



**20 APRIL 2015**

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## JUDGMENTS

### New South Wales (NSW)

13 April 2015 - [Sarah White v The Local Health Authority & Anor - \[2015\] NSWC 417](#)

The New South Wales Supreme Court has ordered the release of a person unlawfully detained in a mental health facility.

The applicant, who is subject to a guardianship order, was voluntarily admitted to the facility in November 2013. In January 2015, the Mental Health Review Tribunal reviewed the applicant's admission, as required by the *Mental Health Act 2007* (NSW). The Tribunal found that the applicant did not have a current mental illness requiring hospital admission, and ordered that the applicant be discharged from the facility on 10 February 2015.

The facility delayed the applicant's discharge in order to make arrangements for the applicant's future accommodation in consultation with the Public Defender, the applicant's guardian. Under the terms of the applicant's guardianship order, the Public Defender had the authority to decide the applicant's accommodation.

The applicant contended that when she was not released on 10 February 2015 as had been ordered by the Tribunal, she was no longer being held in the facility as a voluntary patient. After the applicant's repeated requests to leave the facility were disregarded, she applied to the court for a habeas corpus order seeking her release.

The Court found that there was no statutory authorisation to keep the applicant in the facility. While the Court noted that it had "grave misgivings" about the wisdom of releasing the applicant from the facility without a plan for her immediate future, it held that she was entitled to be released.

15 April 2015 - [Dharmalingham v Western New South Wales Local Health District - \[2015\] NSWCATAD](#)

The New South Wales Civil and Administrative Tribunal has found that the Western New South Wales Local Health District discriminated against an employee on the basis of his race.

The applicant was employed as the Director of Pharmacy at the Bathurst Base Hospital. He alleged that his employer, the respondent, had discriminated against him on the basis of his race, disability and carer's responsibilities. The applicant also alleged that he was victimised for bringing proceedings in relation to those claims.

While the Tribunal held that a number of the applicant's claims could not be substantiated, it found that the applicant had been discriminated against in relation to a complaint made about the applicant speaking in his native language at work.

The Tribunal found that the applicant had become aware that his colleague filed a complaint stating that it was inappropriate for the applicant to speak his native language on the telephone while at work, and that this made her uncomfortable. The Tribunal found that this constituted discrimination, as the applicant was treated less favourably due to his race.

In its decision, the Tribunal noted that the respondent had failed to take steps to implement training regarding 'issues relating to persons from a non-English speaking background.'

The Tribunal also held that the respondent had victimised the applicant when it placed him on special leave while investigating allegations made against him.

The Tribunal held the respondent vicariously liable for the actions of its employees, and awarded the applicant \$10,000 in damages.

**14 April 2015 - *AIN v Medical Council of New South Wales* - [2015] NSWCATAD 66**

Access to government information – versions of documents – format of information provided – 'legal professional privilege' – overriding public interest against disclosure.

**16 April 2015 - *Health Care Complaints Commission v Iskander* - [2015] NSWCATOD 30**

Administrative Law – *Civil and Administrative Tribunal Act 2013* (NSW) – Health Practitioner Regulation National Law – Where asserted medical practitioner is guilty of unsatisfactory professional conduct and professional misconduct. Where further asserted practitioner suffers impairment. Where practitioner has self-administered prescription drugs. Practitioner's registration suspended at date of hearing. Where practitioner concedes she is impaired and substantially concedes particulars in the complaint.

**Victoria**

**13 April 2015 - *Medical Board of Australia v Dr ZOF (No 2)* - [2015] VCAT 379**

Health Practitioner Regulation National Law s 196(2) – previous finding of professional misconduct concerning transgression of professional boundaries by medical practitioner engaging in an inappropriate personal and/or romantic and/or sexual relationship with patient/staff member – previous finding of failure to maintain proper records in relation to patient – appropriate determinations.

**Australia. Administrative Appeals Tribunal**

**14 April 2015 - *Elhelwe v Australian Community Pharmacy Authority* - [2015] AATA 219**

Pharmacists - application to supply pharmaceutical benefits from a particular premises - small shopping centre - whether supermarket with gross leasable area of 2,500 square metres - construction of supermarket - meaning of market - decision affirmed.

**LEGISLATION**

**Commonwealth**

16 April 2015 - **Private Health Insurance (Prostheses) Amendment Rules 2015 (No. 1).**

**Australian Capital Territory**

17 April 2015 - **Health (Nurse Practitioner Position and Scope of Practice) Approval 2015 (No 1) NI2015-164.**

17 April 2015 - **Mental Health (Treatment and Care) (Care Coordinator) Revocation 2015 (No 3) NI2015-167.**

17 April 2015 - **Mental Health (Treatment and Care) (Care Coordinator) Revocation 2015 (No 4) NI2015-168.**

17 April 2015 - **Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Commencement Notice 2015 CN2015-6.**

**Victoria**

17 April 2015 - **Tobacco Regulations 2007 - 109/2007 - Version 007 - Commenced 14/04/2015.**

17 April 2015 - **Mental Health Amendment Bill 2015 - Council - 2nd reading (passed Assembly).**

17 April 2015 - **Public Health and Wellbeing Amendment (Hairdressing Registration) Bill 2015 - Passed both Houses.**

**REPORTS**

**Australia. Department of Health**

Media releases

16 April 2015 - [Abbott Government plans national approach on Mental Health](#) - The Australian Government is working towards the revival of a national approach to improving mental health outcomes and access to support services long-term.

15 April 2015 - [Nation's largest diabetes conversation](#) - Federal Minister for Health Sussan Ley is calling on Australians to have their say as part of the nation's largest conversation about the best ways to prevent, treat and cure diabetes.

12 April 2015 - [Gold Coast to benefit from Metricon Stadium funding](#) - The Australian Government will provide \$15 million towards the construction of a replacement training and administration base for the Gold Coast Suns AFL Club at Metricon Stadium.

11 April 2015 - [New Primary Health Networks to deliver better local care](#) - Australian patients are set to receive better access to frontline health services in their local area as part of the Australian Government's plans to improve the health of the nation, with the country's new Primary Health Network (PHN) on track to begin rolling out from July 1.

1 April 2015 - [Appointment of new ICT provider for Health](#) - The Department has signed a five-year deal with Datacom to provide ICT infrastructure and support services.

Private Health insurance (PHI) Circulars

15 April 2015 - [PHI 24/15 Extension of Private Health Insurance Act 2007 to Norfolk Island.](#)

15 April 2015 - [PHI 23/15 Amendment to February 2015 Prostheses List.](#)

15 April 2015 - [PHI 22/15 Guidelines for Determining Benefits for Private Health Insurance Purposes for Private Mental Health Care 2015 Edition.](#)

14 April 2015 - [PHI 21/15 New Private Same-Day Hospital Information.](#)

14 April 2015 - [PHI 20/15 New Private Hospital Information.](#)

### Consultations

15 April 2015 - [Australian National Diabetes Strategy Public Online Consultation](#) - End date - 17 May 2015.

15 April 2015 - [Technical Guidelines for preparing assessment reports for the Medical Services Advisory Committee - Service Type: Investigative](#) - End date - 29 May 2015.

11 June 2015 - [Opportunities to Reduce Regulation and Red Tape](#) - End date - 30 Jun 2015

### House of Representatives - Standing Committee on Health

4 May 2015 - [Inquiry into Hepatitis C in Australia](#) - Status: Accepting Submissions - Date Referred: 02 December 2014.

### Australia. Department of Social Services

10 April 2015 - [Message from the Department of Human Services Quarterly Review March 2015.](#)

2 April 2015 - [Important information regarding the My Aged Care Regional Assessment Service.](#)

### Australia. National Health Performance Authority

9 April 2015 - [Improvements in major hospitals drive 6% fall in Golden Staph cases](#) - Australia's major public hospitals have recorded a marked fall in the rate of healthcare-associated 'Golden Staph' bloodstream infections, the latest report from the National Health Performance Authority shows. The number of these potentially deadly infections fell by 100, from 1,721 in 2012–13 to 1,621 in 2013–14. The report shows major public hospitals reported 88 fewer cases in 2013–14 compared to the previous year. However, the report also shows that large differences remain between individual hospitals, with patients still up to three times more likely to catch this bloodstream infection depending on the hospital where they receive care.

### **Australia. Health Practitioner Regulation Agency and the boards**

17 March 2015 - [Public Consultation Paper and Regulation Impact Statement - Registered medical practitioners who provide cosmetic medical and surgical procedures - 17 March 2015](#).

6 March 2015 - [Consultation paper - Public consultation on draft revised Board guidelines](#).

2 April 2015 - Meeting of the Podiatry Board of Australia.

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

17 April 2015 - [NHMRC Statement on Data Sharing](#).

16 April 2015 - [NHMRC and ARC Statement on Open Researcher and Contributor ID \(ORCID\)](#).

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

15 April 2015 - [Australian Therapeutic Goods Advisory Council](#) - ATGAC meeting dates for 2015 now available.

15 April 2015 - [Xzen 1200 capsules](#) - Safety advisory.

15 April 2015 - [Advisory Committee on Prescription Medicines \(ACPM\)](#) - PSC meetings have been moved to Tuesdays.

15 April 2015 - [Strong-SX capsules](#) - Safety advisory.

15 April 2015 - [Advisory Committee on the Safety of Medicines \(ACSOM\)](#) - Added biographies for three new members recently appointed to the ACSOM.

15 April 2015 - [Seasonal influenza vaccines: Questions and answers for consumers](#) - Questions and answers for consumers on the seasonal influenza vaccines.

15 April 2015 - [Influenza vaccine: the annual Southern Hemisphere influenza vaccine production and the regulatory approval timeline](#) - An overview of the process for determining the most effective composition for the annual influenza virus.

14 April 2015 - [ACMD meeting statement, Meeting 19, 31 March 2015](#) - Advisory Committee on the Medical Devices meeting statement.

14 April 2015 - [Import and export of controlled substances](#) - Information about permits and licenses to authorise the import, export and manufacture of certain substances.

14 April 2015 - [Receiving prescription medicine streamlined submission evaluation reports by email](#) - Prescription medicine streamlined submission evaluation reports can be sent via email to organisations that have registered for secure email.

14 April 2015 - [Australian eCTD submissions](#) - We have finalised the specification for the Australian eCTD format submissions.

13 April 2015 - [Specsavers' Easyvision Umere Daily Contact Lenses](#) - Recall - incorrect contact lenses supplied to some consumers.

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

10 April 2015 - [Australian Burden of Disease Study: fatal burden of disease in Aboriginal and Torres Strait Islander people 2010 - media release | infographic \(963KB PDF\)](#).

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

13 April 2015 - On the Radar – Issue 218.

### **Australia. Pharmaceutical Benefits Scheme**

15 April 2015 - [PBAC submission to the Senate Inquiry on the availability of new, innovative and specialist cancer drugs in Australia](#).

10 April 2015 - [Submissions open for the Life Saving Drugs Programme Post-market Review Issues Paper](#).

## Australia. National Mental Health Commission

[National Review of Mental Health Programmes and Services Report released](#) (media release) and [Report](#).

## Australian Capital Territory (ACT). Health Directorate

13 April 2015 - [Building capacity in Canberra Hospital Emergency Department](#) - A \$23 million extension that will add a further 21 beds to the Canberra Hospital Emergency Department will begin in the coming weeks, Minister for Health Simon Corbell announced today. 'As part of this important extension the government is delivering on its election commitment to provide a paediatric streaming function in the Emergency Department,' Mr Corbell said. 'The paediatric streaming function will provide young people and their families with dedicated waiting and treatment areas.'

13 April 2015 - [Second Ebola test returns a negative result](#) - ACT Health Chief Health Officer, Dr Paul Kelly this evening confirmed that the second Ebola test undertaken on a healthcare professional who returned from West Africa recently is negative. 'This is excellent news for the patient.' 'We did believe that an Ebola diagnosis was unlikely but it was very important and necessary to react in the way that we did by not taking any chances.' We will continue to monitor her health for the next two weeks according to the agreed national approach for health care workers returning from west Africa. 'I would like to acknowledge the patient for following the appropriate protocols in rapidly informing ACT Health of her symptoms late last week.' 'This incident again shows that ACT Health is well prepared for handling conditions like Ebola.' 'ACT Health would also like to thank the media for their cooperation and measured reporting of the handling of this incident,' Dr Kelly said.

10 April 2015 - [Canberra patient's first test results negative](#) - ACT Health ACT Acting Chief Health Officer Dr Andrew Pengilley this morning said the first Ebola test conducted on a female patient at Canberra Hospital has returned a negative result. 'This is the first of two tests that are undertaken as part of the Ebola protocols followed by ACT Health. The next will be conducted tomorrow morning with the results expected on Monday (13 April). 'In addition to the good news that the first test is negative, I can also advise that overnight the patient's condition has improved.'

10 April 2015 - [Canberra Patient Being Tested for Ebola 10.04.15](#) - ACT Health Acting Chief Health Officer, Dr Andrew Pengilley today confirmed that as a precautionary measure a person who recently returned from West Africa has been admitted into the dedicated Canberra Hospital isolation ward. The precautionary admission was a result of ACT Health's monitoring program following symptoms that developed this afternoon. This will allow the person to be medically assessed, including undergoing testing for the Ebola Virus. The person, who worked as a medical professional in Liberia, has been undergoing monitoring since their return from overseas as required by ACT Health procedures. Due to the low number of cases in Liberia recently, the person did not treat any cases of Ebola.

## New South Wales. Ministry of Health

### Media Releases

16 April 2015 - [Clearing begins to make way for new Liverpool super ambulance station](#) - Health Minister Jillian Skinner and Holsworthy MP Melanie Gibbons today visited the site of Liverpool's new super ambulance station to inspect clearing works which will make way for construction of the facility. The NSW Government purchased the site of the former Liverpool Council chambers at 1-3 Hoxton Park Road last year as part of its \$150 million strategy to ensure NSW Ambulance facilities are fit for the future.

13 April 2015 - [Three months to go until smoke-free outdoor dining comes in](#) - NSW Health is reminding the community that from 6 July 2015, all commercial outdoor dining areas in NSW, including hotels, clubs, restaurants and cafes will be smoke-free, under the Smoke-free Environment Act 2000.

### Policy Directives & Guidelines

14 April 2015 - [Guideline to Consumer Participation in NSW Drug and Alcohol Services](#).

### Information Bulletins

13 April 2015 - [Nurses and Midwives: Primary Function Codes in StaffLink](#).

### Northern Territory (NT). Department of Health

13 April 2015 - **Immunisation important for Territory children** - The Northern Territory Government stridently supports the Federal Government's 'no job, no pay' health policy.

10 April 2015 - **A plan to reduce rates of suicide and self-harm in the Territory** - The Northern Territory Government today released the NT Suicide Prevention Strategic Action Plan 2015-2018 in an attempt to reduce the rates of suicide and impacts of self-harm.

### Queensland. Department of Health

16 April 2015 - **Abbott's \$11.8 billion cuts to Queensland Hospitals** - Health Minister Cameron Dick today called on Tony Abbott to reverse his decision to cut \$11.8 billion from Queensland hospital funding from 2017-18 to 2024-25.

13 April 2015 - **Premier urges Commonwealth not to withhold NDIS funds for Queensland** - Premier Anastacia Palaszczuk will call on the Federal Government to pass on in full Queensland's share of NDIS funding at a COAG meeting later this week.

### South Australia. Department for Health & Ageing

15 April 2015 - **Trivalent and Quadrivalent seasonal influenza vaccines** - This information is being disseminated to assist immunisation providers to address a reported misperception in the community that the funded Trivalent influenza vaccine is inferior to the Quadrivalent for use in the approaching influenza season.

13 April 2015 - **Government's response to Chloe Valentine Coronial Inquest** - The Government today resolved to support 20 of the 21 recommendations from the Chloe Valentine Coronial Inquest.

### Tasmania. Department of Health & Human Services

12 April 2015 - **Tender to Reduce Long-Wait Surgery List.**

### Victoria. Department of Health

16 April 2015 - **SRS Newsletter Summer 2014-15 Issue 16**

1 April 2015 - **National Seclusion and Restraint Reduction Forum** - The 10th National Seclusion and Restraint Reduction Forum (28 & 29 May 2015) aims to reinvigorate the national conversation about reducing seclusion and restraint. The theme for the forum is 'From here to there: Shaping the path to harm free care'. In recognition of over a decade of commitment to reducing the use of restrictive practices, the theme asks presenters and participants to reflect on real world lessons and the innovation and ideas that have arisen from research and practice.

15 April 2015 - **Statement on recycled water connection incident** - Victorian Government agencies are taking action in response to an incident at a school in Melbourne's south east in which recycled water was connected to a drinking water fountain. The issue was detected by a maintenance worker at St. Peters College Cranbourne East campus and South East Water was alerted on 1 April. The school community, including parents and teachers, have been notified and provided with the relevant health and other information. After the college notified South East Water, which confirmed that a recycled water supply line had been connected to the drinking fountain, supply to the drinking fountain was immediately cut off. Following the detection of the issue, the Department of Health & Human Services (DH&HS) immediately began an assessment of the potential for any impact on the health of the school community. Preliminary assessments indicate that the risk of illness from drinking this Class A recycled water is low – it may have led to a slightly increased risk of gastroenteritis.

14 April 2015 - **Another Step Toward Equality For People Living With HIV** - The Andrews Labor Government will improve equality before the law for people living with HIV by repealing an outdated, discriminatory law – the only offence of its kind in Australia. Delivering on another election commitment, the Government will today introduce legislation to repeal section 19A of the *Crimes Act 1958* – which contains a specific offence of intentionally infecting another person with a "very serious disease", defined exclusively to mean HIV. This is the only HIV-specific criminal offence in force in any jurisdiction in Australia. It singles out HIV and unfairly applies a harsher penalty for its transmission. The maximum penalty for the offence is

25 years imprisonment, even higher than the 20-year maximum penalty for manslaughter. The law has never been used in the circumstances for which it was originally enacted – the deliberate transmission of HIV by a blood filled syringe.

10 April 2015 - **Statement From The Minister For Health** - This afternoon, I met with Wendy Harris QC where she tendered her resignation as the Chair of the Board of the Peter MacCallum Cancer Centre, effective immediately. This was a decision made by Ms Harris. I have accepted Ms Harris' resignation and thanked her for her service. I have asked Suzanne Ewart to act as Chair of the Board until a new Chair is appointed. Ms Ewart has been a Director on the Board since October 2011.

### Western Australia. Department of Health

#### Media Releases

16 April 2015 - **Advanced Health Directive ensures your treatment preferences are known** - Advanced Health Directives that detail the type of treatment you want should you become seriously ill or incapacitated can be a useful tool to assist families and medical staff to ensure that your personal decisions and wishes are followed.

16 April 2015 - **Minister for Mental Health: Suicide prevention focus in Kwinana** - The City of Kwinana is one of more than 30 communities throughout Western Australia to receive funding in the latest round of One Life WA Suicide Prevention Small Grants.

14 April 2015 - **Renewed warning for the Kimberley to protect against mosquito bites** - The Department of Health has reiterated its warning to residents and travellers to take precautions to avoid mosquito bites during the school holiday period following further detections of the mosquito-borne Murray Valley encephalitis (MVE) and Kunjin (KUN) viruses throughout the Kimberley.

14 April 2015 - **Minister for Mental Health: Diverse groups get help for suicide prevention** - More than 30 communities throughout Western Australia will share \$298,000 in funding for a range of suicide prevention projects and training, Mental Health Minister Helen Morton announced today.

14 April 2015 - **Minister for Health and Minister for Regional Development: Communities benefit from new health projects** - Five small but vital hospitals across the southern Wheatbelt and central Great Southern will be the first to benefit from the latest health facility improvements to be delivered by the State Government's Southern Inland Health Initiative (SIHI).

14 April 2015 - **Minister for Health and Minister for Regional Development: Albany hospice co-located with health campus** - Albany will soon have capacity to service the increasing demand for palliative care in the area with a new hospice on its way.

### New Zealand (NZ). Ministry of Health

16 April 2015 - **Report on Maternity, 2012** - This report is the latest release in the Report on Maternity series, which provides health statistics about women giving birth, their pregnancy and childbirth experience, and the characteristics of live-born babies in New Zealand. The focus of this report is on women who gave birth, and the babies who were born, in 2012.

16 April 2015 - **Income in advanced age: Findings from LiLACS NZ** - This is a short report about the income of people in advanced age using findings from the Life and Living in Advanced Age Cohort Study (LiLACS NZ).

15 April 2015 - **Country Progress Report New Zealand (HIV/AIDS) 2014** - A report to the United Nations on HIV/AIDs in New Zealand for the period January 2014–December 2014.

14 April 2015 - **Cancer Patient Survival covering the period 1994–2011** - This interactive report shows cancer survival in New Zealand and supersedes the Cancer patient survival covering the period 1994 to 2007 publication. It also shows how cancer survival has changed over time.

13 April 2015 - **Designated Auditing Agency Handbook** - This handbook gives the Ministry of Health's requirements of designated auditing agencies (DAAs) for auditing and audit reporting for the certification of health care services under the Health and Disability Services (Safety) Act 2001. The handbook also gives



providers of health care services a guide to specific requirements for various types of audits. It was revised in 2015.

### **Australian Medical Association (AuMA)**

16 April 2015 - **AuMA warns of public hospital 'perfect storm' as Commonwealth funding decreases and benchmarks are not met** - The AuMA is warning of a possible 'perfect storm' in Australia's public hospital system as Commonwealth funding shrinks, performance benchmarks are not being met, and prices for hospital services under activity-based funding decline. Releasing the *AuMA Public Hospital Report Card 2015* in Sydney today, AuMA President, A/Prof Brian Owler, said that, despite some small improvements, the public hospital system is not meeting the clinical demands being placed on it, and the situation will only get worse as real Commonwealth funding reduces dramatically in coming years.

13 April 2015 - **Media Release - AuMA plan to bolster GP workforce** - The AuMA has developed a plan to provide Junior Medical Officers (JMOs) with important general practice prevocational training in an effort to encourage more young doctors to choose a career in general practice. AuMA President, A/Prof Brian Owler, said today that, following the 2014 Federal Budget decision to scrap the Prevocational General Practice Placements Program (PGPPP), general practice is now the only major medical specialty that does not offer JMOs a prevocational training experience. A/Prof Owler said the AuMA feared that the loss of the PGPPP would see a decline in the general practice workforce, especially in rural and remote areas, at a time when community need for GPs was growing.

### **British Medical Association (BMA)**

15 April 2015 - **Health tourism rules run 'border guard' risk.**

15 April 2015 - **Health service faces GPs exodus.**

15 April 2015 - **Pressure builds for health exemption from free-trade deal.**

13 April 2015 - **BMA Humanitarian Fund swells to £30,000.**

13 April 2015 - **Tobacco packaging: death of a silent salesman.**

### **Canadian Medical Association (CMA)**

15 April 2015 - **Conference Board of Canada research shows need for national seniors strategy.**

15 April 2015 - **Conference Board calls for proactive approach to meet needs of seniors.**

14 April 2015 - **CMA membership benefits now includes ClinicalKey.**

14 April 2015 - **Minister Glover Announces Funding for Addictions Prevention and Treatment Services in First Nations Communities in Manitoba.**

13 April 2015 - **Physician health to be showcased in Winnipeg.**

### **American Medical Association (AMA)**

14 April 2015 - **AMA Celebrates Historic Medicare Reforms Passed by Congress That Will Improve Health of the Nation** - 'Physicians across the country join the American Medical Association (AMA) in celebrating the U.S. Senate's vote tonight to pass Medicare delivery and payment reforms that will help our nation's seniors and improve the health of the nation.'

13 April 2015 - **AMA Continues Innovative Initiative to Reshape Medical Education at Nation's Medical Schools** - Students at leading medical schools across the country will soon be among the first to complete newly implemented curricula developed in conjunction with the American Medical Association's (AMA) innovative work with 11 of the nation's top medical schools to reshape medical education in the United States.

12 April 2015 - **AMA President Outlines Physician Leadership Plan for Digital Health** - The game-changing digital transformation of medicine is emerging into a new phase, according to Robert M. Wah, M.D., president of the AMA, and there is reason for great optimism in the future of this evolution as the AMA helps physicians take on a greater role in leading changes that will move technological innovations forward.

## ABOUT US

### Mark Williams



Mark is a partner in the Litigation and Regulatory team at DLA Piper.

Mark's focus is on public liability and professional indemnity insurance and associated litigation. He has particular experience with medical negligence claims and the complex insurance and indemnity arrangements prevalent in the resources, mining, building and construction industries.

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