [Equivalent of up to 3,000 extra doctors and nurses, and thousands more beds made available to support National Health Scheme \(NHS\)](#).

26 November 2013 - [ONS Excess Winter Mortality in England and Wales statistics - Department of Health response](#).

26 November 2013 - [Smartphone apps to treat obesity and alcohol abuse](#).

25 November 2013 - [International Day for the Elimination of Violence Against Women](#).

22 November 2013 - [Secretary of State for Health: message to NHS staff](#).

22 November 2013 - [Better support, treatment and research for millions of patients with rare diseases](#).

United States of America. Department of Health & Human Services

22 November 2013 - [Food and Drug Administration \(FDA\) approval of avian flu vaccine moves preparedness forward](#).

Australian Medical Association (AuMA)

25 November 2013 - [AuMA calls on audit commission to cut the red tape](#).

25 November 2013 - [AuMA Federal Council condemns draconian Queensland doctor contracts](#).

26 November 2013 - [Too much personal control reduces the effectiveness of the Personally Controlled Electronic Health Record \(PCEHR\)](#).

29 November 2013 - [Ensuring continuity of quality patient care](#).

29 November 2013 - [Doctors' dilemma - medical treatment versus personal beliefs](#).

British Medical Association (BMA)

28 November 2013 - [Fresh hope for new cigarette pack laws](#).

27 November 2013 - [Seven day services require more staff, warns BMA](#).

26 November 2013 - [Independent orthopaedic services procurement concerns doctors leaders](#).

25 November 2013 - [BMA seeks better abuse detection training for doctors.](#)

25 November 2013 - [Asbestos cost-recovery bill voted through.](#)

American Medical Association

27 November 2013 - [New state laws aim to avert opioid overdose deaths.](#) State legislatures are acting to increase the availability of naloxone, a receptor antagonist that potentially can prevent opioid overdose deaths. The AMA has been urging adoption of these laws as part of a larger effort to address overdoses and deaths related to prescription painkillers.

25 November 2013 - [AMA Litigation Center takes on medical liability reform court challenges.](#) As state medical liability reform laws have been increasingly under siege, the litigation center of the AMA and State Medical Societies has stood strong in the courts to meet the legal barrage.

ABOUT US

Anthony Willis



Although maintaining a government focus, Anthony also advises corporate clients particularly in the technology and research and development sectors. He advised the government on proposed changes to Australian patent legislation concerning pharmaceuticals in the context of the US Australia Free Trade Agreement.

He has also advised on the patenting of genetic technology in the context of the BRCA genes.

Contact Details

T +61 2 6201 8725

anthony.willis@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

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

CANBERRA

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

MELBOURNE

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

PERTH

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

SYDNEY

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

www.dlapiper.com

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

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

Copyright © 2013 DLA Piper. All rights reserved.

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