



HEALTH ALERT

16 October 2017

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KEY DECISIONS

6 October 2017 - *Pere v Central Queensland Hospital and Health Service [2017] QCA 225* - PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LIABILITY IN TORT – GENERAL PRINCIPLES, and EMPLOYMENT LAW – LIABILITY AT COMMON LAW FOR INJURY AT WORK – CAUSATION AND FORESEEABILITY – CAUSATION.

Mr Pere was employed as a Fire Safety and Security Officer at the Gladstone Hospital. During a shift, he was observed to be acting in an unusual manner and was directed to the Emergency Department. The treating doctor ordered a blood test and urine test to screen for alcohol and illicit substances. According to the doctor, Mr Pere was calm and did not object or resist to the tests being carried out. Mr Pere said that he was 'poked' with the needle and did not consent to giving blood, and that when he gave his urine sample a nurse was present and looked at his genitalia. He said that these circumstances had caused him shame and humiliation, leading to him suffering from depression and anxiety, which had an adverse impact on his income earning capacity. The Court doubted the credibility of Mr Pere's testimony and stated that the medical evidence did not establish a probable connection between the event and Mr Pere's ongoing psychological disturbance. As such, the claims for assault, battery and negligence were not made out. Mr Pere sought to appeal this decision, claiming that consent to the tests was not 'freely given' because there was a power imbalance between him and his employer. The Court found that there was no evidence that he was deprived of capacity to consent, and that he was not ordered to undergo the tests as an employee but a patient. Leave to appeal was denied.

26 September 2017 - *Inquest into the Death of Jared Charles Olsen Ref No: 20/16*- Mr Olsen died at Fiona Stanley Hospital, Murdoch, as a result of fulminant sepsis (*Klebsiella pneumoniae*) with multi-organ failure complicating severe pancytopenia following the administration of 6-Mercaptopurine in a man with acute severe exacerbation of chronic colitis (Crohn's) and TPMT deficiency.

Mr Olsen was treated at Fiona Stanley Hospital (FSH) for Crohn's colitis with the immunosuppressant medication 6-MP. He was unable to metabolise it, which led to 6-MP toxicity and profound bone marrow suppression, ultimately resulting in his death. Coroner Fogliani found that FSH missed a number of opportunities to detect and avert the 6-MP toxicity, as they electronically received significantly abnormal test results but, due to both system and human error, no clinician became aware of them. The Coroner highlighted the risks for patients when too much reliance is placed on electronic communications in an environment where clinicians routinely work on rotation and in teams, and noted that different hospitals have different practices in relation to testing. Further, many of the experts consulted by the Coroner during the inquest recommended that TPMT enzyme testing be done prior to treatment with drugs such as 6-MP. The Coroner recommended that FSH put in place its own internal robust systems for tracking lists of patients in iCM for whom tests have been ordered and received, including for patients that have been discharged, and those systems facilitate the conveyance of test results to the consultant in charge of the patient's treatment and highlight urgent/abnormal test results, rather than requiring the clinicians to chase up results. The Coroner also recommended that the Department of Health consider whether an operational directive or instruction is required to support governance within public hospitals regarding the implementation of systems for tracking test results, particularly where patients have been discharged.

JUDGMENTS

Commonwealth. Fair Work Commission

6 October 2017 - *Healthscope Operations Pty Ltd T/A Healthscope [2017] FWCA 5189* - Application for approval of the Healthscope - WA - Enrolled Nurses & Support Service Employees - Enterprise Agreement - 2017 - 2020.

6 October 2017 - *Regis Aged Care Pty Ltd T/A Regis Aged Care [2017] FWCA 5194* - Application for approval of the Regis Aged Care, ANMF South Australia and United Voice South Australia Enterprise Agreement 2017.

10 October 2017 - *Thompson Healthcare Pty Ltd v Adamopoulos [2017] FWCFB 5170* - Appeal against decision [2017] FWC 3505 and Order PR594566 of Deputy President Sams at Sydney on 28 July

2017 in matter number U2017/1706; arguable case of appellable error established; satisfied that public interest is enlivened; permission to appeal is granted.

10 October 2017 - [Polymiadis v The Carer's Phone Pty Ltd T/A Prompt Care \[2017\] FWC 5229](#) - DUST DISEASES – damages – apportionment between joint tortfeasors – Law Reform (Miscellaneous Provisions) Act 1946 (NSW), s 5 – injured worker previously received statutory workers' compensation payment – insurer entitled to first charge on recovered damages under Workers' Compensation and Rehabilitation Act 2003 (Qld), s 207B – whether primary tortfeasor entitled to recover contributions from joint tortfeasors in circumstances where insurer entered into agreement with injured worker to pay worker 20% of amount recovered from primary tortfeasor.

WORDS AND PHRASES – 'double compensation' – whether agreement between injured worker and insurer whereby insurer pays worker 20% of damages recovered from tortfeasor constitutes double compensation in circumstances where worker had received statutory compensation payment.

WORKERS COMPENSATION – whether agreement that insurer pay worker 20% of recovered damages valid in circumstances where worker had received statutory compensation payment – whether insurer permitted to waive its right to enforce statutory charge on recovered damages under Workers' Compensation and Rehabilitation Act 2003 (Qld), s 207B.

10 October 2017 - [Bupa Aged Care Australia Pty Ltd t/a Bupa Aged Care Mosman v Tavassoli \[2017\] FWCFB 3941](#) - Appeal against decision [2017] FWC 3200 of Commissioner Riordan at Sydney on 18 July 2017 in matter number U2016/14357.

Commonwealth. Federal Court

9 October 2017 - [Walsh v Umoona Tjutagku Health Service Aboriginal Corporation \(ICN 7460\) \(No 3\) \[2017\] FCA 1203](#) - COSTS - Two respondents jointly represented in victimisation proceedings - claim against first respondent unsuccessful by virtue of statutory bar - claim against second respondent successful - both respondents otherwise taking unsuccessful points in defence of claims - unsuccessful aspects of defences consuming significant portion of trial - multiple offers by respondents - offers subject to terms prohibiting the making of whistleblowing complaints of alleged misconduct by respondents and other persons not joined in proceedings - offers not impudently refused - costs awarded on an issues basis - applicant compensated in respect of unsuccessful points taken by successful respondent.

New South Wales (NSW)

6 October 2017 - [City of Ryde Council v Principal Healthcare Finance Pty Ltd \(No 2\) \[2017\] NSWLEC 134](#) - PRACTICE AND PROCEDURE – application for proceedings to be dismissed under rule 13.4 of Uniform Civil Procedure Rules 2005 – whether reasonable cause of action disclosed – whether applicant estopped from raising issues subject of appeal – whether proceedings constitute abuse of process.

9 October 2017 - [Hadi v Medical Board of Australia \[2017\] NSWCATOD](#) - Medical practitioner – application for registration – prior misconduct of a sexual nature – registration allowed with modified condition.

Queensland

6 October 2017 - [Pere v Central Queensland Hospital and Health Service \[2017\] QCA 225](#) - 'PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LIABILITY IN TORT – GENERAL PRINCIPLES – where the applicant was employed by the respondent – where the applicant was acting unusually while at work – where a co-worker escorted the applicant to the Emergency Department – where medical staff believed the applicant to be either under the influence of alcohol or illicit drugs, or suffering from a medical condition that would require urgent attention – where a doctor discussed the taking of blood and urine samples with the applicant – where the hospital staff reported the applicant was calm and co-operative and that consent was obtained prior to the taking of the samples – where the applicant claims no consent was given and, further, that a nurse observed him as he gave his urine sample – where the applicant claims to have suffered shame and humiliation from the incident, culminating in a psychiatric injury – whether the learned primary judge erred in finding the applicant freely consented to the taking of blood and urine samples – whether the actions of the medical staff constituted assault or battery – whether leave to appeal should be granted.

EMPLOYMENT LAW – LIABILITY AT COMMON LAW FOR INJURY AT WORK – CAUSATION AND FORESEEABILITY – CAUSATION – where the applicant claims medical staff at his workplace committed assault and battery against him in taking his blood and urine samples – where the applicant claims to have suffered a psychiatric injury as a result of the incident – where the respondent had no formal protocol regulating the taking of blood and urine samples from employees who appeared to be under the influence of alcohol at work – where the applicant seeks damages from the respondent as his employer for negligence and failing to take precautions against a risk of injury to a worker under the Workers' Compensation and Rehabilitation Act 2003 (Qld) – where there existed other unrelated issues at the time causing the applicant stress – whether the learned primary judge erred in finding the applicant failed to establish a probable connection between the incident and the applicant's psychiatric condition – whether leave to appeal should be granted.'

Victoria

9 October 2017 - *Wai Tam Pty Ltd as Trustee of Wai Tam Trust v Office Based Anaesthesia Solutions Pty Ltd (Civil Claims)* [2017] VCAT 1567 - Claim for money owing under contract; Australian Consumer Law and Fair Trading Act 2012 (Vic) s 182 and s 184; Order for payment of money found owing by one party to another.

11 October 2017 - *Ahmad v Medical Board of Australia (Review and Regulation)* [2017] VCAT 1646 - Review and Regulation List – Immediate Action against a medical practitioner– Summary suspension of applicant's Alaskan medical licence – whether practitioner's registration has been suspended under the law of another jurisdiction –whether reasonable belief that because of his performance or conduct the practitioner poses a serious risk to persons and it is necessary to take immediate action to protect public health or safety – conduct relating to practitioner's prescribing of controlled substances including opioids while in practice in Alaska –whether practitioner can be permitted to work only as an anaesthesiologist or whether suspension is the minimum regulatory action required – decision of the respondent affirmed – Health Practitioner National Law ss 3(3)(c), 155, 156(1)(a), 156(1)(d).

Western Australia

26 September 2017 - *Inquest into the Death of Jared Charles Olsen Ref No: 20/16*- Mr Olsen died at Fiona Stanley Hospital, Murdoch, as a result of fulminant sepsis (*Klebsiella pneumoniae*) with multi-organ failure complicating severe pancytopenia following the administration of 6-Mercaptopurine in a man with acute severe exacerbation of chronic colitis (Crohn's) and TPMT deficiency.

LEGISLATION

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

Commonwealth

6 October 2017 - *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 4)* 2017L01331

REPORTS

Australia. Department of Health

Media releases

11 October 2017- **\$3.4M funding for drug and alcohol treatment services across the North Coast** - The NSW North Coast region is well placed to fight alcohol and other drug misuse, with the North Coast Primary Health Network commissioning a range of innovative early intervention, treatment and workforce development services.

9 October 2017 - **Action on Tumut Health Services** - Health experts held a special meeting this week aimed at overcoming the shortage of doctors and other health services in the Tumut region.

9 October 2017 - **Marking National Headspace Day** - Headspace supports tens of thousands of Australians each year who are struggling with mental health problems by providing vital counselling services in person and online.

9 October 2017 - [World Health Organisation and Australia forge new strategic partnership](#) - The World Health Organization (WHO) and the Australian Government have launched their first ever country cooperation strategy, on the sidelines of the sixty-eighth session of the WHO Regional Committee for the Western Pacific.

7 October 2017 - [Australia's new digital mental health gateway now live](#) - As part of our over \$4 billion annual investment in mental health, the Turnbull Government is today launching our new digital mental health gateway – Head to Health.

Private Health insurance Circulars

[PHI 47/17 Private Health Insurance \(Prostheses\) Amendment Rules 2017 No.4](#)

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

11 October 2017 - [Final-year students invited to apply for registration online now](#) - Students who are in their final year of study to become a health practitioner should apply for registration online now.

11 October 2017 - [Communiqué from the Board](#) - The Chiropractic Board of Australia releases its September communiqué.

10 October 2017 - [Victorian woman fined \\$20,000 for posing as a psychologist and a general practitioner](#) - A court in Victoria has fined an individual after she treated patients as a psychologist while not registered to do so under the National Law.

10 October 2017 - [Communiqué from the Board](#) The Osteopathy Board releases its latest communiqué.

9 October 2017 - [Communiqué from the Board](#) - The Chinese Medicine Board of Australia releases its latest communiqué.

[Australia. Therapeutic Goods Administration \(TGA\)](#)

11 October 2017 - [Medical devices and IVDs: Suspensions from the ARTG](#) - Suspension of Philips Electronics Australia Ltd IntelliVue MX40 effective 16 May 2017.

10 October 2017 - [Codeine information hub](#) - New information on the Codeine Information Hub.

9 October 2017 - [Conference participation by the TGA](#) - The TGA is participating in these events and conferences.

9 October 2017 - [Submissions received and TGA response: Changes to accessing unapproved therapeutic goods through the Authorised Prescriber \(AP\) and Special Access Schemes \(SAS\)](#) Submissions and outcomes.

6 October 2017 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Ambrisentan (Volibris) and Fomepizole (Antizol), American house dust mite / European house dust mite (Actair).

6 October 2017 - [Gentamicin Injection BP 80 mg in 2 mL Steriluer](#) - Recall – potential for allergic reactions due to higher than expected amounts of histamine.

6 October 2017 [Accessing medicines during a medicines shortage](#) The TGA can approve the import and supply of a medicine that is not included in the ARTG under section 19A of the Act.

[Australian Commission on Safety and Quality in Health Care](#)

10 October 2017 - [Australia joins international push to halve medication errors](#) - A global drive to reduce medication errors by 50% within five years will be launched in Brisbane today, as part of a new push by the World Health Organization to save lives and reduce the harm caused by medication mix-ups.

9 October 2017 - On the Radar – Issue 342 ([PDF 196KB](#)) ([Word 157KB](#))

New South Wales (NSW). Ministry of Health

Media Releases

5 October 2017 - **Blacktown Hospital's \$18M high-tech car park** - Blacktown Hospital has reached a major milestone in the construction of its car park – the first in NSW with a high-tech parking guidance system – under the \$700 million expansion of the hospital. Minister for Health Brad Hazzard today attended the last pour of concrete at a topping- out ceremony, held on the roof of the five-storey, 414-space car park.

10 October 2017 - **Innovative projects to transform mental health support in NSW** - People living with mental illness across NSW will soon benefit from six pioneering projects, awarded \$1.26 million as part of the NSW Government's \$4 million Mental Health Innovation Fund. Premier Gladys Berejiklian and Minister for Mental Health Tanya Davies announced the projects at Parliament House on World Mental Health Day.

Publications

6 October 2017 - **Communicable Diseases Weekly Report (CDWR)**

Policy Directives

10 October 2017 - **Mass Casualty Triage – Smart Triage Packs**

Document number: PD2017_037

8 October 2017 - **Visiting Medical Officers - Rural Doctors' Settlement Package Hospitals-Indexation of Fees 1/8/2017** - Document number: PD2017_035

8 October 2017 - **Neonatal Hepatitis B Prevention and Vaccination Program**

Document number: PD2017_036

Northern Territory. Department of Health

10 October 2017 - **Update - Meningococcal outbreak in Central Australia** - The meningococcal disease outbreak continues in Central Australia, the Barkly, Katherine and Katherine West regions. To date there have been 25 confirmed cases of Meningococcal W with one case awaiting final laboratory testing. All of those affected in this outbreak to date are Aboriginal people, 19 cases are children less than ten years of age.

9 October 2017 - **Caution urged as stinger season begins** - October marks the official start of the stinger season in the Top End. Stingers can be found in our sea waters at any time but they are at their peak from October until the end of May next year.

Queensland. Department of Health

10 October 2017 - **GST funding model would impact Queensland's hospital and health services** - Queensland's hospital and health services would come under enormous pressure if the GST distribution proposals favoured by One Nation and welcomed by the Federal Treasurer Scott Morrison were implemented, Health and Ambulance Services Minister Cameron Dick said today.

10 October 2017 - **Early works tender released for new youth mental health facility** - Early works for a new adolescent mental health facility at The Prince Charles Hospital will go out to tender today – World Mental Health Day.

7 October 2017 - **New \$4.6 million ambulance station for Wynnum a step closer** - A new \$4.6 million Wynnum ambulance station is a step closer to delivery with the Palaszczuk Government announcing the successful tenderer to build the station.

10 October 2017 - **Palaszczuk Government restores Wynnum Manly health services** - The Palaszczuk Government has delivered on its promise to restore Wynnum's 24-hour primary care service and maintain local health services.

10 October 2017 - **One Nation's State leader needs to explain support for cuts to health services** - Pauline Hanson's One Nation's Queensland leader Steve Dickson has a shocking track record on

supporting health services on the Sunshine Coast and throughout Queensland, Health and Ambulance Services Minister Cameron Dick said today.

9 October 2017 - **Men: how to have a conversation with a mate about mental health** - Every day in Australia, men account for **6 out of 8 suicides** on average. When the **Australian Bureau of Statistics**, surveyed Australians in 2014-15, around 1.5 million Australian men reported that they had a mental or behavioural condition. That's just over 1 in 6 men in a single year, and only counts the men who reported it themselves.

Looking out for your mates and being there for them if they need it might help to prevent them from becoming another statistic. If you're keen to start a conversation about mental health with a mate, we've got some tips to help you get started.

10 October 2017 - **What is palliative care and why is it important?** - If a person has a life-limiting condition, which means that it cannot be cured and will lead to the end of their life, the focus of their care will shift from aiming to cure them, to ensuring they have the best quality of life.

South Australia. Department for Health & Ageing

9 October 2017 - **Media release: Immunisation policy to protect patients and staff** - Patients and health workers will be better protected against preventable illnesses under a SA Health immunisation policy released today. Staff who work with patients, or blood and other body fluids, will be required to know their immune status against chickenpox (varicella), whooping cough (pertussis), hepatitis B, measles, mumps and rubella.

10 October 2017 - **Model of care for older persons mental health services open for consultation** - A draft framework for residential older persons mental health services has been released for consultation today.

9 October 2017 - **Mental Health Excellence Award winners announced** - A South Australian leader in mental health and suicide prevention reform is one of five nominees to be honoured in the 2017 Mental Health Excellence Awards.

8 October 2017 - **RAH to host more world-leading transplants** - Just over a month since moving to its new site, the Royal Adelaide Hospital continues to cement its place as the nation's most modern hospital with news its clinicians will continue to perform specialist transplants undertaken nowhere else in Australia.

5 October 2017 - **New precinct marks new era of care for veterans** - The Jamie Larcombe Centre, a new \$15 million veterans' mental health precinct located at Glenside Health Service Campus, will officially be opened today, marking a new era for South Australian veterans receiving specialist mental health care.

Tasmania. Department of Health & Human Services

8 October 2017 - **Mental Health Week 2017: Stronger Together** - With the theme Stronger Together, Mental Health Week 2017 (October 8 to 14) is a great opportunity for the community to come together, work together and recognise the importance of good mental health. The week highlights the importance of starting and encouraging conversations, interaction and education on mental illness and mental wellbeing at all levels of the community.

Victoria. Department of Health

11 October 2017 - **More Security Guards To Keep Hospitals Safer For All** - Health workers, patients and visitors will be safer in hospitals across Victoria as more security guards are deployed as part of another Andrews Labor Government initiative to stamp out violence in hospitals.

Minister for Health Jill Hennessy today announced 30 health services operating across 44 hospital sites will share in nearly \$6.7 million to increase security staffing and mobile security patrol services across hospitals.

11 October 2017 - **Greater Support For People Following Suicide Attempts** - People leaving hospital following a suicide attempt are now receiving dedicated support, thanks to the Andrews Labor Government's Hospital Outreach Post-suicidal Engagement (HOPE) program. Minister for Mental Health

Martin Foley today announced the progress and success of the program during a visit to St Vincent's Hospital, where the trial has been running.

11 October 2017 - **New Ferntree Gully Ambulance Branch Will Save More Lives** - Paramedics in Ferntree Gully now have the facilities they need to quickly respond to local medical emergencies with the opening of a state-of-the-art ambulance branch. Minister for Ambulance Services Jill Hennessy today officially opened the new \$1.4 million ambulance branch on Dobson Street, Ferntree Gully.

Western Australia. Department of Health

6 October 2017 - **Minister for Health: First sod turned on Peel Youth Medical Services Health Hub** - Some of the most vulnerable people in the Peel community in Western Australia have received a boost today with construction now underway on the Peel Youth Medical Services Health Hub.

Publications

9 October 2017 - Healthview is WA Health's **quarterly magazine**, full of news, features, profiles, and updates on what is happening in our public health service.

Australian Medical Association (AuMA)

11 October 2017 - **Proposed Quality Incentive funding formula could penalise GPs** - A proposed new Quality Improvement Incentive for general practice should work alongside the existing and successful Practice Incentives Program (PIP), not shift funding away from it, AuMA Vice President Dr Tony Bartone says.

ABOUT US

Dr Gerry Bean



Gerry is a Corporate Partner and provides corporate and commercial advice to the health sector and the not for profit sector. He has over 20 years' experience as a partner. He acts for hospitals, primary healthcare networks, aged care and retirement villages, charities and health insurers. Gerry has acted on several mergers in the health and non-for profit sectors including the merger which created cohealth. Gerry is an active contributor to our pro-bono practice. Gerry is also a director of the Law Institute of Victoria and a director of DLA Piper's International Board.

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