



# HEALTH ALERT

1 February 2016

<b>Judgements</b> .....	<b>2</b>
Commonwealth. Administrative Appeals Tribunal .....	2
Victoria .....	2
Commonwealth. Fair Work Commission .....	2
Commonwealth. Federal Circuit Court .....	3
New South Wales (NSW) .....	3
United Kingdom .....	3
<b>Legislation</b> .....	<b>3</b>
Commonwealth .....	3
Northern Territory .....	3
<b>Reports</b> .....	<b>3</b>
Australia. Department of Health .....	3
Australia. National E-health Transition Authority (NEHTA).....	3
Australia. National Health & Medical Research Council (NHMRC) .....	4
Australia. Therapeutic Goods Administration (TGA) .....	4
Australian Institute of Health & Welfare (AIHW) .....	4
Australian Commission on Safety and Quality in Health Care .....	4
New South Wales. Ministry of Health.....	4
Health Care Complaints Commission.....	5
Queensland. Department of Health .....	6
South Australia (SA). Department for Health & Ageing .....	6
Tasmania. Department of Health & Human Services .....	6
Victoria. Department of Health .....	7
Western Australia. Department of Health .....	8
United Kingdom. Department of Health.....	8
Australian Medical Association (AuMA).....	8
American Medical Association (AMA) .....	9
<b>About us</b> .....	<b>9</b>
<b>More information</b> .....	<b>10</b>

## JUDGEMENTS

### Commonwealth. Administrative Appeals Tribunal

22 January 2016 - [JLSP and Innovation Australia \[2016\] AATA 23](#)

This case determined whether particular activities of a company were considered "core R&D activities" for the purposes of claiming tax benefits under the *Income Tax Assessment Act 1997* (Act).

The applicant is the Australian-based entity of a larger corporate group, for confidentiality reasons, described throughout as the "Research Group". It carried out a clinical trial of a drug for an international pharmaceutical company. The Research Group applied to Innovation Australia for determination of whether its activities relating to that trial satisfied the requirements of "core R&D activities". Innovation Australia held that they did not.

The Research Group unsuccessfully sought an internal review of these findings before applying to the Administrative Appeals Tribunal of Australia for review. For an activity to be classified as a "core R&D activity" under the Act, it must be conducted for the purpose of generating new knowledge.

The Research Group submitted that its activities in running the clinical trial met that requirement, arguing that the primary objective was to demonstrate the safety and efficacy of the drug and it was the actual testing of this that was the "core R&D activity". Innovation Australia disagreed, arguing that the purpose had to be a "dominant" one and the Research Group had failed to demonstrate this.

The Tribunal found in favour of the Research Group, determining that the purpose had to simply be more than an insubstantial purpose. It held that one activity was a "core R&D activity" and remitted the question of the other activities back to Innovation Australia.

### Victoria

28 January 2016 - [Mortimer v West \(in his role as Deputy State Coroner\) \[2016\] VSC 11](#)

The appellant, Mrs Stephanie Mortimer, sought to set aside the Finding of Coroner Iain West in relation to her sister's death. The Coroner had found that the death was due to enterococcus faecalis sepsis and acute renal failure (the Finding). Mrs Mortimer contended that her sister had died from neuroleptic malignant syndrome (NMS), due to the introduction of antipsychotic medication shortly before her death.

Following the Coroner's determination that there was nothing to justify re-opening the enquiry, Mrs Mortimer unsuccessfully applied to the Supreme Court to have that determination set aside. Associate Justice Randall found that she had failed to identify a point of law to support her appeal. Mrs Mortimer then appealed that decision to a judge of the Supreme Court. This appeal emphasised a number of matters not previously explained.

Mrs Mortimer argued, among other things, that the Finding should be overturned because the Coroner did not have all of the deceased's medical records when he made his decision. She also said that he had failed to take into account a relevant consideration, being the potential for the deceased's death to be from NMS. The whole of the Finding was therefore an error of law.

Rush J dismissed the appeal for the same reason as Randall AsJ did. He held that an appeal on the grounds of a failure to find facts, an attendant failure to afford procedural fairness or where the Coroner failed to procure any necessary reports or tests will not constitute an arguable case on appeal.

### Commonwealth. Fair Work Commission

28 January 2016 - [Bethesda Hospital Incorporated T/A Bethesda Hospital \[2016\] FWCA 544](#)

Application for approval of the Bethesda Hospital Enrolled Nurses, Hospitality and Maintenance Employees' Agreement 2015.

25 January 2016 - [Australian Red Cross Blood Service \[2016\] FWCA 465](#)

Application for approval of the Australian Red Cross Blood Service Nursing Enterprise Agreement Tasmania 2015.

27 January 2016 - [Commonwealth of Australia as represented by the Department of Health \[2016\] FWCA 506](#)

Application for approval of the Department of Health Enterprise Agreement 2016-2019.

#### **Commonwealth. Federal Circuit Court**

22 January 2016 - [Newcombe v Amrou Metawa Pty Ltd \[2016\] FCCA 89](#)

INDUSTRIAL LAW – Small claims – whether the Applicant was a part-time employee or a casual – classification of employment.

#### **New South Wales (NSW)**

28 January 2016 - [BCS v Dental Council of NSW \(No 2\) \[2016\] NSWCATOD 9](#)

PRACTICE AND PROCEDURE — principles of open justice — whether appropriate to order the suppression of name of health practitioner costs — principles applying to awarding costs under the Health Practitioner Regulation National Law (NSW) — presumption that the successful party is ordinarily entitled to recover its costs.

#### **United Kingdom**

27 January 2016 - [Jacobs v King's College Hospital NHS Foundation Trust \[2016\] EWHC 121 \(QB\)](#)

25 January 2016 - [Williams v The Bermuda Hospitals Board \(Bermuda\) \[2016\] UKPC 4](#)

### **LEGISLATION**

#### **Commonwealth**

29 January 2016 - [Public Governance, Performance and Accountability \(Establishing the Australian Digital Health Agency\) Rule 2016](#) - F2016L00070 - as made

#### **Northern Territory**

27 January 2016 - [Alcohol Mandatory Treatment Act 2014](#) - commenced

### **REPORTS**

#### **Australia. Department of Health**

Media releases

24 January 2016 - [New measures to encourage childhood vaccinations](#) - From this year, to continue receiving family assistance payments from the Commonwealth (Child Care Benefit, Child Care Rebate and Family Tax Benefit Part A Supplement), children and young people up to 20 years of age must be fully immunised, on a catch-up schedule, or have an approved medical exemption.

Consultations

[MSAC Reforms - call for public comment](#)

[The Australian Immunisation Handbook - Yellow Fever Chapter Update](#)

#### **Australia. National E-health Transition Authority (NEHTA)**

29 January 2016 - [The Clinical Terminology January v20160131 Release is now available for download](#) - The Clinical Terminology January v20160131 Release is now available for download from the NEHTA website.

18 January 2016 - [PCEHR is changing its name to My Health Record](#) - The Commonwealth Department of Health has announced that the name of the Personally Controlled Electronic Health Record (PCEHR) has changed to My Health Record.

18 January 2016 - [Connectathon - National Clinical Terminology Service \(NCTS\)](#) - NEHTA's first technical Connectathon on the use of HL7's Fast Healthcare Interoperability Resources (FHIR®) in the

National Clinical Terminology Service (NCTS) is being held over 2 days on 10-11 February 2016, in Brisbane.

14 January 2016 - [NEHTA eHealth Software Developer Community Webinar Series - Webinar invitation and Survey](#) - NEHTA is running a series of webinars for organisations developing software to support the national eHealth programme, including accessing the My Health Record system and the Healthcare Identifiers service. This follows on from NEHTA eHealth Software Developer Community announcement – Secure Messaging Conformance Test Tools, found [here](#).

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

28 January 2016 - [Reviewing the structure of NHMRC's grant programme](#)

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

28 January 2016 - [ACSOV meeting statement, Meeting 9, 23 October 2015](#) - Advisory Committee on the Safety of Vaccines meeting statement.

27 January 2016 - [Reporting problems](#) - Report a side effect of a medicine or vaccine, a problem with a medical device, a counterfeit medicine or medical device or an issue with packaging or storage of a medicine.

27 January 2016 - [Safety and scientific reviews](#) - This page contains the findings of TGA safety and scientific reviews. Review of cardiovascular safety of non-steroidal anti-inflammatory drugs. Safety review of diclofenac. Toxicity of tartrazine.

27 January 2016 - [Safety publications](#) - The TGA produces a range of safety-related publications including regular safety bulletins, brochures, reports and educational materials.

25 January 2016 - [Flocare transition giving sets with ENFit transition adaptors](#) - Recall for product correction – potential for leakage and/or breakage.

22 January 2016 - [Australian regulatory guidelines for sunscreens \(ARGS\)](#) - New ingredient added and minor revisions in line with recent legislation changes.

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

29 January 2016 - [Australian Cancer Incidence and Mortality \(ACIM\) books \(cancer data update\)](#)

28 January 2016 - [Toothache more common for uninsured](#)

28 January 2016 - [Chronic disease risk factors \(web update\)](#)

22 January 2016 - [Cancer screening programs in Australia by Primary Health Network \(dynamic data display\)](#)

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

28 January 2016 - [Caring for Cognitive Impairment – A National Campaign](#) - The Australian Commission on Safety and Quality in Health Care has launched a national campaign to improve knowledge and care practices to provide better outcomes and reduce the risk of harm to people with cognitive impairment in hospital.

On the Radar – 1 February 2016 – Issue 258 ([PDF 139KB](#)) ([Word 234KB](#))

On the Radar – 25 January 2016 – Issue 257 ([PDF 102KB](#)) ([Word 139KB](#))

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

##### **Media Releases**

28 January 2016 - ["Save the Date" to protect children from diseases](#) - Parents and carers are encouraged to download the free "Save the Date to Vaccinate" app and ensure their children receive vaccinations on time.

27 January 2016 - **End of an era: State's coronial and forensic medicine headquarters on the move** - The NSW Coroner's Court and Department of Forensic Medicine will move to a purpose-built facility in Western Sydney, the NSW Government announced today.

27 January 2016 - **NSW Government announces fast-tracking of St George Hospital redevelopment** - NSW Treasurer Gladys Berejiklian and Health Minister Jillian Skinner today visited St George Hospital to announce the fast-tracking of construction of the Acute Services Building.

26 January 2016 - **350 scholarships for diploma of enrolled nursing** - NSW Health Minister Jillian Skinner today encouraged school leavers or anyone interested in a career change to take advantage of 350 NSW Government scholarships for the 2016 Diploma of Nursing (Enrolled Nurse) program.

#### Information Bulletins

22 January 2016 - **National Health and Medical Research Council Research Staff Salary Rates 1 January 2016 - IB2016\_002**

#### Health Care Complaints Commission

28 January 2016 - **Dr Roger Flekser - unsatisfactory professional conduct and professional misconduct found** - The Health Care Complaints Commission prosecuted vascular registrar Dr Roger Flekser concerning his conduct in 2012 at St George Private Hospital and St George Public Hospital

28 January 2016 - **Updated media release - Dr Naleen Priyamanna - Registration cancelled** - The NSW Health Care Complaints Commission prosecuted Dr Naleen Priyamanna, a general practitioner employed by the Home Doctor Service, before the NSW Civil and Administrative Tribunal (NCAT) in October 2015.

27 January 2016 - **Dr Himanshu Roy - unsatisfactory professional conduct proven and cautioned** - The Health Care Complaints Commission prosecuted Dr Himanshu Roy, a radiologist, before a Professional Standards Committee (the Committee) concerning the quality of Dr Roy's radiological reporting.

19 January 2016 - **Mr Ronnie Obusan - finding of unsatisfactory professional conduct – reprimand and conditions** - The Health Care Complaints Commission prosecuted Mr Ronnie Obusan, a nurse, before a Professional Standards Committee between 12 – 14 October 2015.

15 January 2016 - **Dr Zeitoun Athour – Registration cancelled** - The Health Care Complaints Commission prosecuted Dr Zeitoun Athour, a general practitioner, before the NSW Civil and Administrative Tribunal (NCAT) alleging that he had engaged in unsatisfactory professional conduct and professional misconduct.

15 January 2016 - **Mr Andrew Watson - disqualified for 18 months** - The Health Care Complaints Commission prosecuted Mr Andrew Watson, an enrolled nurse, before the NSW Civil and Administrative Tribunal (NCAT) in relation to his inappropriate personal and sexual relationship with a respite care patient of the Mayfield Aged Care Facility.

14 January 2016 - **Ms Katrina Ostendorf - finding of impairment – disqualified for one year** - The Health Care Complaints Commission prosecuted Ms Katrina Ostendorf, a registered nurse, before the NSW Civil and Administrative Tribunal (NCAT), on 22 July 2015. Ms Ostendorf did not attend the hearing and at the time of the hearing had surrendered her registration.

8 January 2016 - **Dr Peter John Lewis – reprimanded by a Medical Professional Standards Committee and conditions imposed** - The Health Care Complaints Commission prosecuted Dr Peter John Lewis, a general practitioner, concerning his care of a patient from 2008 to 2011 at the YourHealth Manly practice.

6 January 2016 - **Dr Christopher Siew Tuan Mah - unsatisfactory professional conduct proven and reprimanded** - The Health Care Complaints Commission prosecuted Dr Christopher Siew Tuan Mah, a general practitioner, before a Professional Standards Committee (the Committee) alleging unsatisfactory professional misconduct.



18 December 2015 - **Mr Geoffrey Mitchell - professional misconduct and not a suitable person** - The Health Care Complaints Commission prosecuted Mr Geoffrey Mitchell, a psychologist, before the NSW Civil and Administrative Tribunal (NCAT).

#### **Queensland. Department of Health**

28 January 2016 - **New \$35m health innovation fund leading the way** - The Palaszczuk Government is leading Australia with a new \$35 million innovation fund to provide more targeted services to patients. Minister for Health and Ambulance Services Cameron Dick said today that the new fund would lead to better cooperation between GPs, hospitals and medical clinics. "Today I am proud to announce a \$35 million integrated care innovation fund – one of the largest of its kind in this country," he said. "I want to see Queensland hospitals partnering with GPs and primary health networks to develop a coordinated approach when it comes to treatment, whether that treatment begins in the community or in our hospitals".

22 January 2016 - **\$11.4 million funding boost for Logan Hospital ED** - The Emergency Department (ED) at Logan Hospital, one of the state's busiest, will receive an \$11.4 million funding boost to provide extra beds and more staff to cope with population growth in Logan City. Member for Woodridge and Minister Health and Ambulance Services Cameron Dick said that the cash injection would provide an extra 11 beds, two in the paediatric unit and nine in the adult section. "Logan City is one of the fastest growing parts of Queensland, and there has been a 15 per cent surge in presentations to the Hospital's emergency department this financial year," he said. "This is why we are increasing the ED's capacity by bringing in 41 new staff and opening a further 11 beds – two in children's unit and nine in the adult section".

#### **South Australia (SA). Department for Health & Ageing**

25 January 2016 - **New guidelines help us enjoy animals safely** - Petting zoos, agricultural shows and wildlife parks across the state are implementing new SA Health guidelines to make interacting with animals safer than ever. SA Health Director of Public Health Services Dr Kevin Buckett said the animal contact guidelines have been developed in conjunction with industry, following outbreaks of animal related disease in Australia and internationally. "Animals are a source of joy for small kids and big kids alike, and that's why petting zoos, agricultural shows and wildlife parks are such a popular pastime for South Australian families," Dr Buckett said.

24 January 2016 - **Multi-patient "Ambus" to hit the road** - Australia's first ambulance bus, which can be used to treat 12 patients at a time, has been launched in Adelaide today. Health Minister Jack Snelling said the vehicle will allow SA Ambulance Service to respond to major emergencies and treat multiple patients at once. "SA Ambulance Service will have more capability than ever to care for sick and injured South Australians with this revolutionary vehicle," Mr Snelling said. "It's equipped with state of the art technology and can treat six stretcher patients and six sitting patients".

22 January 2016 - **Worrying rise in Mumps, Whooping Cough cases** - The state's Health Minister and clinicians have issued an urgent warning to parents to make sure their child's immunisations are up-to-date before they return to school. It follows a dramatic rise in the number of preventable infections contracted by children last year. "In 2015 we saw notifications of whooping cough more than double, while there was also a dramatic rise in mumps cases," Jack Snelling said. "These diseases are highly infectious, very difficult to treat and can have severe complications particularly in children, but they are vaccine preventable. Vaccination is the best way to protect children from a number of preventable diseases." Mr Snelling said all children are eligible to receive free vaccines as part of the Childhood National Immunisation Program.

#### **Tasmania. Department of Health & Human Services**

29 January 2016 - **Tackling drug abuse** - The State's sporting clubs are being harnessed in the fight against illicit drugs. The Tasmanian Government is partnering with the Australian Drug Foundation to deliver the Tackle the Issue program which will support our sporting clubs, their players, coaches and supporters to work as a team in the fight against illicit drugs. Sporting clubs can be very effective in tackling illicit drug use, because they're a great place to promote healthy lifestyles, spot risky behaviour and intervene before there is a problem. Tasmania will lead the nation by being the first state to pilot the program and the results will inform the national roll out. The Australian Drug Foundation will conduct the

program and the Tasmanian Government will provide \$120,000 in funding, plus provide support from agencies including the health, police sport and recreation.

28 January 2016 - **AMA report card** - The Hodgman Liberal Government is rebuilding Tasmania's health system. We have invested a record amount in our health system, but more needs to be done. With the economy growing and the Budget coming back under control, we can now invest the dividends of this into the core business of government – such as health. That is why we have conducted the most extensive consultation ever, initiated the One Health System reforms, we have merged the three health organisations into one and we are working closely with clinical redesign teams, led by Health Services Innovation Tasmania, to improve patient flow. We are also conducting more surgeries and focusing in many cases on patients who have waited so long for surgery that, once treated, their waiting times were large enough to skew the median wait time upwards to make the data seem worse. Clearing the longest waiting backlog can only be achieved by accepting this increase in median wait data. The Tasmanian Health Service (THS) have been provided with over \$24.4 million in funding in 2015-16, as part of \$76 million over four years to increase surgical activity.

25 January 2016 - **Campaign to highlight smoking impact** - The Hodgman Liberal Government has an ambitious goal for Tasmania to have the healthiest population in Australia by 2025. Addressing Tasmania's high rates of chronic disease, due to choices such as smoking is a priority. Shockingly one in five or 70,000 Tasmanian adults smokes daily. Tasmania also has the highest rate of teenagers smoking during pregnancy. This is not acceptable. Today I was pleased to help launch the latest campaign which warns Tasmanians about the impact of smoking. Smoking can and does have appalling effects on the human body. Campaigns such as this one, which depict the full, shocking impact which smoking-related cancers have on quality of life, have been proven effective in reducing the rates of smoking. We must continue to inform Tasmanians, particularly children and young people, of the deadly effects of smoking. I thank Quit Tasmania and Cancer Council Tasmania for their continuing efforts in the fight against smoking-related diseases.

23 January 2016 - **Improvements in Mental Health Services** - Taking action to improve the mental health and wellbeing of Tasmanians is a priority for the Hodgman Liberal Government. I am pleased to announce today that in 2015 the rate of community follow-up for Tasmanian mental health patients hit record levels, with more than three quarters of patients receiving a follow up care from a community team within seven days of leaving an acute inpatient psychiatric unit. This is a significant improvement from 2013 when the follow-up rate was just 34.5 per cent state-wide. Rates have improved across the state, notably almost tripling for the Northside mental health unit at the Launceston General Hospital. For many, the period after leaving a mental health inpatient unit is a vulnerable time and is also often a period of stress and uncertainty for families and carers. This is why follow up care is vital to ensure patients, families and carers are fully supported. We have also seen a downward trend across the state in seclusion rates continue with a rate of 10.1 events per 1000 bed days in 2014-15, dropping from 15.2 events per 1000 bed days in 2013-14.

## **Victoria. Department of Health**

29 January 2016 - **Update Vaccinations Before Heading Back To Kinder** - As around 74,000 excited Victorian children gear up for kinder, the Andrews Labor Government is urging families to make sure their children's vaccinations are up to date. Joining nurses and parents at Lady Huntingfield Children's Centre in North Melbourne, Minister for Families and Children Jenny Mikakos and Minister for Health Jill Hennessy said that all children enrolling in an early childhood education and care service must be fully vaccinated unless they had an approved exemption. Conscientious objection to vaccinations is not an exemption.

28 January 2016 - **Victorian Research Centre Signs Major Global Pharma Deal** - Victoria's reputation as Australia's biotech, pharmaceutical and medical research hub has been strengthened this week with one of the largest preclinical deals in Australia – worth \$700 million. Minister for Small Business, Innovation and Trade Philip Dalidakis said the deal highlights the state's leading cancer research capacity. Parkville-based Australian Cancer Therapeutics Cooperative Research Centre (CTx), their UK based research and commercialisation partner Caner Research Technology and global pharmaceutical giant

MSD, known as Merck in the US and Canada, have signed a licensing agreement for the development and commercialisation of drugs arising from the PRMT5 inhibitor program.

28 January 2016 - [World First Trial A Breakthrough For Leukaemia Treatment](#) - In a major breakthrough in the fight against leukaemia, Melbourne medical researchers have shown patients with an advanced form of leukaemia can achieve complete remission with a new tablet treatment. The results from the world first clinical trial of new anti-cancer tablet, venetoclax, have shown it was effective in killing cancer cells in patients with advanced forms of chronic lymphocytic leukaemia when conventional treatment options had failed. Close to 80 per cent of patients involved in the trial had promising responses to the drug, with 20 per cent of those involved going into complete remission.

#### **Western Australia. Department of Health**

##### **Media Releases**

28 January 2016 - [Minister for Health and Minister for Regional Development: Katanning Health Service upgrade on the way](#) - Works to kick off the \$32 million upgrade of the Katanning Health Service will begin at the end of February, after BGC Constructions won the tender for forward works.

28 January 2016 - [Country health worker receives AM award](#) - Geraldine Hogarth, Aboriginal Health Worker at Leonora Community Health, has been presented with a Member of the Order of Australia for "significant service to the Indigenous community of regional Western Australia through the provision of improved ear health care for children".

22 January 2016 - [Midland Public Hospital delivering on targets](#) - More than 19,220 patients have been treated by St John of God Midland Public Hospital since it opened its doors to the public on 24 November, 2015. St John of God Midland Public Hospital A/Chief Executive Officer Mark Grime said a steady stream of people have been admitted to the hospital since opening, including more than 9,230 people at the hospital's emergency department. We are delighted to be assisting and caring for people in the area, after years of planning to ensure we provide high quality health care services delivered closer to home, he said. If the current trend continues, the hospital will be on track to treat the expected 200,000 people over the next 12 months.

##### **Operational Directives**

21 January 2016 - [OD 0651/16 Clinical and Related Waste Management Policy](#) - The OD provides the minimum requirements for the management of clinical and related waste generated by WA Health facilities.

21 January 2016 - [OD 0650/16 Uniform Human Resource Delegations for WA Health Entities](#) - To provide an updated set of uniform human resource delegations for WA Health.

#### **United Kingdom. Department of Health**

22 January 2016 - [Changes to midwife supervision in the UK](#)

22 January 2016 [Continuing care for children and young people with complex needs](#) Consultation Outcome

25 January 2016 - [The Ross Fund - Combatting the world's most serious diseases](#) - News story

26 January 2016 - [Pharmaceutical buying groups in the NHS](#) - Guidance

26 January 2016 - [Enabling closer working between the emergency services](#) - Consultation outcome

27 January 2016 - [Putting community pharmacy at the heart of the NHS](#) - Correspondence

28 January 2016 - [Social work: improving adult mental health](#) - Guidance

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

28 January 2016 [Federal cuts result in funding "black hole" for Australia's over-stressed public hospitals](#) The AuMA's latest snapshot of the performance of Australia's public hospitals points to an imminent crisis as the effects of Federal funding cuts make it harder for hospitals to meet growing patient demand and to reach significant performance benchmarks. The AuMA Public Hospital Report Card 2016,



released today, shows that, against key measures, the performance of our public hospitals is virtually stagnant, and even declining in key areas.

27 January 2016 - **Media alert: Australia's public hospitals facing a funding "black hole"** - AuMA President, Professor Brian Owler, and AuMA Vice President, Dr Stephen Parnis, will tomorrow release the AuMA Public Hospital Report Card 2016, an AuMA analysis of the performance of Australia's public hospitals. The AuMA Report Card examines public hospital capacity; emergency department waiting and treatment times; and elective surgery waiting and treatment times. It also provides a State-by-State snapshot of performance.

### American Medical Association (AMA)

21 January 2016 - **First-of-its-Kind PSA Campaign Targets the 86 Million American Adults with Prediabetes** - To raise awareness and help people with prediabetes know where they stand and how to prevent type 2 diabetes, the American Diabetes Association (ADA), the American Medical Association (AMA), and the Centres for Disease Control and Prevention (CDC) have partnered with the Ad Council to launch the first national public service advertising (PSA) campaign about prediabetes.

## 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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