



HEALTH ALERT

31 AUGUST 2015

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JUDGMENTS

Victoria

27 August 2015 - *Fertility Control Clinic v Melbourne City Council* [2015] VSC 424

The Supreme Court considered an application by the Fertility Control Clinic ('the Clinic') for orders to compel the Melbourne City Council ('the Council') to exercise its statutory powers to remedy an alleged nuisance.

In March 2013, the Clinic notified the Council of an alleged nuisance by protesters. After an investigation, the Council took the view that the only arguable nuisance was the protesters' efforts to block visitors' entry to the Clinic.

Under the *Public Health and Wellbeing Act 2008* ('the Act'), it was open to the Council to determine that the matter is best settled privately provided they advise the Clinic of methods for doing so. The Council therefore advised that the matter should be settled privately by referral to Victoria Police.

The Clinic submitted to the Court that the Council had misconstrued the meaning of nuisance under the Act and had, therefore, misdirected itself as to the scope of its statutory duties to investigate and remedy the alleged nuisance.

The Court rejected this submission, holding that the Council had performed its statutory duties and, hence, could not be compelled to remedy the alleged nuisance. McDonald J reasoned that the Council had indeed turned its mind to the relevant questions mandated by the Act. His Honour affirmed that the fact that a decision-maker may answer a relevant question erroneously does not constitute jurisdictional error.

Nonetheless, McDonald J granted a declaration that a referral to Victoria Police does not constitute a method for 'settling the matter privately' under the Act.

New South Wales (NSW)

28 August 2015 - *Smith v Pennington* [2015] NSWSC 1168

The Supreme Court gave judgement for the defendant, South Western Sydney Local Health District, in a negligence claim brought by a former patient who attempted suicide shortly after being granted leave from the Sub-Acute Mental Health Unit ('SAMHU').

The plaintiff alleged that the defendant acted negligently by granting him leave to return home for four days after being involuntarily detained at SAMHU as a mentally disordered person. The plaintiff otherwise alleged that the manner in which he was granted leave was negligent because, among other reasons, the defendant failed to give adequate warnings to his parents about key stressors which may affect the plaintiff during his leave.

Justice Garling held that the defendant had indeed breached its duty of care by failing to advise the plaintiff to avoid his known stressors: alcohol and contact with his ex-girlfriend. Garling J also affirmed that the defendant should have told the plaintiff's parents that, if they were concerned for the plaintiff during his leave, they could make contact with SAMHU.

However, Garling J held that the plaintiff had failed to prove that the defendant's breach caused the plaintiff's injuries. Justice Garling concluded that there was no evidence to show that the defendant's failure to counsel the plaintiff against alcohol and contact with his ex-girlfriend had given rise to the plaintiff's decision to commit suicide.

26 August 2015 - *Health Care Complaints Commission v Spruce* [2015] NSWCATOD 89

Administrative Law - Civil and Administrative Tribunal (NSW) - health practitioner - whether practitioner guilty of unsatisfactory professional conduct - whether practitioner guilty of professional misconduct - whether practitioner suffers an impairment - whether practitioner is competent to practice - appropriate disciplinary orders where finding made that unregistered practitioner is not competent to practice and is guilty of professional misconduct.

25 August 2015 - *BMS v St Vincent's Health Network Sydney Limited* [2015] NSWCATAD 177

Administrative Review - Amendment of health information - whether amendment required to ensure that health information is accurate.

25 August 2015 - *Porter v Phong Le* [2015] NSWSC 1218

Practice and Procedure - application for separate determination of whether defendant breached duty of care - complex medical negligence proceedings - causation said to be complex - time taken to litigate causation exceeds breach - overlap of evidence - application dismissed - best course to allocate a hearing date.

Commonwealth. Administrative Appeals Tribunal

24 August 2015 - *McCutcheon and National Disability Insurance Agency* [2015] AATA 624

National Disability Insurance Scheme – reasonable and necessary supports – spina bifida – scoliosis – whether chiropractic treatment a reasonable and necessary support – whether chiropractic treatment will be, or is likely to be, effective and beneficial having regard to current good practice – whether most appropriately funded through the NDIS – whether more appropriately funded through general health system – decision under review set aside.

Commonwealth. Fair Work Commission

24 August 2015 - *Majumdar v Peninsula Health* [2015] FWC 5667

Employment - Application for relief from unfair dismissal - doctor found to have been unfairly dismissed - reinstatement not an appropriate remedy.

Northern Territory (NT)

26 August 2015 - *Nitschke v Medical Board of Australia (No 2)* [2015] NTSC 50

Costs – appeal from Health Professional Review Tribunal – appellant successful on main grounds of appeal – appellant did not succeed on some grounds – notice of appeal amended prior to hearing – no reason to depart from usual order as to costs – appellant also to have normal costs of appeal to the Tribunal – Supreme Court Rules (NT) r 63.03.

South Australia (SA)

27 August 2015 - *Inquest into the death of John David Jones* - Findings - Inquest into the Death of John David Jones.

LEGISLATION

27 August 2015 - ***Medical Research Future Fund (Consequential Amendments) Act 2015.***

27 August 2015 - ***Medical Research Future Fund Act 2015.***

27 August 2015 - ***Repatriation Private Patient Principles.***

27 August 2015 - ***Veterans' Affairs (Treatment Principles – Removal of Prior Approval Requirement and Time Limits for Convalescent and Respite Care in Hospital) Amendment Instrument 2015.***

27 August 2015 - ***Veterans' Affairs (Private Patient Principles Re-Making) Revocation Instrument 2015.***

27 August 2015 - ***Statement of Principles concerning fracture (Reasonable Hypothesis) (No. 94 of 2015).***

27 August 2015 - ***MRCA Private Patient Principles 2004.***

27 August 2015 - ***Amendments to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC62) (24/08/2015).***

27 August 2015 - ***Statement of Principles concerning Achilles tendinopathy and bursitis (Balance of Probabilities) (No. 97 of 2015).***

27 August 2015 - [Statement of Principles concerning Achilles tendinopathy and bursitis \(Reasonable Hypothesis\) \(No. 96 of 2015\)](#).

27 August 2015 - [Statement of Principles concerning hallux valgus \(Balance of Probabilities\) \(No. 99 of 2015\)](#).

27 August 2015 - [Statement of Principles concerning hallux valgus \(Reasonable Hypothesis\) \(No. 98 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning hepatitis E \(Balance of Probabilities\) \(No. 113 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning hepatitis E \(Reasonable Hypothesis\) \(No. 112 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning external burn \(Balance of Probabilities\) \(No. 111 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning external burn \(Reasonable Hypothesis\) \(No. 110 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning Meniere's disease \(Balance of Probabilities\) \(No. 109 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning Meniere's disease \(Reasonable Hypothesis\) \(No. 108 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning ingrowing nail \(Balance of Probabilities\) \(No. 107 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning ingrowing nail \(Reasonable Hypothesis\) \(No. 106 of 2015\)](#).

26 August 2015 - [PGPA Act \(Recovery of Compensation for Health Care and Other Services Special Account - Establishment\) Determination 2015/06](#).

26 August 2015 - [Statement of Principles concerning mesothelioma \(Balance of Probabilities\) \(No. 105 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning mesothelioma \(Reasonable Hypothesis\) \(No. 104 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning malignant melanoma of the skin \(Balance of Probabilities\) \(No. 103 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning malignant melanoma of the skin \(Reasonable Hypothesis\) \(No. 102 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning lipoma \(Balance of Probabilities\) \(No. 101 of 2015\)](#).

26 August 2015 - [Statement of Principles concerning lipoma \(Reasonable Hypothesis\) \(No. 100 of 2015\)](#).

24 August 2015 - [Private Health Insurance \(Prostheses\) Rules 2015 \(No. 2\)](#).

New South Wales (NSW)

26 August 2015 - [Health Services Amendment \(Paramedics\) Bill 2015](#).

27 August 2015 - [Drug and Alcohol Treatment Amendment \(Rehabilitation of Persons with Severe Substance Dependence\) Bill 2015](#).

REPORTS

Australia. Department of Health

Media releases

24 August 2015 - Minister for Health, Sussan Ley presented the Keynote Address to the Catholic Health Australia 2015 National Conference on 24 August 2015. [Read more.](#)

22 August 2015 - Patient safety and welfare should be the priority in any negotiations between private hospitals and health insurers, not used as ransom in a cynical 'Game of Thrones', Federal Minister for Health Sussan Ley said. [Read more.](#)

23 August 2015 - Hundreds of Australian families dealing with children's cancer will get greater support with the launch of a one-stop Children's Cancer Website, the first of its kind in Australia. [Read more.](#)

21 August 2015 - The Abbott Government has opened applications for a \$400,000 grants programme to support and develop women leaders in Australian sport. [Read more.](#)

19 August 2015 - [CHF Members and Stakeholders Forum Speech](#) - Sussan Ley, Minister for Health was the guest speaker at the CHF Members and Stakeholders Forum on 19 August 2015.

Private Health Insurance Circulars

25 August 2015 - [PHI 55/15 August 2015 Protheses List.](#)

Australia. Department of Social Services

21 August 2015 - [Joint Communiqué from DSS and the Department Human Services.](#)

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

27 August 2015 - The State Administrative Tribunal of Western Australia has reprimanded Dr William Barnes, suspending him for three months and imposing conditions on his registration. [Read more.](#)

25 August 2015 - A man who dispensed medications to patients when he was not a registered pharmacist has pleaded guilty to breaching the National Law, been fined \$4000 and granted a spent conviction. [Read more.](#)

24 August 2015 - AHPRA today released the latest performance data on AHPRA's management of notifications in Queensland. [Read more.](#)

24 August 2015 - AHPRA reports on performance in Queensland Published . [Read more.](#) [Download PDF.](#)

21 August 2015 - Call for applications for appointment to the list of approved persons for appointment to panels for the Nursing and Midwifery Board of Australia, and the Victorian Board of the Nursing and Midwifery Board of Australia. [Read more.](#)

21 August 2015 - Call for applications for appointment to the ACT / TAS / VIC Regional Board of the Psychology Board of Australia. [Read more.](#)

Australia. National Health & Medical Research Council (NHMRC)

25 August 2015 - [Top experts appointed to NHMRC committees.](#)

21 August 2015 - [NHMRC Research Tracker.](#)

Australia. Pharmaceutical Benefits Scheme (PBS)

26 August 2015 - Updated Frequently Asked Questions (FAQs) have been prepared that provide further detail on the 1 September 2015 changes to the Growth Hormone and Botulinum Toxin Section 100 programmes under the PBS. [Read more.](#)

26 August 2015 - The agenda for the November 2015 PBAC meeting is now available. Your comments are welcome whether you are a patient, carer, member of the public, health professional or member of a consumer interest group. [Read more.](#)

25 August 2015 - Pharmaceutical Benefit Advisory Committee (PBAC) Guidelines Review - Extension of public consultation. [Read more.](#)

24 August 2015 - Update to Listing Requirements for New Brands and New Items. [Read more.](#)
21 August 2015 - The recommendations from the July 2015 PBAC meeting are now available. [Read more.](#)
21 August 2015 - Fact Sheets on Biosimilars have been added to the PBS website. [Read more.](#)
19 August 2015 - The Australian Statistics on Medicines for 2012, 2013 and 2014 are now available. [Read more.](#)

Australia. Therapeutic Goods Administration (TGA)

25 August 2015 - [St Jude implantable devices when used with the Merlin@home transmitter](#) - Hazard alert update - additional issue that can result in an unintended device software reset.
21 August 2015 - [Profemur cobalt-chrome femoral neck - used in hip replacements](#) - Hazard alert - potential for component failure due to metal fracture.

Australian Institute of Health & Welfare (AIHW)

26 August 2015 - [Trends in hospitalised injury, Australia: 1999–00 to 2012–13.](#)
26 August 2015 - [Media release: Falls most common cause of injury - with numbers rising.](#)

Australian Commission on Safety and Quality in Health Care

24 August 2015 - [New resources help parents and clinicians better understand the benefits and risks of CT scans for children and young people.](#)
24 August 2015 - On the Radar - Issue 237 ([PDF 100KB](#)) ([Word 137KB](#)).

Australian Capital Territory (ACT). Health Directorate

26 August 2015 - [Light rail helps drive fight against obesity.](#)
26 August 2015 - [Capital Health Network to improve care across ACT health.](#)
25 August 2015 - [Grants program opens to provide more support for family violence victims.](#)
24 August 2015 - [East Hotel Partners with Canberra Hospital to provide free emergency accommodation.](#)

New South Wales (NSW). Ministry of Health

Media Releases

21 August 2015 - [Air Pollution Health Warning](#) - The NSW Office of Environment and Heritage have advised NSW Health that Sydney is experiencing poor air quality due to smoke particles from hazard reduction. This is expected to continue over the weekend.

Policy Directives & Guidelines

25 August 2015 - [Executive Performance Management.](#)
25 August 2015 - [Visiting Medical Officers - Rural Doctors Settlement Package Hospitals Indexation of Fees - 1/8/2015.](#)
21 August 2015 - [Staff Specialist Emergency Physicians - Remuneration Arrangements for the period to June 2016.](#)

Information Bulletins

21 August 2015 - [Staff Specialists Training, Education and Study Leave \(TESL\) New Funding Entitlement 2015 - 2016.](#)
24 August 2015 - [Public Health Service Employees Skilled Trades \(State\) Award Increase in Expense Related Allowances.](#)

Publications

21 August 2015 - [Crystalline Methamphetamine Background Paper – NSW Data.](#)

20 August 2015 - **Crystalline Methamphetamine: Key Messages.**

Northern Territory (NT). Department of Health

24 August 2015 - **Biting midge numbers to rise with full moon** - Biting midges will be out in high numbers from 27 August to 2 September coinciding with the full moon. Director of Medical Entomology, Nina Kurucz advises Top End residents and visitors to avoid midge bites by taking precautions and avoiding mangrove areas where biting midges breed, especially around sunrise and sunset.

Queensland. Department of Health

26 August 2015 - **HPDO offer on the table** - The Palaszczuk Government has offered its health practitioners and dental officers a 2.5 per cent pay rise and an extension of professional development entitlements as part of a new pay deal.

26 August 2015 - **Under 5's targeted in \$1.5 Million Vaccination Drive** - The Palaszczuk Government has unveiled a vaccination drive to help achieve 95% immunisation among young Queenslanders.

26 August 2015 - **From little hearing problems, big problems can grow** - Staff from Cairns North Community Health ensured the healthy hearing message didn't fall on deaf ears yesterday (Tuesday, 25 August) as they took part in a special services expo.

25 August 2015 - **Alcohol and tobacco still do the most damage** - Excessive alcohol and tobacco use is doing more harm than Queenslanders realise. Each year around 4,300 Queenslanders die and more than 65,000 are admitted to hospitals where alcohol, tobacco and other drug use is involved, according to a discussion paper for a new state-wide action plan.

2 August 2015 - **Measles alert for Toowoomba** - The Darling Downs Public Health Unit has urged residents to be alert to symptoms of measles after a person confirmed to have the disease visited Toowoomba last weekend.

21 August 2015 - **Five measles cases at Qld Uni** - Five University of Queensland (UQ) students have been confirmed with measles. Senior Medical Officer with Queensland Health's Communicable Diseases Unit, Dr Heidi Carroll said the Metro North Public Health Unit had set up a vaccination clinic at UQ's St Lucia Campus today.

20 August 2015 - **Lady Cilento gives the gift of a smile** - No longer shy - Lisa-Maree shows off her lovely new smile. Two-year-old toddler from Naru, Lisa-Maree, will leave Australia tomorrow with a brand new smile following facial surgery at the Lady Cilento Children's Hospital (LCCH).

Queensland. Office of the Health Ombudsman (OHO)

21 August 2015 - **July performance data** - The OHO continued to receive a high number of complaints and notifications in July, as it started its second year as Queensland's health service complaints agency.

South Australia (SA). Department for Health & Ageing

23 August 2015 - **Winter diarrhoea warning** - South Australians are being reminded to maintain good personal hygiene following an increase in Cryptosporidiosis cases this winter. Health Minister Jack Snelling said a spike in Cryptosporidiosis cases during the summer months is often linked to increased use of swimming pools by people infected with the illness, but this year high numbers have continued into winter.

Tasmania. Department of Health & Human Services

26 August 2015 - **Royal Hobart Hospital redevelopment creating hundreds of Tasmanian jobs** - The Hodgman Liberal Government has put the critical redevelopment of the Royal Hobart Hospital back on track, and it is creating hundreds of jobs for Tasmanians.

25 August 2015 - **Royal Hobart Hospital helipad a life-saving initiative** - The Hodgman Liberal Government has put the critical Royal Hobart Hospital upgrade back on track, an upgrade which will include a life-saving helipad which was strangely omitted by the Labor Government's original plan.

Victoria. Department of Health

25 August 2015 - **No Jab, No Play policy proposed** - The Victorian Government announced the introduction of proposed legislation, known as 'No Jab, No Play', which will require children to be fully vaccinated before they can commence at childcare or kindergarten. The proposed law is designed to provide parents/carers with a reminder point and additional motivation to keep their children's vaccinations up to date and recognises the importance of preventing serious illnesses in children. The new law will be considered by Parliament towards the end of the year and with a view to commencing from 1 January 2016. Children attending an early childhood service prior to the legislation coming in to effect will not be impacted.

25 August 2015 - **Ambulance stations across Victoria to be upgraded** - The Andrews Labor Government today announced the six ambulance stations that will be rebuilt as part of a \$20 million investment to modernise and upgrade ambulance facilities across Victoria. In metropolitan Melbourne, ambulance stations will be rebuilt in Kew, Dandenong, and Preston. In regional Victoria, stations will be rebuilt in Echuca, Orbost, and Sale.

23 August, 2015 - **New smoking bans for outdoor dining areas from 2017** - The Andrews Labor Government will ban smoking in outdoor dining areas from 1 August 2017 so that Victorians can enjoy a meal outside without being subjected to second-hand smoke. The proposed ban will cover all outdoor dining areas at restaurants, cafes, take-away shops and licenced premises. Extensive consultation will be undertaken with health experts, businesses and the hospitality industry, local governments, and the community to inform legislation to be introduced into the Parliament in 2016.

25 August 2015 - **Timely food safety warning from Salmonella results** - The results of extensive testing of food from the Langham Hotel have shown raw egg mayonnaise used in foods, including chicken sandwiches, was responsible for salmonella poisoning in more than 40 people last month. Victoria's acting Chief Health Officer Professor Michael Ackland said the findings reinforced the need for stringent food safety processes to be followed at all times, in both home and commercial settings.

Western Australia (WA). Department of Health

Media Releases

26 August 2015 - **Minister for Health: Eyes on the ball for outback vision** - The State Government has contributed about \$4 million to take an eye health clinic on the road to parts of remote and regional WA.

25 August 2015 - **Minister for Health: Kids choo choose Midland hospital playground** - In a nod to Midland's heritage as a major railway junction, local primary school children have chosen a locomotive theme for the playground design at the St John of God Midland Public Hospital which is due to open in November.

New Zealand (NZ). Ministry of Health

26 August 2015 - **A New National Drug Policy for New Zealand: Summary of Submissions** - This publication summarises the submissions received on the discussion document A New National Drug Policy for New Zealand, which was released for public consultation between December 2013 and February 2014.

26 August 2015 - **National Drug Policy 2015 to 2020** - The National Drug Policy 2015 to 2020 sets out the Government's approach to alcohol and other drug issues, with the overarching goal of minimising alcohol and other drug harm, and promoting and protecting health and wellbeing.

25 August 2015 - **Gynaecologic Cancer Follow-up: New Zealand Gynaecological Cancer Group guidelines** - These are guidelines for the follow-up of women after diagnosis and or treatment of cancer of the uterus or cervix.

British Medical Association (BMA)

26 August 2015 - **Less-than full-time training guidance update** - BMA training guidance has been updated in recognition of rising demand from juniors doctors to work less-than full time.

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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