



HEALTH ALERT

2 May 2016

Judgments	2
Victoria	2
Queensland.....	2
New South Wales	3
Commonwealth	3
Legislation	4
Commonwealth	4
Tasmania.....	4
Reports	4
Australia. Department of Health	4
Australia. Health Practitioner Regulation Agency and the boards.....	4
Australia. National Health & Medical Research Council	4
Australia. Therapeutic Goods Administration	5
Australian Institute of Health & Welfare	5
Australian Commission on Safety and Quality in Health Care	5
Australia. National Mental Health Commission	5
New South Wales. Ministry of Health.....	5
Northern Territory. Department of Health	6
Queensland. Department of Health	6
South Australia. Department for Health & Ageing.....	6
Tasmania. Department of Health & Human Services	6
Victoria. Department of Health	7
Western Australia. Department of Health	7
New Zealand. Ministry of Health.....	8
United Kingdom. Department of Health.....	8
About us	8
More information	9

JUDGMENTS

Victoria

19 April 2016 - [Inquest into the death of Chris Pravin Prasad](#)

Mr Prasad was a 51-year-old involuntary inpatient at a psychiatric hospital. He had been diagnosed with schizoaffective disorder, depression, hypertension, arthritis and diabetes mellitus type 2. On 17 January, Mr Prasad was granted day leave by his contact nurse. The temperature on this day reached a high of 38 degrees. Mr Prasad died later that same night. Despite being unable to determine the medical cause of the death, the Coroner went on to consider the appropriateness of granting day leave in such extreme heat conditions.

It was established that there was no formal policy of restricting leave in extreme weather conditions, nor was there any specific organisation training on the issue. However, the hospital indicated that the effects of heat are understood and taken into account by direct care clinicians when undertaking patient risk assessments. It also came to light that the Department of Health would have issued an alert on that day to notify the hospital of extreme weather conditions. The effectiveness of this relied on the motivation of staff to look at it.

The Coroner found that in granting day leave to Mr Prasad in such extreme heat conditions, the hospital failed to provide a holistic approach to his care. This did not amount to finding that the death was preventable. It was recommended that the Chief Psychiatrist issue a directive requiring all public mental health services to develop and introduce an appropriate guideline that identifies the clinical responsibilities for at-risk clients in times of extreme weather conditions.

Queensland

26 April 2016 - [Central Queensland Hospital and Health Service v Q \[2016\] QSC 89](#)

A Queensland hospital brought an application seeking permission to terminate a 12-year-old girl's pregnancy. The child, herein referred to as "Q", was nine weeks pregnant at the time of giving evidence. Since conception, Q had sought medical assistance from a general practitioner, a social worker, two specialist obstetricians, and a psychiatrist. She consistently maintained her wishes to have the pregnancy terminated. The prospective father was unaware of her pregnancy.

The key issues were that of consent and criminal law. Firstly, a child's capacity to give informed consent depends upon their ability to "achieve a sufficient understanding and intelligence to enable him or her to understand fully what is proposed". It was found that considering her age, Q had a very good understanding of the risks associated with the procedure. However, her ability to comprehend the long term consequences were understandably limited. Ultimately the court considered it appropriate to invoke its *parens patriae* jurisdiction. Secondly, it is a criminal offence to procure an abortion in Queensland unless it is authorised, justified or excused by law. The court heard that Q was finding the pregnancy "very stressful emotionally". She also reported that this emotional distress caused her to self-harm and attempt suicide on two occasions.

The court held that it was clearly in Q's best interests for the termination to proceed, finding that it was necessary to avoid danger to her mental and physical health. The court ordered Q be permitted to undergo, and the hospital be permitted to perform the termination.

22 March 2016 - [Medical Board of Australia v Kyaw \[2016\] QCAT 34](#)

PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNPROFESSIONAL CONDUCT – GENERALLY – where the practitioner provided false documents to the registering authority – whether reprimand is an appropriate sanction

9 February 2016 - [Medical Board of Australia v Kelly \[2016\] QCAT 35](#)

HEALTH PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – issuing a prescription to a patient where the practitioner was not in a professional or treating relationship with the patient and in circumstances where no records were kept of any clinical findings for the issuing of the prescription.

14 October 2015 - [Nursing and Midwifery Board of Australia v Isgrove \[2015\] QCAT 522](#)

PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – NURSES – where the registrant employed nurse at psychiatric hospital –where registrant made nursing administration assessment of patient –where patient suffered from depression and anxiety, suicidality and a gambling addiction –where registrant maintained an inappropriate sexual relationship with patient both personally and via mobile phone –where registrant asked patient to represent to the registrant’s employer and APRAH the relationship did not exist –where the registrant has behaved in a way that constitutes professional misconduct

New South Wales

20 April 2016 - [Jacqueline Lee Freestone v Murrumbidgee Local Health District \[2016\] NSWDC 53](#)

PERSONAL INJURY: medical negligence; failure of radiologist to report incidental finding; peer professional practice; competing expert opinions; causation and physical injury; causation and psychiatric injury; assessment.

20 April 2016 - [Tanious v South Eastern Sydney Local Health District \[2016\] NSWCA 83](#)

PRACTICE AND PROCEDURE – notice of motion seeking coronial inquest – need to identify an arguable basis for such an order – application required to be made before primary judge

22 April 2016 - [Health Care Complaints Commission v Pakalu \[2016\] NSWCATOD 49](#)

ADMINISTRATIVE LAW – Civil and Administrative Tribunal Act 2013 (NSW) – Where practitioner admits he is guilty of criminal offence (aggravated indecent assault) – Whether practitioner’s conduct improper and unethical – Whether practitioner’s conduct constitutes professional misconduct – Whether practitioner is fit to practise medicine.

26 April 2016 - [Iacovone v Raftos \[2016\] NSWSC 502](#)

PRACTICE AND PROCEDURE – notice of motion - application to vacate trial date – where liability admitted and quantum disputed – where amount of care required by plaintiff in dispute – where factual basis for expert opinion of rehabilitation physician changed – defendant not able to qualify expert to meet changed opinion in time for trial – motion dismissed

29 April 2016 - [QBE Insurance \(Australia\) Limited v Davies \[2016\] NSWSC 536](#)

ADMINISTRATIVE LAW - appeal from decision of medical assessors review panel under the Motor Accidents Compensation Act 1999 - appeal from referral decision of proper officer – principles in Nguyen v Motor Accidents Authority of New South Wales [2011] NSWSC 351 – review panel found impairment to be result of referred pain from injury caused by the motor vehicle accident – no error established

Commonwealth

14 April 2016 - [Cox v Eve O & G \[2016\] FWC 1861](#)

Application for relief from unfair dismissal – medical practice manager – summary dismissal –allegations of fraud – close personal and professional relationship between employer and employee – identification of irregularities in business accounts – Small Business Fair Dismissal Code – whether employer had a belief the employee was guilty of serious misconduct – whether employer’s belief based on reasonable grounds - ‘show cause’ letter – consistent denial of allegations – independent forensic investigation – explanation not plausible – face to face meeting preferable but not essential – referral to police – unnecessary to make findings of misconduct – employer’s belief based on reasonable grounds –employer had complied with the Code – application dismissed.

21 April 2016 - [Nivocations Australia Pty Ltd v Secretary of the Department of Health \[2016\] FCA 394](#)

HEALTH LAW – Australian Register of Therapeutic Goods – application for registration of therapeutic goods, being a Voke Inhalator nicotine 0.43 mg pressurised inhalation aerosol can – Therapeutic Goods Act 1989 (Cth) s 23 – whether application made in accordance with a form approved by the Secretary – whether application effective – whether application made in accordance with s 23 for the purposes of s 25 of the Therapeutic Goods Act so that the Secretary must evaluate the goods for registration – whether

letter of 16 October 2015 constituted or evidenced an “initial decision” within s 60 of the Therapeutic Goods Act

LEGISLATION

Commonwealth

28 April 2016 - [Private Health Insurance \(Benefit Requirements\) Amendment Rules 2016 \(No. 2\)](#) F2016L00589 - as made

Tasmania

27 April 2016 - [Pharmacy Control Amendment Bill 2016](#) (No. 20 of 2016) - Introduced

REPORTS

Australia. Department of Health

Media releases

23 April 2016 - [Turnbull Govt to double public dental investment](#) - The Turnbull Government will deliver the largest-ever Commonwealth-investment in frontline public dental services to ensure those who need it most, such as children and adult concession card holders, do not fall through the cracks.

Private Health insurance Circulars

29 April 2016 - [PHI 30/16 - Private Health Insurance \(Benefit Requirements\) Amendment Rules 2016 \(No.2\)](#)

Medical Benefits Schedule

29 April 2016 - [The 1 May 2016 MBS XML file is now available to download](#)

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

29 April 2016 - [Call for applications](#) - Call for applications to the New South Wales Board of the Nursing and Midwifery Board of Australia.

28 April 2016 - [NMBA continues to engage with nurses and midwives across Australia at forums](#) - The NMBA are continuing to host stakeholder information forums as part of its engagement activities for nurses and midwives across Australia.

28 April 2016 - [New doctors' health service arrangements](#) - Doctors and medical students in NSW, the ACT, SA, and the NT will have access to expanded doctors' health services from 1 May 2016.

28 April 2016 - [Newsletter from the National Board](#) - The Medical Board of Australia releases its latest newsletter

28 April 2016 - [Revised registration standards for limited registration published today](#) - The Medical Board of Australia (the Board) has today published the revised registration standards for the four types of limited registration available under the National Law.

26 April 2016 - [If chiropractic advertising doesn't meet legal obligations, we will take action](#) - The Chiropractic Board of Australia and AHPRA will, in the most serious cases, prosecute chiropractors who are breaching their legal obligations and refusing to correct their advertising.

22 April 2016 - [Call for expressions of interest](#) - Call for expressions of interest – Queensland Board of the Medical Board of Australia

22 April 2016 - [Newsletter from the Osteopathy Board](#) - The Osteopathy Board of Australia releases its latest newsletter.

Australia. National Health & Medical Research Council (NHMRC)

28 April 2016 - [Bringing together Australia's best dementia researchers](#) - The inaugural Australian Dementia Forum 2016 will be held in Brisbane from 1 to 3 May 2016 and will feature an array of Australia's foremost researchers on dementia alongside the leading experts from around the world. The forum will

provide a unique blend of research, education, stimulation and networking. The Forum will cover four main themes over 3 days including Diagnosis/Assessment; Care/Living with Dementia; Intervention/Treatment; and Prevention

27 April 2016 - [NHMRC opens public consultation on draft ethical guidelines for xenotransplantation research](#) - NHMRC has opened public consultation on draft guidelines for the ethical review and conduct of clinical trials involving animal-to-human xenotransplantation. Xenotransplantation is the transplantation of living cells, tissues or organs from one species to another, such as from animals to humans.

29 April 2016 - [NHMRC Research Tracker](#)

Australia. Therapeutic Goods Administration (TGA)

28 April 2016 - [Reasons for scheduling delegate's final decisions - NCEs \(Medicines\) - April 2016](#) - Reasons for decisions for amendments to the Poisons Standard

27 April 2016 - [Lang Yi Hao tablets](#) - Safety advisory

Australian Institute of Health & Welfare (AIHW)

29 April 2016 - [Cancer \(web pages update\)](#)

28 April 2016 - [Chronic respiratory conditions \(web page update\)](#)

Australian Commission on Safety and Quality in Health Care

On the Radar – 26 April 2016 – Issue 270 ([PDF 144KB](#)) ([Word 150KB](#))

15 April 2016 - A16/02: [Application of the requirements for general observation charts](#)

4 April 2016 - A16/01: [Accreditation assessment requirements of health service organisations post significant clinical or governance review](#)

Australia. National Mental Health Commission

28 April 2016 - [New survey highlights impact of Aboriginal and Torres Strait Islander mental health conditions](#)

27 April 2016 - [New resource for professionals to talk safely about suicide](#)

New South Wales. Ministry of Health

Media Releases

26 April 2016 - [NSW Health urges pregnant women to have free flu vaccination early](#) - With winter approaching, NSW Health is urging pregnant women and other high-risk groups to have their free flu vaccination as soon as possible.

27 April 2016 - [Celebrating 10 years of coronary care at Coffs Harbour Hospital's cath lab](#) - Health Minister Jillian Skinner and Member for Coffs Harbour Andrew Fraser today visited Coffs Harbour Hospital to celebrate the tenth anniversary of the cardiac catheter laboratory. The laboratory opened in 2006 and provides full diagnostic and interventional services, including stenting and angiography.

27 April 2016 - [State-of-the-art Kempsey Hospital opened](#) - Health Minister Jillian Skinner, Federal Member for Cowper Luke Hartsuyker and Member for Oxley Melinda Pavey today officially opened Kempsey Hospital's new clinical services building - the centrepiece of the \$81.9 million major redevelopment.

27 April 2016 - [Unlocking treatments for complex diseases](#) - Six NSW genomics research teams working on unlocking the causes of some of the most debilitating genetic conditions will share in \$1.54 million in funding as part of the NSW Government's 2015/16 Genomics Collaborative Grants Program. NSW Premier Mike Baird and Minister for Medical Research Pru Goward announced the grant recipients during a tour of the Kinghorn Centre for Clinical Genomics at the Garvan Institute of Medical Research today.

Information Bulletins

27 April 2016 - [Increases to Rates of Pay and Allowances for Skilled Trades Employees](#)

Northern Territory. Department of Health

27 April 2016 - **Impact of technology highlighted during Sexual Assault Awareness Month** - April is Sexual Assault Awareness Month and a group of Central Australian service providers want to draw attention to the fact that technology, like mobile phones, enables young people to create, send and receive sexually suggestive images and text messages, which is known as sexting.

Queensland. Department of Health

27 April 2016 - **Recognising 50 years of service** - A hospital cook who has dedicated more than 50 years of her life to Julia Creek patients has been recognised by the North West Hospital and Health Service (HHS).

27 April 2016 - **Mt Lofty Heights Nursing Home opens its doors and heart to new resident** - Mt Lofty Heights Nursing Home has a new resident who is winning over hearts with his kind nature, generous spirit and wagging tail. Sammy the greyhound has been officially adopted by the Darling Downs Hospital and Health Service facility, much to the delight of residents, staff and visitors

South Australia (SA). Department for Health & Ageing

28 April 2016 - **Close the immunisation gap** - South Australians are being reminded of the importance of protecting themselves and their children from debilitating diseases this World Immunisation Week, 24-30 April. SA Health Communicable Disease Control Branch Director, Dr Ann Koehler, said this year's theme for World Immunisation Week is 'close the immunisation gap'. "In Australia, one of the biggest gaps in immunisation has traditionally been between Aboriginal children and non-Aboriginal children," Dr Koehler said.

28 April 2016 - **2016 flu vaccine available across SA** - The 2016 seasonal influenza vaccine is available across the state to help protect those most at risk of serious complications from the flu. The free vaccine for vulnerable members of the community is available from local GP clinics, while the general public can also purchase the vaccine at a small cost from their GP or community pharmacy if they are aged over 16 years.

26 April 2016 - **Recognising our top nurses and midwives** - South Australia's dedicated and hard-working nurses and midwives will be publicly recognised at the 2016 South Australian Nursing and Midwifery Excellence Awards next week.

28 April 2016 - **Deadly mushrooms found in SA** - SA Health has warned South Australians to be aware of poisonous wild mushrooms which are growing in the Adelaide Hills. State Herbarium Honorary Research Associate Pam Catcheside said the potentially lethal Death Cap mushroom – *Amanita phalloides* has recently been found under oak trees. "Ingestion of the Death Cap mushroom can lead to severe abdominal pains, nausea, vomiting and diarrhoea, and in more serious cases can cause liver damage, kidney failure and even death," Ms Catcheside said.

Tasmania. Department of Health & Human Services

28 April 2016 - **Update on building a safe and sustainable maternity service for the North West** - The establishment of an integrated North West maternity service, delivered from one site, is expected to occur in September; however no changes will be made until the appropriate transitional arrangements are in place.

27 April 2016 - **New statistics point to health improvements** - Shorter stays in hospital and improved bed availability at the Royal Hobart Hospital are just some of the health improvements outlined in new statistics released today by Health Services Innovation Tasmania (HIS Tas).

27 April 2016 - **Royal Hobart Hospital Redevelopment on budget and on time** - I would like to assure Tasmanians that the Royal Hobart Hospital redevelopment remains on time and on budget. This is despite new information released under RTI laws yesterday that shows the original handover date of the temporary inpatient facility has not been met.

26 April 2016 - **Government call on WorkSafe to look into RHH claims** - The Government has asked WorkSafe Tasmania to look into allegations made by unions about unsafe work practices at the Royal Hobart Hospital Hospital.

24 April 2016 - **Tasmanian pharmacists now providing flu jabs** - The Hodgman Liberal Government is committed to advancing reforms that will keep Tasmanians healthy and out of hospital.

Victoria. Department of Health

April 29, 2016 - **Ambulance Blitz To Further Improve Response Times** - The Andrews Labor Government is investing an additional \$144 million to fix the ambulance system after four years of crisis so Victorians can have confidence that in an emergency they will get the care they need, quickly.

April 27, 2016 - **Victoria Continues To Lead The Nation On Equality** - An Australian first Pride Centre is the centerpiece of the Andrews Labor Government's continued investment in services and facilities for lesbian, gay, bisexual, transgender and Intersex (LGBTI) Victorians. A total of \$15 million will go towards the Pride Centre, which will showcase LGBTI art and history, co-locate LGBTI advisory, health and support services, and feature community spaces which will provide a safe environment for LGBTI Victorians to meet and socialize.

April 27, 2016 - **Our Aim Is To Save One Life Every Day** - Work is underway to implement Victoria's 10-year Mental Health Plan to achieve better mental health outcomes for Victorians and to save lives. The Victorian Budget 2016-17 provides a \$356 million investment in mental health, with a focus on providing better access to services and investing in prevention.

April 27, 2016 - **New Fund: Quality Health Care For Regional Victorians** - A dedicated new fund to rebuild rural and regional hospitals will ensure families in regional Victoria have access to the quality health care they deserve. The Victorian Budget 2016/17 provides \$200 million for the new Regional Health Infrastructure Fund to put the needs of patients, doctors, nurses and healthcare workers first.

April 27, 2016 - **Record Increase In Health Funding Delivers The Care Victorians Need, Sooner** - More patients will receive the care, treatment and surgeries they need sooner with the biggest ever increase in health funding, under the Andrews Labor Government's Victorian Budget 2016/17. Our hardworking doctors, nurses and paramedics will get the support they need to save lives and keep Victorians healthy with an extra \$2.45 billion for health.

April 25, 2016 - **Real Time Prescription Monitoring Will Save Lives** - The Andrews Labor Government is taking action to reduce the number of Victorians dying from prescription drug overdoses, with the introduction of a real-time prescription monitoring system. With more people losing their lives each year in Victoria from overdoses of prescription drugs than those dying in road accidents, a real-time prescription monitoring system has the potential to prevent the deaths of up to 90 Victorians over the next five years.

April 24, 2016 - **Immunity For Community To Keep Kids Safe And Healthy** - The Andrews Labor Government today launched a new campaign to highlight the benefits of immunisation for individuals and the community. Coinciding with World Immunisation Week (24 – 30 April), Immunity for Community features real stories of everyday Victorians whose personal experiences reinforce the potentially lifesaving benefits of immunisation to not only individuals but the community as a whole.

Western Australia (WA). Department of Health

Media Releases

29 April 2016 - **New malaria test spot on** - A WA Health clinician's 'near-miss' for national research funding last year has contributed to the development of what could become a valuable new tool for measuring drug levels in blood.

29 April 2016 - **Minister for Health: Selfless service as PMH helper celebrates 100th** - Health Minister John Day has congratulated Gerry Leeuwangh on his years of dedicated service, as the Princess Margaret Hospital helper celebrates his 100th birthday today.

28 April 2016 - **New cancer machine speeds treatment time** Western Australian oncology patients will benefit from greatly reduced waiting times and faster treatment with the commissioning of the latest in linear accelerator (linac) technology at Fiona Stanley Hospital (FSH).

28 April 2016 - **Minister for Health and Minister for Regional Development: Construction start promises better Collie health care** - Work is underway on a \$7.8 million redevelopment of the Collie Health Service that will transform the hospital into a contemporary, best-practice healthcare facility.

26 April 2016 - [Minister for Health: Latest technology cuts cancer care wait times](#) - Western Australian oncology patients will benefit from greatly reduced waiting times and faster treatment, with the commissioning of the latest in linear accelerator (linac) technology at Fiona Stanley Hospital (FSH).

26 April 2016 - [Minister for Mental Health and Attorney General: \\$13.1 million for mental health court diversion](#) - The State Government has reinforced its commitment to people with mental illness involved in the criminal justice system by allocating \$13.1 million in the 2016-17 State Budget to the Mental Health Court Diversion Program.

Reports & Publications

27 April 2016 - [Western Australia Emergency Access Target quarterly reports](#)

New Zealand. Ministry of Health

29 April 2016 - ['Ala Mo'ui Progress Report: December 2015 'Ala Mo'ui: Pathways to Pacific Health and Wellbeing 2014-18](#) - ('Ala Mo'ui) is a four-year plan that provides an outcomes framework to deliver high-quality health services that meet the needs of Pacific peoples.

29 April 2016 - [Te Ohonga Ake: The Determinants of Health for Māori Children and Young People in New Zealand: Series Two](#) - This report, which focuses on the underlying determinants of health for Māori children and young people, aims to: Provide a snapshot of progress in addressing many of the determinants of health including child poverty and living standards, housing, early childhood education, oral health, tobacco use, alcohol related harm, and children's exposure to family violence. Assist those working in the health sector to consider the roles other agencies play in influencing child and youth health outcomes related to these determinants.

United Kingdom. Department of Health

28 April 2016 - [BMA responds to RCP report on e-cigarettes](#) - "This report provides much needed insight and evidence which will help inform the debate on e-cigarettes. It is certainly interesting to see the RCP assessment of tobacco harm reduction, which recognises the potential for e-cigarettes to reduce harm associated with tobacco use."

26 April 2016 - [LA-MRSA: information for people who work with livestock](#)

22 April 2016 - [Developing a public health outcome measure for children aged 2 to 2.5 using ASQ-3](#)

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.

Michael regularly presents to medical groups and hospitals on medico-legal issues.

Contact Details

T +61 3 9274 5437

michael.regos@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

Level 9, 480 Queen Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne NSW 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 22, No.1 Martin Place
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 8007
sydney@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.

For further information, please refer to www.dlapiper.com

Copyright © 2016 DLA Piper. All rights reserved.

If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.