

# **HEALTH ALERT**

# 1 August 2016

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#### **JUDGMENTS**

#### Commonwealth

27 July 2016 - *Ms Glenda Saville v Biripi Aboriginal Medical Service T/A Biripi Aboriginal Corporation Medical Centre* [2016] FWCFB 5064 - Appeal against an order PR580476 of Senior Deputy President Drake at Sydney on 18 May 2016 in matter number U2016/6591; whether permission to appeal should be granted; no arguable case of appellable error established; public interest not enlivened; permission to appeal refused.

27 July 2016 - *Ngaanyatjarra Health Service (Aboriginal Corporation) T/A Ngaanyatjarra Health Service v Andrew Roberts and Others* [2016] FWC 4875 - Application for costs orders against a party and legal representative involved in an application for an Unfair Dismissal Remedy.

22 July 2016 - Alphapharm Pty Ltd v Gilead Sciences, Inc. [2016] APO 50 - PATENTS – opposition to the grant of a patent – the invention relates to a hemifumarate salt – the hemifumarate is thermodynamically more stable than the monofumarate – citation reports the formation of the monofumarate – it is inevitable that the hemifumarate would have formed, at least in part – lack of novelty – would not have been a matter of routine to repeat the work of the citation or to alter it to prepare the hemifumarate – no lack of inventive step – opposition succeeds – no award of costs

#### **Victoria**

27 July 2016 - *Hamm v South Gippsland SC* [2016] VCAT 1253 - South Gippsland Shire Council issued a Notice of Decision to Grant a Planning Permit to convert an existing building previously used as a residential care facility to a hospital that will specifically treat drug and alcohol addiction. The proposed use includes alterations to the existing building so it can accommodate up to 20 inpatients through a detoxification and rehabilitation program. A number of nearby residents oppose the use and have applied to the Tribunal to review the decision of Council.

The residents are concerned that the proposed use will significantly impact the social wellbeing of the town as well as impact on the amenity of their homes and community. On the other hand, the Council contends that the use is not dissimilar to other community based uses and can sit comfortably in a residential context.

The Tribunal considered that the impact on the residents had to be weighed against the benefits that such a use can provide to the community at large. In that regard, the Tribunal was satisfied that a facility used to treat people with drug addictions is capable of being accommodated on this site. The key concern was that the application had not been resolved to a sufficient level of detail in order to enable the Tribunal to be satisfied that the amenity impacts are adequately managed. For this reason, the Tribunal set aside the decision of the Council, meaning that no permit is granted.

21 July 2016 - Inquest into the death of Kyle Ray Sears - Findings into the death of Kyle Ray Sears

#### **New South Wales**

28 July 2016 - *Charles v Northern New South Wales Local Health District* [2016] NSWIRComm 8 - The appellant worked as a casual Hospital Assistant at Lismore Base Hospital on a number of occasions between March 2010 and July 2013. In September 2011, the appellant made a public interest disclosure to the Independent Commission Against Corruption (ICAC) in relation to a practice carried out by the hospital. No adverse finding emerged from ICAC in relation to the practice. However, the appellant believed that he was subsequently, as an employee of the respondent, subjected to a campaign of bullying and harassment. In late 2014, the Workers Compensation Commission found the appellant to be unfit to work due to psychological injury. The appellant was advised in early 2015 that he was no longer an employee of the respondent. He brought a claim under the Industrial Relations Act alleging that his dismissal was 'harsh, unreasonable or unjust'. The claim was dismissed at first instance. The appellant now seeks leave to appeal, and if leave is granted, an appeal against that decision.

The Commission first considered whether leave to appeal should be granted. In that regard, it was found that there had been a failure to determine a fundamental jurisdictional issue, that is, whether there was or was not a dismissal. Accordingly, leave to appeal was granted. The Commission then found that there had

not been a 'dismissal' for the purposes of the Act. Therefore, the determination of the appeal could lead to no other order than that made in the first instance proceedings. The appeal was dismissed.

25 July 2016 - *Nepean Blue Mountains Local Health District v Starkey* [2016] NSWCA 11425/07/201 - TORTS – negligence – personal injury – slip and fall – where parties failed to refer to provisions of the Civil Liability Act in pleadings and at trial – where primary Judge failed to refer to the Civil Liability Act in judgment – whether primary Judge erred in failing to refer to the Civil Liability Act – whether primary Judge failed to elaborate the nature, content and scope of the duty of care – whether primary Judge failed to make finding on causation – whether primary Judge made findings outside of the plaintiff's case as pleaded – whether primary Judge made erroneous findings of fact

26 July 2016 - *MKH v JBH* [2016] NSWSC 1031 - MENTAL HEALTH - Guardians, committees, administrators, managers and receivers – Appointment - Application for appointment of a protected estate manager - Application made in anticipation of personal injury compensation – Protected person without other property - Application adjourned until after resolution of compensation litigation

#### **LEGISLATION**

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

#### Commonwealth

28 July 2016 - National Health (IVF Program) Special Arrangement Amendment Instrument 2016 (No. 2) (PB 69 of 2016) - F2016L01247 as made.

28 July 2016 - National Health (Originator Brand) Amendment Determination 2016 (No. 5) (PB 71 of 2016) - F2016L01245 as made.

28 July 2016 - National Health (Listed drugs on F1 or F2) Amendment Determination 2016 (No. 7) (PB 70 of 2016) - F2016L01243 • PB 70 of 2016 as made

28 July 2016 - National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2016 (No. 8) (PB 68 of 2016) - F2016L01241 • PB 68 of 2016 as made

28 July 2016 - National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2016 (No. 7) (PB 67 of 2016) - F2016L01240 as made.

25 July 2016 - Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 - QAA - 8/2016 - F2016L01236 as made.

25 July 2016 - Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 - QAA 7/2016 - F2016L01235 as made.

25 July 2016 - National Health (Epworth and Cabrini Private Hospitals Paperless Prescribing and Claiming Trial) Special Arrangement 2016 (PB 28 of 2016) - F2016L01234 as made.

#### **Northern Territory**

29 July 2016 - Guardianship of Adults Act - commenced.

# Western Australia

25 July 2016 - Public Health Bill 2014 - assent.

25 July 2016 - Public Health (Consequential Provisions) Bill 2014 - assent.

# **REPORTS**

#### Australia. Department of Health

#### Media releases

28 July 2016 - Thousands of Australians now Hep C Free - The Australian Government's watershed commitment to eradicate Hepatitis C within a generation is paying off, with thousands of Australians now Hep C Free as a result of a \$1 billion investment.

26 July 2016 - Ensuring Australians get most from community pharmacy - The Australian Government is ensuring Australians get the best experience possible from community pharmacy and wants to hear from the entire pharmaceutical supply chain – including consumers – on how to deliver it.

26 July 2016 - Young Australians encouraged to take the lead - don't delay, register today - The Australian Government is urging young Australians to put their good intentions about organ donation into effect by registering and sharing their decision online.

Private Health Insurance Circulars

26 July 2016 - PHI 55/16 - Registration of new private health insurer - CBHS Corporate Health

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

28 July 2016 - Newsletter from the Board - The Chiropractic Board of Australia releases its latest newsletter.

28 July 2016 - Newsletter from the National Board - The Medical Board of Australia releases its latest newsletter.

27 July 2016 - Communiqué - The Dental Board of Australia releases its latest communiqué.

27 July 2016 - Communiqué from the Board - The Occupational Therapy Board of Australia releases its latest communiqué.

27 July 2016 - **Tribunal reprimands**, **disqualifies nurse from registration** - A tribunal has reprimanded a nurse and disqualified her from applying for registration for three years.

26 July 2016 - Nurses and cosmetic procedures - A position statement on nurses and cosmetic procedures has been published today.

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

25 July 2016 - Science on the Swan, 3 May 2016 - Presentation by Professor Anne Kelso AO, NHMRC Chief Executive Officer at the Science on the Swan Conference titled 'The changing landscape of medical research: the funders dilemma', Perth, 3 May 2016.

# Australia. Therapeutic Goods Administration (TGA)

25 July 2016 - Australian Public Assessment Reports for prescription medicines (AusPARs) - Added Adalimumab (rch) / Humira and Gliclazide / Gliclazide Gppl MR 30; Gliclazide Gxp MR 60; Gliclazide Genpar MR 60.

25 July 2016 - Annual Charge Exemption (ACE) scheme forms - Sponsors may now apply for an ACE reinstatement up to 15 September 2016.

# **Australian Digital Health Agency**

21 July 2016 - New National Clinical Terminology Service website - The new website for the National Clinical Terminology Service (NCTS) is scheduled to launch early August 2016 and will be available at www.healthterminologies.gov.au.

The NCTS, operated by the Australian Digital Health Agency, is responsible for managing, developing and distributing national clinical terminology solutions such as SNOMED CT-AU and the Australian Medicines Terminology (AMT).

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

27 July 2016 - OECD health-care quality indicators for Australia 2015 - This report summarises information Australia provided to the Organisation for Economic Co-operation and Development's Health at a glance 2015 report, and compares data supplied by Australia in 2015 with data it supplied for previous years and with data reported by other OECD countries. The OECD HCQIs provide a common set of data about the quality of health care delivered across participating OECD member countries.

26 July 2016 - Residential aged care and Home Care 2014–15 (web report) - The Residential aged care and Home Care 2014–15 web report provides information on Australian Government-funded residential aged care services and the Home Care Packages Programme, and the people receiving these services.

25 July 2016 - Mental health services in Australia, tranche 3 release 2016

# Australian Commission on Safety and Quality in Health Care

15 July 2016 - **Delirium Clinical Care Standard** - The Australian Commission on Safety and Quality in Health Care (the Commission) has released a Delirium Clinical Care Standard to support safe, high quality and appropriate care for patients with, or at risk of delirium.

On the Radar – 25 July 2016 – Issue 283 (PDF 106KB) (Word 158KB)

# **Australian Competition and Consumer Commission (ACCC)**

22 July 2016 - Full Court upholds unconscionable conduct finding against AMI - The Full Court of the Federal Court of Australia has dismissed an appeal by NRM Corporation Pty Ltd and NRM Trading Pty Ltd (together, NRM), and NRM director Jacov Vaisman, against the decision of Justice North that NRM had engaged in unconscionable conduct through its Advanced Medical Institute business promoting and supplying medical services and medications for men suffering from sexual dysfunction.

## **Pharmaceuticals Benefits Scheme (PBS)**

27 July 2016 - Review of Pharmacy Remuneration and Regulation - Release of Discussion Paper - The Chair of the Review Panel, Prof. Stephen King has announced the release of the Review's Discussion Paper, inviting formal submissions to the Review.

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

27 July 2016 - Canberra Hospital saves with clean energy technology - The Canberra Hospital is on its way to becoming more energy-efficient with solar panels and new lighting being installed to help reduce future costs and the government's carbon footprint, Minister for Health Simon Corbell announced.

26 July 2016 - New space for drug and alcohol treatment opens at Arcadia House - More people will have access to alcohol and drug treatment programs with a new space for therapeutic group sessions and other health activities opening at Directions ACT's Arcadia House.

25 July 2016 - Government's health reforms reduce medical imaging wait lists - Canberra Hospital patients are receiving more timely medical imaging procedures as a result of the ACT Government's positive ongoing reforms to the health system, Minister for Health Simon Corbell announced today. Mr Corbell said better use of machines and improved processes and practices has driven a major reduction in the waiting lists for MRI scans, CT scans and ultrasounds at the hospital.

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

#### Media Releases

28 July 2016 - Newly available hepatitis C treatments have cure rate of more than 90 per cent - NSW Health today marked World Hepatitis Day by encouraging people living with hepatitis C virus (HCV) infection to access newly available treatments with cure rates of more than 90 per cent. Dr Jo Mitchell, Executive Director, Centre for Population Health, NSW Health, said the highly effective, direct-acting antivirals for the treatment of hepatitis C are now affordable after recently being listed on the Pharmaceutical Benefits Scheme.

25 July 2016 - Bankstown-Lidcombe Hospital - I am profoundly sorry for the families of a newborn who died and another newborn who was severely affected after the wrong gas was dispensed through a neonatal resuscitation outlet at Bankstown-Lidcombe Hospital. I deeply regret these families have suffered through such a devastating error. NSW Health will do all it can to support them.

Policy Directives & Guidelines

28 July 2016 - Medicare Ineligible and Reciprocal Health Agreement - Classification and Charging

22 July 2016 - NSW Health Data Quality Assurance Framework for Activity Based Management

**New South Wales Health Care Complaints Commission (HCCC)** 

28 July 2016 - Miss Michelle Hollamby- impairment and lack of competence

21 July 2016 - Dr Nima Azizi - Registration cancelled for a minimum of 3 years for professional misconduct - The HCCC prosecuted Dr Nima Azizi before the NSW Civil and Administrative Tribunal for his conduct in 2013 and 2014, while he was working in the emergency departments of Blacktown and Mt Druitt Hospitals.

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

27 July 2016 - NT's first Public Guardian named - The new *Guardianship of Adults Act* commences today with the appointment of the inaugural Public Guardian who will head up a new independent statutory office. Department of Health Chief Executive, Professor Len Notaras, said he was pleased to announce that following a competitive recruitment process, Ms Beth Walker has been appointed as the inaugural Public Guardian of the Northern Territory.

#### Queensland. Department of Health

29 July 2016 - Craftsman-made cabinets donated to Charleville Hospital Palliative Care Unit - Charleville Hospital's Palliative Care Unit will soon have a new custom-made kitchenette, beautifully crafted and donated by local cabinet-maker Fred Jaeger and his wife Tracy.

28 July 2016 - **Grants another step towards smoke-free Queensland** - Local governments will be provided with extra funding to help prepare for new smoke-free laws due to take effect on September 1.

28 July 2016 - Palaszczuk Government continues bolstering frontline jobs - Minister for Health and Ambulance Services Cameron Dick has called on the LNP to end its campaign of lies surrounding frontline job cuts as the Palaszczuk Government continues recruiting where it counts.

27 July 2016 - Langbroek kicks own goal on payroll - Member for Surfers Paradise John-Paul Langbroek has kicked an own goal on the issue of payroll while trying to distract from the LNP's woeful record on health.

27 July 2016 - **\$6 million investment in medicinal cannabis research in Queensland** - Parents of Queensland children with severe drug-resistant epilepsy can now express their interest in taking part in medicinal cannabis clinical trials.

25 July 2016 - Roma resident praises convenience of telehealth - Roma resident Marcus Dart was recovering from a broken lower leg and wasn't looking forward to a painful nine-hour return drive to Toowoomba for his first follow-up specialist consultation. But thanks to the South West Hospital and Health Service's telehealth technology, he has been able to be seen at Roma for all his follow-up reviews and saved the time, cost and inconvenience of multiple long journeys.

22 July 2016 - Bollon nursing director advises residents to give telehealth a go - Bollon Community Clinic's new Director of Nursing and Facility Manager Heather Hancock has experienced first-hand the benefits of telehealth in isolated areas. Ms Hancock, who has worked in rural and remote Queensland for more than 30 years, wants to promote the use of telehealth at Bollon for routine and follow-up consultations with specialists and GPs

#### Queensland, Office of the Health Ombudsman

12 July 2016 - Health, conduct and performance functions report Q3 2015–16: Australian Health Practitioner Regulation Agency and the national boards

# South Australia. Department for Health & Ageing

22 July 2016 - **Travelling Aussies**, **be careful of mozzies!** - South Australians travelling to South and Central America to cheer on our Olympians and Paralympians are being urged to protect themselves from mosquito-borne diseases.

# Tasmania. Department of Health & Human Services

28 July 2016 - **Green and White must apologise over RHH allegations** - The findings from the WorkSafe report that have been made public today, has found there is no illness cluster at the Royal Hobart Hospital.

27 July 2016 - Bright future for Tasman Peninsula health services - I welcome today's announcement that health services on the Tasman Peninsula are set for a bright and sustainable footing into the future.

25 July 2016 - Cardiothoracic RTI - Today an RTI was provided to Labor on cardiothoracic surgery as part of our commitment to be an open and transparent government.

23 July 2016 - Take a virtual walk through the Royal redevelopment - Now is your opportunity to take a virtual tour of the Royal Hobart Hospital Redevelopment with panoramic images of the K-Block design now available - a great way to preview the state-of-the-art facilities before they are built.

22 July 2016 - Community boost for Lilydale - I am pleased to announce that the Hodgman Liberal Government will provide a one-off grant of \$119,500 for a significant upgrade of the Lilydale Memorial Hall

# Victoria. Department of Health

29 July 2016 - More Rural Patients Logging On To Telehealth - The Andrews Labor Government is better connecting patients across rural Victoria with top medical specialists via the internet thanks to a \$5 million investment in telehealth to improve access to health care.

28 July 2016 - New Plans To Eliminate The Burden Of Hepatitis B And C In Victoria - The Andrews Labor Government has set a bold goal of eliminating hepatitis B and C by 2030 with ambitious targets that exceed those set by the World Health Organization. To mark World Hepatitis Day, Parliamentary Secretary for Health Mary-Anne Thomas, today launched the Victorian Hepatitis B and C Strategies for 2016 to 2020.

28 July 2016 - Halving The Rate Of Suicide In Victoria - The Andrews Labor Government has revealed its plan to halve the rate of suicide over the next 10 years. Premier Daniel Andrews today joined Minister for Mental Health Martin Foley and Member for Frankston Paul Edbrooke to release the Labor Government's Suicide Prevention Framework, which is backed by a \$27 million investment in two key suicide prevention initiatives.

# Victorian Institute of Forensic Medicine

2 June 2016 - Reader Feedback - Subclavian Lines - The Communiqué is an educational resource for medical practitioners and health professionals with a focus on patient safety in acute health care settings. Written by clinicians for clinicians about lessons learned from deaths investigated by the Coroners Court.

# Western Australia (WA). Department of Health

# Media Releases

28 July 2016 - Meningococcal disease in a child - The Department of Health has reported that a young child is currently recovering in hospital after being diagnosed with meningococcal disease.

26 July 2016 - Minister for Health and Minister for Regional Development: Builder revealed for Katanning hospital project - The contract for the \$32 million redevelopment of the Katanning Health Service has been awarded to Cockram Construction Ltd, Health Minister John Day and Regional Development Minister Terry Redman announced today.

22 July 2016 - Minister for Health and Minister for Regional Development: Milestone reached for Katanning Health Service - The first stage of construction of the new \$32.4 million Royalties for Regionsfunded Katanning Health Service is now complete.

28 July 2016 - **Health Matters** - **Hepatitis Week** - Noongar Radio hosts a fortnightly program called 'Health Matters' where Aboriginal and other health experts discuss health issues

25 July 2016 - **Hepatitis Awareness Week focuses on treatment** - World Hepatitis Day is Thursday 28 July, and this year's theme is elimination.

21 July 2016 - Our Undiagnosed Disease Program in the news - If you missed the ABC's story on WA Health's recently launched Undiagnosed Diseases Program (UDP), which screened on the magazine-style program Australia Wide at the weekend, you can still catch it on the ABC website or iview.

#### **Publications**

22 July 2016 - Western Australian Immunisation Strategy 2016–2020 - The WA Immunisation Strategy 2016–2020 outlines a comprehensive framework for enhancing immunisation program service delivery in WA. The Strategy is designed to serve as a road map to strengthen programs and partnerships that improve capacity to protect the health of our communities through immunisation.

# New Zealand. Ministry of Health

28 July 2016 - Publicly funded hospital discharges – 1 July 2013 to 30 June 2014 - These tables contain summarised data showing publicly funded hospital discharges and procedures by DHB, ethnic group, sex, age group and disease/procedure classification.

28 July 2016 - **Privately funded hospital discharges – 1 July 2013 to 30 June 2014** - These tables contain summarised data showing privately funded hospital discharges and procedures by DHB, sex, age group and disease/procedure classification.

28 July 2016 - Review of Drug Utensils Regulation: A discussion document - The National Drug Policy identifies alcohol and other drug issues as health matters that need to be addressed proportionately, compassionately and innovatively. The goal of the policy is to minimise harm from alcohol and other drugs, and to promote and protect the health and wellbeing of New Zealanders.

# United States of America. Department of Health & Human Services

28 July 2016 - HHS forges unprecedented partnership to combat antimicrobial resistance - To address one of the greatest modern threats to public health — antibiotic resistance — the U.S. Department of Health and Human Services (HHS), the Wellcome Trust of London, the AMR Centre of Alderley Park (Cheshire, United Kingdom), and Boston University School of Law will create one of the world's largest public-private partnerships focused on preclinical discovery and development of new antimicrobial products.

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

29 July 2016 - Rural GP grants must be reshaped - As part of Family Doctor Week, the AuMA is calling on the Government to work with profession as it reshapes Rural and Regional Teaching Infrastructure Grants to allow more rural family doctors to invest in the future of their practices.

28 July 2016 - **More rural GP opportunities needed** - During Family Doctor Week, the AuMA is calling on the Government to invest in the AuMA's Community Residency Program to encourage more young doctors to choose a career in general practice and work in regional and remote Australia.

27 July 2016 - Invest in preventive health for a healthier Australia - As part of Family Doctor Week, the AuMA is encouraging the Government to invest in preventive health measures to improve the health and wellbeing of all Australians.

26 July 2016 - AuMA supports Royal Commission into Northern Territory juvenile detention - The AuMA supports the Prime Minister's decision to establish a Royal Commission into the mistreatment of juveniles in Northern Territory detention, following the shocking revelations in the ABC's Four Corners program.

26 July 2016 - Victoria, Tasmania join National Doctor Health Network - Victoria and Tasmania have joined the new \$2 million national network of doctors' health services, paving the way for doctors and medical students in both States to access advisory, referral, and advocacy services.

26 July 2016 - **Health Care Home trial must be properly funded** - In AuMA Family Doctor Week, the AuMA is calling on the Federal Government to allocate appropriate funding for the trial of the Health Care Home model of care for patients with chronic disease.

25 July 2016 - **GP-Pharmacist team delivers better outcomes for patients** - This Family Doctor Week, the AMA is encouraging the Federal Government to support the AMA's proposal to integrate non-dispensing pharmacists into GP-led primary care teams.

24 July 2016 - Support your local family doctor - The AMA is encouraging Australians to celebrate AMA Family Doctor Week 2016 by acknowledging the hard work and dedication of the more than 30,000 GPs across the country who provide high quality primary health care to their patients.

23 July 2016 - Labor Opts For Experience In Health - AMA President Dr Michael Gannon welcomed the re-appointment of Catherine King to the Shadow Health portfolio, with the new title, Shadow Minister for Health and Medicare.

# **American Medical Association (AMA)**

26 July 2016 - From hospital to home: A model for safer transitions - Patients with multiple chronic conditions, polypharmacy and unmet social needs are often at risk for serious drug therapy problems during the transition from hospital to home.

26 July 2016 - Physicians, patients take active approach to diabetes fight-online - A new project underway is creating a roadmap for large health care organizations to partner with their patients to fight off type 2 diabetes when they are most at risk of developing the disease.

19 July 2016 - Tracking patients between visits: A new care model - As the health care system transitions to value-based care, new models of care will be a critical part of the new Medicare payment system. Learn how one physician is using a new model of care to track patients in between face-to-face visits in his practice.

#### **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.

#### **Contact Details**

T+61 2 6201 8789

caroline.atkins@dlapiper.com

#### MORE INFORMATION

Contact your nearest DLA Piper office:

## **BRISBANE**

Level 9, 480 Queen Street Brisbane QLD 4000 **T** +61 7 3246 4000 **F** +61 7 3229 4077 brisbane@dlapiper.com

# CANBERRA

Level 3, 55 Wentworth Avenue Kingston ACT 2604 T +61 2 6201 8787 F +61 2 6230 7848 canberra@dlapiper.com

#### **MELBOURNE**

Level 21, 140 William Street Melbourne VIC 3000 T +61 3 9274 5000 F +61 3 9274 5111 melbourne@dlapiper.com

## **PERTH**

Level 31, Central Park 152–158 St Georges Terrace Perth WA 6000 T +61 8 6467 6000 F +61 8 6467 6001 perth@dlapiper.com

#### **SYDNEY**

Level 22, No.1 Martin Place Sydney NSW 2000 T +61 2 9286 8000 F +61 2 9286 8007 sydney@dlapiper.com

www.dlapiper.com

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