



**9 JUNE 2015**

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## JUDGMENTS

### Australia. Fair Work Commission

#### *Marr v Western Health* [2015] FWC 2970

The Fair Work Commission has held that it was reasonable for Western Health to dismiss a former employee who made multiple errors administering drugs to patients. The Commission rejected an unfair dismissal claim brought by the applicant, holding that her dismissal was not harsh, unjust or unreasonable.

The Commission found that the applicant, who worked as a registered nurse in the Intensive Care Unit of the hospital, incorrectly administered drugs to patients on three occasions from March 2013 to September 2014. The Commission held that these errors were a valid reason for Western Health to dismiss the applicant. The Commission acknowledged that the errors did not cause any evident harm to the affected patients, but found that the number of errors and the time period over which they occurred justified the applicant's dismissal. The Commission accepted the hospital's evidence that treatment errors, particularly in the Intensive Care Unit, can have serious consequences for patients.

The Commission considered a number of factors weighing in favour of a finding that the dismissal was unfair, including the applicant's age, the period of time she had worked as a registered nurse, her length of service with the hospital and her previous performance reviews. The Commission also accepted that Western Health had breached the discipline clause in the relevant nurses enterprise agreement by issuing a first and final warning to the applicant prior to her dismissal. However, the Commission ultimately considered that the valid reason for the applicant's dismissal outweighed these other factors.

### Victoria

#### *Inquest into the death of Suzanne Berg*

The Victorian Coroners Court has recommended that the Royal Australasian College of General Practitioners (the College) consider amending its *Standards for General Practices*. The Coroner recommended that the standards should include guidance for general practitioners relating to continuity of care and follow up for patients with mental health issues.

The Coroner investigated the circumstances of Ms Suzanne Berg's death, which occurred between January and May 2015 from an unascertainable cause. The Court found it was possible that the deceased had been experiencing symptoms of mental illness immediately prior to her death.

Ms Berg had previously received treatment for her mental health, but disengaged from clinical services in 2011. While still engaging with health services, she had taken anti-psychotic medication. The Coroner did not make any findings against the deceased's former treating clinicians. However, the Court noted that Ms Berg's death highlights a "*need for appropriate assertive follow up of mental health patients who are accessing voluntary treatment and medication management through a general practitioner*".

The Coroner noted that although psychological matters account for nearly 10% of general practice consultations, the College does not provide guidelines relating to follow up care for mental health patients who disengage from care without notice.

As the Coroner made her recommendation pursuant to section 72(2) of the *Coroners Act 2008* (Vic), the College must reply within 3 months, specifying the steps that it has taken or will take in response. The College's response will be made available on the Court website.

## **Inquest into the death of Ignac Lecek**

Inquest into death of a "person placed in custody" prior to death – finding that deceased was not given appropriate and timely medical attention as a result of systematic shortcomings – recommendation that the Melbourne Custody Centre engage an on-site medical practitioner.

## **New South Wales**

### ***Health Care Complaints Commission v Ferguson* (No 2) – NSWCATOD 55**

Complaint against a nurse – impairment – alcohol dependence or abuse – suspended by Nursing and Midwifery Council – suspension and pre-existing conditions end when complaint is disposed of by Tribunal – if practitioner sought renewal of registration within period allowed registration would be without conditions – Tribunal considered conditions needed – conditions imposed.

### ***Health Care Complaints Commission v Eftimoski* [2015] NSWCATOD 51**

Dentist – Sexual Relationship – Code of Conduct – Boundaries Policy Statement – Code of Ethics for Dentists National Law – Section 139B and E.

### ***Health Care Complaints Commission v Mobilia* [2015] NSWCATOD 52**

Application alleging unsatisfactory professional conduct and professional misconduct – prescription of Schedule 4D and 8 drugs of addiction without obtaining authority – failure to conduct appropriate assessment and examination of patients – failure to keep proper medical records.

## **Queensland**

### ***Cleary v Psychology Board of Australia* [2015] QCAT 168**

Health care professionals– psychologists – disciplinary proceedings – where registrant a registered psychologist – where Psychology Board of Australia imposed conditions on the registrant after a finding the registrant practiced the profession unsatisfactorily – where registrant seeks review of the conditions imposed – whether a stay of the Psychology Board of Australia's decision should be granted – where the stay does not expose the public to any particular risk.

## **United Kingdom**

### ***FB v Rana* [2015] EWHC 1536**

Medical negligence – breach of duty – doctor and hospital jointly liable.

## **LEGISLATION**

### **Commonwealth**

28 May 2015 – ***Private Health Insurance Amendment Act 2015*** C2015A00057 (Act No. 57 of 2015 as made) An Act to amend the *Ombudsman Act 1976*, and for related purposes.

4 June 2015 – ***Human Services (Medicare) (Medicare Programs) Specification 2015*** F2015L00789 • as made.

1 June 2015 – ***Therapeutic Goods Legislation Amendment (Annual Charges Exemption) Regulation 2015*** F2015L00778 • SLI 2015 No. 75 as made.

1 June 2015 – ***National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2015 (No. 6) (PB 50 of 2015)*** F2015L00770 • PB 50 of 2015 as made.

1 June 2015 – ***National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2015 (No. 5) (PB 51 of 2015)*** F2015L00769 • PB 51 of 2015 as made.

## Australian Capital Territory

5 June 2015 – [Liquor Amendment Bill 2015](#)

5 June 2015 – [Mental Health Bill 2015](#)

## New South Wales

3 June 2015 – [Child Protection Legislation Amendment Bill 2015](#) – Introduced.

3 June 2015 – [Health Services Amendment \(Paramedics\) Bill 2015](#) – Introduced.

## Queensland

3 June 2015 – [Workers' Compensation and Rehabilitation \(Protecting Firefighters\) Amendment Bill 2015\\*](#) – Introduced.

## South Australia

3 June 2015 – [Children's Protection \(Implementation of Coroner's Recommendations\) Amendment Bill 2015](#) – Passed HA and read 1st time LC.

3 June 2015 – [Controlled Substances \(Simple Possession Offences\) Amendment Bill 2015](#) – Introduced.

2 June 2015 – [Health Care \(Administration\) Amendment Bill 2015](#) – Received from HA and read 1st time LC.

## REPORTS

### Australia. Department of Health

Media releases

5 June 2015 – [Boost for mental health researcher in the development of online tool](#) – Minister for Health Sussan Ley congratulated Dr Philip Batterham on receiving the 2015 Commonwealth Health Minister's Award for Excellence in Health and Medical Research.

4 June 2015 – [Establishment of expert groups to shape a healthier Medicare](#) – The Australian Government has appointed some of Australia's most well-respected health professionals and consumer representatives to work closely with the government to deliver a healthier Medicare.

2 June 2015 – [National Strategy to address antibiotic overuse](#) – A new national strategy will aim to reduce the threat of antibiotic resistance following statistics showing Australia's consumption of antibiotics is among the highest in the developed world.

31 May 2015 – [New drug listing treats rare life-threatening lung cancer](#) – The Abbott Government will invest \$60 million listing a new drug.

31 May 2015 – [Australia continues to lead world on anti-smoking](#) Australia's world-leading role in reducing smoking rates continues as the latest phase of the National Tobacco Campaign launches on Sunday 31 May – World No Tobacco Day.

29 May 2015 – [Coalition helps stamp out Indigenous smoking](#) – The Coalition Government's redesigned Tackling Indigenous Smoking Programme will further reduce smoking in Aboriginal and Torres Strait Islander communities.

29 May 2015 – [Review of organ donation and transplantation programme](#) Assistant Minister for Health Fiona Nash has announced a review of the current organ and tissue donation and transplantation programme.

27 May 2015 – [Response to resignation of David Koch](#) – Media statement from Assistant Minister for Health, Fiona Nash on the resignation of David Koch from his position as advisory board chairman of the Organ and Tissue Authority.

27 May 2015 – [Riverina Consortium to Focus on Palliative Care](#) – Assistant Minister for Health, Fiona Nash, has announced that a local consortium from Wagga Wagga was successful in securing funding of \$3.3 million through the National Palliative Care Projects.

26 May 2015 – [Industrial chemical assessments simplified](#) – Businesses will save an extra \$23 million a year as the Australian Government continues to cut red tape.

26 May 2015 – [Palliative Care – Talking about dying won't kill you](#) – People nearing the end of their lives and their families, carers and nursing staff will benefit from \$52 million in Australian Government funding for palliative care projects.

23 May 2015 – [Royal Flying Doctor Service a big winner in rural health budget initiatives](#) – Rural and regional health is set to benefit from initiatives in the 2015-16 budget.

### **Private Health insurance (PHI) Circulars**

2 June 2015 – [PHI 34/15 Private Hospital Information](#)

2nd June – [PHI 33/15 Revoke Private Hospital Information](#)

### **Consultations**

28 May 2015 – Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper. [Read more](#)

### **Publications**

26 May 2015 – [Review of organ and tissue donation and transplantation programme – terms of reference](#)

### **Australia. Department of Social Services**

5 June 2015 – [Opening of applications for the DSS SBRT Grant Funding](#)

3 June 2015 – [Notice of Change Commonwealth HACC programme schedules](#)

8 May 2015 – [My Aged Care provider and assessor portals now available](#)

### **Australia. House of Representatives Committees – Parliament of Australian Standing Committee on Health**

[Inquiry into Chronic Disease Prevention and Management in Primary Health Care](#)

### **Australia. National Blood Authority**

2 June 2015 – Outcomes of RFT for supply of imported immunoglobulin products ([NBA RFT 02/2014](#)).

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

29 May 2015 – [NHMRC Research Tracker – 29 May 2015](#)

On the Radar – [1 June 2015 – Issue 225 \(PDF 91KB\) \(Word 126KB\)](#)

27 May 2015 – [Infographic: Essential elements for safe and high-quality end-of-life care](#)

### **Australian NEHTA – National E-health Transition Authority**

2 June 2015 – [Launch of New Terminology Service](#) – A new terminology service that enables access to both AMT and SNOMED CT-AU reference sets in a variety of release formats is now available.

29 May 2015 – [The AMT v20150531 May 2015 release is now available for download](#) – The AMT v20150531 May 2015 release is now available for download from the NEHTA website.

### **Australia. Pharmaceutical Benefits Scheme (PBS)**

27 May 2015 – [Recommendations made by the PBAC – April 2015 PBAC Special meeting](#) – The recommendations made by the Pharmaceutical Benefits Advisory Committee (PBAC) in the April 2015 PBAC Special meeting are now available.

1 June 2015 – PBS Website Update – The Schedule of Pharmaceutical Benefits was updated on 1 June 2015 and the Summary of Changes can be found on the New, Amended and Deleted Items page. [Read More](#)

1 June 2015 – PBS Publications – Design changes to PDF documents – The PBS Schedule is provided in a variety of formats including PDF versions of both the monthly Schedule and the monthly Summary of Changes. The PDF versions of – [Read More](#)

29 May 2015 – Outcomes for the Diabetes Post-market Review – The Minister for Health has considered the reports for all three stages of the Post-market Review of Products used in the Management of Diabetes, which includes – [Read More](#)

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

4 June 2015 – [New oral anticoagulants – apixaban \(Eliquis\), dabigatran \(Pradaxa\) and rivaroxaban \(Xarelto\)](#) – No evidence to support routine blood monitoring at this time.

3 June 2015 – [Ja Dera 100% Natural Weight Loss Supplement capsules](#) – Ja Dera 100% Natural Weight Loss Supplement capsules pose a serious risk to your health and should not be taken.

#### **Australian Institute of Health & Welfare**

4 June 2015 – [Access to health services by Australians with disability 2012](#)

29 May 2015 – [Housing assistance in Australia 2015 \(online report\)](#)

#### **Australia. National Mental Health Commission**

4 June 2015 – [National Mental Health Commission Calls for National Focus on Indigenous Mental Health](#)

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

Media Releases

4 June 2015 – [Targeting the supply of liquor to minors](#)

#### **New South Wales Health Care Complaints Commission**

3 June 2015 – [Dr Glen Mobilia – professional misconduct – reprimand and conditions](#) – The Commission brought a complaint concerning general practitioner Dr Glen Mobilia's prescribing of schedule 4D and schedule 8 drugs to his patients.

2 June 2015 – [Dr Zlatko Eftimoski, Dentist – Finding of unsatisfactory professional conduct](#) – The Health Care Complaints Commission prosecuted Dr Zlatko Eftimoski, a dental practitioner, before the New South Wales Civil & Administrative Tribunal.

1 June 2015 – [Registered Nurses Wendy Kennedy, Christopher Parker and Jisnu Dowsett cautioned and Stewart Thompson reprimanded by a Nursing and Midwifery Professional Standards Committee](#) – The Commission brought four complaints against mental health nurses Wendy Kennedy, Stewart Thompson, Christopher Parker, and Jisnu Dowsett.

29 May 2015 – [Joanne Senior, Psychologist – Finding of professional misconduct and unsatisfactory professional conduct](#)

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

Media Releases

4 June 2015 – [Quality hospital performance continues in NSW](#) – Health Minister Jillian Skinner has welcomed the latest Bureau of Health Information (BHI) Quarterly Report (January–March 2015) which shows NSW hospitals are providing timely access to care for record numbers of patients. Today's BHI report shows 75% of patients left NSW emergency departments within four hours and elective surgery performance was strong, despite increased volumes. "Compared to the same quarter last year, over 17,000 extra patients visited our emergency departments, over 9,000 extra patients were admitted and more than 370 more elective surgeries were performed," Mrs Skinner said.

2 June 2015 – **The New South Wales Teen Dental Survey 2010** – The NSW Teen Dental Survey 2010 was a joint project of the Centre for Oral Health Strategy NSW (COHS), the University of Sydney, and the Australian Research Centre for Population Oral Health (ARCPOH), University of Adelaide.

#### **Northern Territory. Department of Health**

3 June 2015 – **REMINDER – Mozzies love the long weekend too** – As Top Enders prepare their vehicles, boats and camping gear for the June long weekend the Northern Territory Government is warning all Territorians that they need to take measures to protect themselves from mosquito bites.

1 June 2015 – **New Health and Community Services Complaints Commissioner appointed** – A former Health Minister with more than 30 years' experience working throughout the Northern Territory will be recommended for appointment as the new Health and Community Services Complaints Commissioner.

#### **Queensland. Department of Health**

5 June 2015 – **New funds for Central Queensland to tackle domestic and family violence** – Organisations across Central Queensland will have the opportunity to apply for a share of up to \$5.45 million over three years for domestic and family violence prevention and support services.

3 June 2015 – **More training for ED staff to prevent suicide** – Emergency Department staff in Queensland public hospitals will receive training to recognise, assess and manage people at risk of suicide as part of a new training package announced today.

#### **South Australia. Department for Health & Ageing**

29 May 2015 – **97 percent of rural GPs sign new deal** – The deadline for responding to Country Health SA's Standard Rural GP Agreement offer has concluded, with 97 per cent of rural doctors committing to the new contract. The agreement is a standard contract between rural GPs and Country Health SA to provide medical services in country hospitals. Country Health SA Acting Chief Executive Officer, Rebecca Graham, said the high rate of acceptance ensured all country hospital services would continue without interruption.

29 May 2015 – **Influenza update – May 2015** – To date, the Communicable Disease Control Branch (CDCB) has received 1595 notifications of influenza in 2015, more than double the number of influenza notifications reported in the comparable period in the previous two years (717 cases in 2014 and 538 cases in 2013). Of these 67% are influenza A and 33% are influenza B.

#### **Tasmania. Department of Health & Human Services**

4 June 2015 – **Tasmanian Health Service Governing Council appointed** – The Hodgman Liberal Government's One State, One Health System, Better Outcomes reforms will help to fix the broken health system.

3 June 2015 – **Out of Home Care Reforms to Deliver Better Outcomes for Children and Young People** – The Hodgman Liberal Government is committed to rebuilding essential services such as child protection to deliver better outcomes.

2 June 2015 – **The next steps in addressing family violence** – The Tasmanian Liberal Government is determined to address the appalling social ill of family violence.

31 May 2015 – **World No Tobacco Day** – Today is World No Tobacco Day and to mark the occasion I hope that all Tasmanians will help us to spread the message that smoking kills.

#### **Victoria. Department of Health**

3 June 2015 – **Protecting vulnerable children 24/7 across regional Victoria** – Children in rural and regional Victoria who are at risk of abuse or neglect are being better protected by the Andrews Labor Government. For the first time there will be teams of specialist child protection workers dedicated to providing on-call, after-hours assistance to vulnerable children and families right across the state. Previously, only 50 per cent of the state was covered by this service. Minister for Families and Children, Jenny Mikakos, announced today that more than 19 child protection workers will be recruited to boost

after-hours services across Victoria, funded via a \$15.6 million boost over four years contained in the recent *Victorian Budget 2015-16*.

1 June 2015 – **Funding to boost support for trans and gender diverse young people** – The Andrews Labor Government will provide the Royal Children's Hospital with an additional \$6 million over four years to reduce the growing waiting list for its gender dysphoria service. After years of neglect under the previous Liberal Government, young trans and gender diverse Victorians are currently forced to wait more than 12 months for medical and counselling services at the Hospital. The Dysphoria Service provides a range of medical and mental health assessment services, treatment and management services, and supports children and adolescents experiencing gender dysphoria. The number of referrals to the service has steadily increased, from seven in 2007, to 104 in 2014. It's estimated that between 120 and 150 new referrals will be received this year alone.

### Western Australia. Department of Health

#### Media Releases

3 June 2015 – **Minister for Mental Health: New mental health unit modernises service** – Patients with acute mental illness will have access to state-of-the-art facilities and services after the official opening today of a new \$31 million mental health unit (MHU) at Sir Charles Gairdner Hospital.

3 June 2015 – **New mental health unit modernises service** – The new \$31 million mental health unit (MHU) at Sir Charles Gairdner Hospital (SCGH) has opened, offering patients with acute mental illness access to state-of-the-art facilities and services.

2 June 2015 – **WA Health salutes its medical researchers** – During Australian Society for Medical Research (ASMR) Medical Research Week, WA Health salutes the many clinician researchers working throughout its hospitals and health services for their outstanding work to improve the health and wellbeing of our community.

31 May 2015 – **Minister for Mental Health: Reduction in self-harm admissions at PMH** – Reduced waiting times to see specialists and intensive support for young people at risk of self-harm has resulted in a 40 per cent drop in the number of admissions to Princess Margaret Hospital for self-inflicted injuries in the past year.

29 May 2015 – **All-clear for swimming and recreational fishing in Safety Bay in Warnbro Sound** – The Department of Health has lifted its health warning against swimming and recreational fishing, within Safety Bay, following the recent discharge of untreated wastewater.

28 May 2015 – **Lifetime's work in nursing recognised with award** – A nurse who has dedicated almost half a century to helping others was recently honoured at a gala awards ceremony.

### New Zealand. Ministry of Health

5 June 2015 – **Indicators for the Well Child/Tamariki Ora Quality Improvement Framework March 2015**

4 June 2015 – **Lung Cancer Multidisciplinary Meeting Toolkit**

3 June 2015 – **Disability Support Services Strategic Plan 2014 to 2018**

### United Kingdom. Department of Health

4 June 2015 – **Safety and efficiency in the NHS** – Speech.

2 June 2015 – **How can we afford the kind of care we all want?** – Speech.

2 June 2015 – **Clampdown on staffing agencies charging NHS extortionate rates** – News story.

1 June 2015 – **The Department of Health's agencies and partner organisations** – Corporate report.

29 May 2015 – **Guidance on overseas visitors hospital charging regulations** – Guidance.



## United Kingdom – Article

Doctors charged with manslaughter over death after emergency caesarean. [Read More](#)

## United Kingdom Parliamentary and Health Service Ombudsman

Dying without dignity – Investigations by the Parliamentary and Health Service Ombudsman into complaints about end of life care. [Read more](#)

## United States – Article

[How Law Firms Use Facebook and Other Data to Track Down Medical Victims](#)

## Australian Medical Association

31 May 2015 – [AMA launches resource to assist doctors to better support victims of family violence](#)

– The Australian Medical Association (AMA) today launched an important resource – Supporting Patients Experiencing Family Violence: A Resource for Medical Practitioners – to assist doctors to provide better support for victims of family violence. The resource, produced in collaboration with the Law Council of Australia, provides information about specialist support services including health, mental health, drug and alcohol, legal, family support, and child protection services.

31 May 2015 – [AMA National Conference delegates condemn new medical school, and call for action on asylum seeker health](#)

– Delegates to the AMA National Conference 2015 in Brisbane late yesterday unanimously passed two Urgency Motions and a Motion with Notice. The first Urgency Motion relates to the decision to fund a new medical school at Curtin University in WA. The second Urgency Motion relates to the health of asylum seekers. The Motion with Notice relates to protection from prosecution for doctors who disclose, in the public interest, failures in health care delivery in immigration detention centres.

30 May 2015 – [AMA Gold Medal](#) – Former AMA President Dr Steve Hambleton was last night awarded the AMA Gold Medal, the Association's highest honour, in recognition of his outstanding and tireless service to the medical profession and the community. Presenting the Medal at the AMA National Conference Gala Dinner, AMA President Associate Professor Brian Owler said Dr Hambleton, had been a very prominent and active member of the health community and a dedicated member of the Australian Medical Association for more than 25 years.

## 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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