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JUDGMENTS

Queensland

23 October 2014 - [Vision Eye Institute Ltd v Kitchen & Anor \[2014\] QSC 260](#)

In 2006, Kitchen sold his ophthalmology practice in Central Queensland to Vision. He agreed to work for Vision for at least five years. In 2009 he purported to terminate his employment contract and set up new ophthalmology practices. Vision argued that in doing so, Kitchen unlawfully terminated the contract and breached the contract's restraint of trade provisions.

The first issue the Supreme Court of Queensland was required to consider whether Vision had breached its contractual obligations in relation to the terms of Kitchen's employment. If it had, Kitchen was entitled to terminate the contract. The Court carefully interpreted the contract and decided that Vision had not breached its obligations. It followed that Kitchen had repudiated the contract by purporting to terminate it and by establishing a new clinic in 2009. By virtue of Kitchen's inadvertent repudiation, Vision was entitled to accept the repudiation, terminate the agreement and recover damages for the loss it suffered as a result.

The second issue related to the restraint of trade provisions contained in the Share Purchase Agreement. The Court held that most of the restraints were unenforceable because they exceeded what was reasonable for the protection of Vision's legitimate interests as buyer of Kitchen's practice and as Kitchen's employer. For example, the restraint against establishing a competing practice was excessive because its geographical reach extended beyond the area of Central Queensland in which Vision's practices operated and were expected to expand.

New South Wales

17 October 2014 - [Health Administration Corporation v George D Angus Pty Ltd \[2014\] NSWCA 352](#)

The Health Administration Corporation compulsorily acquired land that was occupied by the respondent. The respondent was a service company through which its sole director, Dr Angus, provided gynaecological and obstetric services. The land was advantageously located within a short distance of Wagga Wagga Base Hospital and Calvary Hospital, allowing Dr Angus to walk to each hospital to attend obstetric patients.

Following the acquisition, the respondent relocated its practice to another location in Wagga Wagga. It incurred financial costs in connection with the relocation. The new location was also further away from Wagga Wagga Base Hospital and Calvary Hospital. As a result of the distance, Angus considered it too risky to treat obstetric patients and therefore ceased providing obstetric services. He restricted himself to providing gynaecological services, resulting in a decline in the income and profitability of his business.

The respondent claimed compensation for loss attributable to lost income and/or profits as a consequence of relocation necessitated by the compulsory acquisition. The NSW Court of Appeal considered whether or not the proper construction of the term "financial costs" in the *Land Acquisition (Just Terms Compensation) Act 1991* was such that it entitled the respondent to claim loss of income and/or profits as a result of it having to abandon its obstetric practice upon relocation. The Court upheld the primary judge's finding that the respondent was entitled to recover compensation for the lost or forgone net income it sustained as a direct and natural consequence of the compulsory land acquisition.

20 October 2014 - [Health Care Complaints Commission v Osborne \[2014\] NSWCATOD 118](#)

Unsatisfactory professional conduct and professional misconduct - treatment of two elderly patients

20 October 2014 - [BGQ v Sydney Local Health District \[2014\] NSWCATAD 174](#)

Health Information - health privacy principles - conduct

Commonwealth

21 October 2014 - [Munday v Commonwealth of Australia \(No 2\) \[2014\] FCA 1123](#)

Human rights – Discrimination – disability – discrimination alleged in conduct of Commonwealth program regarding early release of superannuation on compassionate grounds – early release of superannuation sought by second applicant to pay for in-vitro fertilisation (IVF) treatment overseas on the basis that it was necessary to alleviate acute or chronic depression – IVF treatment would involve paying for ova – first application rejected because decision-maker was not satisfied that IVF was necessary to alleviate second applicant's depression or that she lacked the financial capacity to meet the expense arising from the proposed treatment by other means – second application rejected because decision-maker was not satisfied that IVF was necessary to alleviate second applicant's depression and also because superannuation funds would be used for a purpose that was not permitted under Australian law – requirement of lawful purpose not specified in *Superannuation Industry (Supervision) Act 1993* (Cth) or *Superannuation Industry (Supervision) Regulations 1994* (Cth) – whether imposition of this requirement involved unlawful discrimination on the basis of second applicant's disability (infertility) – whether failure to obtain independent legal advice before imposing this requirement involved a failure to make a reasonable adjustment – *Disability Discrimination Act 1992* (Cth), ss 5 and 6

17 October 2014 - [Ambulance Victoria v United Voice \[2014\] FCA 1119](#)

Industrial law – proposed industrial action to release ambulance response time data to media – whether action constitutes industrial action of the kind protected by s 415 of the *Fair Work Act 2009* (Cth) – whether the proposed action results in a restriction or limitation on or delay in the performance of the employee's normal duties

Northern Territory

17 October 2014 - [Coppa v Medical Board of Australia \[2014\] NTSC 48](#)

Statutory interpretation – *Health Practitioner Regulation National Law (NT)* – challenge to National Board's decision requiring plaintiff to undergo health assessment pursuant to s 169 – Part 8, Divisions 8 and 9 processes may take place independently of one another – health assessment of medical practitioner may occur at the same time as investigation of the medical practitioner.

Administrative law – notion of reasonable belief under s 169 – words “or may have” indicate that reasonable belief as to a possibility is sufficient – National Board's belief as to plaintiff's impairment was a reasonable belief – *Health Practitioner Regulation National Law (NT)*.

Administrative law – procedural fairness – defendant's decision to require health assessment did not involve making findings of fact or determination of merits of notifications – principles of natural justice do not apply prior to formation of a “reasonable belief” – *Health Practitioner Regulation National Law (NT)*.

Victoria

16 October 2014 - [Gokoglu v Healthscope Limited \[2014\] VCC 1652](#)

Application for leave under section 134AB(16)(b) of the *Accident Compensation Act* to institute proceedings for pain and suffering and loss of earning capacity damages – mental disturbance/disorder secondary to lower back injury - disentanglement of organic/non-organic consequences of unrelated bilateral carpal tunnel injury

LEGISLATION

Commonwealth

[Health Insurance \(Pathology Services Table\) Regulation 2014](#) F2014L01367 • SLI 2014 No. 150 as made • 16/10/2014

[Statement of Principles concerning rotator cuff syndrome No. 100 of 2014](#) F2014L01376 • No. 100 of 2014 as made • 17/10/2014

[Statement of Principles concerning osteomyelitis No. 90 of 2014](#) F2014L01380 • No. 90 of 2014 as made • 17/10/2014

[Statement of Principles concerning osteomyelitis No. 91 of 2014](#) F2014L01381 • No. 91 of 2014 as made • 17/10/2014

[Statement of Principles concerning malignant neoplasm of the lung No. 92 of 2014](#) F2014L01382 • No. 92 of 2014 as made • 17/10/2014

[Statement of Principles concerning malignant neoplasm of the lung No. 93 of 2014](#) F2014L01384 • No. 93 of 2014 as made • 17/10/2014

[Statement of Principles concerning leptospirosis No. 94 of 2014](#) F2014L01385 • No. 94 of 2014 as made • 17/10/2014

[Statement of Principles concerning leptospirosis No. 95 of 2014](#) F2014L01386 • No. 95 of 2014 as made • 17/10/2014

[Statement of Principles concerning malignant neoplasm of the breast No. 96 of 2014](#) F2014L01383 • No. 96 of 2014 as made • 17/10/2014

[Statement of Principles concerning malignant neoplasm of the breast No. 97 of 2014](#) F2014L01387 • No. 97 of 2014 as made • 17/10/2014

[Statement of Principles concerning osteoporosis No. 98 of 2014](#) F2014L01388 • No. 98 of 2014 as made • 17/10/2014

[Statement of Principles concerning osteoporosis No. 99 of 2014](#) F2014L01391 • No. 99 of 2014 as made • 17/10/2014

[Statement of Principles concerning rotator cuff syndrome No. 101 of 2014](#) F2014L01379 • No. 101 of 2014 as made • 17/10/2014

[Statement of Principles concerning anxiety disorder No. 102 of 2014](#) F2014L01389 • No. as made • 17/10/2014

[Statement of Principles concerning anxiety disorder No. 103 of 2014](#) F2014L01390 • No. 103 of 2014 as made • 17/10/2014

[National Health \(Pharmaceutical Benefits - Early Supply\) Amendment Instrument 2014 \(No. 7\) - specification under subsection 84AAA\(2\) \(No. PB 84 of 2014\)](#) F2014L01392 • PB 84 of 2014 as made • 20/10/2014

[National Health Determination under paragraph 98C\(1\)\(b\) Amendment 2014 \(No. 10\) \(No. PB 83 of 2014\)](#) F2014L01393 • PB 83 of 2014 as made • 20/10/2014

[National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2014 \(No. 11\) \(PB 82 of 2014\)](#) F2014L01395 • PB 82 of 2014 as made • 20/10/2014

[Dental Benefits Legislation Amendment Bill 2014](#), third reading agreed to House of Representatives 23 October (Amends the: *Dental Benefits Act 2008* and *Health Insurance Act 1973* to apply the Professional Services Review Scheme to dental services provided under the Child Dental Benefits Schedule; *Health Insurance Act 1973* to require the Chief Executive Medicare (CEM) to waive certain debts incurred by dentists in relation to the Chronic Disease Dental Scheme (CDDS); and *Dental Benefits Act 2008* to: enable the CEM or their delegate to obtain certain documents from dentists to substantiate the payments of benefits under the CDBS; delegate ministerial functions and powers; amend the definition of 'dental practitioner'; enable the disclosure of certain protected information; and make a technical amendment.)

South Australia

[Sexual Reassignment Repeal Bill 2014](#) Introduced to the Legislative Council 15th October (a bill for An Act to repeal the *Sexual Reassignment Act 1988*)

REPORTS

Australia. Department of Health & Ageing

Media releases

24 October - [Expert Panel to Review Medicines and Medical Devices Regulation](#)

22 October - [Ebola – The Facts](#)

22 October - [Establishing the NHMRC National Institute for Dementia Research](#)

20 October - [\\$3.6 Million for Research to Address Hearing Loss](#)

20 October - [New Mobile Clinic Receives Support from the Australian Government](#)

19 October - [Million Dollar Funding Boost for *Hello Sunday Morning*](#) The Australian Government has committed \$1.1 million for a digital, evidence-based early intervention and treatment programme to help people change their relationship with alcohol.

17 October - [Commonwealth Government Delivers Funding for New Medical Research Discoveries](#)

17 October - [Major Hospital Upgrade Provides Significant New Services](#)

17 October - [New online mental health service helps young people affected by cancer](#)

Australia. Health Practitioner Regulation Agency and the boards

24 October - The Chinese Medicine Board of Australia releases its latest newsletter. [Read full article](#)

23 October - The Medical Board of Australia releases its latest newsletter. [Read full article](#)

23 October - Request for tender - Stakeholder engagement initiative Seeking qualified and experienced parties to review the Nursing and Midwifery Board of Australia's approach to communicating with stakeholders. [Read More](#)

22 October - National Board recognises special week for occupational therapists Occupational Therapy Board Chair highlights the important contribution of occupational therapists to the community. [Read More](#)

20 October - The Board releases its latest newsletter. [Read full article](#)

21 October - Statement by the Nursing and Midwifery Board of Australia Mr David Lance Lahey – reprimanded and disqualified from applying for registration as a nurse. [Read More](#)

21 October - Statement by the Podiatry Board of Australia Mr Terrence Williams – disqualified from applying for registration for three years. [Read More](#)

17 October - Call for applications for appointment to National Boards Applications are now sought for appointments to upcoming vacancies for chairs (from practitioner members), practitioner members and community members. [Read More](#)

17 October - The Pharmacy Board of Australia releases its latest communique. [Read full article](#)

Australia. National Health & Medical Research Council

22 October - [Establishing the NHMRC National Institute for Dementia Research](#) The first step to establish a National Institute for Dementia Research was taken today. The National Health and Medical Research Council (NHMRC) has opened an Expression-of-Interest (EOI) process for organisations interested in providing services to establish the institute. Health Minister Peter Dutton said the NHMRC National Institute for Dementia Research was a cornerstone of the Australian Government's \$200 million commitment to boosting research into dementia. [See full media release](#)

17 October - [NHMRC Research Tracker](#)

NHMRC Health Tracker

Australia. Therapeutic Goods Administration

23 October - [Upgrade to TGA website](#) - On 29 October 2014 we are switching over to a new search engine and implementing improved navigation on the TGA website.

23 October - [Reasons for scheduling delegates' final decisions, October 2014](#) - Reasons for decisions by the Delegate of the Secretary to the Department of Health for amendments to the Poisons Standard.

22 October - [Biomet titanium mandible implants](#) - Consumers and health professionals are advised that Biomet Australia is issuing a hazard alert for its titanium mandible implants due to the potential risk of fatigue fractures in two batches.

22 October - [Complementary medicines: Cancellations from the Australian Register of Therapeutic Goods \(ARTG\) following compliance review](#) - Cancellation of products listed for October 2014

21 October - [TGA presentation given at the Pharmaceutical Australia Congress \(PAC\), 10 October 2014](#) - This presentation provided an overview on empowering patient care using TGA initiatives.

21 October - [Australian eCTD submissions: Frequently asked questions](#) - Updated all frequently asked questions.

20 October - [Consultation: Invitation for public comment - Out-of-session ACMS meeting, November 2014](#) - Notice inviting public submissions under subsection 42ZCZK of the *Therapeutic Goods Regulations 1990 (the Regulations)*

17 October - [Regulation impact statement: Amendments to the new regulatory framework for in vitro diagnostic medical devices \(IVDs\)](#) - This regulation impact statement finalises the consultation process and outlines amendments to the regulatory framework for in vitro diagnostic medical devices

Australian Institute of Health & Welfare

24 October - [Cardiovascular disease, diabetes and chronic kidney disease: Australian facts: mortality - media release](#)

23 October - [Australian Cancer Database: current status and a vision for the future](#)

22 October - [Australian hospital statistics 2013-14: emergency department care](#)

20 October - [Australian hospital statistics 2013–14: elective surgery waiting times | media release](#)

Australian Commission on Safety and Quality in Health Care

On the Radar – 20 October 2014 – Issue 196 ([PDF 119KB](#)) ([Word 125KB](#))

Australian Capital Territory. Health Directorate

20 October - [AIHW report shows elective surgery wait times reduce in ACT](#)

New South Wales. Ministry of Health

Media Releases

24 October - [World-first heart transplant success for St Vincent's Hospital](#)

23 October - [Behind the scenes of the \\$91.3 million Dubbo Hospital redevelopment](#)

20 October - [NSW leading the nation in elective surgery](#)

Policy Directives & Guidelines

22 October - [Wayfinding for Healthcare Facilities](#) GL2014_018

20 October - [Clinical Procedure Safety](#) PD2014_036

Information Bulletins

23 October - [Notification of Obsolete PD2006_027 - Clinical Ethics Processes in NSW Health](#) IB2014_064

23 October - [Notification of Obsolete Policy Directive - PD2006_076](#) IB2014_063

20 October - [Leave Matters Manual for the NSW Health System](#) IB2014_062

Northern Territory. Department of Health

24 October - [Supporting Territory women for October Breast Cancer Awareness Month](#)

23 October - [New NT Telehealth partnership with Telstra](#)

Queensland. Department of Health

24 October - [Double penalty for health assaults](#)

22 October - [Record number of patients treated in Qld hospitals](#)

22 October - [Queensland pioneers pre-booked BreastScreen appointments](#)

21 October - [Better care for children at The Townsville Hospital](#)

21 October - [Backlog maintenance blitz](#)

20 October - [Eye surgery vision in sight](#)

19 October - [Surgery wait time 'best ever'](#)

South Australia. Department for Health & Ageing

22 October - [Busy Flu Season for our Emergency Departments](#)

17 October - [Best Care. First Time. Every Time. Transforming Health](#)

Victoria. Department of Health

24 October - [Hospital's now close to home for Geelong youngsters](#)

24 October - [Honouring the rich history of Victorian cemeteries](#)

23 October - [Works powering ahead at new ambulance branch in Wallan](#)

23 October - [Dementia Action Plan launched in Bendigo](#)

23 October - [New mental health beds open at Latrobe Regional Hospital](#)

22 October - [Continuing improvements to hospital performance](#)

22 October - [Expansion of Bunurong Memorial Park begins](#)

21 October - [New Charlton Hospital rises from the 2011 floods](#)

21 October - [Naphthine Government invests in 55 additional mental health nurse scholarships](#)

19 October - [Advice from the Chief Health Officer on cancer cluster claims \(19 October 2014\)](#)

17 October - [Historic investment improves access to drug and alcohol treatment](#)

Western Australia (WA). Department of Health

Media Releases

22 October - [Australian first for child health in Pilbara](#)

Operational Directives

23 October - [OD 0569/14](#) Clinical Incident Management (CIM) Policy 2014. On 1 October 2014, an updated Clinical Incident Management (CIM) Policy will be released. The updated CIM Policy has strengthened the notification and investigation of clinical incidents resulting in harm to patients.

New SAC 1 clinical incident reporting timelines are as follows:

- Undertake an initial investigation of the clinical incident within 48 hours to identify critical human error and system failures and implement preliminary actions to prevent harm to further patients.
- Investigation times reduced from 45 working days to 28 working days.
- All recommendations to be finalised and evaluated within six months of the final investigation report.
- These changes will apply to both public hospitals and health services and licensed private health care facilities and contracted non-government organisations.

In addition to the revision of SAC 1 clinical incident processes, all SAC 2 incidents where the patient is moderately harmed will be subjected to mandatory reporting into Datix CIMS by public hospitals and health services.

23 October - [OD 0568/14](#) Business Rules to Maintain Data Integrity of HR Information Systems This Operational Directive (OD) outlines business rules to be followed by Budget Holders and delegated officers in the implementation of standardised Human Resource (HR) processes across the Department of Health in Western Australia. This OD allocates them with greater accountability for the quality and reliability of information they provide. These processes are endorsed by the State Health Executive Forum (SHEF) and are crucial in improving the transparency of Human Resource Information Systems (HRIS) information and consequently for the improvement of corporate governance practices.

23 October - [OD 0567/14](#) Workforce Information System – Workforce Analysis and Comparison This Operational Directive (OD) provides instructions to be followed by Agencies and Departments in the provision of workforce data to the Public Sector Commission (PSC) through the Workforce Analysis and Comparison Application (WACA). It includes current deadlines for the submission of workforce data to the PSC through the WACA. Also provided are updated links to relevant websites containing information and instructions pertaining to submission of data to the WACA as well as relevant contact details.

23 October - [OD 0566/14](#) - FTE Processing This Operational Directive (OD) provides instructions relating to the maintaining of recoups in the Full-Time Equivalent (FTE) system so as to support all holders of the Department of Health who have the responsibility to ensure that all FTE data is accurately captured.

22 October - [OD 0565/14](#) - WA Health Style Guide for Corporate Visual Identity WA Health Style Guide for Corporate Visual Identity

22 October - [OD 0564/14](#) - Data Breach Response Policy The Data Breach Response Policy sets out procedures for staff in the event that WA Health experiences a data breach or suspects that a data breach has occurred. The purpose of this Policy is to enable WA Health to contain, assess and respond to data breaches in a timely manner. This will help mitigate potential adverse impacts to individuals and the organisation.

22 October - [IC 0203/14](#) - WA Government Health Services Engineering And Building Services Award 2004 – Variation Of Allowance – Leading Hand Allowance Variation of the Leading Hand Allowance

United Kingdom (UK). Department of Health

23 October - [Final Care Act guidance published](#)

23 October - [Care Act 2014 Part 1: factsheets](#)

23 October - [National Health Service \(NHS\) IT: Local Service Provider benefits realisation](#) Part of a collection: [NHS IT - Local Service Provider contracts](#)

23 October - [Updating our care and support system: draft regulations and guidance](#)

23 October - [Care Act 2014: statutory guidance for implementation](#)

23 October - [Helping the police to support people with vulnerabilities](#)

22 October - [New support for public sector workers](#)

21 October - [Department of Health prompt payment of suppliers](#)

21 October - [Extra accident and emergency doctors recruited](#)

21 October - [Guidance on financing available to NHS trusts and Foundation Trusts](#)

20 October - [Directions: Health Education England and NHS Litigation Authority](#)

20 October - [NHS Pension scheme draft regulations 2015](#) Part of a collection: [NHS pensions](#)

17 October - [UK blood safety and the risk of variant Creutzfeldt-Jakob disease](#)

United States of America. Department of Health & Human Services

23 October - [HHS Secretary announces \\$840 million initiative to improve patient care and lower costs](#)

Australian Medical Association

21 October - [Politicians, doctors, police, public health experts, and families of victims to meet to develop action plan to address alcohol-related harms](#)

British Medical Association (BMA)

23 October - [NHS five-year plan echoes BMA concerns](#) The BMA is 'encouraged' by an NHS five-year plan that echoes association calls for long-term, sustainable investment and a solution to GP issues.

22 October - [Dementia diagnosis incentive caution](#) GP practices should think 'very carefully' before taking up financial incentives to diagnose dementia

21 October - [Pathway boost for mental healthcare](#) Doctors leaders have welcomed the introduction of a new care pathway for patients with mental health

Canadian Medical Association (CMA)

22 October - [CMA Conjoint Accreditation Services enters new era](#) The Canadian Medical Association business unit that accredits more than 200 educational programs for 15 allied health professions in Canada is reinventing itself to be more relevant and responsive to the organizations it serves.

American Medical Association (AMA)

23 October - [AMA Statement on CMS Announcement of Practice Transformation Initiative](#)

21 October - [Regulatory Nightmare Threatens Care for America's Seniors](#)

17 October - [int statement from the American Hospital Association, the American Medical Association and the American Nurses Association](#)

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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