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JUDGMENTS

Australia. High Court

2 September 2015 - AstraZeneca AB v Apotex Pty Ltd AstraZeneca AB v Watson Pharma Pty Ltd AstraZeneca AB v Ascent Pharma Pty Ltd [2015] HCA 30

The proceedings concerned the validity and alleged infringement of three patents. The appellants originally sought to protect their intellectual property, claiming that the respondents had infringed their patented method for treating hypercholesterolemia. The appellants failed at trial, on appeal and before the High Court because the patented method lacked an 'inventive step'. The patent was, therefore, invalid and liable to be revoked.

The Court considered the provisions of the *Patent Act 1990* ('the Act') which define when an invention is to be taken to involve an inventive step. Under the Act, an invention involves an inventive step unless the step would have been obvious to a skilled person in light of common general knowledge. Specialised information is also relevant to determine whether a step is obvious to the extent that the skilled person is reasonably expected to ascertain, understand and regard the information as relevant.

The appellants contended that the skilled person is precluded from considering multiple items of specialised information to assess the relevance of any one item of specialised information. The appellants therefore submitted that the Federal Court erred in finding that a combination of sources can be used to determine if an item of specialised information is relevant. Rejecting this view, the Court held that the Act does not restrict the way 'relevance' is determined.

The appellants further argued that the invention was not obvious to a skilled person. French CJ affirmed that 'obviousness' was for the Court to determine and upheld the Federal Court's rejection of this submission.

Queensland

3 September 2015 - Idameneo (No 123) Pty Ltd v Zahedpur [2015] QSC 255

The Supreme Court held in favour of the plaintiff, a company operating various medical centres throughout Australia, in relation to their claim for breach of contract. The plaintiff brought proceedings after the defendant, a doctor practising at one of the plaintiff's medical centres, ceased to provide medical services as agreed.

The defendant agreed to practice at the plaintiff's premises for at least five years. Soon after beginning his practice, the defendant complained about a number of administrative procedures at the centre. Correspondence between the parties failed to resolve the defendant's concerns. Finally, in February 2012 the defendant ceased attending the plaintiff's centre.

The plaintiff notified the defendant that he was in serious breach of his contract. The plaintiff then gave notice that the contract had terminated and commenced proceedings against the defendant for damages.

The defendant contended that the plaintiff was not entitled to terminate because it had, itself, breached the contract by failing to provide the services and facilities it considered necessary to render medical services from the premises. The defendant alleged, among other things, that the plaintiff had breached this obligation by refusing to display the defendant's name at reception; refusing to allow him to make appointments contrary to the centre's 'walk in' system; and by failing to provide him with electronic access to reports.

Justice Daubney held that, although the centre did not operate as the defendant may have wished, the defendant's complaints did not amounted to breach of contract by the plaintiff.

28 May 2015 - Psychology Board of Australia v Spring [2015] QCAT 314

Professions and Trades – where psychiatrist conducted counselling sessions with de facto couple – where intimate relationship commenced between psychiatrist and de facto wife during the therapeutic relationship – whether the psychologist's conduct amounts to professional misconduct.

28 August 2015 - Inquest into the death of Verris Dawn Wright and Jasmyn Louise Carter (Carter-Maher)

Coroners: inquest, health care related death, recognising and responding to deteriorating patients, sepsis awareness, Queensland Adult Deterioration Detection System tools.

New South Wales (NSW)

4 September 2015 - Wsol v John James Memorial Hospital [2015] ACTCA 43

APPEAL – Jurisdiction, practice and procedure – Appeal from the ACAT – Leave to appeal out of time – Discrimination on the grounds of race – Unrepresented litigant – Litigation guardian – Subpoeanaing of further witnesses – Fresh evidence – Workers compensation and damages for discrimination – Delay in delivering decision – Causation.

3 September 2015 - Khoo v South Western Sydney Local Health District [2015] NSWCATAD 183

GOVERNMENT INFORMATION – Information contained in medical records of applicant's deceased grandmother - Public interest considerations in favour of disclosure – Interest in government accountability – Interest in disclosure of information relating to care of elderly people – Personal factors of application – Public interest considerations against disclosure – Personal information of deceased person – Whether disclosure of information could reasonably be expected to prejudice the supply of confidential information – Whether disclosure of information could reasonably be expected to prejudice the effective exercise by the respondent of its functions – Balancing of public interest considerations.

1 September 2015 - Health Care Complaints Commission v Torrinello [2015] NSWCATOD 90

ADMINISTRATIVE LAW – Civil and Administrative Tribunal Act 2013 (NSW) – whether in the interest of the public for complaint against medical practitioner to be withdrawn.

31 August 2015 - Wei Fan v South Eastern Sydney Local Health District (No 2) [2015] NSWSC 1235

PROFESSIONAL NEGLIGENCE – medical negligence - alleged failure to diagnose type 2 diabetes – alleged failure to diagnose acute cholecystitis – alleged failure to carry out cholecystectomy – breach of duty of care – causation - damages.

28 August 2015 - Mahoney by her Tutor Patrick Mahoney v Healthscope t/as Campbelltown Private Hospital [2015] NSWSC 1255

PRACTICE AND PROCEDURE - amendment of pleadings – where hearing date fixed – complex medical issue – whether plaintiff delayed bringing application for tactical reasons – whether delay adequately explained.

28 August 2015 - Stevenson v A/Prof Morgan [2015] NSWSC 1230

MEDICAL NEGLIGENCE – joint conference of experts on damages – whether vocational assessor and occupational therapist should participate in joint conference with rehabilitation physicians.

Victoria

28 August 2015 - Hetherington v Department of Defence [2015] VSC 448

WORKERS' COMPENSATION – Claim for damages for negligence at common law – Failure to diagnose pregnancy – Consequences – Injury consequent on undiagnosed pregnancy – Australian Defence Force.

31 August 2015 - Victorian WorkCover Authority v Victorian Institute of Forensic Mental Health [2015] VCC 1154 - NEGLIGENCE - indemnity - causation.

28 August 2015 - Inquest into the death of Moufid Sawan - Death of involuntary patient.

LEGISLATION

Commonwealth

27 August 2015 - Medical Research Future Fund (Consequential Amendments) Act 2015.

27 August 2015 - Medical Research Future Fund Act 2015.

- 3 September 2015 PGPA Act (Human Pituitary Hormones Special Account 2015—Establishment) Determination 2015/09.
- 1 September 2015 Australia New Zealand Food Standards Code Revocation and Transitional Variation 2015 (Application A1101 Commencement of Dietary Fibre Claim Provisions Consequential).
- 1 September 2015 Food Standards (Application A1103 Citric & Lactic Acids as Food Additives in Beer & related Products) Variation.
- 31 August 2015 National Health (IVF Program) Special Arrangement Amendment Instrument 2015 (No. 1) (PB 86 of 2015).
- 31 August 2015 National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2015 (No. 8) (PB 84 of 2015).
- 31 August 2015 National Health (Listed drugs on F1 or F2) Amendment Determination 2015 (No. 7) (PB 82 of 2015).

New South Wales (NSW)

27 August 2015 - Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2015 - 2R Debate adjourned 5 calendar days - Introduced by Nile, Fred - Private Member's Public Bill.

Victoria

1 September 2015 - Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Bill 2015.

REPORTS

Australia. Department of Health

Media releases

- 3 September 2015 Last chance to have a say on Primary Health Care Reform September 3 is the last day to join the thousands of Australians who have had their say as part of the Australian Government's commitment to reforming primary health care and building a healthier Medicare.
- 3 September 2015 Medicare claims hit 1 million per day Medicare is now being billed over one million times a day for the first time in history, as new figures show growth in claims outstripped the number of new patients three-to-one over the past decade.
- 1 September 2015 New drug listing Keytruda to treat melanoma Patients with melanoma will now have access to breakthrough medicine Keytruda on the Pharmaceutical Benefits Scheme.
- 31 August 2015 Australian-first national approach to Indigenous cancer care An Australian-first national approach to addressing the Indigenous cancer gap establishes seven new national priorities to reduce the increasing cancer mortality rates in the Aboriginal and Torres Strait Islander community.
- 31 August 2015 New agreement for the Mersey Hospital The formal signing of the \$148.5 million agreement between the Commonwealth and Tasmanian Governments means North-Western Tasmanians will continue to receive high-quality care at the local Mersey Community Hospital.
- 30 August 2015 Medibank-Calvary Resolution The Minister for Health, Sussan Ley has welcomed the news that Calvary Private Hospitals and Medibank have finalised an agreement ahead of their August 31 deadline.

Circulars

Victoria. Victorian Institute of Forensic Medicine

8 September 2015 - The Clinical Communiqué releases its latest newsletter. The Communiqué is an educational resource for medical practitioners and health professionals with a focus on patient safety in acute health care settings. Written by clinicians for clinicians about lessons learned from deaths investigated by the Coroners Court. Read more.

Private Health insurance Circulars

- 1 September 2015 PHI 60/15 Revoke Private Hospital Information.
- 1 September 2015 PHI 59/15 Name Change Private Hospital Information.
- 1 September 2015 PHI 58/15 Amendment to 2016 Premium Round application submission date.
- 31 August 2015 PHI 57/15 Private Health Insurance (Benefit Requirements) Amendment Rules 2015 (No.3) Changes to the Private Health Insurance (Benefit Requirements) Rules 2011.
- 28 August 2015 PHI 56/15 2016 Premium Round Applications.

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

- 2 September 2015 The National Board sets fee for 2015/16 The Aboriginal and Torres Strait Islander Health Practice Board of Australia (the Board) has announced that the national registration fee for Aboriginal and Torres Strait Islander health practitioners for 2015/16 will remain the same as in the previous year. The Board has frozen the registration fee at \$100. It will cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 The Chinese Medicine Board of Australia sets fee for 2015/16 The Chinese Medicine Board of Australia (the Board) has decided that the national registration fee for Chinese medicine practitioners for 2015/16 will remain the same as in the previous year. The Board has frozen the registration fee at \$579. It will cover the registration period for most practitioners from 1 December 2015 to 30 November 2016.
- 2 September 2015 The Chiropractic Board of Australia sets fee for 2015/16 The Chiropractic Board of Australia (the Board) has announced the national registration fee for chiropractors for 2015/16. The fee has been set at \$552, limiting the increase to the national consumer price index (CPI) of 1.3%. It will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 The Dental Board of Australia sets fee for 2015/16 The Dental Board of Australia (the Board) has announced the national registration fee for dental practitioners for 2015/16. The fee will apply from 9 September 2015, and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016. The fee will be: dentists and specialists \$610; dental prosthetists \$542; dental hygienists and therapists \$301.
- 2 September 2015 The National Board sets fee for 2015/16 The Medical Radiation Practice Board of Australia (the Board) has announced that the national registration fee for medical radiation practitioners for 2015/16 has been reduced. The Board has reduced the registration fee to \$180, which is \$70 less than in the previous year. The new fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Nursing and Midwifery Board of Australia maintains fee reduction for 2015/16 The Nursing and Midwifery Board of Australia (the NMBA) has announced that in 2015/16 it will maintain its reduced national registration fee for nurses and midwives¹. Last year the NMBA announced a \$10 fee reduction, lowering the registration fee to \$150. The reduced fee will continue in 2015/16 and will benefit nurses and midwives during the next registration renewal due by 31 May 2016. The regulation of nursing and midwifery is funded solely by registrant fees.
- 2 September 2015 Occupational Therapy Board of Australia sets fee for 2015/16 The Occupational Therapy Board of Australia (the Board) has announced that the national registration fee for occupational therapists for 2015/16 has been reduced. The Board has reduced the registration fee to \$130, which is \$30 less than in the previous year. The annual renewal fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Optometry Board of Australia sets fee for 2015/16 The Optometry Board of Australia (the Board) has announced that the national registration fee for optometrists for 2015/16 has been reduced. The Board has reduced the registration fee to \$325, which is \$40 less than in the previous

- year. The new fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Osteopathy Board of Australia sets fee for 2015/16 The Osteopathy Board of Australia (the Board) has announced that the national registration fee for osteopaths for 2015/16 has been reduced. The Board has reduced the registration fee to \$386, which is \$30 less than in the previous year. The new fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Pharmacy Board of Australia sets fee for 2015/16 The Pharmacy Board of Australia (the Board) has announced the national registration fees for pharmacists for 2015/16. The general registration fee has been set at \$320, limiting the increase to below the national consumer price index (CPI) of 1.3%. It will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Physiotherapy Board of Australia sets fee for 2015/16 The Physiotherapy Board of Australia (the Board) has announced that the national registration fee for physiotherapists for 2015/16 has been reduced. The Board has reduced the registration fee to \$120, which is \$39 less than in the previous year. The new fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 Podiatry Board of Australia sets fee for 2015/16 The Podiatry Board of Australia (the Board) has announced that the national registration fee for podiatrists and podiatric surgeons for 2015/16 has been reduced. The Board has reduced the registration fee to \$378, which is \$10 less than in the previous year. The annual renewal fee will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.
- 2 September 2015 **Psychology Board of Australia sets fee for 2015/16** The Psychology Board of Australia (the Board) has announced the national registration fee for psychologists for 2015/16. The fee has been set at \$436, limiting the increase to the national consumer price index (CPI). It will apply from 9 September 2015 and cover the registration period for most practitioners of 1 December 2015 to 30 November 2016.

Australia. National Health & Medical Research Council (NHMRC)

3 September 2015 - \$5.8 million for international health research collaborations - More than \$5 million has been awarded to Australian researchers collaborating with international experts to solve global health problems. The National Health and Medical Research Council (NHMRC) today announced 11 grants to support international collaborative research on health issues such as heart attacks, dementia, stroke and leukaemia.

Australia. Therapeutic Goods Administration (TGA)

- 3 September 2015 **TGA key performance indicators: January to June 2015** This KPI report covers aspects of our performance between January to June 2015.
- 3 September 2015 ACMD meeting statement, Meeting 22, 20 August 2015 Advisory Committee on Medical Devices, Meeting 22 statement.
- 2 September 2015 APO-Paracetamol 500 mg tablets Recall potential for contamination with latex.
- 1 September 2015 Medical Devices Safety Update, Volume 3, Number 5, September 2015 Check 'synch' before cardioversion; Recognising medical device incidents; Grounding pad selection vital during electrosurgical and ablation procedures; Practice points HIV point-of-care testing; Recent safety alerts.
- 28 August 2015 Medical devices and IVDs: Cancellations of certain devices within an entry Details of products cancelled from the ARTG.
- 27 August 2015 List of evaluated registered complementary medicines A new entry has been made on the list that sets out the registered complementary medicines on the ARTG that have been evaluated by the TGA for safety, quality and efficacy.

Australian Institute of Health & Welfare (AIHW)

4 September 2015 - Half of Australians in permanent residential aged care suffer from dementia - A new web report, released today by the Australian Institute of Health and Welfare (AIHW), looks at two streams of aged care services: residential aged care (where a person lives in an aged care facility, either on a permanent or temporary basis) and the Home Care Packages Programme (an alternative to residential aged care where services are designed to support people to live independently in the community for as long as possible). New data in Residential aged care and Home Care 2013-14, shows that 7.8% of the Australian population aged 65 and over were in residential aged care in 2013-14, and another 2.5% received a package of care in their home.

Australian Commission on Safety and Quality in Health Care

4 September 2015 - New report shows wide variation in antimicrobial usage in Australian hospitals -A new report on antimicrobial use in Australian hospitals shows there is wide variation in usage between hospitals, indicating that although overall usage rates have decreased slightly in recent years, there is still considerable room for improvement.

31 August 2015 - On the Radar – Issue 238 (PDF 84KB) (Word 125KB)

Australian Capital Territory (ACT). Health Directorate

2 September 2015 - \$16 million outpatient facility nearing completion at Canberra Hospital -Canberrans accessing outpatient services at Canberra Hospital will soon receive care in a new, purposebuilt \$16 million facility.

31 August 2015 - Better protection for participants in life-saving Naloxone program - The ACT Government will progress legislative changes to protect 'Good Samaritans' who administer Naloxone in life-saving situations.

26 August 2015 - Capital Health Network to improve care across ACT Health - ACT Health has launched a primary health network to improve care across the ACT's health system for patients requiring care from multiple providers, or at risk of poor health outcomes.

New South Wales (NSW). Ministry of Health

Media Releases

2 September 2015 - Quality hospital performance continues in NSW.

1 September 2015 - E-Cigarette ban takes effect.

Policy Directives & Guidelines

- 3 September 2015 Medical Officers Employment Arrangements in the NSW Health Service.
- 3 September 2015 Psychiatric Emergency Care Centre Model of Care Guideline.
- 31 August 2015 Standards for Paediatric Intravenous Fluids: NSW Health (second edition).

Information Bulletins

- 3 September 2015 Visiting Dental Officer Increased Rates of Pay.
- 28 August 2015 Changes to Prescribing and Dispensing of Botulinum Toxin and Growth Hormone.

Northern Territory (NT). Department of Health

- 3 September 2015 Tender for paediatric ward upgrade and negative pressure rooms awarded One of the Top End's largest construction companies has been awarded the tender to upgrade the Royal Darwin Hospital paediatric wards and negative pressure isolation rooms.
- 1 September 2015 New treatment space for Royal Darwin Hospital Minister Elferink today inspected the works to the new Allied Health facility at Royal Darwin Hospital.

28 August 2015 - Territory strategy to support and improve mental health - Today saw the launch of the Territory's first ever Mental Health Strategic Plan, following the Territory Government's commitment to enhance mental health services.

Queensland. Department of Health

- 3 September 2015 **20-year strategy launches health system into digital age** The Palaszczuk Government has outlined a 20-year strategy to bring the Queensland's health system into the digital age.
- 3 September 2015 Child protection champions honoured at awards Some of Queensland's most passionate and dedicated child protection advocates have been honoured today for their efforts to protect children and young people from abuse and neglect.
- 2 September 2015 \$2.5 million for new early childhood centre in Lockhart River The Cape York Aboriginal community of Lockhart River will open the doors to a new early childhood and family support centre next year with the help of the Palaszczuk Government.
- 2 September 2015 Premier unveils cutting-edge cancer imaging centre Premier Annastacia Palaszczuk today unveiled Queensland's newest weapons in the fight against cancer, opening the ACRF Centre for Comprehensive Biomedical Imaging at QIMR Berghofer Medical Research Institute in Brisbane.
- 2 September 2015 Abbott Government holds out on Queensland NDIS rollout Queenslanders with disability are being unfairly punished as the Federal Government threatens to ration Queensland's fair share of the National Disability Insurance Scheme (NDIS) DisabilityCare Australia (DCA) fund.

Tasmania. Department of Health & Human Services

- 3 September 2015 Labor flip-flopping around despite health reforms being recognised as crucial The Hodgman Liberal Government's incredibly important reforms to fix our broken health system have been supported.
- 3 September 2015 Hundreds of elective surgeries already provided with money Labor claims hasn't been spent yet Another day, another monumental clanger on health by Labor.Rebecca White, who must be approaching a record-low strike rate.
- 3 September 2015 Salvation Army to deliver 12 new residential rehabilitation beds on North West The Salvation Army has been awarded a tender to deliver 12 new drug and alcohol rehabilitation beds on the North West.
- 3 September 2015 Extra endoscopy sessions at the Mersey Around 300 more endoscopy procedures will be performed at the Mersey Community Hospital every year in the first step.

Western Australia (WA). Department of Health

Media Releases

- 2 September 2015 New strategies to tackle sexually transmitted infections and blood-borne viruses An increased focus on the prevention, testing and treatment of sexually transmitted infections (STIs) and blood-borne viruses (BBVs) are the main goals outlined in a suite of new WA Health sexual health strategies.
- 2 September 2015 **Sexual health and blood-borne virus strategies** WA Health has launched a new suite of sexual health strategies with an increased focus on the prevention, testing and treatment of sexually transmitted infections and blood-borne viruses.
- 1 September 2015 Strategies to meet ED demand WA Health has opened a new Ambulance Surge Capacity Unit (ASCU) at Sir Charles Gairdner Hospital in in partnership with St John Ambulance.
- 31 August 2015 Goldfields celebrates hospital redevelopment Visitors and locals from the Goldfields and surrounding areas now have access to upgraded, modern treatment facilities with the completion of the final of the \$59.6 million redevelopment of Kalgoorlie Health Campus.
- 28 August 2015 Minister for Health and Minister for Regional Development: Goldfields celebrates hospital redevelopment Visitors and locals from the Goldfields and surrounding areas now have access

to upgraded, modern treatment facilities with the final phase completion of the \$59.6 million redevelopment of Kalgoorlie Health Campus.

28 August 2015 - Three cases of meningococcal infection diagnosed - The Department of Health today reported that three cases of confirmed or probable meningococcal disease had been notified in the past week, including a young child, a young adult and an elderly adult.

Operational Directives (OD)

27 August 2015 - OD 0626/15 - Antimicrobial Stewardship Policy - Antimicrobial stewardship (AMS) is a systematic approach to optimising use of antimicrobials to reduce inappropriate use, improve patient outcomes and reduce adverse consequences of antimicrobials. The purpose of this policy is to ensure both individual patients and the community benefit from appropriate antibiotic use.

27 August 2015 - OD 0625/15 - Interim Guidance on Pre-exposure Prophylaxis for HIV - Operational directive to inform S100 prescribers accredited by WA Health about the role of antiretroviral pre-exposure prophylaxis (PrEP) for the prevention of Human Immunodeficiency Virus (HIV) transmission.

31 August 2015 - Referrals to public outpatient surgical clinics reporting.

New Zealand (NZ). Ministry of Health

- 3 September 2015 Revitalising the National HPV Immunisation Programme This publication outlines the Ministry of Health's plan for progressing and revitalising the National HPV Immunisation Programme for 12-year-old girls.
- 2 September 2015 Evaluation of the Maternity Quality and Safety Programme This report presents the findings of an evaluation of the Maternity Quality and Safety Programme, launched by the Ministry of Health in 2012.
- 2 September 2015 'Ala Mo'ui Progress Report June 2015 This is the six-monthly progress report on the implementation of 'Ala Mo'ui: Pathways to Pacific health and wellbeing. It covers the period from December 2014 to June 2015.
- 1 September 2015 Maternity Consumer Survey 2014 The Maternity Consumer Survey 2014 presents the results of two national surveys completed in 2014 and 2015: the Maternity Consumer Survey 2014 of women who had live babies and the 2015 Survey of Bereaved Women who lost a baby between 20 weeks' pregnancy and four weeks after birth. Both surveys were carried out by Research New Zealand.

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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