



HEALTH ALERT

24 July 2017

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JUDGMENTS

Key Decisions

19 July 2017 - *NJE v Mental Health Tribunal (Human Rights) [2017] VCAT 1070* - Mental Health Act 2014 (Vic), sections 68, 69, 70, 92, 93 and 96 - review of decision of the Mental Health Tribunal to order electroconvulsive treatment – whether applicant does not have capacity to give informed consent - whether there is a less restrictive way for the applicant to be treated section 6 - treatment.

The applicant brought proceedings to review a decision of the Mental Health Tribunal to order electroconvulsive treatment (ECT). The applicant, who suffered schizophrenia, was an involuntary patient at a mental health in-patient facility. Her treating team sought an order for the applicant to receive ECT, and the applicant expressed wishes not to have ECT.

The issue in dispute was whether the applicant had capacity to give informed consent about her treatment. The applicant argued she had decision making capacity as she was able to read and understand the relevant information she had been given about ECT. Her treating team contented the applicant lacked capacity because she did not have insight into her condition and she could not use and weigh the information given to her about ECT.

The Tribunal confirmed the decision to allow ECT treatments. The Tribunal noted the applicant's strongly and consistently expressed wish not to have ECT, and her right to freedom from medical treatment without consent and freedom of movement and privacy. However, the Tribunal was not satisfied that she had decision making capacity because her refusal to undergo ECT was made without consideration of the advantages or disadvantages of the treatment. The Tribunal also gave weight to the clinical view that her condition was resistant to treatment and ECT is the only treatment that has a chance to address both negative and positive symptoms of the condition

18 July 2017 - *Ms Shahin Tavassoli v Bupa Aged Care Mosman [2017] FWC 3200* - Application for an unfair dismissal remedy. The applicant, an assistant nurse, brought proceedings against her employer, an aged care facility. The applicant resigned from her employment and claimed she was constructively dismissed due to false accusations about her conduct. In support of its decision, the respondent produced evidence of the applicant making comments about deceased residents and ignoring resident's buzzers requesting help, conduct which the respondent considered to be in breach of the company's code of ethics.

The Commission held there was no valid reason for the applicant to be terminated and that her dismissal was harsh and unfair. It concluded that the evidence of the respondent did not convince the Commission that the applicant was laughing at deceased residents and neglecting her duty by ignoring the resident's buzzers. It noted the applicant's argument that the respondent had not provided her with any specific allegations in writing and had refused to show her the evidence of her conduct. It also emphasised the respondent's failure to provide evidence from other employees who may have seen the incident and the applicant's actions.

The Commission upheld the applicant's request to be reinstated because the employment relationship between the applicant and the respondent could be restored as the manager involved in the incident was no longer employed at the company. It also accepted the argument that the applicant may find it difficult to find alternative employment due to her age and language deficiency.

Commonwealth. Fair Work Commission

17 July 2017 - *Adventist Healthcare Limited [2017] FWCA 3725* - Application for approval of the Adventist HealthCare Limited Allied Health and Support Services Staff Enterprise Agreement 2017-2020.

New South Wales

7 July 2017 - *Roberts v Nursing and Midwifery Board of Australia [2017] NSWCATOD 109* - PROFESSIONS AND TRADES – where applicant seeks to set aside decision dismissing application for an

indefinite stay of appeal and dismissing appeal - where multiple failures by appellant to file evidence or submissions in substantive application – where no prospects of success on appeal.

South Australia

13 July 2017 - [Chiropractic Board of Australia v Shanahan \[2017\] SAHPT 9](#) - Complainant alleged that the respondent behaved in a way that constitutes professional misconduct – Four grounds were alleged – Three grounds related to inappropriate conduct on the part of the respondent towards his patients – One ground related to repeated breaches of an undertaking voluntarily given by the respondent – The respondent was self-represented at the hearing – He did not advance any rebuttal evidence or effectively participate in the hearing – The Tribunal is satisfied that the complainant has established to the requisite degree the four grounds set out in the complaint – HELD – The conduct set out in the complaint constitutes professional misconduct – The respondent is reprimanded in the strongest possible terms – The respondent's registration as a chiropractor is cancelled – The respondent is permanently disqualified from reapplying for registration – The respondent is prohibited from providing any health services whether remunerated or not, that utilise his skills and knowledge gained as a chiropractor – The respondent is to pay the complainant's costs of and incidental to these proceedings to be agreed or, in default of agreement, to be adjudicated – Ss 195 and 196 of Schedule 2 Health Practitioner Regulation National Law (South Australia) Act 2010.

Victoria

14 July 2017 - [Curran v Loddon Campaspe Centre Against Sexual Assault \(Human Rights\) \[2017\] VCAT 999](#) - Health Records Act 2001 (Vic) – Health Privacy Principles – claims of breaches of health privacy – use and disclosure of information – primary purpose – secondary purpose – is an applicant's name health information – access to records – data retention and security – allegations of fraudulent alteration of records – abandoned – whether information in health records is misleading – what constitutes health records.

10 July 2017 - [Psychology Board of Australia v Treacher \[2017\] VCAT 1000](#) - Health Practitioner Regulation National Law Act 2009 (Vic) - Psychologists Registration Act 2000 (Vic), section 48 – psychologist admitted to engaging in professional misconduct in respect of multiple boundary violations – psychologist no longer registered – reprimand.

29 June 2017 - [Bar v Schneider \(Human Rights\) \[2017\] VCAT 957](#) - Section 75 of the Victorian civil and administrative Tribunal Act 1998– application for proceeding to be struck out or dismissed – claim misconceived and lacking in substance. Health Records Act 2001. Health Privacy Principle (HPP) 2.2.

13 July 2017 - [Finding Without Inquest into the Death of Michelle Louise Rosevear COR 2015 2797](#)

Western Australia

29 June 2017 - [Inquest into the Death of Ejub Mehinovic 1487/2015](#)

LEGISLATION

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

Commonwealth

20 July 2017 - [National Health \(Pharmaceutical Benefits Scheme Hospital Medication Chart Paperless Claiming Trial\) Special Arrangement 2017 \(PB 54 of 2017\)](#) - F2017L00936 as made.

19 July 2017 - [Declaration of Quality Assurance Activity under section 124X of the Health Insurance Act 1973 – QAA 3/2017](#) - F2017L00931 as made.

14 July 2017 - [Therapeutic Goods \(Permissible Ingredients\) Determination No. 3 of 2017](#) - F2017L00926 as made.

REPORTS

Australia. Department of Health

Media releases

18 July 2017 - [\\$116 million anti-smoking campaign key to help Closing the Gap](#) - Australian Government initiatives are helping prevent Indigenous people from taking up smoking and to encourage existing smokers to quit.

17 July 2017 - [Innovation has Older Australians Sharing in Better Caring](#) - An Australian-first online marketplace linking independent care and support workers with clients highlights the promise of innovation to improve the lives of our ageing population.

Private Health Insurance Circulars

[PHI 37/17 Clarification of Roles in the Certification Process](#)

[PHI 36/17 Private Health Insurer's Second Tier Default Benefit Rates Annual Audit](#)

[PHI 35/17 Private Same-Day Hospital Information](#)

Australia. Health Practitioner Regulation Agency and the boards

20 July 2017 - [Newsletter from the National Board](#) - The Chinese Medicine Board of Australia releases its July newsletter.

20 July 2017 - [Board publishes position statement on advertising](#) - The Board has published a position statement on advertising due to concern about an increase in Chinese medicine advertising complaints.

19 July 2017 - [Communiqué](#) - The Dental Board of Australia releases its latest communiqué.

18 July 2017 - [Statement on ABC 7.30 Report](#) - Our primary objective, working with 14 national health practitioner boards, is to ensure the protection of the public. We can and do take regulatory action when we receive a notification (complaint) about individual registered health practitioners to ensure patient safety.

17 July 2017 - [Medical practitioner disqualified for ten years for professional misconduct](#) - The Western Australia State Administrative Tribunal has disqualified Dr Anish Singh from applying for re-registration for ten years and fined him \$5,000 for professional misconduct.

17 July 2017 - [Tribunal finds medical practitioner engaged in professional misconduct during consultation](#) - A medical practitioner's consultation with a 10-year-old girl with a malignant tumour has resulted in a tribunal finding of professional misconduct.

17 July 2017 - [Quarterly registration data released](#) - The National Aboriginal and Torres Strait Islander Health Practice Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Chiropractic Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Dental Board has released its quarterly registration data.

14 July 2017 - [Medical practitioner reprimanded for unprofessional conduct](#) - Medical practitioner reprimanded for failing to properly maintain professional boundaries with a patient.

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

17 July 2017 - [Quarterly registration data released](#) - The National Occupational Therapy Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Optometry Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Osteopathy Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Pharmacy Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Physiotherapy Board has released its quarterly registration data.

17 July 2017 - [Quarterly registration data released](#) - The National Podiatry Board has released its quarterly registration data.

14 July 2017 - [Communiqué from the Board](#) - The Podiatry Board of Australia releases its latest communiqué.

Australia. National Health and Medical Research Council (NHMRC)

14 July 2017 - [NHMRC Research Tracker](#)

21 July 2017 - [NHMRC Health Tracker - July 2017](#)

Australia. Pharmaceutical Benefits Scheme

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

Australia. Therapeutic Goods Administration

20 July 2017 - [Prescription medicines: registration of new chemical entities in Australia](#) - Newly-registered new chemical entities added.

20 July 2017 - [ACMD meeting statement, Meeting 31, 24 February 2017](#) - ACMD 31 meeting statement has been published.

18 July 2017 - [Medical devices and IVDs: Cancellations of certain devices within an entry](#) - Details of products cancelled from the ARTG.

18 July 2017 - [Conference participation by the TGA](#) - The TGA is participating in these events and conferences.

18 July 2017 - [ACM meeting statement, Meeting 1, 2-3 February 2017](#) - ACM 1 meeting statement has been published.

Australian Digital Health Agency

14 July 2017 - [Fax machines on the way out for Australian healthcare](#) - Fax-free healthcare is one step closer today, as the Australian Digital Health Agency (the Agency) and clinical information systems vendors work together to progress secure electronic messaging between healthcare providers. This technology will enable health data to flow securely from one healthcare provider to another – irrespective of the software they are using, the organisation they work for, or with whom they are communicating.

14 July 2017 - [Fact Check: Security of My Health Record](#) - My Health Record is a secure online summary of your health information. An individual can control what goes into it, and who is allowed access. Individuals can choose to share their health information with their doctors, hospitals and other healthcare providers.

Australian Institute of Health & Welfare

20 July 2017 - [Australia's hospitals at a glance 2015–16](#)

21 July 2017 - [Tracking progress against the Implementation Plan goals for the Aboriginal and Torres Strait Islander Health Plan 2013–2023: first monitoring report \(SAS VA dynamic data display\)](#)

Australian Commission on Safety and Quality in Health Care

[Barcoding and other scanning technologies to improve medication safety in hospitals – June 2017 \(PDF 802KB\) \(Word 2MB\)](#)

[CARAlert Annual Report 2016 – 2017 \(PDF 898KB\) \(Word 621KB\)](#)

19 July 2017 - [New system spotlights spread of antibiotic resistance](#) - A new surveillance system set up to provide early warning of the spread of dangerous bacteria has detected more than 1,000 cases across Australia resistant to last-line antibiotics – giving experts much better and more timely information to help combat the threat of antimicrobial resistance.

On the Radar – 17 July 2017 – Issue 330 [\(PDF 180KB\) \(Word 148KB\)](#)

New South Wales (NSW). Ministry of Health

Media releases

20 July 2017 - [Measles alert: NSW Health urges awareness after Sydney case](#) - NSW Health is urging people who have been in the Sydney CBD and Leichhardt from July 15 -19 to be aware of the symptoms of measles after an infected tourist visited these areas.

The young adult international traveller probably caught the infection in their home country and first developed symptoms in Melbourne on July 15. They then travelled to Sydney and visited many tourist highlights before being diagnosed with measles and isolated.

20 July 2017 - [Legionnaires' disease regulation report released](#) - NSW Health today released a report into the proposed further regulation of building cooling towers to help reduce the risk of Legionnaires' disease. NSW Chief Health Officer Dr Kerry Chant said the report is based on the recommendations from the Legionella Expert Panel and feedback received from public consultation in early 2017. The report considered whether any new measures are needed to strengthen current prevention and control activities.

Publications

19 July 2017 - [APHTI Competency Framework](#)

Northern Territory. Department of Health

20 July 2017 - [Katherine Town Water Supply and PFAS Testing Results](#) - Last year, the Australian Department of Defence notified the Northern Territory Government of the presence of per-and poly-fluoroalkyl substances, also known as 'PFAS', in the vicinity of some Defence bases around Australia including Tindal.

Queensland. Department of Health

19 July 2017 - [How to hack your meal plan when it isn't working](#) - One of the most powerful steps you can take towards healthier eating is [creating a healthy meal plan](#). It's easy to see the benefits: sitting down and putting together a list of the meals you intend to eat ahead of time allows you identify the points where you could be making healthier choices, and makes it easier to avoid temptation when you're at the supermarket.

But creating a healthy eating plan and actually following through with it are two different things. Many old habits around eating can be hard to break, especially when life gets in the way and disrupts your carefully laid plans. A hard day at work might see you skipping one healthy meal in favour of ordering a pizza, or you could agree to meet a friend for coffee and find yourself ordering a chocolate brownie to go with your latte.

18 July 2017 - [Drop in number of outstanding Queensland Health overpayments](#) - The number of outstanding overpayments owed by current or former Queensland Health employees has dropped by more than 12,000 during the term of the Palaszczuk Government.

17 July 2017 - [State Government investment delivers first NRL State of Mind recognised club in Queensland](#) - Norths Juniors Rugby League Club today became the first NRL State of Mind recognised club in Queensland after completing the six-step recognition process.

16 July 2017 - [Information session for potential Gladstone Hospital contractors](#) - Businesses in the Gladstone region are invited to an information session to learn about local opportunities for the main works package of the Gladstone Hospital Emergency Department (ED) project.

14 July 2017 - [Minister 'mixes it up' with Cairns team for Dry July](#) - A month without alcohol can have several health benefits but for those taking part in Dry July, the challenge to refrain from drinking is made more attractive by the fundraising rewards for a cause close to their heart.

14 July 2017 - [Waiting lists cut thanks to Palaszczuk Government initiative](#) - Queenslanders with specialist outpatient appointments have seen waiting lists slashed thanks to a Palaszczuk Government initiative.

South Australia. Department for Health & Ageing

17 July 2017 - [Media release: Meningococcal case - July](#) - A case of invasive meningococcal disease has been confirmed in a 53-year-old man from metropolitan Adelaide, who tragically died on Saturday.

18 July 2017 - [Parents urged to do more amid decay in childhood dental rates](#) - A number of babies aged under one year old are among a worrying spike in cases of South Australian children who were hospitalised due to poor dental health in the last 12 months.

16 July 2017 - [Patients asked to be patient as New RAH moves date approaches](#) - A television commercial that showcases the new Royal Adelaide Hospital (RAH) will begin airing on free TV from this evening, as part of a community awareness campaign to ensure South Australians know how the move to the new RAH could impact on them.

Victoria. Department of Health

21 July 2017 - [Locals To Help Shape Warrnambool Hospital Revamp](#) - The Warrnambool community will help shape an expansion of Warrnambool Base Hospital that will best meet local healthcare needs and deliver world-class care into the future.

21 July 2017 - [A Healthy Future For Port Fairy](#) - Port Fairy now has a community health centre, which locals can be proud of, thanks to support from the Victorian Government and the fundraising efforts of the local community.

20 July 2017 - [More Mental Health Care For New Mums, Children And Young People](#) - More mothers, children and young people will benefit from earlier and increased mental health support, thanks to a more than \$21 million funding boost to expand the capacity of vital services.

19 July 2017 - [Easing The Burden Of Chronic Disease](#) - Victorians living with chronic diseases in four locations in the state's north will be the first to trial a scheme bringing pharmacists and doctors together to better manage patient illnesses. The Pharmacist Chronic Disease Management Pilot will give eligible patients the freedom to visit their local pharmacy when monitoring and managing their chronic illnesses.

19 July 2017 - [Record Funding Boost For Better Patient Care](#) - The Andrews Labor Government will spend a record \$18.12 billion across the health system over the next year so more Victorian patients can get the highest quality care and treatment they need sooner. Minister for Health Jill Hennessy today announced the 2017/18 budget allocations for Victorian hospitals, as well as a new state-of-the-art stroke care unit for the Royal Melbourne Hospital.

19 July 2017 - [New Study Takes Aim At Male Suicide](#) - The recipient of a fellowship from the Andrews Labor Government's medical research strategy is set to tackle the high incidence of suicide in working men. Initial studies show stressful working conditions are a major risk factor for mental health problems and suicide among men, and the research aims to find the reasons and link workplaces into health services which can help.

Dr Allison Milner has received a four-year fellowship to research the issue and develop solutions – one of three worth up to \$800,000 each – granted under the Labor Government's \$20 million plan to ensure Victoria stays a world leader in health and medical research that has the power to change lives.

17 July 2017 - [Exploring Hi-Tech Ag Innovation In Canada And Israel](#) - Minister for Agriculture Jaala Pulford is gaining insight from world leaders in medicinal cannabis cultivation, manufacturing and

distribution to help ensure the success of this new and emerging industry in Victoria. Ms Pulford was in Canada to meet with a number of medicinal cannabis companies including some of Canada's largest producers of medicinal cannabis, Aurora Enterprises, ABcannMedicinals and Canopy Growth Corporation.

17 July 2017 - **Doctor On Campus At Patterson River Secondary College** - Students at Patterson River Secondary College and right across the state will be able to access health advice, treatment and support thanks to the Andrews Labor Government's Doctors in Secondary Schools Program.

Western Australia (WA). Department of Health

21 July 2017 - **Expressions of Interest – Members and Deputy Members Human Research Ethics Committee** - The Department of Health Human Research Ethics Committee has a special responsibility for the ethical oversight of the use and disclosure of health information held by the Department.

17 July 2017 - **Targeted recruitment for greater diversity** - Proactive recruitment of Aboriginal nurses and midwives has resulted in 24 graduate positions across WA being offered in 2017, nearly double the number offered in 2016.

20 July 2017 - **Minister for Health: Safety and quality top of agenda for WA health system** - The State Government has today released a wide-ranging review into the safety and quality of public health services and hospitals in Western Australia.

New Zealand. Ministry of Health

19 July 2017 - **Summary of Submissions on Transforming Respite: Disability Support Services Draft Respite Strategy 2017-2022** - This publication presents our analysis of the messages we received from the disability sector about the draft disability respite strategy, Transforming Respite.

19 July 2017 - **Transforming Respite: Disability Support Services Respite Strategy 2017 to 2022** - The Ministry of Health's disability respite strategy, Transforming Respite, will make it easier for carers of disabled people to have a break from their caring responsibilities.

Australian Medical Association (AuMA)

20 July 2017 - **Family Doctor Week 23-29 July 2017** - President of the AuMA, Dr Michael Gannon, will be writing to all GPs ahead of the AuMA's annual celebration of Australia's hardworking and dedicated GPs.

20 July 2017 - **GPs increased role in treating Hepatitis C** - A recent article in MJA has argued in favour of an increased role for GPs in managing and treating hepatitis C.

20 July 2017 - **Accessing unapproved medicines and devices for your patients – what's changed?** - It's now easier for doctors to access unapproved therapeutic goods for patients who need them. The government schemes which allow doctors to access unapproved therapeutic goods, such as medicines, biologicals and medical devices that haven't been approved in Australia, have been simplified and streamlined.

20 July 2017 - **Maintain Flu Vaccination vigilance** - GPs and practice nurses are reminded there are age restrictions on some influenza vaccines, following four confirmed cases of Seqirus' Afluria Quad being incorrectly administered to children under five years of age.

In light of the incorrect administration of vaccines, GPs are advised to be vigilant. Specifically, it is important for medical professionals to check that the correct prescription and vaccine have been supplied by the pharmacist and that no mix-ups occur before administration of the vaccine.

20 July 2017 - **SAVE THE DATE for the AGPAL & QIP 2018 Conference (Sponsored Article)** - Taking place in Melbourne from 17 - 19 May, this national quality-focused industry event is sure to be a highlight on your 2018 practice calendar.

20 July 2017 - **Young Doctors support Family Doctor Week** - Council of Doctors in Training recently joined AMA Vice President Tony Bartone to promote Family Doctor Week.

15 Jul 2017 - **One in two public hospital doctors working unsafe hours** - One in two doctors in Australian public hospitals are working unsafe hours, the latest AMA Safe Hours Audit shows, with the longest recorded shift a disturbing 76 hours.

ABOUT US

Dr Gerry Bean



Gerry is a Corporate Partner and provides corporate and commercial advice to the health sector and the not for profit sector. He has over 20 years' experience as a partner. He acts for hospitals, primary healthcare networks, aged care and retirement villages, charities and health insurers. Gerry has acted on several mergers in the health and non-for profit sectors including the merger which created cohealth. Gerry is an active contributor to our pro-bono practice. Gerry is also a director of the Law Institute of Victoria and a director of DLA Piper's International Board.

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