



HEALTH ALERT

17 AUGUST 2015

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JUDGMENTS

New South Wales (NSW)

13 August 2015 - *Waller v James* [2015] NSWCA 232

The NSW Court of Appeal dismissed an appeal brought by the parents of a profoundly disabled boy after the primary judge gave judgement for the doctor who coordinated their in vitro fertilisation (IVF) treatment.

The proceeding concerned an alleged breach of contract and of duty by Dr Christopher James, the respondent, for failing to inform his patients, the appellants, of the hereditary risks of anti-thrombin deficiency (ATD).

The appellants' son, who was conceived through IVF, inherited ATD from his father. Four days after his birth, the infant suffered a form of stroke, causing severe disabilities.

The primary judge rejected the appellants' submission that their son's ATD had caused or materially contributed the stroke, concluding that although the respondent had breached his duty of care, the appellants' claim should be rejected because it failed to show causation, and because the claimed damage was too remote.

The Court of Appeal upheld the primary judge's findings on the respondent's duty, holding that the respondent had failed in his duty to adequately explain his reasons for referring the appellants for genetic counselling. However, the Court of Appeal rejected the appellants' claim on the basis of 'causation', finding that it would not be appropriate to extend the respondent's liability to all harm suffered as a consequence of the birth. Accepting that the stroke was unrelated to ATD, the Court further noted that no loss was shown to have been caused by the ATD. Hence, the Court dismissed the appeal.

Queensland

12 August 2015 - *Downes v Affinity Health Pty Ltd* [2015] QDC 197

The District Court of Queensland gave judgement for the defendant, Affinity Health Pty Ltd, in a negligence claim made by a former employee of the defendant. The claim concerned an injury sustained by the plaintiff while working as a nurse at the Selangor Private Hospital in Nambour.

During a night-shift, the plaintiff sustained injury to her lumbar spine by manually assisting an elderly patient back into bed. The patient had recently undergone a full hip-replacement, and the defendant was aware, among other things, that the patient had been assessed to have a moderate falls risk.

The plaintiff alleged that the defendant was negligent, having failed to fulfil its duty to its employees to use reasonable care to avoid injury that is reasonably foreseeable. The Court found that the risk of injury from patient handling was reasonably foreseeable. The Court further found that, while the defendant had not breached its duty by failing to provide additional staff, the defendant's failure to specifically notify existing staff of the need for heightened vigilance in the care of the relevant patient was more likely than not, unreasonable.

However, the plaintiff's claim failed on the issue of causation. The Court held that even if the defendant had reasonably informed the plaintiff of the need for vigilance, the plaintiff would not have avoided her injury. Indeed, the Court noted that the plaintiff could not have remained stationed at the bed-side of the patient as she was required to attend to other patients.

8 December 2014 - *Oglesby v Nursing & Midwifery Board of Australia* [2014] QCAT 701

Professions and Trades - Nurse - Disciplinary proceedings - where registrant in private practice performed homebirth - where complications arose in a homebirth by way of vaginal birth after caesarean section - where complications arose in another homebirth and registrant performed an artificial rupture of membranes to induce labour in a home setting.

Commonwealth - Fair Work Commission

13 August 2015 - *Joy Lawrence v Calvary Home Care Services Ltd T/A Calvary Community Care* [2015] FWC 5257 - Application for relief from unfair dismissal - extension of time granted.

13 August 2015 - Linley Clinic [2015] FWCA 5559 - Application for approval of the Linley Clinic and ANMF Enterprise Agreement 2015.

12 August 2015 - Paul Berthon v Urapuntja Health Service Aboriginal Corporation [2015] FWC 5527 - Application for relief from unfair dismissal.

12 August 2015 - Hudson Institute of Medical Research [2015] FWCA 5545 - Application for approval of the Hudson Institute of Medical Research Enterprise Agreement 2015.

12 August 2015 - ResMed Limited v Australian Manufacturing Workers' Union [2015] FCAFC 106 - PRACTICE AND PROCEDURE – Apprehended bias – Procedural fairness – Whether predetermination of issues prior to hearing and decision had taken place – Apprehension of losing the case as distinct to apprehended bias INDUSTRIAL LAW – Fair Work Commission – Consistency of decisions – Expression of opinion on a legal issue in an earlier related case does not constitute grounds for a reasonable apprehension of bias.

11 August 2015 - St Andrew's Hospital Inc [2015] FWCA 5498 - Application for approval of the St Andrew's Hospital Inc., Nursing Employees Theatre and Procedural Areas & ANMF Enterprise Agreement 2015.

11 August 2015 - Pulse Health [2015] FWCA 5442 - Application for approval of the Foster Private Hospital and the NSWNMA Enterprise Agreement 2015-2018.

South Australia (SA)

13 August 2015 - Inquest into the death of Murray Lawrence Abinett - Findings - Inquest into the Death of Murray Lawrence Abinett.

13 August 2015 - Inquest into the death of Alexander Charles Dickenson - Findings - Inquest into the Death of Alexander Charles Dickenson.

13 August 2015 - Inquest into the death of John George Charles Hill - Findings - Inquest into the Death of John George Charles Hill.

13 August 2015 - Inquest into the death of Ivy Mavis Trengove - Findings - Inquest into the Death of Ivy Mavis Trengove.

Victoria

3 August 2015 - AB (a pseudonym) v McKimm & Anor (Ruling) [2015] VCC 987 - Application for orders enabling the plaintiff to continue a proceeding for damages in respect of the cause of action – application for pseudonym order.

17 July 2015 - Nursing and Midwifery Board of Australia v Seijbel-Chocmingkwan [2015] QCAT 283 - Professions and Trades - Nurse - Disciplinary proceedings- where registrant nurse convicted of multiple assaults and attempted murder.

10 August 2015 - Inquest into the death of Noela McGowan - Finding Without Inquest into the Death of Noela McGowan.

11 August 2015 - Inquest into the death of Orce Petrusevski - Findings - Inquest into the Death of Orce Petrusevski.

LEGISLATION

Commonwealth

13 August 2015 - **Medical Research Future Fund Bill**.

12 August 2015 - **National Disability Insurance Scheme (Timeframes for Decision Making) Amendment Rules 2015**.

New South Wales (NSW)

12 August 2015 - **Health Services Amendment (Ambulance Services) Bill 2015**.

11 August 2015 - [Health Services Amendment \(Paramedics\) Bill 2015](#) - Introduced and Second reading speech.

REPORTS

Australia. Department of Health

Media releases

12 August 2015 - [Medical Research Future Fund Bill Passes](#) - The successful passage of the Government's legislation to establish the Medical Research Future Fund will significantly strengthen Australia's standing as one of the global leaders in the field of medical research.

12 August 2015 - [New stats reveal 50% of Australians battling chronic disease](#) - The need for Primary Health Care reform has been highlighted with the release of new statistics that show half of all Australians have at least one chronic disease.

10 August 2015 - [Australian Government assistance for elite Indigenous sportspeople](#) - Minister for Health and Sport Sussan Ley has paid tribute to the significant contribution Indigenous athletes have made in the Australian sporting landscape.

Private Health Insurance Circulars

12 August 2015 - [PHI 54/15 Private Health Insurers' Second Tier Default Benefit Rates Annual Audit.](#)

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

13 August 2015 - A man who pretended to be a dentist in Victoria today pleaded guilty to the 17 charges filed against him by the Australian Health Practitioner Regulation Agency (AHPRA). [Read more.](#)

13 August 2015 - The National Board has released its quarterly registration data. [Read more.](#)

12 August 2015 - Occupational Therapy Board of Australia releases its latest communiqué. [Read more.](#)

12 August 2015 - [Webinar: Analysis of risks and trends in notifications about Occupational Therapists in Australia.](#)

11 August 2015 - [Tips for easy online renewal for medical practitioners](#) - Read these quick tips to renew your registration online and on time.

11 August 2015 - The Nursing and Midwifery Board of Australia (NMBA) website has undergone a number of changes to improve navigation and make it easier for visitors to find information and documents. [Read more.](#)

11 August 2015 - The Psychology Board of Australia has released the July 2015 meeting communiqué. [Read more.](#)

10 August 2015 - Health Ministers' response to the independent three year review of the National Registration and Accreditation Scheme welcomed. [Read more.](#)

10 August 2015 - The Dental Board of Australia releases its latest communiqué. [Read more.](#)

10 August 2015 - The Podiatry Board of Australia releases its latest communiqué. [Read more.](#)

7 August 2015 - The Physiotherapy Board of Australia releases its latest communiqué. [Read more.](#)

7 August 2015 - The National Board has published its July communiqué. [Read more.](#)

Australia. National Health & Medical Research Council (NHMRC)

7 August 2015 - [Notice of Intent for the NIH BRAIN Initiative call released.](#)

7 August 2015 - [NHMRC Research Tracker.](#)

Australia. Therapeutic Goods Administration (TGA)

13 August 2015 - [Sodium glucose co-transporter 2 inhibitors - used to treat type 2 diabetes](#) - Safety advisory - risk of diabetic ketoacidosis.

11 August 2015 - [TGA presentation given at the RACI Pharmaceutical Science Group Seminar, 10 August 2015](#) - This presentation is an overview of TGOs versus pharmacopoeias and how these are incorporated into the Australian legislation.

11 August 2015 - [Scheduling committees meeting dates and decisions timeframes](#).

10 August 2015 - [Compositional guideline: Polaprezinc](#) - Compositional guideline for Polaprezinc is published subsequent to registration of Therapeutic Goods (Listing) Notice 2015 (No.3).

7 August 2015 - [ACSMD meeting statement, Meeting 9, 9 April 2015](#) - The Advisory Committee on the Safety of Medical Devices meeting statement 9 for 9 April, 2015 is now available.

6 August 2015 - [TGA presentation given at the PDA conference, July 2015](#) - This presentation provides an overview of data integrity and the expectations of the TGA.

3 August 2015 - [Medicines Safety Update, Volume 6, Number 4, August 2015](#) - Risperidone and risk of cerebrovascular adverse events; Infliximab and non-melanoma skin cancers; Tramadol oral drops.

Australian Institute of Health & Welfare (AIHW)

11 August 2015 - [Nurse and midwife registration numbers up—but more seeking work \(media release\)](#).

12 August 2015 - [Media release: 1 in 5 Australians affected by multiple chronic diseases](#).

10 August 2015 - [Chronic diseases and comorbidities \(web report\)](#).

Australian Commission on Safety and Quality in Health Care

On the Radar – 10 August 2015 – Issue 235 ([PDF96KB](#)) ([Word 133KB](#)).

Australia. National Mental Health Commission

10 August 2015 - [Communiqué - 3rd National Aboriginal Health Summit](#).

Australian Capital Territory (ACT). Health Directorate

12 August 2015 - [Keeping women informed about alcohol and pregnancy](#) - A campaign to encourage health professionals to start a conversation with pregnant women and those planning a pregnancy about alcohol consumption was launched today by Minister for Health Simon Corbell.

New South Wales (NSW). Ministry of Health

Media Releases

10 August 2015 - [More treatment support for ice addicts](#) - Assistant Minister for Health Pru Goward today delivered on the NSW Government's \$11 million election commitment to help those using crystal methamphetamine 'ice' and fighting addiction, by revealing the locations of new stimulant treatment services and the expansion of existing services.

7 August 2015 - [State's leading cancer researchers honoured](#) - The state's top honour for cancer research was tonight awarded to Professor John Forbes AM, a pioneer in breast cancer research.

Policy Directives & Guidelines

12 August 2015 - [High-Risk Medicines Management Policy](#).

12 August 2015 - [Point of Care Testing \(PoCT\) Policy](#).

11 August 2015 - [Public Interest Disclosures](#).

10 August 2015 - [Management of patients with Acute Severe Behavioural Disturbance in Emergency Departments](#).

10 August 2015 - [Recruitment and Selection of Staff to the NSW Health Service](#).

Information Bulletins

12 August 2015 - [Notification of Obsolete Guideline - GL2010_007](#).

Publications

12 August 2015 - [Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health - Process Implementation Evaluation Report 2013.](#)

Northern Territory (NT). Department of Health

11 August 2015 - [Northern Territory leads the way in electronic health records](#) - The Northern Territory has a contemporary and mobile population which includes more than one million interstate visitors. *My eHealth Record* allows individuals to have secure electronic health information that is accurate and up to date in one centralised point.

10 August 2015 - [Water quality testing at Tennant Creek Hospital](#) - Central Australia Health Service advises that low levels of legionella bacteria have been found during routine water sampling at Tennant Creek Hospital.

Queensland. Department of Health

14 August 2015 - [Toowoomba nurse set to hit the open road to raise awareness about depression](#) - Toowoomba mental health nurse Rob McGrigor is set to join 500 other motorcycle riders to raise awareness of depression and suicide prevention.

13 August 2015 - [Chaos before Lady Cilento Children's Hospital opening](#) - An independent review into the opening of Lady Cilento Children's Hospital found that there was enough evidence in June and July last year to delay the November opening of the hospital.

13 August 2015 - [Review on commissioning of Lady Cilento Childrens Hospital](#) - Children's Health Queensland Chief Executive Fionnagh Dougan today welcomed the recommendations of an independent review of the commissioning of the Lady Cilento Children's Hospital (LCCH).

12 August. 2015 - [New Chronic Conditions Manual launched](#) - Australia's first comprehensive one-stop clinical manual for use by anyone involved in dealing with chronic conditions was launched in Cairns yesterday.

13 August 2015 - [Government to act on Emergency Departments](#) - Minister for Health and Ambulance Services Cameron Dick has this week issued a directive to the state's hospitals to improve conditions for patients at Emergency Departments as Brisbane experiences a very difficult flu season.

7 August 2015 - [National registration of paramedics delayed](#) - The inclusion of paramedics in the National Registration and Accreditation Scheme (NRAS) has been delayed once again following the COAG Health Council meeting of state, territory and federal Health Ministers in Darwin today.

Queensland. Health Ombudsman

11 August 2015 - [Health Ombudsman releases annual performance report](#) - The Office of the Health Ombudsman (OHO) received and finalised thousands of complaints during its first year as Queensland's health service complaints agency, show figures in its Annual performance report 2014–15.

Tasmania. Department of Health & Human Services

7 August 2015 - [New Meningococcal Fact Sheet Available.](#)

Victoria. Department of Health

11 August 2015 - [Strategy to drive Victoria's health and medical research](#) - The Minister for Health has today released a Discussion Paper to guide the development of a Victorian Health and Medical Research Strategy. The Strategy will identify Victoria's priorities in health and medical research, promote innovation, and prepare our State for the economic and healthcare opportunities on offer both nationally and internationally.

11 August 2015 - [Working together to improve paramedic mental health](#) - The Andrews Labor Government is increasing its efforts to better support Victoria's hardworking paramedics, after new data revealed elevated rates of suicide.

9 August 2015 - **New hospital to be named after the late Joan Kirner** - The new \$200 million Women's and Children's Hospital to be built in Sunshine will be named after the late Premier Joan Kirner AC.

7 August 2015 - **Paramedic recognition in national scheme delayed again** - A COAG meeting in Darwin today saw the proposal to include paramedics in the National Registration and Accreditation Scheme delayed yet again.

Western Australia (WA). Department of Health

Media Releases

14 August 2015 - **Minister for Health: Nominate now for excellence awards** - Nominations for the 2016 WA Nursing and Midwifery Excellence Awards are now open.

11 August 2015 - **Minister for Health: Interim board chair nominations now open.**

11 August 2015 - **Perth's sun – a gift to medical research** - Perth's hot climate made it the obvious choice for a WA Health research project looking at how heatwaves affect the community's use of healthcare services.

11 August 2015 - **Study points to scale of rare disease impact** - New Western Australian research has provided an insight into the cost burden of rare diseases on the State's health system – but warns that even its own findings may be considerably understated.

10 August 2015 - **Karratha Health Campus contractor named** - The State Government has announced Brookfield Multiplex as the successful tenderer to start design and construction of the \$207.15 million Karratha Health Campus.

10 August 2015 - **Minister for Mental Health: Giving thanks for the power of conversation** - A new campaign which promotes the importance of regular and meaningful conversations with the aim of preventing suicide has been endorsed by Mental Health Minister Helen Morton.

7 August 2015 - **Minister for Mental Health: \$1.1 million for WA meth prevention campaign** - The State Government will spend more than \$1 million over the next three years on education and awareness campaigns to prevent methamphetamine use and reduce harm.

7 August 2015 - **Survey shows long wait for a diagnosis not rare** - Almost a third of respondents to a survey of Australian adults living with a rare disease have revealed having had to wait five or more years for a confirmed diagnosis of their condition.

Operational Directives (OD)

13 August 2015 - **OD 0624/15** - WA Health Exit Survey Policy - The WA Health Exit Survey Policy has been revised to: reduce duplication by combining the existing Exit Survey Policy and Procedure into a single revised document; confirm exit survey responses are reported in an aggregated and de-identified form unless an exiting employee provides consent to release their personal information; and update the post exit survey information process and relevant links, position titles and forms.

Australian Medical Association (AuMA)

13 August 2015 - **AIHW data highlights the need for greater investment in general practice** - AMA President, Professor Brian Owler, said today that data released yesterday by the Australian Institute of Health and Welfare (AIHW) sends another strong message to the Government that significant new investment in primary care, especially general practice, is needed to equip the health system to meet current and future community needs.

12 August 2015 - **AMA and ANCAP call for new technology to be standard features in Australian cars to save lives** - The AMA and the Australasian New Car Assessment Program (ANCAP) have joined forces to lobby governments and car industry leaders to embrace new technology – starting with Autonomous Emergency Braking (AEB) – and make it standard in all new cars sold in Australia.

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.

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