



# HEALTH ALERT

3 October 2016

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## JUDGMENTS

### Commonwealth. Fair Work Commission

23 September 2016 - *Francis Logan v Bendigo Health Care Group* [2016] FWC 6780 - The applicant, Mr Logan, was employed by the respondent as an enrolled nurse. On 16 May 2016, a patient made a complaint to Mr Logan's employer. Two allegations were made against Mr Logan and he was given an opportunity to respond. An investigation occurred and the first allegation could not be substantiated. In relation to the second allegation, Mr Logan made admissions as to his conduct. The admitted conduct was considered by his employer to constitute serious misconduct. On 26 May 2016, Mr Logan was dismissed. In this proceeding, Mr Logan made an application for relief from unfair dismissal. He sought an order to be reinstated, as well as an order to restore lost pay.

Mr Logan admitted to touching the hand and kissing a patient on the forehead while saying, 'Goodnight and God Bless'. The issue for the Commission to determine was whether this gave Mr Logan's employer a 'valid reason' for his dismissal. For there to be a valid reason, the reason has to be 'sound, defensible and well-founded'. Mr Logan admitted that his conduct crossed the boundary. However, in accordance with the relevant legislation, he contended that his dismissal was neither 'unfair, unjust or unreasonable'.

At the conclusion of the two day hearing, the Commission ordered that Mr Logan be reinstated by his employer. The Commission declined to make an order to restore lost pay.

28 September 2016 - *Australian Nursing and Midwifery Federation v Hammondcare* [2016] FWC 6953 - Proposed protected action ballot of employees of HammondCare—form of question—permissibility of composite question seeking a single yes/no answer to whether multiple forms of industrial action are approved—extension of notice period.

27 September 2016 - *Kerry Anne Paltridge v Limestone Coast Health Unit Trust T/A Robe Medical Centre* [2016] FWC 6835 - Application for relief from unfair dismissal.

### Commonwealth. Administrative Appeals Tribunal

26 September 2016 - *Hopkins and Comcare (Compensation)* [2016] AATA 742 - COMPENSATION – applicant made claim in 1992 for neck injury and associated headaches – applicant medically retired in 2002 – applicant received compensation payments from that date on – on basis of new medical report respondent determined in 2014 that applicant suffers from a constitutionally-based problem and that condition is no longer work related – whether accepted condition materially contributed to in a material degree by applicant's employment with the Commonwealth – applicant found to have suffered an injury that has resulted in incapacity such that applicant is entitled to ongoing compensation – decision under review set aside.

### New South Wales

27 September 2016 - *McManus v Murrumbidgee Local Area Health Network* [2016] NSWSC 134 - Ms McManus sought damages for nervous shock following the death of her son. She alleged that the defendant hospital failed to properly manage her antenatal and monitor her labour and the delivery with the result that her child died soon after birth. Ms McManus contended that the death could and should have been avoided by an early Caesarean section. The defendant admitted liability and did not dispute that Ms McManus was seriously unwell. The issues in these proceedings concerned her likely prognosis and amenability to treatment.

Following the death of her child, Ms McManus became depressed, socially withdrawn, anxious and forgetful. She developed insomnia and began drinking to excess. During the trial, the court heard from Ms McManus, her husband, as well as a number of health professionals. This evidence led to the court finding that Ms McManus' psychiatric condition rendered her 'disabled on an ongoing and unrelenting basis from enjoying or participating in a wide range of fundamental activities of daily life'. The court accepted that while Ms McManus might benefit from cognitive therapy, it would require her to revisit the death of her child in a gradual but ultimately quite intense and confronting manner. It found that in such circumstances, it would not be unreasonable for Ms McManus to refuse undergoing such treatment.

The court assessed Ms McManus' damages in view of her psychiatric condition having little real or tangible prospect of improving. It concluded that Ms McManus was entitled to damages in the sum of \$1,785,498.

### South Australia

28 September 2016 - [Inquest into the death of Robert Ian McShane](#) - Findings into the death of Robert Ian McShane.

### Victoria

23 September 2016 - [Brown v The Psychology Board of Australia \[2016\] VCAT 1621](#) - Psychologist, Code of Ethics, Ethical Guidelines, treating friend, involvement in client's family dispute, professional boundaries, multiple relationships, unsatisfactory professional performance, unprofessional conduct.

22 September 2016 - [MTD v Lifestyle Solutions \(Aust\) Pty Ltd \(Human Rights\) \[2016\] VCAT 1605](#) - Application for reinstatement of proceeding in order to enforce terms of settlement – proceedings brought under the Health Records Act 2001 (Vic) – proceedings settled at mediation – order made striking matter out with a right to apply for reinstatement – whether appropriate to reinstate proceedings – whether terms of settlement ought to be made the subject of orders under section 93 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic).

## LEGISLATION

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

### Commonwealth

30 September 2016 - [National Health \(Efficient Funding of Chemotherapy\) Special Arrangement Amendment Instrument 2016 \(No. 10\) \(PB 85 of 2016\)](#) F2016L01567 as made

30 September 2016 - [A New Tax System \(Goods and Services Tax\) \(Adult and Community Education Courses\) Determination 2016](#) F2016L01564 as made

30 September 2016 - [National Health \(Listing of Pharmaceutical Benefits\) Amendment Instrument 2016 \(No. 9\) \(PB 81 of 2016\)](#) F2016L01560 as made

30 September 2016 - [Inspector-General of the Australian Defence Force Regulation 2016](#) F2016L01558 as made

30 September 2016 - [National Health \(Price and Special Patient Contribution\) Amendment Determination 2016 \(No. 7\) \(PB 82 of 2016\)](#) F2016L01563 as made

30 September 2016 - [National Health \(Pharmaceutical benefits – early supply\) Amendment Instrument 2016 \(No. 8\) \(PB 83 of 2016\)](#) F2016L01561 as made

30 September 2016 - [National Health \(Highly specialised drugs program\) Special Arrangement Amendment Instrument 2016 \(No. 9\) \(PB 84 of 2016\)](#) F2016L01559 as made

30 September 2016 - [Environment Protection and Biodiversity Conservation Amendment \(Cost Recovery\) Regulation 2016](#) F2016L01556 as made

30 September 2016 - [National Health \(Growth Hormone Program\) Special Arrangement Amendment Instrument 2016 \(No. 1\) \(PB 87 of 2016\)](#) F2016L01553 as made

30 September 2016 - [National Health \(IVF Program\) Special Arrangement Amendment Instrument 2016 \(No. 3\) \(PB 86 of 2016\)](#) F2016L01552 as made

29 September 2016 - [National Health \(Listed drugs on F1 or F2\) Amendment Determination 2016 \(No. 9\) \(PB 88 of 2016\)](#) F2016L01546 as made

28 September 2016 - [National Health \(Originator Brand\) Amendment Determination 2016 \(No. 7\) \(PB 89 of 2016\)](#) F2016L01537 as made

### New South Wales

28 September 2016 - [Health Legislation Amendment Bill 2016](#) Assented

## REPORTS

### Australia. Department of Health

#### Media releases

29 September 2016 - [Data update](#) - Researchers relying on information in a sample of data extracted from Australia's Pharmaceutical Benefits and Medicare Benefits schemes that was withdrawn recently from the data.gov.au website are advised that work is continuing to restore the dataset as soon as possible.

25 September 2016 - [Go online to check on cheaper medicines](#) - Millions of consumers will be able to access more affordable medicines on the Pharmaceutical Benefits Scheme (PBS) from 1 October – and they can go online to check the savings they will make.

#### Private Health Insurance Circulars

20 September 2016 - [PHI 74/16 Changes to Second-Tier Eligible Hospitals](#)

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

29 September 2016 - [Quarterly registration data released](#) - The National Chinese Medicine Board has released its quarterly registration data.

29 September 2016 - [Revised registration standards for all medical practitioners and new cosmetic guidelines take effect on 1 October 2016](#) - New standards and guidelines for medical practitioners take effect on 1 October: two revised registration standards and new cosmetic guidelines.

29 September 2016 - [Medical practitioner fined, disqualified from reapplying for registration for 10 years for professional misconduct](#) - A general practitioner has been reprimanded, fined \$20,000, ordered to pay legal costs and disqualified from reapplying for registration as a medical practitioner for 10 years for professional misconduct.

29 September 2016 - [Referral of medical practitioner to Tribunal dismissed](#) - The State Administrative Tribunal of Western Australia (the tribunal) has dismissed a referral by the Medical Board of Australia (the Board) regarding specialist psychiatrist, Dr Roger Paterson.

29 September 2016 - [Quarterly registration data released](#) - The National Optometry Board has released its quarterly registration data.

29 September 2016 - [Continuing professional development webinar now available](#) - A webinar presentation on continuing professional development (CPD) for pharmacists is now available to watch.

27 September 2016 - [Newsletter - Registrant Update](#) - The Physiotherapy Board of Australia has released its latest newsletter.

27 September 2016 - [One week to go to have your say on the use of chaperones](#) - The Medical Board of Australia (the Board) and the Australian Health Practitioner Regulation Agency (AHPRA) are reminding the public there is one week left for them to have their say on the use of chaperones to protect patients.

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

27 September 2016 - [Medical practitioner's registration suspended after surgery error](#) - A neurosurgeon's registration has been suspended for performing spinal surgery at the wrong level and then attempting to cover it up.

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

30 September 2016 - [NHMRC Research Tracker](#)

### Australia. National Mental Health Commission

28 September 2016 - [New suicide prevention advisory group](#) - This October sees the second meeting of the new Advisory Group for Suicide Prevention. Established in response to a request in December 2015 by federal Minister for Health, Sussan Ley, the group provides advice, expertise and strategic support for suicide prevention policy across Australia by identifying priorities and promoting action. In keeping with the

National Mental Health Commission's commitment to the ideal of nothing about us without us, membership includes people with a lived experience of mental ill health.

28 September 2016 - **Causes of death in 2015 data released by ABS** - Suicide remained the leading cause of premature death in Australia in 2015, according to data released today by the Australian Bureau of Statistics. The Australian Bureau of Statistics report Causes of Death, Australia, 2015 shows that death by suicide occurred at a rate of 12.6 per 100,000 people, an increase on that recorded in 2014 of 12.0 per 100,000 people.

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

26 September 2016 - **Cheaper medicines from 1 October** - The PBS continues to make medicines more affordable for millions of Australians with the latest cycle of reductions taking effect on 1 October 2016. More than 2,000 medicine brands will reduce in price, some by as much as \$20 per script. These savings are the result of the PBS Access and Sustainability Package reforms which passed Parliament last year.

22 September 2016 - **Review of Pharmacy Remuneration and Regulation - Submissions closing soon** - With submissions closing soon, the Chair of the Review Panel, Prof. Stephen King is urging people to send in their submissions to the Review.

### **Australia. Productivity Commission**

22 September 2016 - **Preliminary findings report** - The Productivity Commission has identified six priority areas where the potential to give people a greater say over the human services they use could improve the effectiveness of those services. The Commission proposes to examine six human service areas in the next phase of its inquiry: social housing, services at public hospitals, specialist palliative care, public dental services, services in remote Indigenous communities and family and community services. The Productivity Commission inquiry into applying competition principles to human services was a recommendation of the Harper Review (Competition Policy Review).

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

30 September 2016 - **Revised risk management strategy for manufacturers of medicines and blood, tissues and cellular therapies** - Update to the manufacturer risk management framework and reinspection frequencies for medicines, blood, tissues and cellular therapies.

29 September 2016 - **TGA presentation: 2016 Australasian Epidemiological Association (AEA) 23rd Annual Scientific Meeting, 15 September 2016** - This presentation describes a scientific research study undertaken by the TGA to investigate increased reports of allergic adverse events following influenza immunisation in 2015.

29 September 2016 - **Current post-market medical device reviews** - A range of signals can trigger investigation.

28 September 2016 - **Consultations on adoption of European Union guidelines in Australia** - Consultation: EU guidelines proposed for adoption. Closing date: 9 November 2016.

28 September 2016 - **Metformin extended release tablets** - Update – medicine shortages change in status.

28 September 2016 - **Performance statistics report: July 2015 to June 2016** - The performance statistics report for July 2015 to June 2016 is now available.

27 September 2016 - **LFIT Anatomic CoCr V40 femoral heads (used in hip replacements)** - Hazard alert – risk of adverse events due to potential taper lock failures.

27 September 2016 - **Prescription medicines: registration of new chemical entities in Australia** - Added registered new chemical entities for Idelvion (albutrepenonacog alfa), Zinbryta (daclizumab) and Empliciti (elotuzumab).

27 September 2016 - **Prescription medicines: new or extended uses, or new combinations of registered medicines** - Added Adcetris (brentuximab vedotin (rch)).

27 September 2016 - [Breast implants: Update on TGA monitoring of anaplastic large cell lymphoma](#) - Safety advisory.

27 September 2016 - [Metagenics NasoClear](#) - Recall - potential bacterial contamination.

22 September 2016 - [Consultation: Proposed Amendments to the Poisons Standard - ACCS and ACMS meetings, November 2016](#) - The TGA is seeking comments from interested parties on the proposed amendments to the Poisons Standard. Closing date: 20 October 2016.

22 September 2016 - [Consultation: Proposed Amendments to the Poisons Standard - Joint ACCS and ACMS meeting, November 2016](#) - The TGA is seeking comments from interested parties on the proposed amendments to the Poisons Standard. Closing date: 20 October 2016.

21 September 2016 - [TGA presentation: Complementary Medicines Australia Annual Conference, 15 September 2016](#) - This presentation provides an overview of the Government's response to the Expert Panel Review of Medicines and Medical Devices, with an emphasis on complementary medicines changes.

21 September 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - Added Lumacaftor / Ivacaftor (Orkambi 200/125).

20 September 2016 - [Wolfish Shark Viagra tablets](#) - Safety advisory.

### **Australian Institute of Health & Welfare (AIHW)**

23 September 2016 - [Media release: Significantly higher disease burden for Indigenous Australians—but improvements made](#)

22 September 2016 - [Healthy Communities: Hospitalisations for mental health conditions and intentional self-harm in 2013–14](#)

20 September 2016 - [Permanency planning in child protection: a review of current concepts and available data 2016](#)

16 September 2016 - [Australian Institute of Health and Welfare \(AIHW\) Access no. 40](#)

### **Australian Commission on Safety and Quality in Health Care**

26 September 2016 - On the Radar – Issue 292 ([PDF 194KB](#)) ([Word 149KB](#))

### **Australian Capital Territory. Health Directorate (ACT)**

29 September 2016 - [Recall: Quality Bakers Australia Bread Rolls](#) - The recall of certain Woolworths, Coles and IGA bread products has been initiated by the supplier in concert with the retailers in NSW and ACT.

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

#### Media Releases

27 September 2016 - [Extra \\$1.5 million for Molong MPS redevelopment](#) - Health Minister Jillian Skinner and Nationals candidate for the Orange by-election, Scott Barrett, have committed an extra \$1.5 million to the Molong Multi-purpose Service (MPS) redevelopment to replace the old support services building.

#### Publications

1 October 2016 - [Why Children Matter](#)

#### Policy Directives & Guidelines

28 September 2016 - [Staff Specialist Rights of Private Practice Arrangements](#)

28 September 2016 - [Prevention and Management of Unacceptable Workplace Behaviours in NSW Health - JMO Module](#)

28 September 2016 - [Training, Education and Study Leave \(TESL\) for Staff Specialists](#)

26 September 2016 - [ComPacks Program Guidelines](#)

## Information Bulletins

28 September 2016 - [Standardising License Agreements for Government Radio Communications Assets](#)

26 September 2016 - [Christmas Closedown 2016-2018](#)

23 September 2016 - [Salary Increases for Staff in the NSW Health Service - HSU and ASMOF Awards Northern Territory. Department of Health](#)

29 September 2016 - [Warning: Stinger season starts on Saturday](#) - Saturday marks the official start of the stinger season in Top End waters.

28 September 2016 - [Early rains spark melioidosis warning](#) - The Wet Season is not quite here but Territorians are already being warned to protect themselves from the potentially deadly soil-borne disease, melioidosis.

### Queensland. Department of Health

27 September 2016 - [Boosting Queensland's health exports focus of roundtable, trade mission](#) - Queensland's readiness to tap into the growing multi-billion dollar international market for health care services was a hot topic at the second in a series of high level meetings with private sector health industry leaders today.

26 September 2016 - [Caring for carers is a top priority for the Palaszczuk Government](#) - Dementia Awareness Month is a timely reminder of the need to support programs that care for people with dementia, and their families and carers.

23 September 2016 - [Innovative ENT service cuts long waits by 90 per cent](#) - Logan Hospital's ENT outpatient long wait list has been cut by 90 per cent since the commencement of an innovative new service just eight months ago.

### South Australia. Department for Health & Ageing

26 September 2016 - [CMV retesting update](#)

24 September 2016 - [No infection risk to dental patients confirmed](#)

### Tasmania. Department of Health & Human Services

30 September 2016 - [RHH install new hyperbaric chambers](#) - Patients requiring hyperbaric oxygen treatment will benefit from two new monoplace hyperbaric chambers which arrived at the Royal Hobart Hospital (RHH) this week. The chambers are part of the Hodgman Liberal Government's \$12 million investment in hyperbaric medicine as part of the \$689 million RHH Redevelopment. Hyperbaric oxygen therapy is a well-known treatment for decompression illness and works by squashing bubbles which form in the blood and tissue of divers who have been exposed to pressure underwater.

29 September 2016 - [Mental Health Week 2016 – Mental Health Begins with Me theme](#) - Mental Health Week (October 9-15) is important – not only for the sector but for the whole community. This year's theme is 'Mental Health Begins with Me', which reflects the fact that the week presents an excellent opportunity to increase our knowledge of mental health and wellbeing, as well as the role we can all play in reducing the stigma of people living with mental ill health.

29 September 2016 - [New RHH oncology ward opens](#) - As part of the \$689 million Royal Hobart Hospital (RHH) Redevelopment, the new inpatient oncology ward will open to patients today - Thursday, September 29.

### Western Australia.(WA) Department of Health

#### Media Releases

27 September 2016 - [Training boost for WA researchers](#) - Western Australia's Chief Medical Officer has launched the first in a series of on-line training modules designed specifically to enhance the research skills of Western Australia's health and medical researchers.

## Australian Medical Association (AuMA)

29 September 2016 - **Be vaccine aware** - The Department of Health has advised that as at 15 September 2016, there have been 97 confirmed cases of GSK's Fluarix Tetra being administered to children under three years of age and 10 confirmed cases of Seqirus (bioCSL) Fluvax administered to children under five years of age for the 2016 influenza season. While the number of new confirmed cases and incoming reported cases is now beginning to decline ongoing vigilance is required and doctors and nurses who provide immunisations are encouraged to be vaccine aware.

29 September 2016 - **Funding reprieve for general practice welcomed** - The Government has heeded AuMA calls for a moratorium on new PIP changes, which could have left individual general practices more than \$20,000 a year worse off.

23 September 2016 - **Antivax film dumped following outcry** - A controversial film that claims US health authorities are covering up evidence linking a vaccine to autism has been withdrawn from screening at a central Victorian film festival. The Castlemaine Local and International Film Festival has decided to dump the controversial show *Vaxxed: From Cover-Up to Catastrophe* following widespread calls, including from AuMA President Dr Michael Gannon, for it to be scrapped from the festival's line-up.

22 September 2016 - **National terms and conditions for the employment of GP Registrars** - The AuMA is pleased to advise that General Practice Registrars Australia (GPRA) and General Practice Supervisors Australia (GPSA) have reached agreement on the National Terms and Conditions for the Employment of Registrars (NTCER) commencing in 2017 - three months earlier than the previous agreement, and just in time for registrars and practices to negotiate their employment arrangements for 2017.

22 September 2016 - **The election is over, but the pressure on GPs is getting worse** - It is more than two months since the Federal election, but there has been no change to the health policies that are placing enormous pressure on GPs and increasing health care costs for patients. United General Practice Australia (UGPA), comprising leading general practice groups including the AuMA, warned this week that quality patient care is under growing threat because of the Government's ongoing freeze on Medicare patient rebates.

22 September 2016 - **WMA Medical Ethics Day** - The World Medical Association's (WMA) annual Medical Ethics Day is a way for the global medical community to recognise and promote the important role of ethics in medicine. To help inform GPs on a range of ethical issues, the AuMA has a Code of Ethics and a number of Position Statements and Guidelines available.

22 September 2016 - **AuMA defends GPs over asthma drugs claim** - The AuMA's Chair of General Practice, Dr Richard Kidd, has defended GPs against claims they are failing to specifically warn parents of possible psychiatric side effects of the asthma drug Singulair.

22 September 2016 - **AuMA Submission: RACGP's Draft 5th Edition Standards for General Practice** - The AuMA has provided a submission to the Royal Australian College of General Practitioners (RACGP) on its Second Draft of the Standards for General Practices, 5<sup>th</sup> edition. The 5<sup>th</sup> edition Standards are due to be released in October 2017. The AuMA provided a submission on the first draft of the Standards earlier this year, and, for the most part, the comments and suggestions made in that submission were incorporated into the second draft.

22 September 2016 - **Three deaths a day from prescription drugs: Australian Medicine** *Australian Medicine* this week reports that health bodies have called on the Government to establish a mandatory, national, real-time prescription monitoring (RTPM) system, as new figures show nearly three Australians die every day from prescription drugs.

22 September 2016 - **Australian Immunisation Register** - From 30 September the Australian Childhood Immunisation Register (ACIR) will become the Australian Immunisation Register (AIR), a national register that records vaccinations given to people of all ages in Australia. This is welcome progress towards a Whole of Life Register, which the AuMA has long advocated for.

22 September 2016 - **Putting your AuMA Family Doctor Logo into practice** - AuMA GP members are encouraged to download and use the 2016 AuMA Family Doctor logo. The logo is provided as part of the



AuMA's ongoing efforts to promote the role of general practice and will enable AuMA GPs to identify and promote themselves as a Family Doctor.

## ABOUT US

### Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies. Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL. Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

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