



# HEALTH ALERT

12 OCTOBER 2015

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## JUDGMENTS

### Australia. High Court

#### 7 October 2015 - *D'Arcy v Myriad Genetics Inc* [2015] HCA 35

The High Court has unanimously upheld an appeal by Yvonne D'Arcy. The High Court held that an isolated nucleic acid, with specific variations which indicate susceptibility to breast and ovarian cancer, was not a 'patentable invention' within the meaning of the *Patents Act 1990* (Cth) (the Act).

Relevantly, the Act requires that an invention must be 'a manner of manufacture' to be patentable. The Court held that that this was not the case for the invention claimed in three claims of the first respondent's patent.

The joint judgment of Chief Justice French and Justices Kiefel, Bell and Keane rejected an 'unduly narrow characterisation' of the effect of the 1959 High Court decision of *National Research Development Corporation v Commissioner of Patents* (1959) 102 CLR 252 (*NRDC*), which couches a manner of manufacture in terms of an 'artificially created state of affairs' that is of 'economic significance'.

Their Honours affirmed that the terminology used in *NRDC* was not intended to be an exhaustive formula for the concept of manner and manufacture. Having regard to a broader range of relevant factors, their Honours held that the claimed isolated nucleic acid is not a manner of manufacture. On this basis, the Court made an order to revoke the three patent claims in issue.

### Victoria

#### 30 September 2015 - *Inquest into the death of Baby Kirat Singh*

The Victorian Australian Coroners Court has delivered inquest findings in relation to the death of Baby Kirat Singh who died aged seven weeks and three days from global hypoxic ischaemic injury.

At three days of age, Baby Kirat sustained a global hypoxic ischaemic brain injury while co-sleeping with her mother in the Maternity Ward of Sunshine Hospital. According to Baby Kirat's mother, she had briefly breastfed her new-born daughter before laying her down by her side in the bed, intending to feed her again after a short break. Baby Kirat's mother then fell asleep. Some hours later, the infant's mother reported to a midwife that Baby Kirat was cold and was not moving.

Baby Kirat was transferred for treatment at the Neonatal Intensive Care Unit of the Royal Children's Hospital before returning to Sunshine Hospital for on-going care. On 27 August 2013, a multidisciplinary team meeting was held to discuss a palliative care approach with Baby Kirat's mother. Two days after palliative care was agreed and commenced, Baby Kirat passed away.

In the circumstances, the Coroner concluded that the consultation and decision making processes around the decision to adopt a palliative approach to treatment were reasonable and appropriate.

The Coroner accepted evidence that nursing staff at Sunshine Hospital had advised Baby Kirat's mother that co-sleeping was potentially hazardous to infants. The Coroner therefore concluded that the clinical management and care provided to Baby Kirat and her mother was reasonable and appropriate.

### New South Wales (NSW)

#### 8 October 2015 - *Quach v Health Care Complaints Commission (No 2)* [2015] NSWCA 31

COSTS – costs assessed on an indemnity basis – where order against litigant in person – where litigant in person notified that claimed interlocutory relief misconceived and unlikely to succeed.

#### 8 October 2015 - *Health Care Complaints Commission v Shinwari (No 2)* [2015] NSWCATOD 107

Medical practitioner engaged in rapid opioid detoxification treatment – Held, inter alia, multiple failures to safely practise in a specialised area of medicine - Constituting in the aggregate professional misconduct - Reprimand imposed together with practice conditions and costs order.

## Queensland

### 20 August 2015 - [Medical Board of Australia v Vucak \[2015\] QCAT 367](#)

HEALTH CARE PROFESSIONALS – medical practitioners – disciplinary proceedings – professional misconduct and unprofessional conduct – departure from accepted standards – where registered plastic surgeon engaged in a sexual relationship with a patient during the course of the therapeutic relationship – where medical practitioner admits to conduct that constitutes unsatisfactory misconduct – where medical practitioner not found to have engaged in a sexual relationship with a patient at the end of the therapeutic relationship.

## United Kingdom (UK)

### 7 October 2015 - [TUV \(by her mother and litigation friend SIV\) and Great Ormond Street Hospital NHS Foundation Trust \[2015\] EWHC 2829 \(QB\)](#) - Medical negligence - Court approved settlement.

## LEGISLATION

### Commonwealth

9 October 2015 - [Therapeutic Goods \(Listing\) Notice 2015 \(No. 6\)](#).

### Australian Capital Territory (ACT)

7 October 2015 - [Mental Health Act 2015](#).

South Australia

8 October 2015 - [Primary Produce \(Food Safety Schemes\) \(Meat Food Safety Advisory Committee\) Variation Regulations 2015](#).

### Tasmania

6 October 2015 - [Health Amendment \(Fees Validation\) Act 2015 \(No. 31 of 2015\)](#).

### Western Australia (WA)

6 October 2015 - [Swan District Hospital \(Eveline Road Site\) By-laws 2005](#).

6 October 2015 - [Hospitals \(Services Charges for Specialised Orthoses\) Determination 2015](#).

## REPORTS

### Australia. Department of Health

Media releases

8 October 2015 - [Australian General Practice Training programme \(AGPT\)](#) - The Australian General Practice Training (AGPT) programme is a fully Commonwealth funded postgraduate vocational training programme for medical graduates wishing to pursue a career in general practice.

8 October 2015 - [GP Training Advisory Committee](#) - The Minister for Health Sussan Ley has announced appointments to the new, profession led GP Training Advisory Committee to oversee governance of the Australian General Practice Training programme.

5 October 2015 - [Coming soon: A new approach for our mental health system](#) - Minister for Health Sussan Ley has encouraged all Australians to reach out to friends and family this Mental Health Week (October 2 to 10), and has foreshadowed significant structural reform of the mental health system.

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

2 October 2015 - [NHMRC Research Tracker](#).

### Australia. Therapeutic Goods Administration (TGA)

8 October 2015 - [Products containing Andrographis paniculata](#) - Safety advisory - risk of allergic reactions.

8 October 2015 - [Safety review of Andrographis paniculata and anaphylactic/allergic reactions](#) - The TGA has undertaken a safety review of andrographis - a herbal ingredient used in some complementary medicines.

7 October 2015 - [Terry White Chemists branded children's paracetamol syrup for 1 to 5 years and children's paracetamol syrup for 6 to 12 years](#) - Recall - risk of plastic fragments breaking from bottle and being ingested.

7 October 2015 - [Apohealth children's paracetamol for 1 to 5 years, children's paracetamol for 6 to 12 years, and children's ibuprofen for 6 months to 12 years](#) - Recall - risk of plastic fragments breaking from bottle and being ingested.

7 October 2015 - [Children's medicines supplied in bottles that may be faulty - multiple brands](#) - Update 2 - additional products affected.

7 October 2015 - [Terry White Chemists branded ibuprofen children's suspension](#) - Update - recall - additional batch affected.

6 October 2015 - [Public submissions on scheduling matters referred to the ACMS #15, August 2015](#) - Public submissions made in response to the delegate's proposed amendments to the Poisons Standard referred to ACMS #15 are now available.

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

6 October 2015 - On the Radar – Issue 243 ([PDF 150KB](#)) ([Word 143KB](#)).

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

#### Media Releases

8 October 2015 - [Seven Hills one stop mental health centre opens.](#)

2 October 2015 - [Convenient patient and carer accommodation open at Royal North Shore Hospital.](#)

#### Policy Directives & Guidelines

8 October 2015 - [Building Strong Foundations \(BSF\) Program Service Standards.](#)

7 October 2015 - [Infants and Children: Initial Management of Fever/Suspected Sepsis in Oncology /Transplant Patients.](#)

7 October 2015 - [Non-Admitted Patient Data Collection Transition from WebNAP to EDWARD Reporting.](#)

#### Information Bulletins

7 October 2015 - [Pesticide Use Notification Plan.](#)

#### Publications

2 October 2015 - [Health Professionals Workforce Plan 2012-2022.](#)

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

5 October 2015 - [Community wellbeing the focus for Mental Health Week](#) - This week marks National Mental Health Week, held to coincide with World Mental Health Day on Saturday 10 October. Mental Health Week provides the opportunity to promote social and emotional wellbeing in the community, encourages people to maximise their health potential, coping capacity and increase mental health recovery through education and connection to resources.

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

7 October 2015 - [Health Minister wants to learn lessons from Ravenshoe disaster](#) - Minister for Health and Ambulance Services Cameron Dick has announced an examination of the health system's response following the Ravenshoe explosion.

6 October 2015 - **Palaszczuk Government unveils plan for early action on mental health** - The Palaszczuk Government has today unveiled a plan to improve the mental health and wellbeing of Queenslanders by taking early action.

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

7 October, 2015 - **Transforming Health to improve patient care in north and north-east** - More than 3,000 additional patients will be seen at Modbury Hospital each year and 24/7 orthopaedic coverage will be provided at the Lyell McEwin Hospital following a move of hospital services in Adelaide's north and north-east. Minister for Health Jack Snelling said the realignment of services between Modbury Hospital and Lyell McEwin Hospital will also significantly reduce the time local patients wait for surgery.

2 October, 2015 - **South Australians commit to improving mental health** - The State Government has encouraged all South Australians to make a mental health and wellbeing promise during Mental Health Week 2015. Parliamentary Secretary to the Minister for Health Leesa Vlahos said a commitment to talk with friends, eat well or exercise daily can improve mental health and wellbeing.

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

9 October 2015 - **Rethinking Mental Health** - Taking action to improve the mental health and wellbeing of Tasmanians is a priority for the Hodgman Liberal Government.

6 October 2015 - **Security of Staff our Highest Priority** - The Hodgman Liberal Government is committed to the highest level of safety and security of staff and patients at the Wilfred Lopes Centre.

6 October 2015 - **Construction start for RHH forecourt** - A significant milestone in rescuing the Royal Hobart Hospital has now been taken with the start of construction works.

#### **Victoria. Department of Health**

6 October, 2015 - **Medicinal cannabis to be legalised in Victoria** - In an Australian first, the Andrews Labor Government will legalise access to locally manufactured medicinal cannabis products for use in exceptional circumstances from 2017. Prior to the election, Labor committed to this change because no family should have to choose between breaking the law and watching their loved ones suffer. The Victorian Law Reform Commission was asked to advise how to amend the law in order to allow people in exceptional circumstances to safely access medicinal cannabis products.

5 October, 2015 - **Funding opens to improve mental health, alcohol and other drugs facilities** - Mental health services, and services that treat people who are dependent on alcohol and other drugs, can now apply for \$5.5 million in funding from the Andrews Labor Government, Minister for Mental Health Martin Foley announced today as part of Mental Health Week. Mental Health and Alcohol and Other Drugs Facilities Renewal Grants will help existing, community-based organisations to deliver the best, recovery-oriented services for Victorians. Services can apply for up to \$500,000 for building works to improve physical amenity, space and safety. Up to \$500,000 of the \$5.5 million will be available for Mental Health Safety and Privacy Grants, to fund the installation of electronic swipe system locks for people staying in community-based mental health services.

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

##### **Media Releases**

7 October 2015 - **Death from meningococcal disease in an older adult** - The Department of Health today reported that an elderly West Australian has died in hospital from meningococcal disease.

6 October 2015 - **Minister for Mental Health: Good Outcomes Award winners announced** - Youth Focus chief executive officer Jenny Allen and remote area mental health worker Paul Escott are among the seven winners recognised today in the 2015 Mental Health Good Outcomes Awards.

6 October 2015 - **Minister for Health and Minister for Planning: Back to nature as play space vital to wellbeing** - Children who regularly play in natural settings are sick less often and have more opportunities to develop their co-ordination and motor skills, according to research from the University of Western Australia and not-for-profit organisation, Nature Play WA.

5 October 2015 - [Southern Cross to have better facilities](#) - People living in Southern Cross can look forward to a new state-of-the-art Emergency Department thanks to upgrades planned for the local hospital.

5 October 2015 - [Katanning upgrade takes shape](#) - The planned upgrades for Katanning Health Service are taking shape with schematic designs of the new building area and upgrades to the original building now completed.

5 October 2015 - [Maternity transition at Swan District Hospital](#) - Women booked to have a baby at Swan District Hospital and who are due on or after November 24 will be contacted by St John of God Midland Public Hospital during the next few weeks about the uninterrupted transfer of their care.

#### **New Zealand (NZ). Ministry of Health**

9 October 2015 - [Tatau Kahukura: Māori Health Chart Book 2015, 3rd edition](#) - Tatau Kahukura: Māori Health Chart Book 2015 (3rd edition) presents a picture of the health status of the Māori population compared to non-Māori population at a national level in the early 2010s.

6 October 2015 - [Maternity Tables 2013](#) - The Maternity Tables 2013 present annual health statistics about women giving birth, their pregnancy and childbirth experience, and the characteristics of the live-born babies in New Zealand. The focus is on births in 2013.

6 October 2015 - [Cancer: Historical summary 1948–2012](#) - These tables contain cancer registration and death data for selected cancers by sex, from 1948–2012.

6 October 2015 - [Cancer: New registrations and deaths 2012](#) - This report is the latest release in the Cancer: New registrations and deaths series, which presents information about new cases of primary cancer diagnosed and reported to the New Zealand Cancer Registry.

6 October 2015 - [Selected Cancers 2012, 2013, 2014](#) - These tables present numbers and rates of cancer registrations for selected cancers, by ethnic group and sex, for 2012, 2013 and 2014.

#### **United Kingdom (UK). Department of Health**

8 October 2015 - [Public health commissioning in the NHS 2015 to 2016](#).

8 October 2015 - [Public health formula for local authorities from April 2016](#).

8 October 2015 - [Appointment of the Chair of the National Mental Capacity Forum](#).

7 October 2015 - [Showcasing the best of NHS innovation to overseas health leaders](#).

7 October 2015 - [NHS Primary Medical Services Directions](#).

7 October 2015 - [Statement opposing female genital mutilation](#).

#### **United States of America (USA). Department of Health & Human Services**

6 October 2015 - [HHS issues rules to advance electronic health records with added simplicity and flexibility](#).

6 October 2015 - [HHS publishes a roadmap to advance health information sharing and transform care](#).

## 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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