



HEALTH ALERT

22 February 2016

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JUDGMENTS

Queensland

12 February 2016 - *Gobus v State of Queensland (Cairns and Hinterland Hospital and Health Service)* [2016] QIRC 18 - Mr Gobus, a psychologist working in an acute care team, claimed to have been unfairly dismissed. He argued that it was an harsh and unjust decision, but also that it had been made for the invalid reason that he made a public interest disclosure (PID). During the course of an interview process for promotion, Mr Gobus became aware of what he perceived as impropriety relating to another candidate having inside knowledge of the interview questions. Rather than to his department, he made a disclosure about his suspicion to the Minister for Health in what the court described as highly critical and derogatory statements against his organisation and its staff. The letters prompted his professional conduct to be raised internally and supervision of his performance was instituted. Mr Gobus claimed it was the PID that led to his unsuccessful promotion and eventual dismissal.

The court examined the PID and Mr Gobus' conduct throughout the promotion process and subsequently, including letters he sent to the Minister for Health containing potentially defamatory statements. It concluded that the dismissal was clearly referable to Mr Gobus' ongoing conduct and not simply the PID. In determining that his employer had acted reasonably, the court looked at the multiple step internal process that was implemented, including several chances for Mr Gobus to respond, and to participate in supervised work and additional performance management prior to his dismissal. The court found that the reason for his termination was valid and had been validly communicated to him.

Victoria

17 February 2016 - *WCH v Mental Health Tribunal (Human Rights)* [2016] VCAT 199 - WCH was hospitalised for mental illness in 1991. Following admission he was diagnosed with schizophrenia by his treating medical team and in 1999 he was placed on a community treatment order based on this diagnosis. He was subject to compulsory treatment orders for 16 years until in 2015 he challenged a further one year extension. WCH claimed that the original diagnosis was made in error and, while he admitted to occasionally presenting with depression, he should never have been compulsorily treated for schizophrenia.

VCAT examined the statutory criteria for issuing community treatment orders with reference to the original diagnosis by the hospital, finding that when the treating medical team made an application for the original order and subsequent orders, the tribunal must be satisfied that (a) the person has a mental illness, (b) because of this, immediate treatment is needed to prevent harm to the person or others, (c) a treatment order will achieve the required treatment, and (d) there is no less restrictive means reasonably available.

VCAT found that regardless of the technical correctness of the treating team's diagnosis, in order for compulsory treatment to be ordered there must be significant illness in line with the legal definition of mental illness. In this case, while there was evidence to support the original diagnosis, the effect of the mental illness was not significant enough to justify compulsory treatment. Failing this first hurdle, VCAT found that three of the four required criteria were not met, and the order was revoked.

15 February 2016 - *Pipe v Victorian WorkCover Authority* [2016] VCC 57 - Serious Injury application – Pain and Suffering – Aggravation to pre-existing injury

16 February 2016 - *Petrogas Pty Ltd v Doolan & Ors* [2016] VSC 46 - ADMINISTRATIVE LAW – Judicial review – Medical Panel findings – Reasons of Medical Panel inadequate – Error on the face of the record – Entitlement of first defendant to indemnity certificate – Appeal Costs Act 1998, ss 3, 4; Supreme Court (General Civil Procedure) Rules 2015, O 56; Workplace Injury Rehabilitation and Compensation Act 2013, ss 3, 274.

New South Wales

17 February 2016 - *Charles v Northern New South Wales Local Health District* [2016] NSWIRComm 1004 - UNFAIR DISMISSAL – casual employee – whistleblower – bullying and harassment – workers compensation claim – separation from casual pool – administrative process – no dismissal – application dismissed

Tasmania

18 February 2016 - [Allianz Australia Insurance Limited v Mercer \[2016\] TASFC 2](#) - Limitation of Actions – Limitation of particular actions – Simple contracts, quasi contracts and torts – Tort actions involving personal injuries – Actions for damages in respect of personal injuries to be brought within three years from date of discoverability – Date of discoverability defined as date when plaintiff knew or ought to have known that personal injury had occurred, was attributable to the defendant, and was sufficiently significant to warrant bringing proceedings – Meaning of sufficiently significant to warrant bringing proceedings.

United Kingdom

16 February 2016 - [Jaciubek v Gulati & Anor \[2016\] EWHC 269 \(QB\)](#)

12 February 2016 - [Lawrance v The General Medical Council \[2016\] EWHC 215 \(Admin\)](#)

12 February 2016 - [Actavis UK Ltd & Ors v Eli Lilly & Co \(Rev 1\) \[2016\] EWHC 234 \(Pat\)](#)

LEGISLATION

As a general rule, this bulletin tracks subsidiary legislation at Commonwealth, but not at state level.

Commonwealth

15 February 2016 - [Therapeutic Goods Legislation Amendment \(Charges Exemptions and Other Measures\) Regulation 2016](#) - F2016L00109 as made

New South Wales

17 February 2016 - [Government Sector Employment Legislation Amendment Bill 2016](#) - Introduced

South Australia

11 February 2016 - [Voluntary Euthanasia Bill](#) - Introduced

Victoria

16 February 2016 - [Drugs, Poisons and Controlled Substances Amendment Act 2016](#) - Received Assent

REPORTS

Australia. Department of Health

Private Health Insurance Circulars

16 February 2016 - [Immunisation Targets](#)

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

17 February 2016 - [Communiqué from the Board](#) - The Chiropractic Board of Australia releases its January communiqué.

16 February 2016 - [Lessons for all in system failures at Djerriwarrh](#) - Australia's health practitioner regulator says there are lessons for everyone in the tragedy at the Djerriwarrh Health Service and that AHPRA is doing its part to address the system failures that let patients down.

12 February 2016 - [Protecting the public: Local data summaries from a national scheme](#) - Local reports have today been released for each state and territory on Australia's regulatory scheme for health practitioners, providing a unique insight on local outcomes within a national scheme.

12 February 2016 - [Call for applications](#) - Call for applications to the Tasmanian Board of the Nursing and Midwifery Board of Australia.

Australia. National Health & Medical Research Council (NHMRC)

19 February 2016 - [NHMRC Research Tracker](#)

[NHMRC Health Tracker - February 2016](#)

Australia. Therapeutic Goods Administration (TGA)

17 February 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - added Budesonide (Cortiment).

17 February 2016 - [Prescription medicines: registration of new chemical entities in Australia](#) - added January 2016 prescription medicine NCE registrations.

16 February 2016 - [Excellence Losing Weight capsules](#) - Excellence Losing Weight capsules pose a serious risk to your health and should not be taken.

16 February 2016 - [Half Quite tablets](#) - Half Quite tablets pose a serious risk to your health and should not be taken.

12 February 2016 - [Consultations on adoption of European Union guidelines in Australia: Outcome of previous consultation](#) - EU/ICH guidelines adopted by the TGA following consultation within the TGA and with relevant external stakeholders.

12 February 2016 - [Consent to import, supply or export goods that do not comply with standards](#) - new database available.

Australian Commission on Safety and Quality in Health Care

On the Radar – 15 February 2016 – Issue 260 ([PDF 114KB](#)) ([Word 145KB](#))

New South Wales (NSW). Ministry of Health

Media Releases

17 February 2016 - [Ice Forums: Educating NSW Communities](#) - Assistant Minister for Health Pru Goward today announced a series of community education forums to support local communities dealing with the harmful impacts of ice.

Policy Directives & Guidelines

17 February 2016 - [Superannuation Liability - Consultants and Contractors](#)

16 February 2016 - [Superannuation for Sessional Visiting Medical Officers \(VMOs\)](#)

16 February 2016 - [Superannuation Guarantee Contribution for Sessional Interpreters](#)

16 February 2016 - [Donation, Use and Retention of Tissue from Living Persons](#)

12 February 2016 - [Feeding Difficulties in Children - A Guide for Allied Health Professionals](#)

Information Bulletins

16 February 2016 [Medical Speciality Coding in StaffLink](#)

New South Wales (NSW). Health Care Complaints Commission (HCCC)

17 February 2016 - [Dr Leonel Valansi - finding of unsatisfactory professional conduct, cautioned and 12 months of mentoring](#) - The NSW Health Care Complaints Commission prosecuted Dr Leonel Valansi, a medical practitioner, before a Medical Professional Standards Committee.

12 February 2016 - [Mr Seth Talmadge - Psychologist - Disqualified for 5 years and prohibition order imposed](#) - The NSW Health Care Complaints Commission prosecuted Mr Seth Talmadge, a former psychologist, before the NSW Civil and Administrative Tribunal (NCAT).

12 February 2016 - [Updated media release - Dr Wael Ghannoum – Restrictions on medical practice](#) - On 8 February 2016, NCAT imposed significant restrictions on Dr Ghannoum's registration.

Northern Territory. Department of Health

9 February 2016 - [Bali bombings nurse retires after 22 years at Royal Darwin Hospital](#) - A Darwin registered nurse who was awarded an OAM for the critical role she played in the medical response to the 2002 Bali bombings is retiring after 22 years at Royal Darwin Hospital.

5 February 2016 - **Royal Darwin Hospital prepares to farewell Timorese doctors** - Two Timorese paediatric registrars who have worked in the Paediatric Department at Royal Darwin Hospital for the last six months will complete their rotations shortly to return to Timor-Leste.

Queensland. Department of Health

18 February 2016 - **Video teleconferencing program connecting rural and remote services** - Queensland Health nurses and midwives are accessing professional support and education thanks to a video teleconferencing program. The Brisbane-based Telehealth Emergency Management Support Unit (TEMSU) gives rural nurses the opportunity to seek advice from senior nurses with backgrounds in emergency or intensive care.

18 February 2016 - **Doomadgee health staffer earns national recognition** - A Doomadgee resident has become the first North West Hospital and Health Service employee to receive national registration as an Aboriginal and Torres Strait Islander Health Practitioner. Health worker Anne O'Keefe gained her national registration in January, North West Hospital and Health Service (HHS) Interim Chief Executive Terry Mehan said.

17 February 2016 - **Telehealth getting results for persistent pain sufferers in South West Queensland** - Persistent pain impacts one in five Australians, but a telehealth group service in South West Queensland is providing much needed respite to long-term sufferers.

South Australia (SA). Department for Health & Ageing

18 February 2016 - **Spotlight on SA immunisation rates** - South Australia has taken out three of the top 10 spots for one-year-old immunisation rates by postcode, according to the latest *Healthy Communities: Immunisation rates for children in 2014/15* report.

16 February 2016 - **New notifiable conditions in South Australia from 18 February 2016** - As of 18 February 2016, rheumatic fever, rheumatic heart disease, Hendra virus infection, *Vibrio parahaemolyticus* infection, chancroid, and poliovirus infection (previously notifiable as poliomyelitis) will be notifiable diseases in South Australia under the *South Australian Public Health Act 2011*.

15 February 2016 - **Patients and families benefit from improvements in the south** - Improvements in patient care in the south have led to a 30 percent reduction in patients who spend longer than 14 days in hospital, ensuring patients get the care they need and get home to their families sooner.

14 February 2016 - **SA Health Minister sickened by false claims** - South Australia's Health Minister has called on the opposition spokesman for health Stephen Wade to immediately disassociate himself with Warren Jones after SA Health confirmed he falsely claimed a man who tragically died in the city's north east this week was subjected to ambulance diversion.

13 February 2016 - **SA Health response to Facebook allegation** - SA Health has become aware of allegations published on a Facebook page regarding the care of a patient from the north eastern suburbs. The "Save the health care system" Facebook page alleges a patient was turned away from the Lyell McEwin Hospital Emergency Department before being taken to Modbury Hospital where they later died. Clinical Ambassador for Transforming Health, Professor Dorothy Keefe said the allegation is completely false.

12 February 2016 - **Hospital patient numbers up as stay times decrease** - New SA Health data shows South Australians spent around seven hours less in metropolitan hospitals on average during 2015, despite hospitals treating thousands more patients.

12 February 2016 - **SA Health monitors hospital infections** - SA Health will continue to monitor rates of health care associated infections in public hospitals following the release of the latest Australian Institute of Health and Welfare report into *Staphylococcus aureus* bloodstream infection (SAB).

Tasmania. Department of Health & Human Services

19 February 2016 - **Union scare campaign** - Union claims about Home Help are wrong, again. HACSU is worrying some of the most vulnerable in our community with misinformation. I have fielded a number of calls and emails from worried clients of the Home Help program who have been told by HACSU that the

service is closing. This is despicable behaviour. The Tasmanian Government has provided record funding for health and we want it to be used to get the best possible health outcomes. Contrary to union scaremongering, there is no proposal before the Government to shut down the Home Help service run by the Tasmanian Health Service (THS) in the North.

17 February 2016 - **Extra elective surgeries** - More than 150 Tasmanians who have been waiting on the elective surgery waiting list for too long will be fast tracked as part of the first tranche of a program to give patients access to private hospitals treatment established under a Tasmanian and Commonwealth Government partnership. These Tasmanians will receive a letter this week inviting them to be assessed to have their surgery performed sooner at one of five private hospitals through the new Panel arrangements.

12 February 2016 - **RHH construction ramps up** - Right to Information documents released today show expenditure made to progress design, engineering and other critical works for the major project remains on budget and on time. The overall budget for the project is \$689 million, the documents show that the project team spent more than \$30 million on works in the second half of 2015, including more than \$23 million spent on construction, with other costs including planning, IT and governance.

Victoria. Department of Health

19 February 2016 - **Parents' Newborn Baby Companion Gets A New Look** - The record book of key health and developmental information for new parents about their newborn baby is getting a fresh look, new content and a new name, highlighting the central role of parents in the Education State as their child's first teacher.

18 February 2016 - **Innovative Local Partnerships Extended To Improve Lives** - The Andrews Labor Government has extended an initiative that brings together local community leaders and experts to improve services and support for vulnerable children, young people and families. Meeting with the Inner Gippsland Area Partnership in Morwell today, Minister for Families and Children Jenny Mikakos said the Children and Youth Area Partnerships initiative would be extended across all eight areas until at least 30 June 2019. Under the initiative, new ways of working together are being tested to respond to local issues. This work is improving the life chances of vulnerable children and young people across Victoria.

18 February 2016 - **More Beds And Faster Care For Victorian Patients** - The Andrews Labor Government's \$200 million Beds Rescue Fund is on track to open 101 new beds and points of care in less than one year. Premier Daniel Andrews, Minister for Health Jill Hennessy, and Member for Frankston Paul Edbrooke today officially opened the new eight-bed Frankston Hospital Rapid Assessment Chest Pain Unit, which is expected to treat an additional 2000 patients a year. The extra beds at Frankston Hospital mark 92 out of 101 beds and points of care opened as a result of the Labor Government's \$200 million Hospital Beds Rescue Fund. The remaining nine beds are expected to be open by 1 March – less than a year after they were promised.

18 February 2016 - **One-Stop Support Centre For Sexual Assault Victims In Gippsland** - Victims of sexual assault and child abuse in Gippsland will be able to access a range of services in one location with the opening of a new multi-disciplinary centre (MDC) in Morwell. Minister for Families and Children Jenny Mikakos officially opened the new multi-disciplinary centre today, which brings together specialised services including police, child protection, nursing and counselling services. The centre will provide victims, many of who have also experienced family violence, a safe place to report crimes and receive the help they need without having to repeat their story over again to numerous services.

17 February 2016 - **More Support To Keep Paramedics Healthy And Safe** - New powered stretchers which will make moving patients safer and easier for paramedics will soon be fitted in all Ambulance Victoria vehicles. Minister for Ambulance Services, Jill Hennessy, today unveiled the state-of-the-art new stretchers funded through the Labor Government's \$20 million commitment to upgrade ambulance vehicles and equipment.

15 February 2016 - **Labor Government Delivering Shade Protection For Victorians** - Victorians enjoying the outdoors are about to get some much needed protection from harmful UV radiation with the installation of shade at sports clubs, parks, community venues and playgrounds.

14 February 2016 - **Labor Government Steps In To Save Eye And Ear Hospital After Botched Liberal Redevelopment** - The Andrews Labor Government has secured \$31.4 million to save and complete the Royal Victorian Eye and Ear Hospital redevelopment after it was plagued by delays and cost blowouts under the former Liberal Government.

Western Australia (WA). Department of Health

Media Releases

19 February 2016 - **Minister for Health and Minister for Regional Development: Builder announced for Collie health upgrade** - The construction tender for the \$7.8 million redevelopment of the Collie Health Service has been awarded to BGC Construction Pty Ltd, Health Minister Kim Hames announced today.

18 February 2016 - **Third trimester pertussis vaccinations prove a success** - The free pertussis vaccination program, offered to women in their third trimester of pregnancy, has proven a resounding success with more than 20,000 vaccinations given within the first 12 months. WA Health Medical Coordinator, Prevention and Control Program, Communicable Disease Control Directorate Professor Paul Effler said that mothers who have the pertussis vaccine during pregnancy have higher levels of antibodies against the disease than mothers not vaccinated.

17 February 2016 - **WA Health responds to Auditor General's Report** - WA Health Deputy Director General Rebecca Brown today accepted the findings and recommendations in the Office of the Auditor General's (OAG) report into WA Health's Centralised Community Services contract with Fujitsu. The report, which was conducted at the request of the previous Acting Director General Professor Bryant Stokes, provides six recommendations to address the findings that cover contract management, governance and financial control. "We acknowledge that the report found weaknesses in these areas and, in the past two years, have been investing significant resources into our procurement and governance processes," Ms Brown said. "Of the six recommendations in the OAG Report, two have already been implemented and the remaining four are on track to be fully implemented well within the timelines recommended by the OAG."

12 February 2016 - **My Story competition for young people** - WA Health has launched a short story and photo competition on its Get the Facts website for young people. The "My Story" competition, being launched during Sexual Health Week (8-14 February), encourages young people to share and reflect on their own stories, experiences and thoughts surrounding sexual health, puberty and respectful relationships.

11 February 2016 - **Minister for Health: More than \$8 million in grants for medical research** - Western Australia's health and medical research community will benefit from more than \$8 million of State Government funding that supports researchers by helping meet costs associated with delivering their projects.

11 February 2016 - **WA Health invites Year 10s to explore how GREaT nursing can be** - Year 10 students who want to get a taste of hospital life as a nurse or midwife are invited to apply for a free, hands-on work-experience program in a public hospital.

9 February 2016 - **Minister for Health: More specialist doctors choosing Albany** - The Great Southern region now has more than 24 medical specialists living in the region with the appointment of the first resident geriatrician who will be based at Albany Health Campus at the end of this month.

9 February 2016 - **Minister for Health: More than \$1 million helps get under the skin** - More than \$1 million in State Government funding will help research ways to treat skin conditions and improve the health of children in Western Australia's Kimberley region.

8 February 2016 - **Minister for Health: New view of Perth Children's Hospital** - West Australians have been given a sneak peek inside the \$1.2 billion Perth Children's Hospital (PCH) through new 3D vision released today by Health Minister Kim Hames.

6 February 2016 - **Minister for Health: Immunisation rates for WA children on the rise** - The latest snapshot of Australia's immunisation rates is good news for Western Australia, with the proportion of fully vaccinated five-year-old children reaching a record high.

9 February 2016 - [Zika virus confirmed in adult](#) - The Department of Health today reported that a Western Australian adult who recently returned from central America has been diagnosed with Zika virus infection. This is the second case ever notified in WA, following a single case in 2015.

Operational Directives

18 February 2016 - [Prescription and Management of Patient Controlled Intravenous Analgesia OD 0658/16](#)

18 February 2016 - [WA Health Consent to Treatment Policy OD 0657/16](#)

11 February 2016 - [Employee Use of Social Media Policy OD 0656/16](#)

14 February 2016 - [SMS Patient Reminders in WA Public Health Services Policy OD 0655/16](#)

Publications/Reports

17 February 2016 - [Elective Surgery Wait List reports](#)

17 February 2016 - [Referrals to public outpatient surgical clinics reporting](#)

11 February 2016 - [National Emergency Access Target quarterly reports](#)

New Zealand. Ministry of Health

17 February 2016 - [Evaluation of the Establishment of Clinical Exercise Physiologist role in New Zealand](#)

15 February 2016 - [Health of the Health Workforce Report 2015](#)

12 February 2016 - [Guide to PRIMHD Activity Collection and Use](#)

9 February 2016 - [Pertussis Control Strategies 2015: A consistent approach for New Zealand](#)

United Kingdom. Department of Health

15 February 2016 - [New investment in mental health services](#) The announcement follows the publication of a [report by the Mental Health Taskforce](#), chaired by Paul Farmer, Chief Executive of Mind. The taskforce has reviewed mental health care and has set out its vision for preventative, holistic mental health care and making sure that care is always available for people experiencing a crisis.

The recommendations to be delivered by 2021 include:

- an end to the practice of sending people out of their local area for acute inpatient care
- providing mental health care to 70,000 more children and young people
- supporting 30,000 more new and expectant mothers through maternal mental health services
- new funding to ensure all acute hospitals have mental health services in emergency departments for people of all ages
- increasing access to talking therapies to reach 25% of those who need this support
- a commitment to reducing suicides by 10%

Australian Medical Association (AuMA)

17 February 2016 - [AuMA Forum - Health Care for Asylum Seekers – The right thing to do](#) - The AuMA is hosting a Forum in Sydney this Sunday to discuss the health care of asylum seekers, with a focus on the mental and physical harms caused by immigration detention, especially for children.

15 February 2016 - [AuMA President to visit remote Indigenous communities during Northern Territory visit](#) - AuMA President, Professor Brian Owler, will today travel to the Northern Territory to meet doctors and other health workers in Alice Springs, and visit a number of remote Indigenous communities to see first-hand how health services are being delivered at the local level.

10 February 2016 - [Greater Commitment Needed to Truly Close the Gap](#) - The AuMA is pleased to see some improvement in a number of key indicators for Aboriginal and Torres Strait Islander Health, but warns that a long-term commitment across all political parties is needed if targets for closing the health gap

are to be met within a generation. The Close the Gap Steering Committee *Progress and Priorities Report 2016* was released this morning, on the 10th anniversary of the Closing the Gap Campaign.

8 February 2016 - [Stop the cuts - time for strong investment in health](#) - The AuMA has released its Pre-Budget Submission for 2016-17. The AuMA has urged the Government to use the May Budget to invest strongly in the future of the Australian health system to meet growing and changing demand from an ageing population and a surge in chronic and complex conditions, which is afflicting more and more Australians.

British Medical Association (BMA)

17 February 2016 - [BMA Scotland comment on new National Clinical Strategy \(BMA Scotland\)](#) - BMA Scotland respond to the publication of the Scottish Government

American Medical Association (AMA)

18 February 2016 - [National survey finds physicians support PDMPs, encounter barriers to providing non-opioid therapy to treat patients' pain](#) - The American Medical Association today released the findings of a national physician survey that shows strong support for key policies and recommendations to end the nation's opioid epidemic, including ways to improve prescription drug monitoring programs, enhancing physician education as well as removing barriers to care.

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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