



HEALTH ALERT

20 June 2016

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JUDGMENTS

New South Wales

17 June 2016 - *Mace v Justice and Forensic Health Network; The Geo Group Australia Pty Ltd v AAI Limited t/as Vero Insurance* [2016] NSWSC 803 - Mr Mace brought claims in negligence against Justice and Forensic Health Network, the State, and the Geo Group Australia Pty Ltd for injuries he suffered while an inmate at Parklea Correctional Centre (**PCC**). The claims were settled in late 2015. Geo now pursues a cross claim against its insurer, AAI Limited trading as Vero Insurance with whom it entered a 'Medical Malpractice Civil Liability Insurance Policy', under which it made a claim in 2012, in respect of Mr Mace's claim. In issue is whether Geo's claim falls within the terms of the policy. Vero contends that the insuring clause of the policy had not been triggered by its claim.

Geo operated PCC under an agreement it had entered with the Commissioner of Corrective Services whereby it had contracted to provide the services of psychologists, counsellors and custodial staff. It was Justice Health which provided medical services for inmates held in custody there, through the medical and nursing staff which it employed. While at PCC, Mr Mace received these nursing services. The issue was whether the evidence established that he had, or ought to have received, the services of either the counsellors or the psychologists Geo employed there.

Vero submitted that Mr Mace's complaint related to Geo's failure to recognise that he was displaying symptoms of acute mental illness and consequent failure to refer him for treatment. That, it said, was not something for which it had insured Geo. The court did not accept this and found in favour of Geo.

16 June 2016 - *ALZ v SafeWork NSW (No 2)* [2016] NSWCATAD 121 - Privacy – health privacy principles – information protection principles – personal information – health information – collection – lawful purpose – unlawful means – storage – relevance – use – access - disclosure of health information

Victoria

17 June 2016 - *Health Care Complaints Commission v Tan* [2016] NSWCATOD 77 - The Health Care Complaints Commission (**HCCC**) issued a Notice of Complaint to Dr Tan which related primarily to the inappropriate, ongoing prescription of a number of different drugs to two patients. Further, it alleged that Dr Tan failed to keep proper medical records as required by law. Dr Tan admitted to being guilty of all the complaints made against him. Dr Tan also admitted that his conduct had constituted both unsatisfactory professional conduct and professional misconduct. By this stage, Dr Tan had already retired from practice and surrendered his registration. Given this information, the principal concern of the Tribunal was the nature of protective orders that should be made.

Dr Tan made an application that, because he had not renewed his registration and had no intention of returning to the practice of medicine, the Tribunal should not proceed to conduct an enquiry. This application was opposed by the HCCC. The Tribunal found that although Dr Tan has not renewed his registration, he remains amenable to findings of misconduct and the making of protective orders. His behaviour was described as 'contemptible, outrageous and unethical'. In its reasons, the Tribunal took into account, among other things, the necessity to send a message to other medical practitioners that misconduct of this kind will not be tolerated.

Dr Tan was disqualified from being registered for a period of three years. In addition, the Tribunal ordered that the National Board record the fact that if he were currently registered, it would have cancelled his registration.

10 June 2016 - *EFV v Department of Health and Human Services (Review and Regulation)* [2016] VCAT 902 - Review and Regulation List; child welfare; child with disability; mother without sufficient capacity to care for child; long-term out of home care and non-reunification plan; case plan upheld; Children, Youth and Families Act 2005 s.10, 166(3)(a) 167(1)(d)&(e)(3)&(4), 262, 333.

Queensland

6 November 2015 - *Medical Board of Australia v Tabriz* [2015] QCAT 530 - PROFESSIONS AND TRADES- HEALTH CARE PROFESSIONALS- DOCTORS- DISCIPLINARY PROCEEDINGS- PROFESSIONAL MISCONDUCT- where doctor engaged in sexual relationship with patient- where doctor accused of breaching patient confidentiality- where submissions made as to which party should pay the costs of a strike-out application and substantive hearing- where question of whether the tribunal should award costs in favour of a relevant board where unprofessional conduct or professional misconduct is proven- where doctor's solicitors had proposed matter proceed on a penalty hearing only- where Medical Board of Australia did not agree with proposal- where ultimate hearing and findings closely resembled the doctor's proposal- where Medical Board of Australia to pay costs of and incidental to the strike-out application- where doctor to pay Medical Board of Australia's costs of and incidental to the proceedings up until date of doctor's proposal- where doctor to pay 50% of the costs of and incidental to the proceedings subsequent to doctor's proposal, excluding costs of strike-out application.

24 March 2016 - *Cabading v Medical Board of Australia* [2016] QCAT 095 - PROFESSIONS AND TRADES- HEALTH CARE PROFESSIONALS- DOCTORS- SHOW CAUSE –where doctor failed AMC MCQ examinations- where Medical Board of Queensland refused to renew the Applicant's limited registration- where the Applicant submitted that the preferred course was the granting of limited registration subject to supervision- whether the Board's decision to renew the Applicant's registration was the correct and preferable decision- where the Tribunal found that examinations apply uniformity to the measurability of competence- where repeated failure of examinations show a person is unable to demonstrate a sufficient level of competence – where the Tribunal found that the Board's decision to refuse the renewal of the Applicant's registration was the correct and preferable decision- where the tribunal ordered the Applicant to pay the Board's costs of and incidental to the review proceedings

21 March 2016 - *Pharmacy Board of Australia v The Registrant* [2016] QCAT 097 - PROFESSIONS AND TRADES- HEALTH CARE PROFESSIONALS- DOCTORS- DISCIPLINARY PROCEEDINGS- PROFESSIONAL MISCONDUCT- where Tribunal suspended the suspension of Registrant's registration for an operational period of 3 months- where the Board submitted that the Registrant be suspended for 12 months- where tribunal indicated that 12 months would be an appropriate period of suspension in the ordinary course of events had the decision been delivered in a more timely way- where the Registrant had no resolution to the disciplinary proceedings- where the Tribunal made orders as previously imposed

15 June 2016 - *Inquest into the death of John Edward Drane* - Findings into the death of John Edward Drane.

South Australia

9 June 2016 - *Inquest into the death of Peter John William Fallon* - Findings into the death of Peter John William Fallon.

Tasmania

10 June 2016 - *Daniels v Tasmania Health Service* [2016] TASSC 27 - Private International Law – Service out of jurisdiction – Under other legislation and Rules of Court – Procedure – Conditional appearance and setting aside service – Application to set aside service – Onus of proof – Onus on plaintiff to show service permitted without leave – Onus on defendant on other matters.

LEGISLATION

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

16 June 2016 - *Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 2)* - F2016L01039 as made

16 June 2016 - *National Health (Remote Aboriginal Health Services Program) Special Arrangements - Amendment Instrument 2016 (No. 2)* - F2016L01038 PB 40 of 2016 as made

REPORTS

Australia. Department of Health

Private Health insurance Circulars

15 June 2016 - [PHI43/16 – Critical dates for submitting applications for the February 2017 Prostheses List](#)

15 June 2016 - [PHI 42/16 – Critical dates for August 2016 Prostheses List](#)

14 June 2016 - [PHI 41/16 – Guidelines for Recognition of Private Hospital-Based Rehabilitation Services](#)

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

15 June 2016 - [Medical practitioner suspended for possessing child pornography](#) - A medical practitioner who admitted possessing child pornography has had his registration suspended by a tribunal for professional misconduct.

15 June 2016 - [Communiqué from the Board](#) - The Chinese Medicine Board of Australia releases its latest communiqué.

15 June 2016 - [Newsletter from the National Board](#) - The Chinese Medicine Board of Australia releases its June newsletter.

14 June 2016 - [Unregistered psychologist convicted and fined by court](#) - A South Australian man has received a \$7,500 fine and a criminal conviction for knowingly and recklessly using the title 'psychologist' in breach of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law).

14 June 2016 - [Communiqué from the Board](#) - The Occupational Therapy Board of Australia releases its latest communiqué.

9 June 2016 - [Statement on Bacchus Marsh Hospital](#) - The statement yesterday by Victorian Health Minister, The Hon Jill Hennessy MP, on the review of stillborn and newborn deaths at Djerriwarrh Health Services going back to 2001 underlines the importance of AHPRA's investigations into individual health practitioners.

Australia. National E-Health Transition Authority (NEHTA)

16 June 2016 - [NEHTA Software Developer Community Announcement - Clinical Package Validator 2.4](#) - NEHTA has released version 2.4 of the Clinical Package Validator tool. The updated version provides the following key new features in addition to a number of stability improvements.

6 June 2016 - [Announcement of NEHTA's Transition to the Australian Digital Health Agency](#) - On 1 July 2016 NEHTA's assets and liabilities will by law become the assets and liabilities of the Australian Digital Health Agency, a new Commonwealth corporate entity.

Australia. National Health & Medical Research Council (NHMRC)

10 June 2016 - [NHMRC Health Tracker – June 2016](#) - Commonwealth Health Minister's Award The National Health and Medical Research Council congratulates Dr Joseph Powell from the University of Queensland on winning the annual Commonwealth Health Minister's Award for Excellence in Health and Medical Research for 2016. This prestigious award recognises outstanding individual achievement by a mid-career Australian researcher.

10 June 2016 - [NHMRC Research Tracker](#)

Australia. Pharmaceutical Benefits Schedule

6 June 2016 - [Biosimilar Awareness Initiative Reference Group Communiqués](#) - The communiqués from the meetings of the Biosimilar Awareness Initiative Reference Group are now available.

1 June 2016 - [PBS Palliative Care Schedule](#) - As part of the Post-market Review of Authority Required PBS Listings, the restrictions for a number of Palliative Care Schedule items will change on 1 June 2016.

1 June 2016 - [PBS Website Update](#) - The Schedule of Pharmaceutical Benefits was updated on 1 June 2016 and the Summary of Changes can be found on the New, Amended and Deleted Items page.

25 May 2016 - [PBS Software Developers website redesign](#) - The design of the PBS Software Developers website has been updated. The new design creates a consistent look between the PBS, Health and PBAC Guidelines websites.

Australia. Therapeutic Goods Administration (TGA)

17 June 2016 - [Mercaptamine \(cysteamine\) and mercaptopurine](#) - safety advisory - similarity between ingredient names mercaptamine (cysteamine) and mercaptopurine.

16 June 2016 - [Medtronic deep brain stimulation therapy DBS Extension models 7483 and 37086](#) - hazard alert - risk of adverse events related to DBS tunnelling procedure.

14 June 2016 - [Medtronic deep brain stimulation devices - multiple models](#) - hazard alert - risk of loss of coordination in patients' movements.

10 June 2016 - [Hydroxyethyl starch \(Voluven and Volulyte\)](#) - update - increased risk of death and kidney injury in critically ill patients.

9 June 2016 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) - added Simoctocog alfa rhu (Nuwiq).

8 June 2016 - [Updates to the list of designated orphan drugs](#) - added Bosentan.

7 June 2016 - [TGA presentation: Australian Acupuncture and Chinese Medicine Annual Conference Perth, 20-22 May 2016](#) - This presentation provides an overview of the complementary medicines regulatory framework.

Australian Competition and Consumer Commission (ACCC)

16 June 2016 - [ACCC acts to restore competition for pathology services in Queensland](#) - The Australian Competition and Consumer Commission has accepted court enforceable divestiture undertakings from Primary Health Care Limited (**Primary**) (ASX: PRY) and Healthscope Limited (**Healthscope**) (ASX: HSO). The undertakings follow an extensive investigation by the ACCC into whether Primary's acquisition of Healthscope's pathology assets in Queensland, which occurred in 2015, breached section 50 of the *Competition and Consumer Act 2010* (Cth) (the Act). The investigation included multiple statutory notices and the compulsory examination under oath of executives from both firms.

16 June 2016 - [ACCC takes action against Medibank for alleged misleading and unconscionable conduct](#) - The Australian Competition and Consumer Commission has instituted proceedings in the Federal Court against Medibank Private Limited (**Medibank**) alleging it contravened the Australian Consumer Law by engaging in misleading conduct, making false or misleading representations and engaging in unconscionable conduct. The allegations are in relation to Medibank's failure to notify Medibank members and members of its subsidiary brand, ahm, regarding its decision to limit benefits paid to members for in-hospital pathology and radiology services.

Australian Institute of Health & Welfare (AIHW)

17 June 2016 - [Back problems, associated comorbidities and risk factors \(web report\)](#)

16 June 2016 - [Children's Headline Indicators \(dynamic data display web update\)](#)

15 June 2016 - [Alcohol and other drug treatment services in Australia 2014–15](#)

15 June 2016 - [Media release: 1 in 200 Australians seek treatment for alcohol and other drugs](#)

Australian Commission on Safety and Quality in Health Care

16 June 2016 - [Australia's most comprehensive report on antibiotic resistance released](#) - The Australian Commission on Safety and Quality in Health Care has released a landmark report outlining the most comprehensive picture of antimicrobial resistance, antimicrobial use and appropriateness of prescribing in Australia to date.

Australian Capital Territory (ACT). Health Directorate

15 June 2016 - [New heads for ambulance and rural fire services in the ACT](#) - The appointment of new chief officers for the ACT Ambulance Service and ACT Rural Fire Service were today welcomed by Minister for Police and Emergency Services Simon Corbell.

9 June 2016 - [Legislation paves the way for new secure mental health facility](#) - Two new pieces of legislation that will guide the day to day management of ACT Health's new Secure Mental Health Unit and clearly define the processes for transfer of custody of detainees to the unit has been passed in the Legislative Assembly, Minister for Health Simon Corbell announced today.

New South Wales (NSW). Ministry of Health

Policy Directives & Guidelines

16 June 2016 - [Brain Injury Rehabilitation Program \(BIRP\) - Fees Policy and Schedule of Fees](#)

14 June 2016 - [Ambulance Service - Charges](#)

14 June 2016 - [NSW Newborn and Paediatric Emergency Transport Services \(NETS\) Charges](#)

Information Bulletins

14 June 2016 - [NSW Health Student Placement Agreement \(SPA\) for Entry into a Health Occupation](#)

New South Wales Health Care Complaints Commission (HCCC)

17 June 2016 - [Dr Reza Jangodaz - Dentist - Guilty of professional misconduct and registration cancelled](#) - The HCCC prosecuted a dentist, Dr Reza Jangodaz, before the NSW Civil and Administrative Tribunal (**the Tribunal**). The Tribunal found that Dr Jangodaz had engaged in a sexual relationship with a female patient who was especially vulnerable, had failed to refer the patient to another practitioner for completion of root canal therapy treatment and that he had repeatedly contacted the patient in an attempt to influence her to withdraw her complaint against him.

2 June 2016 - [Mr Claude Fakhouri - Breached Code of Conduct for Unregistered Health Practitioners](#) - The HCCC completed its investigation into a complaint against non-registered health practitioner, massage therapist, Claude Fakhouri in January 2016. An order by NCAT preventing publication of the prohibition order that was imposed following the investigation has now been lifted.

Northern Territory. Department of Health

17 June 2016 - [Trauma Centre takes part in disaster simulation in Timor-Leste](#) - A typhoon that caused flooding and a major landslide burying parts of a village and road collapses are all part of an unfolding disaster being played out in Timor-Leste this week.

10 June 2016 - [Territory 'Crypto' warning](#) - The Northern Territory Centre for Disease Control has issued a warning about gastro caused by the parasite, *Cryptosporidium parvum*.

Queensland. Department of Health

16 June 2016 - [Tim Nicholls under pressure to release cabinet documents](#) - Tim Nicholls has today demonstrated he cannot be trusted with health care in Queensland, after failing his first credibility test in his Budget reply.

16 June 2016 - [Health performance at record levels despite demand pressures](#) - A record number of people are receiving treatment within clinically-recommended time frames in Queensland's public hospitals, despite extreme demand challenges.

16 June 2016 - [Skin cancer under the microscope this Men's Health Week](#) - Queensland Health is placing an emphasis on skin cancer and melanoma prevention for this Men's Health Week. Research shows Queensland men over 45 are two thirds more likely to be diagnosed with melanoma than women. Further to this, men are also three times more likely to die as a result of a melanoma diagnosis.

14 June 2016 - [Cochlear implant service celebrates one year at The Townsville Hospital](#) - Amid the blare of screaming alarms and the milling of frightened children, two-year-old Annabelle Waldschmied slept

peacefully. When the faulty fire alarm tripped again later that day, day care staff and Annabelle's parents Justine and John knew something was terribly wrong.

14 June 2016 - [Patients first in Metro South Hospital and Health Service budget](#) - Metro South Hospital and Health Service will be given a \$176 million boost next financial year to help ensure patients receive the best possible care.

14 June 2016 - [Patients first in Metro North Hospital and Health Service budget](#) - Health funding in Metro North will jump \$213.1 million next financial year to help ensure patients receive the best possible care.

14 June 2016 - [Queensland health budget puts patients first](#) - Queensland's multi-billion dollar health budget will jump 7.7 per cent to meet growing demands for health services across the state.

South Australia. Department for Health & Ageing

12 June 2016 - [SA Hospitals prepare for winter surge](#) - SA Health has released a new demand management plan for South Australian hospitals in preparation for a predicted surge in patients this winter.

10 June 2016 - [David Swan steps up to new role](#) - SA Health's longest serving Chief Executive, David Swan, has been appointed to the role of Chief Executive Officer of St Vincent's Private Hospitals and will finish with the department in September.

Tasmania. Department of Health & Human Services

16 June 2016 - [White wrong on cardiothoracic services](#) - At the very least, opposition health spokesperson Rebecca White is playing politics. Her claims today are factually wrong, irresponsible and she is unnecessarily scaring the Tasmanian public.

Victoria. Department of Health

16 June 2016 - [Taking A Stand Against Health Worker Violence](#) - The Andrews Labor Government will launch a new public awareness campaign to reduce violence in Victorian hospitals as part of a plan to stop attacks against frontline health workers.

14 June 2016 - [Australia's Biggest Blood Donation Centre Opens In Melbourne CBD](#) - More Victorians will now be able to donate more blood to save more lives with Australia's largest blood donation centre opening its doors in Melbourne today. Minister for Health, Jill Hennessy, today celebrated the official opening of the Australian Red Cross Blood Service's new and larger Melbourne CBD Blood Donor Centre on Collins Street.

11 June 2016 - [Victoria's First Supercare Pharmacies Opening Soon](#) - The Andrews Labor Government is getting on with delivering our Victorian Super Pharmacies election commitment with the first five community pharmacies to open 24-hours-a-day, every day by the end of June.

Western Australia (WA). Department of Health

Media Releases

16 June 2016 - [Poison mushroom warning for rural WA](#) - The Department of Health is warning Western Australians not to gather or eat wild mushrooms from the South West and Great Southern regions because of the risk of poisoning.

14 June 2016 - [Minister for Health: Outback eye van highlights vision for the future](#) - State-of-the-art eye care has been provided to 668 regional patients in the past three months, thanks to the work of the Lions Outback Vision Van, which received \$2 million in funding from the Liberal National Government.

13 June 2016 - [Minister for Health: New centre to promote world-class WA health research](#) - A bold new medical initiative is set to attract more clinical trials to Western Australia and build on the State's international reputation for research excellence.

16 June 2016 - [Cancer care closer to home](#) - WA Health has strongly invested in cancer care to support the 11,700 Western Australians diagnosed with cancer every year.

Health Canada

1 June 2016 - **Health Canada to stop issuing new conditional registrations for pesticides** - Effective June 1, 2016, Health Canada will no longer grant new conditional registrations for pesticides. This is an important step to improve the openness and transparency of Canada's pesticide regulatory system, by providing the public with an opportunity to be consulted on all major pesticide registration decisions.

1 June 2016 - **Government of Canada announces tighter controls on opioid W-18** - The Government of Canada announced today it has published final amendments that add the synthetic opioid W-18 to Schedule I to the *Controlled Drugs and Substances Act (CDSA)*, and to the Restricted Drugs section of the *Food and Drug Regulations*, rendering unauthorized activities such as production, possession, importation or exportation and trafficking illegal.

United Kingdom. Department of Health

8 June 2016 - **New bowel cancer screening test** - A new bowel cancer home testing kit will be rolled out across England. The Faecal Immunochemical Test (**FIT**) tests for hidden blood in stool samples, which can be an early sign of bowel cancer. Following a successful pilot involving 40,000 people, the UK National Screening Committee recommended the test should be rolled out nationally. The test will now be offered to all men and women aged 60 to 74, every 2 years.

United States of America. Department of Health & Human Services (HHS)

1 June 2016 - **HHS begins listing new transparency information for certified health information technology** - Plain language disclosures, upgraded website to make the health IT market work better.

Australian Medical Association (AuMA)

17 June 2016 - **AuMA welcomes ACCC action against Medibank Private** - The AuMA has long been highly critical of the actions of insurers making changes to their health cover without informing policy holders, and AuMA President Dr Michael Gannon says it is pleasing to see that at least one is now being held to account.

16 June 2016 - **Access to core information critical to e-health record success** - Releasing the AuMA's updated Position Statement, Shared Electronic Medical Records 2016, today, AuMA President Dr Michael Gannon said that giving patients the ability to block or modify access to critical information such as medications, allergies, discharge summaries, diagnostic test results, blood pressure and advance care plans compromised the clinical usefulness of shared electronic medical records loaded on the My Health Record system.

14 June 2016 - **Suspend e-health changes until system fixed** - The AuMA is calling for a moratorium on changes that will penalise general practices thousands of dollars if they do not upload patient health summaries to the My Health Record system, with less than a quarter of practices indicating they will be able to comply with new rules introduced earlier this year to the Practice Incentives Program.

12 June 2016 - **AuMA welcomes Labor's \$2 billion commitment for public hospitals** - The AuMA welcomes Labor's commitment to inject an extra \$2 billion into the public hospital system and to provide \$100 million for a trial of patient-centred medical homes in primary care.

American Medical Association (AMA)

13 June 2016 - **Code of Medical Ethics Modernized for Contemporary Medicine** - The central role of ethics in medicine was demonstrated today as the nation's physician leaders voted to adopt a modernized Code of Medical Ethics during the American Medical Association's Annual Meeting.

13 June 2016 - **AMA Adopts New Guidance for Ethical Practice in Telemedicine** - New ethical guidance adopted today at the AMA Annual Meeting will help physicians understand how their fundamental responsibilities may play out differently when patient interactions occur through telemedicine, compared to traditional patient interactions at a medical office or hospital.

3 June 2016 - **AMA and Other Medical Societies Call for a Change in Interoperability Measurements** - The AMA and 36 specialty medical associations urged the Administration today to rethink the way it measures the interoperability of electronic health records.

1 June 2016 - [AMA Applauds FDA's Proposed Guidance to Reduce Sodium in U.S. Food Supply](#) - With overwhelming scientific evidence showing the direct link between excessive sodium intake and heart disease, the AMA today applauded the U.S. Food and Drug Administration (FDA) for taking a major step toward reducing the amount of sodium added to the nation's food supply.

ABOUT US

Caroline Atkins



Caroline Atkins is the Office Managing Partner for the Canberra office of DLA Piper and has worked extensively in the health sector for Australian Government agencies. Her experience includes the conduct of major technology projects for the health sector, such as in the e-health and aged care sectors, and in advising the Commonwealth on the implementation of policy programs in contractual arrangements (including for medical indemnity insurance and for CSO arrangements for PBS funding). She has also advised the National Blood Authority on major Commonwealth contracts for the supply of blood products including with the Red Cross and CSL. Caroline's commercial experience extends over 30 years and also includes significant experience in ICT outsourcing, whole-of-government technology procurements, intellectual property rights licensing, contract management, procurement strategy and dispute resolution.

Contact Details

T +61 2 6201 8789

caroline.atkins@dlapiper.com

MORE INFORMATION

Contact your nearest DLA Piper office:

BRISBANE

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

CANBERRA

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

MELBOURNE

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

PERTH

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

SYDNEY

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

www.dlapiper.com

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If you would like to reproduce any of this publication, please contact Michael Regos on +61 3 9274 5437 or michael.regos@dlapiper.com.

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