



HEALTH ALERT

20 JANUARY 2014

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JUDGMENTS

Commonwealth

15 January 2014 - *Short v Ambulance Victoria* [2014] FCA 3

The applicant's employment as a paramedic with Ambulance Victoria (AV) was terminated in July 2011. The applicant contended that in terminating his employment, AV contravened the *Fair Work Act 2009* (Cth) by taking adverse action against him because he "vigorously" exercised his workplace rights. The applicant also submitted AV took adverse action against him by refusing to allow him to perform higher duties, issuing a formal warning, and standing him down. He made claims of discrimination on the basis of his alleged mental disability, and breach of the implied term of mutual trust and confidence in his contract of employment. The Federal Court determined that no aspects of the applicant's claim was made out, and dismissed the application.

In issuing the formal warning, the Court found that while this amounted to "adverse action," the issue was whether the complaints made by the applicant prior to the warning was an operative factor. The Court held it was not: the formal warning related to the conduct of the applicant in 2010, and for no other reason. Further, the Court rejected the applicant's contention that AV breached the implied term of trust and confidence, as the warning was issued with reasonable and proper cause.

In relation to the applicant's termination, the Court rejected the submission that his employment was terminated partly because of his persistence in exercising his workplace rights. The Court found the reason the applicant's employment was terminated was because of his "unprovoked and unreasonable personal attack" on his Team Manager.

15 January 2014 - *Rowland v Alfred Health* [2014] FCA 2

Industrial law – adverse action – exercise of a workplace right – making of complaints – restructure – redundancy – whether complaint "in relation to employment" – whether adverse action taken for a prohibited reason – direct evidence of decision-makers concerning their reasons for the adverse action cogent and credible – statutory presumption displaced – making of complaints not a "substantial and operative" factor in decision to take adverse action.

Queensland

10 January 2014 - *Munro v State of Queensland* [2014] QDC 003

A 50 year old registered Nurse, working in a mental health unit of Logan hospital, fell and injured her left hand whilst undertaking an aggressive management course run by a properly qualified instructor. She alleged the injury was caused by the negligence of her employer, the defendant, who had organised the training. The defendant denied this.

The manoeuvre in question involved the plaintiff sliding her foot backwards on a mat. As she did this, her shoe caught the mat, causing her to lose balance and fall. The Court accepted that the instructor had given her detailed instructions on the technique before she attempted it, as it was his usual practice to do so.

Nevertheless, the plaintiff's expert was critical of the instructor's teaching method, maintaining that the "exercise should have been broken up into its component parts, [so] it was inappropriate to have the students performing the whole manoeuvre straight off." As there was no expert evidence to confirm the reasonableness of the instructor's method, the Court agreed with the plaintiff's expert, deeming it unreasonable.

The Court commented that, "inevitably there was some risk of injury from a course of this nature, but the advantages of participation ... would ordinarily outweigh the disadvantage of that risk." In this case, however, the employer did not take reasonable care to minimise the risk of injury to its employee, as it allowed a teaching method to be used that, in fact, increased that risk.

The plaintiff was awarded \$60,000 in addition to the WorkCover refund.

New South Wales (NSW)

10 January 2014 - [West v Director-General, NSW Ministry of Health in respect of Western Sydney local health district \[2014\] NSWIRComm 1001](#)

Public sector disciplinary appeal - application for summary dismissal of appeal - asserted exclusion of appellant by effect of s.92(1)(b) of the *Industrial Relations Act 1996* - principles of statutory interpretation - industrial instrument - literal meaning of statute - circumstances in which statute can be construed to be ineffective - obligation to give effect to statute where possible - preferred interpretation of subs.92(1)(b) - appeal excluded by s.92(1)(b) - motion upheld - appeal dismissed.

Western Australia (WA)

14 January 2014 - [St John of God Health Care Inc v Austin \[2014\] WASCA 11](#)

Workers' Compensation - Construction Of S 93k(4)(c) Of *Workers' Compensation And Injury Management Act 1981* (WA). Whether s 93K(4)(c)(i) of [Workers' Compensation and Injury Management Act 1981 \(WA\)](#) requires plaintiff to make election prior to commencing proceedings - Meaning of word "within" in s 93K(4)(c)(i) of [Workers' Compensation and Injury Management Act 1981 \(WA\)](#) - Whether Court of Appeal has power to make a nunc pro tunc order or declaration where plaintiff fails to comply with the procedural requirements of s 93K(4)(c)(i) of [Workers' Compensation and Injury Management Act 1981 \(WA\)](#).

LEGISLATION

8 January 2014 - [National Health \(price and special patient contribution\) amendment determination 2014 \(No. 1\) \(No. PB 2 of 2014\)](#) F2014L00052 • PB 2 of 2014.

8 January 2014 - [National Health \(listing of pharmaceutical benefits\) amendment instrument 2014 \(No. 1\) \(No. PB 1 of 2014\)](#) F2014L00051 • PB 1 of 2014.

14 January 2014 - [National Health Act 1953](#) - amendment determination under section 84AH (2014) (No. 1) (No. PB 7 of 2014) F2014L00064 • PB 7 of 2014.

REPORTS

Australia. Department of Health & Ageing

Media releases

17 January 2014 - [More help for Blue Mountains women after fires](#). Women in the Blue Mountains will have better access to drug and alcohol treatment programs as a result of additional funding being provided by the Australian Government.

Australia. Health Practitioner Regulation Agency and the boards

15 January 2014 - Nursing & midwifery Board - National health impairment program. Seeking qualified and experienced parties to explore health impairment referral, treatment and rehabilitation services for regulated health professionals. [Read More](#).

15 January 2014 - Review of midwife standards for practice. Seeking qualified and experienced parties to review the midwife standards for practice. [Read More](#).

15 January 2014 - The Optometry Board has issued a statement following a Supreme Court of Queensland ruling. [Read More](#).

14 January 2014 - The Dental Board of Australia and the Dental Council (New Zealand) have released a joint communiqué on the project to develop lists of "competencies" for the recognised dental specialties. [Read More](#).

14 January 2014 - The National Specialist International Medical Graduate (IMG) Committee releases its latest Communiqué. [Read More](#).

14 January 2014 - The Medical Board releases its latest Communiqué. [Read More](#).

14 January 2014 - The medical radiation practice board releases information for education providers and employers about student registration. [Read More](#).

13 January 2014 - The National Board has published its December communiqué. [Read More](#).

Australia. National Health & Medical Research Council

[CEO Health Research Translation Newsletter - December 2013](#).

Australia. Therapeutic Goods Administration (TGA)

17 January 2014 - [Apple's quick-impact weight loss capsules](#) pose a serious risk to your health and should not be taken.

16 January 2014 - [TGA presentation given at Department of Health, Sydney, 11 December 2013](#). Presentation on evidence supporting indications: benefits for consumers and industry was given during a TGA workshop and meeting with the Chinese medicine industry council.

15 January 2014 - [Super Hard tablets](#) pose a serious risk to your health and should not be taken.

10 January 2014 - [Acai Berry Living-XS Diet capsules](#) pose a serious risk to your health and should not be taken.

10 January 2014 - [Erec-Bull tablets](#) pose a serious risk to your health and should not be taken.

10 January 2014 - [Euphausia superba oil - proposed revision: Draft compositional guideline](#). The TGA is seeking comments from interested parties on a proposed revision of the draft compositional guideline for Euphausia superba oil. Closing date: 21 February 2014.

Australian Institute of Health & Welfare

16 January 2014 - [Deaths web pages](#).

15 January 2014 - [Dental workforce 2012](#).

Australian Commission on Safety and Quality in Health Care

20 January 2014 - Please [click here](#) to view "On the Radar" newsletter.

Australian Capital Territory (ACT). Health Directorate

13 January 2014 – Extreme heat forecast for the ACT this week.

ACT Chief Health Officer Dr Paul Kelly and ACT Ambulance Service Chief Officer Mr David Foot today warned Canberrans that prolonged extreme heat conditions are forecast for the ACT this week from Tuesday 14 January until Saturday 18 January.

"We are all susceptible to heat-related stress and illness, which can range from mild to very serious. However, the elderly, young children and babies are most at risk during heat events."

ACT residents are encouraged to monitor family, friends and neighbours for symptoms of heat stress and implement some simple strategies to stay healthy during this heat event.

See the following links:

- [ACT health guide to summer safety](#).
- [Media release](#).

New South Wales (NSW). Ministry of Health

Media Releases

15 January 2014 - [Air pollution health warning - Ozone](#).

Policy Directives & Guidelines

14 January 2014 - [Policy for managed point of care testing \(PoCT\) service](#).

10 January 2014 - [Payment to medical officers undertaking a clinical appraisal remotely](#).

10 January 2014 - [Appointment of visiting practitioners in the NSW public health system.](#)

Northern Territory. Department of Health

16 January 2014 - [Robyn Lambley - alcohol mandatory treatment: latest statistics and six month review.](#)

The second quarterly figures released today show the Government's Alcohol Mandatory Treatment system is having a significant impact in taking chronic alcoholics off the streets and giving them the opportunity to turn their lives around.

Queensland. Department of Health

16 January 2014 - [Health stats debunk Labor's lies.](#) Health Minister Lawrence Springborg has urged the federal opposition leader to stop telling lies and to check his facts to educate himself on the true position of Queensland Health.

16 January 2014 - [New ambulance for Balmoral station.](#) Paramedics at Balmoral ambulance station have taken delivery of a brand new \$215,000 ambulance vehicle.

15 January 2014 - [Newman Government's health action plan for Maryborough.](#) Maryborough hospital will pilot a specialised orthopaedic surgery hub and host an endoscopy centre of excellence to rejuvenate health services in Maryborough and the Wide Bay region.

15 January 2014 - [New flight paramedics for Wide Bay-Burnett.](#) The Bundaberg ambulance station will now be staffed 24 hours a day by intensive care paramedics rather than an on-call system, following the addition of two new paramedics.

14 January 2014 - [Cairns Hospital delivers new specialist services.](#) The introduction of a new urology service at Cairns hospital will save hundreds of far north Queensland patients from having to travel to Brisbane for treatment.

14 January 2014 - [Far North Queensland \(FNQ\) mental health boost – premier announces major tender.](#) Queensland Premier Campbell Newman today announced that Hutchinson Builders had been awarded the tender to build a new twenty bed community care unit in Cairns, delivering a major boost to frontline mental health services.

14 January 2014 - [Liberal National Party \(LNP\) delivering on Townsville paediatric pledge.](#) Health services for children in north Queensland will be expanded following Premier Campbell Newman's announcement today that a dedicated paediatric intensive care unit will be built at Townsville hospital.

14 January 2014 - [Townsville hospital tackles elective surgery list.](#) The number of patients at Townsville hospital who have been waiting for more than a year for elective surgery has been slashed from 337 to just 18.

13 January 2014 - [Redcliffe hospital slashes surgery wait times.](#) Redcliffe hospital is on track to treat every single patient requiring urgent elective surgery within the national timeframes, which is further evidence of the Newman Government's success in slashing waiting times.

South Australia. Department for Health & Ageing

15 January 2014 - New emergency department (ED) for a new era at Modbury hospital. Residents of Adelaide's north-eastern suburbs now have access to a bigger and better ED at Modbury Hospital. [Read more.](#)

15 January 2014 - Strong support for women's and children's hospital move. Feedback from doctors, nurses, unions and the public has shown overwhelming support for the co-location of the women's and children's hospital with the new Royal Adelaide hospital. [Read more.](#)

Tasmania. Department of Health & Human Services

17 January 2014 - [Audit of Royal Hobart hospital redevelopment.](#)

14 January 2014 - [New Deputy Secretary for children.](#)

13 January 2014 - [Beware of hot weather risks.](#)

Victoria. Department of Health

17 January 2014 - [Heat health alert for Monday 13 to Saturday 18 January 2014.](#)

17 January 2014 - [First sod turned on new Ballarat helipad.](#) Premier Denis Naphine together with Minister for Health David Davis today turned the first sod for the new Ballarat base hospital helipad and car park project.

16 January 2014 - [New emergency department opens at northern Hospital.](#) The new \$24.5 million emergency department at Epping's northern hospital was officially opened today with Premier Denis Naphine joining Minister for Health David Davis and Minister for Mental Health Mary Wooldridge today to celebrate the occasion.

15 January 2014 - [Fines quadrupled in clamp on illicit tobacco.](#) The Victorian coalition government will crack down on the dangerous illegal tobacco trade by quadrupling fines for retailers caught with illicit tobacco and cigarettes.

15 January 2014 - [Official: Springvale botanical cemetery world's best.](#) In a major international coup, Springvale botanical cemetery has become the first cemetery outside the United States of America to win the highly prestigious American cemetery excellence award for 2013.

13 January 2014 - [Update: Middle East respiratory syndrome coronavirus \(MERS-CoV\)](#)

13 January 2014 - [More doctors and nurses for Victorian hospitals.](#) The Victorian coalition government today launched a new strategy to grow and develop the state's health workforce as 753 young medical interns start new careers in Victorian hospitals.

Western Australia (WA). Department of Health

Media Releases

16 January 2014 - [Measles warning issued for people who attended Garden City Hoyts cinema complex.](#)

14 January 2014 - [Excess body mass linked to increasing hospital costs.](#)

9 January 2014 - [Pool owners warned of disease risk.](#)

Operational Directives

16 January 2014 - [Information Circular \(IC\) 0176/14](#) Department of Health Medical Practitioners (Metropolitan Health Services). Australian Medical Association (AuMA) Industrial Agreement 2013. Notification that the Department of Health Medical Practitioners (Metropolitan Health Services). AuMA Industrial Agreement 2013 (the Agreement) was registered and that the Agreement replaces the Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2011.

16 January 2014 - [IC 0175/14](#) Hospital workers (Government) award No. 21 of 1966 – Award variation advice of award variation for the hospital workers (Government) Award No.21 of 1966.

New Zealand. Ministry of Health

6 January 2014 - [Immunisation is the best measles protection – updated 9 Jan.](#) Media release.

1 January 2014 - [Measles cases identified – updated 13 Jan.](#) Media release.

United Kingdom (UK). Department of Health

16 January 2014 - [Amendment to infant milk legislation.](#)

15 January 2014 - [Child sexual exploitation: health working group report.](#)

15 January 2014 - [China and the UK : partners in healthcare.](#)

United States of America. Department of Health & Human Services (HHS)

15 January 2014 - [HHS makes progress on health IT safety plan with release of the SAFER guides.](#)

13 January 2014 - [Nearly 2.2 million Americans selected plans in the health insurance marketplace.](#)

11 January 2014 - [50th Anniversary of the surgeon generals report on smoking and health.](#)

10 January 2014 - [HHS strengthens community living options for older Americans and people with disabilities.](#)

Australian Medical Association (AuMA)

15 January 2014 - [AuMA questions safety of pharmacy vaccinations.](#) The AuMA has written to the Queensland Government's Chief Health Officer raising serious patient safety concerns about a Queensland trial of community pharmacists providing flu vaccinations. [Read more.](#)

14 January 2014 - [AuMA President, Dr Steve Hambleton, 5AA Adelaide, General Practitioner co-payments.](#) Transcript: AuMA President, Dr Steve Hambleton, 5AA Adelaide, 30 December 2013 Subject: GP co-payment fee, alcohol misuse, young people and exercise [Read more.](#)

British Medical Association (BMA)

16 January 2014 - [Peers back amendment to lobbying bill staff costs clause.](#) A BMA supported change on staff costs in the controversial lobbying bill has been backed by peers.

16 January 2014 - [Doctors leaders step up call for accurate patient coding.](#) The BMA has escalated calls for patients to be accurately recorded under the senior doctor responsible for their care.

15 January 20-14 - [Public health research units welcomed by doctors.](#) Medical academics have praised the formation of new research units, which have been awarded funding to deliver across 12 key public health areas.

14 January 2014 - [Government addresses BMA concerns with lobbying bill.](#) Key BMA concerns about the controversial lobbying bill have been partially addressed by new government amendments, the association has said.

14 January 2014 - [Views needed on end of life care.](#) Doctors are being urged to share their views on proposed new advice for health professionals on end-of-life care.

14 January 2014 - [Turkish president urged to reject emergency care law.](#) The BMA and health organisations want the Turkish president to reject a law that will criminalise doctors for providing emergency care without state approval.

14 January 2014 - [BMA calls on employers to improve integration of women.](#) Employers should consider how to improve the integration of women into the medical workforce, as new research highlights issues with male-dominated workplaces, the BMA has said.

13 January 2014 - [Doctors seek to improve public understanding of medical research.](#) Medical academic leaders have called for better public understanding of health research, as charities launched a campaign on the importance of sharing medical records.

10 January 2014 - [What's in store for the future of public health?](#) The BMA is surveying public health professionals to find out about their working lives and what they predict for the future of the speciality.

10 January 2014 - [Survey reveals level of specialist and speciality \(SAS\) doctors' autonomy.](#) A BMA survey has revealed the high levels of autonomous working among staff, associate specialists and speciality doctors.

10 January 2014 - [BMA focuses on doctors' value.](#) The BMA will be launching an ambitious programme to help empower doctors in 2014.

Canadian Medical Association (CMA)

14 January 2014 - ["Time to roll up sleeves" in face of dementia epidemic: CMA.](#) Is Canada prepared for the "dementia epidemic" that it faces? The CMA says it isn't, and it had better start getting ready soon.

10 January 2014 - [Fee-for-service payments: down, but far from out.](#) Fee-for-service (FFS) payments, which have anchored physician remuneration in Canada for decades, appear to be beating a slow but steady retreat in the face of growing popularity of other payment methods. Particularly popular are

“blended payments” that combine different types of payments, from FFS to service contracts and practice incentives.

American Medical Association (AMA)

16 January 2014 - [How the three sustainable growth rate \(SGR\) repeal bills would change current law](#). A new comparison of the three versions of legislation to repeal Medicare’s failed SGR formula reveals how each bill would impact laws in place today and how the proposals compare to one another.

15 January 2014 - [Top four issues medical associations will take to state legislatures in 2014](#). As state lawmakers prepare for this year’s legislative sessions, about 200 medical association leaders last week discussed strategies for advancing medicine’s top legislative and regulatory priorities in 2014. Four issues came out at the top of the list.

14 January 2014 - [Putting the new hypertension guideline into practice](#). An online resource from the Journal of the American Medical Association (JAMA) Network can help physicians evaluate and adopt the new evidence-based guideline for managing hypertension in the one-third of U.S. adults who have the high risk condition.

ABOUT US

Andrew Forbes



Andrew practices in litigation and administrative law with a particular focus on health. He is recognised for his expertise in health regulation.

Andrew has acted in Commissions of Inquiry and led investigations into health-related incidents, such as the Hendra virus outbreak. He has acted as "counsel assisting" in internal disciplinary hearings and inquiries.

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