



**24 NOVEMBER 2014**

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## JUDGMENTS

### Federal

11 November 2014 (published 14 November 2014) - [NSW Nurses and Midwives Association v Anglican Care \[2014\] FCCA 2580](#)

Ms Copas, who was represented by the Nurses and Midwives Association, worked for Anglican Care as an Assistant in Nursing. On 17 December 2009, she suffered a workplace injury and was thereafter unable to perform work for Anglican Care. Ms Copas continued to be employed but was absent from work. She received workers' compensation payments under section 49 of the *Workers Compensation Act* (NSW). She ceased employment with Anglican Care on 23 May 2011.

The issue before the Federal Court of Australia was whether or not Ms Copas was entitled to accrue any leave (whether paid or unpaid) during the period that she was receiving workers' compensation payments.

The applicant argued that section 130(2) of the *Fair Work Act* has the effect that an employee is not prevented from taking or accruing leave during the compensation period if the taking or accrual of the leave during the period "is permitted by a compensation law".

The court held that in circumstances where section 49 of the *Workers Compensation Act* does not prevent a worker from receiving both, a beneficial construction of section 130(2) of the *Fair Work Act* would allow for a worker to accrue leave and receive compensation simultaneously. Anglican Care was required to pay Ms Copas an amount that reflected the accrual of annual leave owed to her under the *Fair Work Act* during the period from 1 January 2010 to 23 May 2013.

### Australian Capital Territory

7 November 2014 (published 18 November 2014) - [Robinson v Ng \[2014\] ACTSC 227](#)

Mrs Robinson brought a claim of negligence against a dentist, Dr Ng. During an attempted extraction of one of her molars on 29 December 2009, part of the root of the tooth was pushed upwards through the wall of her sinus and was lodged in the sinus. Mrs Robinson developed osteomyelitis in her jaw, Bell's palsy and facial neuralgia. She required remedial surgery and claimed damages arising out of those events, including a substantial claim for economic loss.

The primary allegation of negligence was that the defendant continued to attempt to remove the tooth when he should have stopped and referred the plaintiff to an oral surgeon or general dentist with significant oral surgery experience. The court's decision turned on the facts, which the parties did not agree upon. According to Dr Ng, Mrs Robinson demanded that he continue the procedure despite Dr Ng having expressed significant concern about the risks of doing so.

An expert witness told the court that even if Mrs Robinson had requested that Dr Ng continue with the extraction, a competent dentist would note the patient's request but deny that request if the dentist thought that the risk outweighed the benefits of continuing. The court accepted this evidence and concluded that Dr Ng should have referred Mrs Robinson when he determined that it was too risky to proceed with the extraction.

The court awarded Mrs Robinson over \$800,000 for, amongst other things, general damages, damages for loss of earning capacity and damages for past and future out-of-pocket expenses.

### New South Wales

18 November 2014 - [BYD v Illawarra Shoalhaven Local health District \[2014\] NSWCATAD 198](#)

Review of conduct - sufficient evidence to make findings - disclosure of health information - outside of agency - use of personal information.

21 November 2014 - [Dr A v Health District \(No 3\) \[2014\] NSWIRComm 55](#)

Unfair dismissal - Threat to dismiss - Order made that employer not proceed to dismiss in accordance with threat - costs - Application by applicant for costs - Whether respondent unreasonably failed to agree to a

settlement of the claim that an order be made under section 89(7) of the *Industrial Relations Act 1996* - Consideration of the strength of respondent's position - Application for costs dismissed.

21 November 2014 - [Dr A v Health District \(No 4\) \[2014\] NSWIRComm 56](#)

Costs - Applicant by appellant for costs of appeal and costs of proceedings giving rise to appeal - Consideration of section 181(2) of the *Industrial Relations Act 1996* - non-disclosure order - Whether application by respondent to lift non-disclosure order was frivolous or vexatious or without reasonable cause thereby warranting an award of costs against the respondent - Application dismissed.

### South Australia

18 November 2014 - [Finding of Inquest into the death of George Darcy Key 1/2014 \(1736/2011\)](#)

Death of newborn - hypoxia during labour - intensive management.

## LEGISLATION

### Commonwealth

[Work Health and Safety Amendment \(Public Authorities\) Regulation 2014](#) - F2014L01518 • SLI 2014 No. 173 as made - This regulation amends the *Work Health and Safety Regulations 2011* to prescribe Medibank Private Ltd and Star Track Express Pty Ltd as "public authorities."

[Private Health Insurance Amendment Bill \(No. 1\) 2014](#) - Passed both houses and read a third time and waiting assent. Amends the *Private Health Insurance Act 2007* to pause the income thresholds which determine the tiers for the Medicare levy surcharge and the government rebate on private health insurance for three years from the 2015-16 financial year.

[National Health \(Concession or entitlement card fee\) Amendment Determination 2014 \(No. 1\) \(No. PB 98 of 2014\)](#) - F2014L01570 • PB 98 of 2014 as made.

[National Health \(Remote Aboriginal Health Services Program\) Special Arrangements Amendment Instrument 2014 \(No. 2\) \(No. PB 99 of 2014\)](#) F2014L01560 • PB 99 of 2014 as made.

[National Health \(Pharmaceutical Benefits\) \(Conditions of approval for approved pharmacists\) Amendment \(Supply from Premises\) Determination 2014 \(No. PB 81 of 2014\)](#) F2014L01559 • PB 81 of 2014 as made.

### New South Wales

18 November 2014 - [Health Practitioner Regulation Legislation Amendment Bill 2014](#) - Read a second time and passed both houses.

## REPORTS

### Australia. Department of Health

Media releases

20 November 2014 - [Healthy sporting clubs recognised with Good Sports awards](#) - The Assistant Minister for Health, Fiona Nash, has congratulated the winners of the Good Sports Awards which recognise sporting clubs that promote healthy lifestyles and reduce excessive alcohol consumption.

20 November 2014 - [Joint statement by Hon Peter Dutton MP, Minister for Health for Australia, and Hon Dr Jonathan Coleman, Minister of Health for New Zealand, regarding ANZTPA](#) - The Australian and New Zealand Governments have agreed to cease efforts to establish a joint therapeutic products regulator, the Australia New Zealand Therapeutic Products Agency (ANZTPA).

20 November 2014 - [Ken Sutcliffe Wins ASC Lifetime Achievement Award](#) - The Minister for Sport Peter Dutton has congratulated long time Channel Nine sports broadcaster Ken Sutcliffe after he was honoured with the Lifetime Achievement award at the 2014 Australian Sports Commission (ASC) Media Awards.

20 November 2014 - [New \\$40 Million Medicine Distribution Centre Opens in Melbourne](#) - A new \$40 million medicine distribution centre in Melbourne will ensure Victorians continue to have reliable and affordable access to important medications.

20 November 2014 - [New Centre Puts Focus On Men's Health](#) - The first Australian health care service focussed specifically on the health of men has been officially opened in North Melbourne.

17 November 2014 - [Antibiotic Awareness Week](#) - This week (17-23 November) is Antibiotic Awareness Week – a worldwide initiative to promote greater understanding of antibiotic resistance and the responsible use of antibiotics.

17 November 2014 - [Investing In Australian Sporting Innovation](#) - Federal Sports Minister Peter Dutton has announced \$1.6 million in funding for 11 different projects which encourage innovation and collaboration in high performance sport.

Private Health Insurance (PHI) Circulars

[PHI 67/14 Prostheses List – Process to Terminate Long Term Inactive Applications.](#)

[PHI 66/14 Amendment to the Private Health Insurance \(Prostheses\) Rules 2014 \(No. 1\).](#)

[PHI 65/14 New Private Same-Day Hospital Information.](#)

[2013-14 Department of Health Annual Report.](#)

[Accessible mental health services for people with an intellectual disability: a guide for providers](#) - This guide has been developed as a practical framework for the development of accessible mental health services. It provides assistance to professionals and to services to improve access to high quality mental health care for people with an intellectual disability.

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

20 November 2014 - Tribunal dismisses appeal by medical practitioner - The NSW Civil and Administrative Tribunal dismissed an appeal by Dr Ashraf Ibrahim Abdou Ibrahim against a Medical Board of Australia decision to refuse his application for limited registration. [Read More](#)

20 November 2014 - Medical practitioner suspended, reprimanded and fined for professional misconduct - The State Administrative Tribunal of Western Australia has suspended the medical registration of Dr Paul Langton for 18 months, reprimanded him and fined him \$30,000 for professional misconduct. [Read More](#)

18 November 2014 - Tribunal reprimands medical practitioner and cancels registration - The State Administrative Tribunal of Western Australia has reprimanded Dr Mughammad Saliem Ismail and cancelled his registration as a medical practitioner. [Read More](#)

17 November 2014 - Tribunal reprimands medical practitioner, cancels registration - The Queensland Civil and Administrative Tribunal has ordered the cancellation of Dr Nemalan Seshagiri Moodley's registration as a medical practitioner, and prohibited him from applying for registration for five years. [Read More](#)

14 November 2014 - Practitioner reprimanded, removed from register and banned for nine months - The Northern Territory Health Professional Review Tribunal has reprimanded Dr Daniel Van Dijk, removed his name from the register, and banned him from reapplying for registration for nine months. [Read More](#)

14 November 2014 - Call for applications - Call for applications for appointment to the Australian Capital Territory Board of the Medical Board of Australia. [Read More](#)

### [Australian Institute of Health & Welfare](#)

21 November 2014 - [Healthy life expectancy in Australia: patterns and trends 1998 to 2012 | media release.](#)

20 November 2014 - [Developing the National Early Childhood Development Researchable Data Set.](#)

19 November 2014 - [Cardiovascular disease, diabetes and chronic kidney disease: Australian facts: prevalence and incidence | media release.](#)

17 November 2014 - [National core maternity indicators—stage 2 report.](#)

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

21 November 2014 - [Conformity assessment requirements for Australian medical device manufacturers - streamlining requirements](#) - Commencing on 5 November 2014, Australian medical device manufacturers are able to use conformity assessment certification from European notified bodies when making applications to the TGA.

20 November 2014 - [Joint statement by Hon Peter Dutton MP, Minister for Health for Australia, and Hon Dr Jonathan Coleman, Minister of Health for New Zealand, regarding ANZTPA](#). The Australian and New Zealand Governments have agreed to cease efforts to establish a joint therapeutic products regulator, the ANZTPA.

20 November 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) Added Trastuzumab emtansine, Pomalidomide, Fluticasone furoate/vilanterol trifenate, Eftrenonacog alfa, Mifepristone/misoprostol, Perampanel (as hemisquihydrate), Indacaterol maleate/Glycopyrronium bromide, Simeprevir (as sodium).

19 November 2014 - [Documents released under Section 11C of the Freedom of Information Act 1982](#) Added FOI 018-1415 document.

18 November 2014 - [Australian eCTD submissions](#) - Updated LORENZ eValidator link and the Style sheet for Australian regional backbone.

14 November 2014 - [Cereform breast implants and associated sizers - update - product cancellation](#) Updated information - product cancellation.

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

17 November 2014 - On the Radar – Issue 200 ([PDF 510KB](#)) ([Word 503KB](#))

19 November 2014 - [New report provides insights into antibiotic prescribing in 151 Australian hospitals](#). A national report released today as part of Antibiotic Awareness Week, provides important information about antibiotic prescribing practices in a number of Australian hospitals.

November 2014 - [Antimicrobial Prescribing Practice in Australia](#). Results of the 2013 National Antimicrobial Prescribing Survey.

### **Australia. Private Health Insurance Administration Council**

10 November 2014 - [Change of Registration Status – Transport Heath Pty Ltd](#). Registered Funds - 14 November 2014.

### **Australia. National Health & Medical Research Council (NHMRC)**

19 November 2014 - [Proposal to dispense with consultation requirements in accordance with section 14B of the National Health and Medical Research Council Act 1992](#)

14 November 2014 - [Call for nominations for NHMRC Council and Principal Committees \(2015-18 Triennium\)](#)

6 November 2014 - [Congratulations to David Craik, winner of the GSK Award for Research Excellence 2014](#)

[NHMRC Research Tracker - 14 November 2014](#)

### **Australian Capital Territory. Health Directorate**

12 November 2014 - [Personal vaporisers e-cigarettes consultation](#). Discussion paper Options to protect the community from potential harms associated with personal vaporisers (e-cigarettes).

### **New South Wales. Ministry of Health**

Media Releases

17 November 2014 - [Menu planning guide gives children the best start in life through developing good habits early](#).

19 November 2014 - [Works underway on new Byron Central site.](#)

14 November 2014 - [Closing the Gap: 2014 NSW Aboriginal Health Award winners honoured.](#)

19 November 2014 - [NSW Government delivers key improvements to mental health care.](#)

#### Policy Directives & Guidelines

19 November 2014 - [Creutzfeld-Jakob Disease Related Information Sharing](#) - PD2014\_041.

#### Information Bulletins

19 November 2014 - [Notification of Obsolete Guideline:GL2008\\_012 & publication of updated NSW Burn Transfer Guidelines](#)-IB2014\_071.

14 November 2014 - [NSW Hospital Peer Groups 2014](#) - IB2014\_070.

20 November 2014 - [Annual Report 2013-14 NSW Health.](#)

19 November 2014 - [Smoke-Free Commercial Outdoor Dining.](#)

7 November 2014 - [NSW Rural Health Plan.](#)

#### Northern Territory. (NT) Department of Health

18 November 2014 - [Third measles case in three weeks](#) - Territorians are being warned to be alert for measles and to ensure they are immune following a third case of measles diagnosed in the Darwin area in the past three weeks.

14 November 2014 - [Action on Health Promotion as NT marks World Diabetes Day](#) - A "tool box" for health promotion action has been developed as the Northern Territory focuses on curbing the burden of chronic conditions. The NT Health Promotion Framework, which was developed by NT Health in collaboration with a range of organisations and service providers, was launched today to coincide with World Diabetes Day.

20 November 2014 - [First of new bush clinics open at Ntaria.](#) Robyn Lambley - The first of seven new remote health centres has been officially opened today at Hermannsburg (Ntaria).

#### Northern Territory. Attorney General

20 November 2014 - [Legislative changes for tattooing and intimate body piercing of minors](#) - | John Elferink - Tattooing and intimate body piercing of minors could soon be illegal in the Northern Territory under proposed changes to the *Summary Offences Act*.

#### Queensland. Department of Health

##### Media releases

18 November 2014 - [New lounge for Princess Alexandra Hospital patients](#) - Minister for Health | The Honourable Lawrence Springborg | Patient admissions and departures at the Princess Alexandra Hospital will be faster, smoother and more comfortable thanks to the opening of a new transit care lounge.

19 November 2014 - [Smoking trends down butt not out.](#)

19 November 2014 - [Put the bite on junk food.](#)

19 November 2014 - [Obesity fuels growing health problems.](#)

19 November 2014 - [Get moving to a healthier, happier life.](#)

19 November 2014 - [The health of Queenslanders 2014 \(full report\)](#) - This fifth report of the Chief Health Officer Queensland captures a broad range of information at state and regional levels about the health status of the population. For the first time in the series, Hospital and Health Service data is reported.

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

### Media releases

19 November 2014 - [Private hospital option for new nRAH site](#) - The State Government will explore the option of a private partner building a new private hospital at the new Royal Adelaide Hospital (nRAH) site. Health Minister Jack Snelling said the option was being explored as it offered significant benefits for patients, as well as public and private hospital providers.

14 November 2014 - [SA Health pledges to introduce same gender accommodation](#) - Friday, Patients in South Australian public hospitals are set to have greater privacy and comfort, with the introduction of same gender accommodation.

## Tasmania. Department of Health & Human Services

### Media releases

18 November 2014 - [New Campaign to Save Lives with Defibrillators](#) - A new television advertising campaign has been launched to encourage Tasmanians to get behind Ambulance Tasmania's life-saving Early Access to Defibrillation Program.

15 November 2014 - [Request for Proposals - Provision of Out of Home Care Services, Phase 1](#) - Children and Youth Services is seeking to engage community sector organisations to deliver Out of Home Care (OOHC) Services to children who are unable to live with their family.

## Victoria. Department of Health

The Victorian Government is in caretaker mode.

14 November 2014 - [New ebola response plan available](#)

## Western Australia. (WA) Department of Health

### Media Releases

21 November 2014 - [Report details patterns of ADHD treatment in WA](#)

20 November 2014 - [School leavers urged to exercise caution in Bali](#)

19 November 2014 - [Be "asbestos aware" during maintenance and renovations](#)

17 November 2014 - [Western Australia leading the way in diabetes care](#)

17 November 2014 - [Mosquito control community information sessions](#)

17 November 2014 - [Kidney transplant success earns top award for RPH medical team](#)

### Operational Directives (OD)

20 November 2014 - [OD 0575/14](#). Non-Admitted Activity Recording and Reporting Policy for WA Health Services 2014–2015. - The purpose of this Operational Directive is to assist WA hospitals and health services to record non-admitted outpatient activity in a consistent and meaningful manner and the Non-Admitted Activity Recording and Reporting Policy for WA Health Services (NAARRP) is a key part of this process. The Policy provides health services with a framework, containing detailed rules and criteria to enable this to occur. Also provides an understanding of reporting requirements to mitigate risks associated with failing to accurately report activity. Accurate and timely information about the care we provide is used in many ways – including ensuring that our health services are adequately funded for the services they provide.

20 November 2014 - [IC 0209/14](#). 12 Hour Shift Flexibility Agreements for Registered Nurses and Midwives - Provides details to assist health services and nursing staff considering implementing a 12 hour roster arrangement.

20 November 2014 - [IC 0208/14](#). Guidelines for the Release of Data - The Guidelines for the Release of Data has been developed to ensure data is released adequately and meets the needs of the requester. This is achieved through the proper documentation of the requester's requirements and the completion of a Data Release Pro-Forma highlighting specific details of the data provided.

## [WA Health Performance Report – July to September 2014 Quarter \(PDF 4.03MB\)](#)

### [New Zealand. Ministry of Health](#)

19 November 2014 - [Pathway to Smokefree New Zealand 2025 Innovation Fund Summary of Quarter One Reports](#) - Short updates on our projects as at 30 September 2014.

### [United Kingdom. Department of Health](#)

19 November 2014 - [Transparent and accountable healthcare: why the culture in the NHS still needs to change](#) - Secretary of State for Health Jeremy Hunt talks about his Four Pillar Plan for the NHS and creating a transparent and accountable culture.

19 November 2014 - [Formal launch of MyNHS](#) - Health Secretary Jeremy Hunt has today (19 November 2014) formally launched MyNHS. This is a new site on NHS Choices where people can compare the performance of their local NHS hospital, their care services and their local authority with up-to-date information.

18 November 2014 - [Avian influenza \(bird flu\) outbreak in Yorkshire: risk to public health extremely low](#) - Public Health England (PHE) is assisting the Department for Environment Food & Rural Affairs (Defra) in the investigation of an avian flu outbreak at a duck breeding farm in Yorkshire.

17 November 2014 - [Opportunity to access the digital healthcare market in China](#) - The NHS and its suppliers enjoy a great reputation in China, which is set to take its annual healthcare funding to \$1 trillion by 2020. Digital health is seen as vital to achieving the Chinese government's healthcare reforms.

### [Australian Medical Association \(AuMA\)](#)

[Promoting a “clinical” approach to the taking and transmission of clinical images](#) -

21 November 2014 - Clinical Images and the Use of Personal Mobile Devices: A guide for medical students and doctors. [Read more](#)

[AuMA joins united international call for basic sanitation and clean water](#) - 19 November 2014 - The AMA has today joined the World Medical Association and leading health organisations and associations from around the world as co-signatories of a letter to United Nations Secretary-General, Ba. [Read more](#)

### [British Medical Association](#)

18 November 2014 - [Sessional GPs urged to try new models of care](#) - The landscape for general practice is changing and sessional GPs need to respond to it, a BMA conference.

14 November 2014 - [Election delays death certificate reforms](#) - The BMA is disappointed that death certificate reforms first proposed after serial killer GP Harold Shipman's activities were uncovered have been postponed.

14 November 2014 - [Winter pressure fund is “merely a sticking plaster”](#) - The £300m announced to help the NHS tackle winter pressures is desperately needed but is “merely a sticking plaster”, the BMA has warned.

14 November 2014 - [External scrutiny of civilian doctors “here to stay”](#) - Civilian doctors should embrace and welcome increased scrutiny by external organisations, according to the commander of defence primary healthcare.

13 November 2014 - [Back to school: mentors needed to raise awareness of medical careers](#) - Medical students should be sent into primary schools to help encourage disadvantaged children to become doctors according to new guidance.

13 November 2014 - [Minister: too many consultants receive excellence awards](#) - Too many consultants are receiving excellence awards, Northern Ireland's health, social services and public safety minister has claimed.



## Canadian Medical Association (CMA)

18 November 2014 - [Hospitals grinding to halt because of stranded seniors, CMA head says](#) - Gridlocked hospitals around Canada are struggling to make room for incoming arrivals because so many older patients have no other place to go, the president of the Canadian Medical Association said today.

## American Medical Association

18 November 2014 - [Three Questions the American Medical Association Wants Patients to Consider before Choosing a Health Plan](#) - AMA and more than 115 Organizations Call for Increased Transparency for Health Insurers to Protect Patients.

## ABOUT US

### Michael Regos



Michael is the head of the DLA Piper health litigation group.

He practises in the areas of health law, insurance law, medical negligence and coronial enquiries. He represents Victorian public hospitals and their insurers, the Victorian Managed Insurance Authority and is the solicitor of choice for Australia's second-largest private health operator.

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