

# **HEALTH ALERT**

# 12 December 2012

Judgments	
Commonwealth. Federal Circuit Court	1
Commonwealth. Administrative Appeals Tribunal	1
New South Wales	1
Victoria	2
Legislation	2
Commonwealth	2
Tasmania	2
Reports	2
Australia. Department of Health	2
Australia. Health Practitioner Regulation Agency and the boards	
Australia. National Blood Authority	4
Australia. National Health & Medical Research Council (NHMRC)	
Australia. Pharmaceutical Benefits Scheme (PBS)	
Australia. Productivity Commission	
Australia. Therapeutic Goods Administration (TGA)	4
Australian Institute of Health & Welfare	5
Australian Commission on Safety and Quality in Health Care	5
Australian Competition and Consumer Commission	
Australian Digital Health Agency	5
New South Wales (NSW). Ministry of Health	5
Northern Territory. Department of Health	6
Queensland. Department of Health	6
Tasmania. Department of Health & Human Services	6
Victoria. Department of Health	
Western Australia. Department of Health	7
New Zealand. Ministry of Health	8
Health Canada	8
United Kingdom. Department of Health	8
Australian Medical Association (AuMA)	8
British Medical Association	9
About us	9
More information	9

# JUDGMENTS

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

5 December 2016 - *Singh v Minister For Immigration & Anor* [2016] FCCA 3061 - MIGRATION – Application for judicial review of decision of Administrative Appeals Tribunal – applicant seeking impermissibly to review previous decision of delegate in separate application – applicant seeking medical treatment visa when not requiring medical treatment – application dismissed.

#### Commonwealth. Administrative Appeals Tribunal

30 November 2016 - *Raad Al-Saad and Secretary, Department of Social Services* [2016] AATA 969 - SOCIAL SECURITY – disability support pension – multiple conditions – whether applicant's conditions are permanent – rating under the Impairment Tables – whether ratings add to a total of 20 points under the Impairment Tables – mental health – spinal condition – lower limb condition – multiple sclerosis – other conditions – decision affirmed.

#### **New South Wales**

30 November 2016 - Phillips v JW Williamson and RW Williamson trading as Williamson Bros [2016] NSWSC 1681 - ADMINISTRATIVE LAW – Workers Compensation appeal – leave sought to file application out of time – leave granted – order sought to set aside Appeal Panel's medical assessment certificate and statement of reasons – procedural fairness – inadequate reasons – orders sought made.

On 30 November 2016, the New South Wales Supreme Court handed down a decision in relation to an application to set aside a decision of a Medical Appeal Panel, established under the *Workers Compensation Act 1998* (NSW). The basis for the application was a breach of procedural fairness. The appeal arose out of a claim for compensation for an injury suffered by the appellant in 2011 when he fell onto his back, striking his head, and also his right shoulder. In January 2015, a medical specialist assessed the applicant and found that deterioration in his condition since the injury was explained by abnormal illness behaviour. The applicant initiated an appeal against this assessment and sought to tender additional evidence not available to the specialist at the time of the examination. He also asked to be examined by a Medical Appeal Panel. The Appeal Panel refused both applications.

By way of summons, the applicant sought a declaration that the medical certificate and decision of the specialist were affected by error of law. The Supreme Court found that the Appeal Panel had erred in rejecting the relevant additional material on which the applicant sought to rely and to which the employer took no objection, and on this basis, he had been denied procedural fairness. The appellant's application was successful with the assessment certificate and statement of reasons set aside and a new Appeal Panel established to consider the appeal, in light of new evidence, and, in accordance with the law.

6 December 2016 - *Health Care Complaints Commission v Tan* [2016] NSWCATOD 147 - PROFESSIONAL DISCIPLINE – Medical Profession — self-administration of drugs – treatment of patients – misleading conduct – finding of professional misconduct – held unfit to remain registered – registration cancelled – prohibition order refused.

In this case the Tribunal heard an application from the Health Care Complaints Commission (**Commision**) to make disciplinary findings in relation to eight complaints against a doctor specialising in cosmetic medicine. The doctor had a history of drug use, and in July 2014, had been hospitalized after being found unconscious in his clinic as a result of the use of Propofol, Pethidine and Midazolam. The Tribunal upheld six of the complaints, and made four findings of unsatisfactory professional conduct on the basis that the doctor's conduct had involved issues of self-abuse, breach of relevant law, and the active misleading of investigative bodies.

The Tribunal refused to make findings in relation to the other two complaints. The first complaint involved an assertion that the doctor was not competent to practice by virtue of an adjustment disorder. The Tribunal found that this assertion was not supported by the Commission's expert evidence. The Tribunal also dismissed a request that a complaint that sought a finding of unsatisfactory professional conduct in relation to the doctor's failure to respond to a notice issued by the Commission. Although the doctor admitted a contravention, the Tribunal did not make a formal finding because it was a case with mitigating factors, including the time of year at which the notice was issued, the need for the doctor to obtain professional advice, and the giving of a detailed response to all questions a month after the notice had been due.

6 December 2016 - *Health Care Complaints Commission v Stone (No 2)* [2016] NSWCATOD 150 - Protective orders – professional misconduct; nurse practitioner – private practice – psychotherapy – sexualised boundary violations with two patients; events over two years apart – lack of collaborative arrangements with medical practitioners – lack of appropriate supervision – inappropriate billing to Medicare – prescribing without appropriate regard to physical health.

7 December 2016 - *Pierce v Metro North Hospital and Health Service* [2016] NSWSC 1731 - COSTS – indemnity costs - offer of compromise – plaintiff entitled to an order that the defendant pay costs on the indemnity basis - no question of principle.

8 December 2016 - *Health Care Complaints Commission v Reader* [2016] NSWCATOD 152 - PROFESSIONS AND TRADES – Professional disciplinary proceedings – whether medical practitioner guilty of unsatisfactory professional conduct and professional misconduct as defined in the Health Practitioner Regulation National Law - where practitioner concedes majority of particulars in complaints - whether practitioner suffers an impairment – whether practitioner competent to practise.

## Victoria

2 December 2016 - *Toyota v Bendrups & Ors* [2016] VSC 718 - ADMINISTRATIVE LAW – Judicial review of an opinion of a medical panel – Denial of procedural fairness – New facts and circumstances – Whether medical questions should be remitted to original medical panel or differently constituted medical panel – Remitter to Convenor of Medical Panels – Civil Procedure Act 2010, s 9 – Accident Compensation Act 1985, s 45 – Wingfoot Australia Partners Pty Ltd v Kocak (2013) 252 CLR 480 – Barrett Burston Malting Co Pty Ltd v Kotzman [2013] VSC 248.

1 December 2016 - *YG-1 Australia Pty Ltd v Dr Brann & Ors* [2016] VSC 713 - ADMINISTRATIVE LAW - Judicial review - procedural fairness - Workers' compensation - Medical Panel - new information relevant, credible and significant to the Panel's decision - Procedural fairness - Adequacy of reasons - Failure to take into account relevant considerations - Accident Compensation Act 1958 (Vic) ss 98, 98E.

# LEGISLATION

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

#### Commonwealth

9 December 2016 - Narcotic Drugs Amendment (Licence Charges) Regulation 2016 - F2016L01894 as made.

9 December 2016 - Narcotic Drugs (Licence Charges) Regulation 2016 - F2016L01893 as made.

## Tasmania

6 December 2016 - Mental Health Amendment Bill 2016 - Assented.

# REPORTS

#### Australia. Department of Health

Media releases

9 December 2016 - Health workforce scholarship arrangements for 2017 - The Assistant Minister for Rural Health, Dr David Gillespie has provided an update on the interim health workforce scholarship arrangements for the 2017 study year.

8 December 2016 - AusPlay shows children need to get more active - Fifty four per cent of children aged under 14 years are active at least once a week in organised sport or physical activity after school hours, the most comprehensive survey of Australians' sporting activity and motivation has found.

8 December 2016 - **NSW Rural Doctors Network office opening** - NSW Rural Doctors Network today opened new offices in Newcastle that will become a hub for rural health practitioners and organisations to the benefit of thousands of rural and remote communities across New South Wales.

6 December 2016 - New Funding Arrangements for Residential Aged Care - The Assistant Minister for Health and Aged Care, Ken Wyatt, has outlined a revised package of aged-care funding measures to ensure the sector is funded and sustainable into the future.

3 December 2016 - **\$2.8 Million for Cure4MND Research** - Funding to find a cure for Motor Neurone Disease received a boost with the Minister for Health, Aged Care and Sport, Sussan Ley, presenting Neale Daniher and the Cure4MND Foundation a cheque for \$2.8 million.

3 December 2016 - Australia's biggest clinical trial part of \$483m health research grants - The largest clinical trial ever undertaken in Australia is among \$483 million in grants for health and medical research funding announced by the Minister for Health and Aged Care, Sussan Ley.

2 December 2016 - Kentish Health Centre - Assistant Minister for Rural Health, Dr David Gillespie, moved today to set the record straight about health care services for the Kentish community in Tasmania.

Private Health Insurance Circulars

7 December 2016 - PHI 91/16 - Critical Dates - February 2017 Prostheses List

2 December 2016 - PHI 90/16 Circular Tasman Health Care Day Infusion Unit

30 November 2016 - PHI 89/16 Private Health Insurance (Benefit Requirements) Amendment Rules 2016 (No. 8)

2 December 2016 - National Health Genomics Policy Framework - The Commonwealth Department of Health is seeking feedback on the draft National Health Genomics Policy Framework. Consultation runs until the 8 March 2017.

# Australia. Health Practitioner Regulation Agency and the boards

8 December 2016 - **Quarterly registration data released** - The National Dental Board has released its quarterly registration data.

7 December 2016 - **Quarterly registration data released** - The National Physiotherapy Board has released its quarterly registration data.

7 December 2016 - **Quarterly registration data released** - The National Psychology Board has released its quarterly registration data.

6 December 2016 - Communiqué - The Dental Board of Australia releases its latest communiqué.

6 December 2016 - **Quarterly registration data released** - The National Osteopathy Board has released its quarterly registration data.

5 December 2016 - Quarterly registration data released - The National Pharmacy Board has released its quarterly registration data.

5 December 2016 - Medical practitioner is reprimanded and fined for inappropriately prescribing medication - The tribunal has reprimanded a practitioner for engaging in professional misconduct, which contributed to the death of a patient.

5 December 2016 - **Quarterly registration data released** - The National Medical Radiation Practice Board has released its quarterly registration data.

5 December 2016 - New form for requesting partial exemption from CPD requirements - The Medical Radiation Practice Board of Australia has published a form for requesting partial exemption from continuing professional development requirements.

5 December 2016 - New recency of practice info graphic published - A new info graphic about recency of practice requirements has been published in addition to an updated video for medical radiation practitioners.

2 December 2016 - Court of appeal upholds Supreme Court's decision to dismiss doctor's application for judicial review - The Court of Appeal in Western Australia has dismissed a cardiologist's appeal of a decision by the Supreme Court of Western Australia.

#### Australia. National Blood Authority

1 December 2016 - Research and Development Pilot Project round two NOW OPEN - The National Blood Authority has commenced a Research and Development Pilot Project to be conducted over two grant rounds.

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

2 December 2016 - **\$483 million in grants to support innovative Australian health and medical research projects** - The Turnbull Government continues to invest in health and medical research with more than \$483 million in funding announced today. This new funding will support 601 grants across four NHMRC funding schemes. More than 1900 researchers will share in the \$483 million for a wide-range of projects.

2 December 2016 - NHMRC Health Tracker – December 2016

## Australia. Pharmaceutical Benefits Scheme (PBS)

7 December 2016 - Review of Pharmacy Remuneration and Regulation - Pharmacy Financial Survey (Update) - In response to concerns amongst some pharmacy owners regarding the intended purpose of the Review's Pharmacy Financial Survey, the Review Panel has released a message clarifying its purpose in conducting the survey and how the data collected will be used to inform its recommendations.

2 December 2016 - Review of Pharmacy Remuneration and Regulation - Pharmacy Financial Survey - In his December Message from the Chair, Prof Stephen King extends an invitation to all Australian pharmacies to participate in an online survey which will inform the Review's own comprehensive financial analysis of the pharmacy sector.

1 December 2016 - **PBS Website Update** - The Schedule of Pharmaceutical Benefits was updated on 1 December 2016 and the Summary of Changes can be found on the New, Amended and Deleted Items page.

# Australia. Productivity Commission

5 December 2016 - Human Services Study report - This report was released on 5 December 2016 and it sets out the Commission's view on the priority areas where reform could offer the greatest improvements in individual wellbeing and community welfare. For the services identified as best suited, the second stage of the inquiry is to make reform recommendations that help to ensure all Australians have timely and affordable access to high-quality services that are appropriate to their needs, and delivered in a cost-effective manner.

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

8 December 2016 - Consultation: National Health Genomics Policy Framework: Conducted by the Department of Health - The Commonwealth Department of Health is seeking feedback on the draft National Health Genomics Policy Framework.

7 December 2016 - TGA presentation: International Society for Cellular Therapy Australia and New Zealand Regional Meeting, 12 November 2016 - This presentation describes the recent TGA public consultation on the exclusion of some autologous cell therapies from regulation.

7 December 2016 - Correcting the record: Australian Financial Review story on medicinal cannabis -Correcting the record on the 5 December 2016 Australian Financial Review story.

7 December 2016 - Medical Device Single Audit Program - Additional candidates can now apply for the Medical Device Single Audit Program.

6 December 2016 - Phenytoin (Dilantin) bottles of capsules and tablets - Recall for product correction - child-resistant caps may not function correctly.

6 December 2016 - TGA presentation: given at the Parenteral Drug Association end of year event, 29 November 2016 - An update on new close out process for inspections, new risk matrix and reinspection frequencies.

6 December 2016 - TGA presentation: Victorian Department of Health and Human Services, 24 November 2016 - This presentation provides a brief background on the TGA's role in the regulation of clinical trials as well as guidance on using the new online Clinical Trial Notification form.

5 December 2016 - Prescription medicines: registration of new chemical entities in Australia - Added registered new chemical entity for Antizol.

5 December 2016 - Prescription medicines: new or extended uses, or new combinations of registered medicines - Added Technivie (paritaprevir/ritonavir/ombitasvir) and Nocdurna (desmopressin (as acetate)).

5 December 2016 - MRA GMP clearance application processing timelines - Updates to MRA clearance application processing timelines.

5 December 2016 - Medtronic SynchroMed II implantable infusion pump - Update - additional information.

#### Australian Institute of Health & Welfare

9 December 2016 - New report reveals overlap between homelessness, child protection and youth justice involvement

7 December 2016 - Inactivity, smoking, obesity among risk factors that contribute to dementia

6 December 2016 - Diabetic ketoacidosis among children and young people with type 1 diabetes

5 December 2016 - Healthy Futures - Aboriginal Community Controlled Health Services Report Card 2016

5 December 2016 - National frameworks about Aboriginal and Torres Strait Islander people

2 December 2016 - Hospitalised burn injuries Australia 2013-14

Australian Commission on Safety and Quality in Health Care

On the Radar - 12 December 2016 - Issue 303 (PDF 265KB) (Word 325KB)

On the Radar – 5 December 2016 – Issue 302 (PDF 185KB) (Word 146KB)

#### Australian Competition and Consumer Commission

2 December 2016 - Advanced Medical Institute owners fined \$350,000 for contempt of court - The Federal Court has fined NRM Corporation Pty Ltd and NRM Trading Pty Ltd (together, NRM) \$350,000 for contempt of court. NRM owns and operates the business known as the Advanced Medical Institute. This decision follows an earlier finding by Justice Moshinsky that NRM had failed to comply with court orders made by Justice North on 22 April 2015 in previous proceedings brought by the ACCC.

# **Australian Digital Health Agency**

5 December 2016 - **CEO Tim Kelsey in Channel Nine interview** - Tim Kelsey speaks about the My Health Record system and says he is convinced the Australian Digital Health Agency can deliver a successful outcome in Australia.

#### New South Wales (NSW). Ministry of Health

Media Releases

7 December 2016 - Strongest winter hospital performance for NSW - NSW hospitals have reported their strongest performance in a winter quarter, with 71.5% of patients spending four hours or less in emergency departments.

5 December 2016 - World-first medicinal cannabis trial now recruiting patients - Doctors are now recruiting patients in a world-first medicinal cannabis trial in NSW for the prevention of chemotherapy-

induced nausea and vomiting. The clinical trial will involve 80 patients in the first stage and could expand to another 250 patients across NSW.

Policy Directives & Guidelines

9 December 2016 - Guidelines for Clinical Placements in NSW Health GL2016\_028

9 December 2016 - Clinical Placements in NSW Health Policy PD2016\_057

5 December 2016 - Transfer of Care from Mental Health Inpatient Services PD2016\_056

1 December 2016 - Medicare Ineligible and Reciprocal Health Agreement - Classification and Charging PD2016\_055

#### Publications

2 December 2016 - PhD Scholarships Guidelines

2 December 2016 - Genomics collaborative grants guidelines

## Northern Territory. Department of Health

9 December 2016 - Putting culture at the centre of Indigenous health care - The Northern Territory Health Minister has launched a new framework, placing culture at the centre of Indigenous health service delivery.

9 December 2016 - An important step in modernising termination of pregnancy laws - Health Minister Natasha Fyles has opened discussions on plans to change termination of pregnancy laws in the Northern Territory.

## **Queensland. Department of Health**

9 December 2016 - Celebrating Queensland Health award winners - Minister for Health and Ambulance Services Cameron Dick has congratulated the winners of the 2016 Queensland Health and Department of Health Awards for Excellence. Mr Dick said finalists for the 2016 awards represented health services from the Gold Coast in the south-east, to the Torres and Cape Hospital and Health Service in the north and the Darling Downs Hospital and Health Service in the west.

4 December 2016 - **Can't touch this – heatwave bats are off limits** - Queensland Health is urging the public not to pick up bats that have been affected by the recent heatwave. Temperatures in the vicinity of 40 degrees in the last few days have caused some bats to leave their usual habit in the trees to seek shelter on the ground. Some bats may appear to be dead but they're not and when people attempt to remove them they can be bitten or scratched.

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

8 December 2016 - Nurse wages - The Hodgman Liberal Government has been negotiating in good faith with the Australian Nursing and Midwifery Federation (**ANMF**). It is deeply unfortunate that the ANMF feel that industrial action is appropriate – particularly as we head towards Christmas. The formal offer of a 2 per cent increase over three years was put to the ANMF, and we continue to urge them to take up this offer to provide members a pay rise before Christmas.

7 December 2016 - Wellbeing of Peacock Centre patients and staff, a priority - The wellbeing of patients and staff is the number one concern of the Hodgman Liberal Government and the Tasmanian Health Service (**THS**), following a fire at the Peacock Centre in North Hobart earlier today. The fire started at around 10:30am this morning. It completely destroyed the building, which was used as a day centre for mental health clients and a base for staff caring for clients in the community. I am advised that two THS staff members were taken by Ambulance Tasmania to the Royal Hobart Hospital for treatment for non-life threatening injuries. I commend the quick actions of staff and emergency services personnel that attended today's fire and worked quickly to evacuate the building. It is thanks to their efforts that the fire did not result in more serious injury to staff and patients.

#### Victoria. Department of Health

7 December 2016 - **Increase in syphilis and gonorrhoea in men who have sex with men** - Health Advisory - Victorian syphilis and gonorrhoea notifications have increased in the last few years, with cases reported predominantly in men who have sex with men.

6 December 2016 - **Help improve Victoria's ambulance services** - Do you have views on how to improve the laws that govern ambulance services in Victoria? The Victorian Government invites your ideas and feedback. Stakeholders and the public are invited to submit ideas around the following key areas: strengthening pre-hospital emergency care and transport to ensure patients receive safe and quality care, enabling more community engagement with Ambulance Victoria, addressing health and wellbeing needs of ambulance staff, improving governance processes and structures to support provision of modern day ambulance services, any additional issues that may impact patient outcomes, staff health and wellbeing, and day-to-day ambulance services operations. Feedback from this consultation will be used to update the *Ambulance Services Act 1986* and related legislation to support the delivery of an optimal, world-class ambulance service.

5 December 2016 - More support for Victorian cancer survivors - Cancer survivors and people living with cancer will get the support they need with \$500,000 to fund new ways to better help Victorians recovering from the effects of a cancer diagnosis and treatment. Minister for Health Jill Hennessy today opened the next funding round of the Victorian Cancer Survivorship Program, while launching the annual Cancer in Victoria Statistics and Trends report with Cancer Council Victoria. A new round of funding will open to health services in mid-December, providing grants of up to \$100,000 to support five new survivorship care projects.

5 December 2016 - **Turnbull cuts leave Victorian public dental care in decay** - More than 60,000 disadvantaged Victorians are in danger of missing out on urgent public dental treatment as a result of more health cuts from the Turnbull Government. Earlier this year the Turnbull Government signalled it would pull the plug on a funding partnership with the states and replace it with a new cost-cutting scheme – but with the old agreements due to expire in less than a month there is no sign of any replacement, meaning Victoria's public dental care and local jobs are now at risk.

2 December 2016 - Treatment close to home for Warrnambool cancer patients - Up to 400 patients from Warrnambool and the South West will now be able to receive radiotherapy treatment close to home with the opening of the new South West Regional Cancer Centre. Minister for Health Jill Hennessy today officially opened the \$30 million world-class Cancer Centre, which was delivered through a partnership between the Victorian Government, Commonwealth Government and local fundraising initiative Peter's Project. The Victorian Government contributed \$15 million to the construction of the centre, with the Commonwealth Government providing \$10 million and Peter's Project contributing \$5 million.

1 December 2016 - Ambulance Victoria Community Hero Awards - 18 ordinary Victorians, including three children and a workplace, have been recognised as heroes for extraordinary lifesaving acts at today's 2016 Ambulance Victoria Community Hero Awards.

1 December 2016 - **Expanded HIV prevention and care in Victoria** - A ground-breaking study providing people at risk of HIV with access to the life changing medication Pre-exposure prophylaxis (PrEP) is being expanded into regional Victoria for the first time. Launching World AIDS Day 2016, Minister for Health Jill Hennessy today announced the expansion of the PrEPX study, as well as a new training program for GPs treating patients for hepatitis B, hepatitis C and HIV.

#### Western Australia. Department of Health

#### Media Releases

8 December 2016 - Minister for Health: Targeted campaign against meningococcal W - A one-off meningococcal ACWY vaccination program begins on Monday (December 12) for people living in Kalgoorlie, Boulder, Coolgardie and Kambalda, following a recent community outbreak of the W strain (MenW).

7 December 2016 - Minister for Health: Peel to benefit from elective surgery boost - An extra \$1.9 million for Peel Health Campus will speed up the delivery of more public elective surgeries for people living in the Peel and surrounding regions.

3 December 2016 - Measles alert for Perth - Western Australians are being asked to be alert to an increased risk of measles, following a confirmed diagnosis in a traveller returning to Australia who was infected during a holiday in Asia.

2 December 2016 - **Shellfish health warning for the Leschenault Estuary** - The Department of Health is asking people not to eat shellfish collected from the middle to lower (southern) parts of the Leschenault Estuary in the Clifton Park region, following the recent detection of potentially harmful microscopic algae.

#### Policy Framework

2 December 2016 - MP 0040/16 Discipline Policy with Explanatory Notes and Template Letters

# 2 December 2016 - MP 0041/16 Managing Unsatisfactory and Substandard Performance Policy with Explanatory Notes, PIP and Template Letters

Publications

8 December 2016 - Disability Access and Inclusion Plan

7 December 2016 - Western Australia Emergency Access Target quarterly reports

#### New Zealand. Ministry of Health

9 December 2016 - The Prevention and Management of Abuse: Guide for Services funded by Disability Support Services - This guide outlines how providers can ensure that both staff and disabled people understand people's right to be safe from abuse, to recognise signs that may indicate abuse and ensure that where abuse occurs, the person is supported and incidents are reported.

9 December 2016 - Framework for Psychosocial Support in Emergencies - This document is designed to help those involved in planning, coordinating and delivering psychosocial interventions and mental health treatments in an emergency. It is for all agencies, service providers and community groups involved in planning, coordinating psychosocial support.

5 December 2016 - Code of Practice for Nuclear Medicine: Draft for consultation - The purpose of this consultation document is to consult and promote discussion on the nuclear medicine code of practice.

# Health Canada

2 December 2016 - Government of Canada proposes stronger regulations to protect children from exposure to lead and cadmium - Proposals would strengthen current limits on lead in consumer products and set regulatory limits for cadmium in children's jewellery.

#### United Kingdom. Department of Health

8 December 2016 - Female Genital Mutilation Risk and Safeguarding: Guidance for professionals -Practical help to support NHS organisations developing new safeguarding policies and procedures for female genital mutilation.

#### Australian Medical Association (AuMA)

6 December 2016 - Early diagnosis and intervention essential for children with ASD - The AuMA Position Statement on Autism Spectrum Disorder (ASD) 2016 calls for coordinated action to speed up the diagnosis of ASD in children. While ASD can be reliably detected at two years of age, Australian children are most commonly diagnosed just before their sixth birthday, possibly leading to delays in early intervention opportunities.

#### **British Medical Association**

7 December 2016 - **Deemed consent proves a life saver** - Thirty-nine organs have been transplanted in Wales in the last year as a direct result of its deemed consent system of donation, latest figures have revealed.

# **ABOUT US**

#### **Michael Regos**



Michael is the head of the DLA Piper health litigation group.

He practises in the areas of health law, insurance law, medical negligence and coronial enquiries. He represents Victorian public hospitals and their insurers, the Victorian Managed Insurance Authority and is the solicitor of choice for Australia's second-largest private health operator.

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