



# HEALTH ALERT

27 March 2017

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## JUDGEMENTS

### Key Decisions

21 March 2017 - *Hicks v Mater Misericordiae Ltd* [2017] QSC 38 - The applicant brought proceedings against the respondents to determine who was the beneficiary of a deceased's will. The applicants were the executors and trustees of a testator whose will named a children's hospital as the residuary beneficiary for identified charitable purposes. The director of the hospital and the named hospital itself ceased to exist after the testator's death. The named hospital had been taken over by the first respondent, which ceased to be solely a children's hospital facility and was operated as a public hospital until its functions as a public hospital ceased. Its public hospital functions were then taken over by the second respondent, a children's hospital, and operated by the Queensland Hospital and Health Service. The question under consideration was whether the benefit of the will was intended for the first or second respondent.

The Court decided in favour of second respondent. It held that the beneficiary would be the institution whose purpose and functions is as near as possible to the purpose of the intended beneficiary. The judge gave weight to the fact that the second respondent hospital was built as a children's hospital to take over the functions of the ceased children's hospital. He concluded in favour of the second respondent because it is a public hospital and its functions falls within the spirit of the trust.

16 March 2017 - *Bayer Pharma Aktiengesellschaft v Generic Health Pty Ltd* [2017] FCA 250 - The applicant, a pharmaceutical company, had brought a proceeding claiming damages against the respondent for patent infringement in relation to an oral contraceptive. It was found that the respondent, another pharmaceutical company, had infringed the applicant's patent by manufacturing and selling a similar oral contraceptive and the Court ordered that the respondent be restrained from continuing to do so.

The current proceeding concerned the appropriate amount of damages to be awarded to the applicant as a result of the infringement. The applicant contended that damages should be based on its lost profits from each sale of the respondent's product. The respondent argued that part of the damages sought for the infringement should not be awarded because the applicant's original specification for the patent was not made in good faith and with reasonable skill and knowledge, as required by law.

The court decided in favour of the applicant. It disagreed with the respondent's contention that the applicant had not framed the original patent specification in good faith and with reasonable skill and knowledge. The court also concluded that damages are best assessed on the basis that every sale of the respondent's product was a loss for the applicant. This was because both parties were operating and competing in the same market and the respondent's product diverted sales away from the applicant's product.

### Commonwealth. Fair Work Commission

22 March 2017 - *Pinnacle HR Inc T/A Pinnacle HR* [2017] FWCA 1604 - Application for approval of the Goel Nominees Nursing Employees (Aged Care) & ANMF Enterprise Agreement 2016.

21 March 2013 - *4 yearly review of modern awards – Plain language re-drafting* [2017] FWCFB 1612 - 4 yearly review of modern awards – Plain language project – Pharmacy Industry Award 2010 – plain language drafting issues.

21 March 2017 - *Regis Aged Care Pty Ltd T/A Regis Aged Care* [2017] FWCA 1596 - Application for approval of the Regis Aged Care Enterprise Agreement - Western Australia 2017.

17 March 2017 - *Natalie Sommer v Healthcare Australia Pty Ltd T/A Healthcare Australia* [2017] FWC 1564 - Application for relief from unfair dismissal – Jurisdictional objection on the ground of genuine redundancy – Finding that dismissal was for operational reasons – No relevant obligation to consult where dismissed employee not covered by modern award or enterprise agreement – Finding that it would have been reasonable to redeploy dismissed employee – Dismissal not a case of genuine redundancy – Interaction between genuine redundancy and unfair dismissal provisions of the Act – Finding that dismissal was for a valid reason but was unfair – Compensation awarded.

## New South Wales

22 March 2017 - *Health Care Complaints Commission v West* [2017] NSWCATOD 39 - MEDICAL PRACTITIONER - inappropriate prescription of drugs of addiction - inadequate clinical records - admissions by respondent Held- respondent guilty of professional misconduct -orders made cancelling registration and for payment of costs.

23 March 2017 - *Clarke v South Eastern Sydney Local Health District* [2017] NSWCATAD 81 - Disability discrimination in employment.

## Queensland

17 March 2017 - *Medical Board of Australia v Wong* [2017] QCA 42 - PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where QCAT departed from the default position in section 100 Queensland Civil and Administrative Tribunal Act 2009 (Qld) that each party bear its own costs – where the tribunal failed to make a finding as to whether the moving party was required by statute to refer the matter to the tribunal – where the tribunal accepted expert evidence as conclusive of an ultimate question – where the tribunal concluded that a party’s position was not ‘wholly unreasonable’ but failed to identify any unreasonableness justifying departure from the default position – whether the Court should extend time for applying for leave to appeal –whether the Court should grant leave to appeal – whether the primary judge erred in law by not recognising the mandatory nature of a statute requiring a party to bring proceedings in the tribunal – whether the primary judge erred in law by accepting expert evidence as conclusive rather than making a value judgment based on that evidence – whether a tribunal may depart from the default position that each party bears its own costs absent a specific finding of unreasonableness.

17 March 2017 - *Hambleton & Anor v Finn* [2017] QDC 61 - CORPORATIONS LAW – Director’s liability – insolvent trading – whether company insolvent when debts incurred – whether section applies if debt to director – statutory set off – whether director to be excused.

## Victoria

21 March 2017 - *Medical Board of Australia v GFO (Review and Regulation) (Corrected)* [2017] VCAT 273 - Medical practitioner, sexual relationships with patients, Medical Practice Act, unprofessional conduct including professional misconduct, unprofessional conduct of a serious nature, Health Profession Registration Act, National Law, professional misconduct.

17 March 2017 - *Nursing and Midwifery Board of Australia v Brewer (Review and Regulation)* [2017] VCAT 384 - Health Practitioner Regulation National Law (Victoria) Act 2009 – ss 5 & 196 – whether convictions in the Magistrates’ Court, in part concerning theft of medications, stalking, intentionally damaging property, aggravated cruelty to animals, burglary, possessing a drug of dependence, reckless conduct endangering serious injury, recklessly causing serious injury, false imprisonment and intentionally causing serious injury amount to professional misconduct within the National Law – appropriate determinations

16 March 2017 - *Psychology Board of Australia v Wilkinson (Review and Regulation)* [2017] VCAT 378 - Health Practitioner Regulation National Law (Victoria) Act 2009 - whether conduct of registered psychologist in refusing to permit on-site audit at his practice and to undergo a performance assessment constituted professional misconduct or unprofessional conduct under the National Law.

## LEGISLATION

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

### Commonwealth

21 March 2017 - *Health Insurance (Professional Services Review – Sampling Methodology) Determination 2017* F2017L00274 as made.

21 March 2017 - *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 2)* F2017L00271 - as made.

## Northern Territory

21 March 2017 - [Termination of Pregnancy Law Reform Bill 2017](#) - Passed.

## Queensland

21 March 2017 - [Public Health \(Infection Control\) Amendment Bill 2017](#) - Introduced.

## South Australia

21 March 2017 - [Statutes Amendment \(Surrogacy Eligibility\) Act 2017](#) - Commenced.

## REPORTS

### Australia. Department of Health

#### Media releases

23 March 2017 - [Turnbull Government appoints new mental health advisory panel](#) - The Australian Government is establishing a new mental health advisory panel to support our commitment to improve services to those that need them.

21 March 2017 - [Consumer involvement in their own healthcare – key to a sustainable national health system](#) - The Secretary of the Federal Department of Health, Martin Bowles has recognised the importance of consumer involvement in health and aged care will significantly deliver a better and more sustainable Australian health system.

21 March 2017 - [Funding to help sporting groups tackle illegal drugs](#) - More than a thousand community sport clubs across the country are being encouraged to take part in an Australian Government program to reduce the impact of illegal drugs on Australian communities.

20 March 2017 - [First National Rural Health Commissioner a step closer](#) - The appointment of Australia's first National Rural Health Commissioner is a step closer.

#### Private Health Insurance Circulars

[PHI 12/17 Private Health Insurance \(Prostheses\) Amendment Rules 2017 \(No. 2\)](#)  
[PHI 11/17 Nursing-Home type patient contribution rates and minimum benefits](#)  
[PHI 10/17 Changes to Second-Tier Eligible Hospitals](#)

### Australia. Health Practitioner Regulation Agency and the boards

23 March 2017 - [Quarterly registration data released](#) - The Medical Radiation National Board has released its quarterly registration data.

23 March 2017 - [News for Board-approved Supervisors](#) - The Psychology Board of Australia has sent the following news to all Board-approved supervisors.

22 March 2017 - [Tribunal cancels medical practitioner's registration after finding four counts of professional misconduct](#) - A tribunal has reprimanded a medical practitioner, cancelled his registration and disqualified him from reapplying for registration for 18 months.

20 March 2017 - [Pharmacist's registration suspended for unlawful supply of medications](#) - A pharmacist's registration was suspended by a tribunal for unlawfully and/or inappropriately supplying scheduled medications and for inadequate record keeping.

17 March 2017 - [Chiropractor is disqualified from applying for registration after sexual contact and inappropriate conduct with patients](#) - The State Administrative Tribunal of WA has disqualified a former chiropractor from applying for registration for three years with the Chiropractic Board of Australia (the Board) after admitting to professional misconduct, including sexual contact and inappropriate conduct with female patients.

20 March 2017 - [Video for dental practitioners](#) - As part of the World Oral Health Day 2017, the Dental Board of Australia (the Board) is launching a video for dental practitioners: An overview of your obligations as a registered dental practitioner.

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

17 March 2017 - [NHMRC Health Tracker – March 2017](#).

## **Australia. Pharmaceutical Benefits Scheme (PABC)**

17 March 2017 - [Additional PBAC Public Summary Documents - November 2016 meeting](#) - The Public Summary Documents (first time rejections and deferrals) from the November 2016 Pharmaceutical Benefits Advisory Committee (PBAC) meeting are now available.

17 March 2017 - [Chemotherapy Compounding Payment Scheme - Extension to the non-mandatory claiming period](#) - The proposed date for mandatory inclusion of the Compounder ID with eligible EFC claims is being extended. It was originally intended that the compounder ID would become mandatory with claims lodged from 1 April 2017.

## **Australia. Therapeutic Goods Administration**

22 March 2017 - [EpiPen 300 microgram adrenaline injection syringe auto-injector](#) - Recall – potential failure to activate or need to apply increased force to activate.

23 March 2017 - [Scheduling delegate's final decisions, March 2017](#) - New Chemical Entities and Scheduling delegates' final decisions and reasons for decisions for medicines and chemicals referred to the November 216 ACCS, ACMS and Joint ACCS-ACMS meetings.

22 March 2017 - [Pregnancy test kits](#) - TGA completes review of home-use kits.

20 March 2017 - [Prescription medicines: new or extended uses, or new combinations of registered medicines](#) - Added registration of new or extended uses of registered medicines 2017.

20 March 2017 - [Consultation: Strengthening monitoring of medicines in Australia](#) - The TGA is seeking comments from interested parties on the proposed enhancements to the safety monitoring of medicines in Australia. Closing date: 1 May 2017.

20 March 2017 - [Consultation: Provisional Approval pathway for prescription medicines](#) - The TGA is seeking comments from interested parties on the proposed Provisional Approval registration process and post market requirements for provisionally registered medicines. Closing date: 1 May 2017.

17 March 2017 - [Submissions received: Expedited pathways for prescription medicines](#) - Submissions and outcome summary from the 2016 consultation are now available.

16 March 2017 - [Etopophos \(etoposide phosphate\) powder for injection vials and Vepesid etoposide capsules](#) - Medicine shortages - update.

16 March 2017 - [Prescription medicines: registration of new chemical entities in Australia](#) - Added registered new chemical entity for Zemaira and Venclexta.

## **Australian Institute of Health & Welfare**

14 March 2017 - [Northern Territory Remote Aboriginal Investment: Ear and Hearing Health Program—July 2012 to June 2016](#) and [Northern Territory Remote Aboriginal Investment: Oral Health Program—July 2012 to December 2015](#)

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

20 March 2017 – On the Radar - Issue 315 ([PDF 256KB](#)) ([Word 152KB](#))

## **Australian Digital Health Agency**

20 March 2017 - [7 National Clinical Terminology Service: Website User Survey](#) - In October 2016, the Australian Digital Health Agency launched the National Clinical Terminology Service (NCTS) website [www.healthterminologies.gov.au](http://www.healthterminologies.gov.au) to provide our customers with a one-stop shop to access our terminology products, tools, applications and supporting resources. We are conducting a survey to seek your feedback on the website and to help identify future improvements to the service.

16 March 2017 - [New National Diagnostic Imaging Program Established](#) - The Australian Digital Health Agency is pleased to announce the establishment of a new national Diagnostic Imaging Program that aims

to have diagnostic imaging reports available in the My Health Record system and accessible by consumers and healthcare providers.

### **Australia. National Blood Authority**

15 March 2017 - **Further Updates to Supply Arrangements for Domestic Intravenous Immunoglobulin** - INTRAGAM® 10 to replace INTRAGAM® P, Phase 2 commencing Wednesday 22 March 2017. Phase 2 of the transition arrangements from Intragam P to Intragam 10 will commence from Wednesday 22 March 2017. Detailed information including frequently asked questions regarding Phase 2 of the transition process is now available.

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

#### Media Releases

20 March 2017 - **Fairer hospital parking fees for patients** - Patients who need the most support will save as much as \$200 a week on public hospital parking fees under changes to be introduced by the NSW Government. Premier Gladys Berejiklian and Health Minister Brad Hazzard have today announced that more patients and carers will be able to access hospital parking concessions from July 2017. Concessions will also be extended to every public hospital car park in NSW where fees are applied, including those run by private operators.

#### Publications

20 March 2017 - **The PANACHE Trial.**

#### Policy Directives & Guidelines

15 March 2017 - **proving Access to Primary Care in Rural and Remote Areas (s19(2) Exemptions)** GL2017\_005.

### **Northern Territory. Department of Health**

21 March 2017 - **Safety & Choice for Territory Women** -The Labor Government has delivered an important election commitment for Territory women, improving safety and choice around termination of pregnancy services.

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

24 March 2017 - **Free major health program launches in Wide Bay** - Wide Bay locals will be receiving free health checks at the Station Square Shopping Centre in Maryborough today to determine whether they are eligible to participate in a \$27 million healthy lifestyle program, My health for life.

23 March 2017 - **New Logan Hospital car park to address demand from patients and staff** - A new Logan Hospital car park announced by the Palaszczuk Government will ease pressure on patient parking and allow staff to return to onsite parking.

23 March 2017 - **Turnbull Government must back BreastScreen funding** - The Turnbull Government should take urgent steps to support vital breast screen services, by committing to a new National Partnership Agreement as soon as possible.

22 March 2017 - **Mums and Bubs Hub closing the gap** - Health Minister Cameron Dick today joined the Institute for Urban Indigenous Health (IUIH) at the official opening of the Birthing in Our Community (BiOC) Mums and Bubs Hub, which offers antenatal and family support services to improve the health outcomes of Aboriginal and Torres Strait Islanders.

22 March 2017 - **Patient care to improve through research grants** - Six researchers will use \$396,000 in Palaszczuk Government funding from the fourth round of Nursing and Midwifery Research Fellowships to improve patient care in various areas.

1 March 2017 - **Breastfeeding: your questions answered** - So you're going to have a baby, congratulations! Along with your little one, a lot of new experiences are going to come into your life, including breastfeeding. You might have a few questions about breastfeeding. Below are some frequently asked questions and answers to get you started.

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

22 March 2017 - [Media release: Pork pie and ascot pie food recall](#) - South Australians are being advised not to consume selected pork pies and Ascot pies following an outbreak of Salmonella linked with the products. SA Health's Director of Food and Controlled Drugs Dr Fay Jenkins confirmed five cases of Salmonella have been linked to the products from a single manufacturer.

### Tasmania. Department of Health & Human Services

24 March 2017 - [Cracks in Labor party... already](#) - Is it any surprise further reductions within the Tasmanian Labor party have surfaced today - now between its state secretary and new leader. In a Q&A with state secretary Stuart Benson, published today, he is at odds with the party's new leader Rebecca White on health.

24 March 2017 - [New funding for Palliative Care Tasmania](#) - The Hodgman Liberal Government has consistently been a strong supporter of providing high quality end of life care for Tasmanians. I am pleased to announce that the State Government will provide \$81,314 in additional Better Access to Palliative Care project funding that will support the service to continue until the end of 2017.

### Western Australia (WA). Department of Health

#### Media Releases

22 March 2017 - [Mosquito-borne disease warning for northern WA](#) - The Department of Health is reminding residents and travellers in the north of Western Australia to take precautions to avoid mosquito bites.

### Canada. Health Canada

20 March 2017 - [Canadian collaboration to accelerate development of cancer treatments](#) - 2017-03-20 10:51:56 National Research Council Canada news releases An innovative collaboration between government, industry, and academia aims to accelerate the development of cancer treatments in Canada. The National Research Council of Canada (NRC) and the Toronto-based Centre for the Commercialization of Antibodies and Biologics (CCAB) have put in place over \$1M in collaborative agreements over the past year to produce and test therapeutic antibodies discovered at the University of Toronto (U of T).

### Australian Medical Association (AuMA)

23 Mar 2017 - [More training needed for doctors treating FGM survivors](#) - The illegal practice of female genital mutilation is shrouded in secrecy, but it does affect Australian women. The AuMA has called for more training and education for doctors in how to identify and treat FMG patients for their ongoing medical complications.

23 Mar 2017 - [New Code of Ethics for Doctors](#) - The AuMA has released its new Code of Ethics, which, for the first time since 2006, has been substantially revised. AuMA President, Dr Michael Gannon, said that a Code of Ethics is essential for setting and maintaining the very high standards of ethical behaviour that society expects from the medical profession.

23 Mar 2017 - [AuMA continues high level talks on Medicare freeze](#) - Opposition Leader Bill Shorten and Shadow Health Minister Catherine King attended a recent AuMA Federal Council meeting to discuss health policy.

23 Mar 2017 - [Education to improve immunisation rates](#) - In speaking with the *Sunday Telegraph* last weekend, AuMA President, Dr Michael Gannon called for the Federal Government to use some of the \$148 million saved each year from the No Jab No Pay reforms to be invested in a public campaign to improve immunisation rates.

23 Mar 2017 - [MBS claims rejected due to aftercare](#) - GPs who have experienced a claim rejection due to aftercare may wish to note that the Department of Human Services has made changes to the application of the aftercare rule to Patient Claims Interactive (PCI) channel.

23 Mar 2017 **Patient-centred management of inflammatory arthritis: MJA** - GPs may be interested to read a Perspectives article in this week's issue of *Medical Journal of Australia* discussing the importance of a patient-centred approach to management of inflammatory arthritis.

Authors of **Patient-centred management of inflammatory arthritis: more than just disease control**, write that great advances in management of inflammatory arthritis have significantly improved the disease control and outcomes. They state that the guidelines, whose algorithms focus on drug prescription to achieve remission of disease, support everyday treatment. They add, however, that while the guidelines provide direction for the use of disease-modifying antirheumatic drugs (DMARDs), they do not consider the patient's broader health needs.

23 Mar 2017 - **PIP eHealth Incentive Reminder** - The Government's extension to the Practice Incentives Program eHealth Incentive (ePIP) requirements expired on 31 January 2017. Those practices that are registered for ePIP now need to ensure they meet their Shared Health Summary (SHS) upload target to the My Health Record each quarter to be eligible for ePIP payments.

23 Mar 2017 - **Resolve to update your CV and stay abreast** - It is not too late in the year to make a few New Year's resolution to help advance your career. The AuMA Career Service has a few tips for your personal resolution list designed to assist you in your medical career and which should be easy to keep.

### **American Medical Association**

20 March 2017 - **Mass General brings population health outreach to primary care** - Integrating a population health management program using data found in their electronic health record (EHR) and certain registries, **Massachusetts General Hospital** (MGH) was able to focus on vulnerable populations and significantly improve care quality for patients with diabetes, cardiovascular disease and hypertension over the initial six months of the program. Using centralized population health coordinators (PHC), MGH allowed its physicians the freedom to work more closely with patients to manage chronic diseases and saved money to boot.

19 March 2017 - **Project crowdsources specialists' diagnoses for safety-net care** - Lack of access to specialty care is a notorious driver of health inequity in the U.S., but until now there have been few scalable options for connecting primary care physicians in underserved areas with their specialist counterparts to make major clinical decisions. A new open project—inspired by Wikipedia, Linux and others that leverage collaborative content creation—has already brought together thousands of volunteer physicians to provide online curbside consults to front-line physicians.



## 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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