



**10 NOVEMBER 2014**

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## JUDGMENTS

### New South Wales

5 November 2014 – [Dezfouli v Justice Health and Forensic Mental Health Network \[2014\] NSWCATAD 188](#)

Mr Dezfouli is a forensic patient in the Forensic Hospital in Sydney, which is administered by the respondent, Justice Health. Mr Dezfouli complained to the Anti-Discrimination Board that Justice Health had discriminated against him on the ground of mental disability by creating and using a registration form which recorded administrative details of his outgoing mail.

The applicant argued that by creating and using the form, the respondent treated him less favourably than it treated or would have treated a person without his disability in the same circumstances, or in circumstances not materially different (in breach of the *Anti-Discrimination Act 1977*). He said the creation and use of the form was detrimental to him because it was used by Forensic Health as justification for recommendations to the Mental Health Review Tribunal for his continued incarceration and the administration of depot medication.

The respondent rejected each of Mr Dezfouli's assertions. It argued that the form was not created because of Mr Dezfouli's disability; it was created to deal with his previous complaints that his mail was not being posted. The respondent also argued that the creation and use of the form did not constitute differential treatment. Forensic Hospital staff would have treated any other patient the same way in similar circumstances, that is, where the patient complained that his/her mail was not being sent.

The Tribunal was not satisfied that the registration form was created or used on the grounds of Mr Dezfouli's disability, or that by creating and using it the respondent had engaged in discrimination.

7 November 2014 – [Whyte v Medical Council of NSW \[2014\] NSWCATAD 190](#)

In 2013, Ms Whyte brought a complaint before the Health Care Complaints Commission (HCCC) against Dr Hartnell. The HCCC determined that the complaint was to be referred for direct resolution and that Dr Hartnell's response was not to be provided to Ms Whyte in accordance with the HCCC's disclosure policy.

Ms Whyte then sought a review of the HCCC's decision to refuse her access to Dr Hartnell's response. She made this application under the *Government Information (Public Interest) Act 2009*. She sought this information as she felt that she could not progress to resolution of her complaint without first seeing what Dr Hartnell had said. She argued that this information was about her and should therefore be disclosed to her. She also argued that there is a public interest in individuals being provided with information that relates to them.

The Tribunal concluded that there was a conclusively presumed overriding public interest against the disclosure of Dr Hartnell's response. Information of this kind is excluded from the operation of the Act and was therefore not required to be disclosed to Ms Whyte. The Tribunal also noted that under the *Health Care Complaints Act 1993*, there is a mechanism for disclosure of information to "a client of a health service provider" to the extent the information relates to that client. This disclosure is completely at the discretion of the HCCC. As such, the Tribunal did not comment on the HCCC's policy in regard to disclosure of this kind.

31 October 2014 – [Mahony v Branley \[2014\] NSWSC 1521](#)

Procedure – pleadings – medical negligence – strike out – whether proceedings should be dismissed – orders conditional on agreement by defendants not to rely on limitation defence in future proceedings.

5 November 2014 – [Smith v Health Care Complaints Commission \[2014\] NSWCATOD 129](#)

Administrative law – *Civil and Administrative Tribunal Act (2013) NSW* – Review of Orders – Pharmacy Tribunal of New South Wales – Orders of Reprimand; Suspension of registration; Condition imposed – Orders completed – Appropriate Review Body – Part 8, Division 8, Health Practitioner Regulation National

Law NSW – Australian Health Practitioner Regulation Agency (AHPRA) – National Board – Pharmacy Board of Australia – Public National Register – Register of Pharmacists – Information to be recorded in Register – publicly available information – Removal of information from Register – relevant statutory provisions.

3 November 2014 – [Health Care Complaint Commission v Vo \[2014\] NSWCATOD 127](#)

Administrative law – *Civil and Administrative Tribunal Act 2013* (NSW) – Where complaint of unsatisfactory professional conduct and professional misconduct in respect of one patient admitted. Propensity evidence – Where practitioner denies inappropriate sexual conduct in respect of another patient. Where unsatisfactory professional conduct and professional misconduct in respect of second patient established. Consideration of appropriate protective orders.

6 November 2014 – [Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd \(No 6\) \[2014\] NSWSC 1549](#)

Practice and procedure – Application to amend pleadings during course of long and complex proceedings – No issue of principle – *Civil Procedure Act 2005* (NSW), ss 56, 57, 58, 60 and 62.

31 October 2014 – [Imaging Partners v Imaging Independently \[2014\] NSWSC 1555](#)

Practice and procedure – discovery – application for discovery order – whether the categories for discovery relate to a fact in issue in the proceedings – whether sufficient nexus to the case pleaded – whether order should be made in relation to documents subject to litigation privilege.

### Commonwealth

6 November 2014 – [Alphapharm Pty Ltd v H Lundbeck A/S \[2014\] FCA 1185](#)

Patents – whether pharmaceutical substance *per se* for purposes of s 70(2)(a) of the *Patents Act 1990* (Cth) was isolated molecule as claimed in patent in suit or part of goods containing that molecule that had been previously included on Australian Register of Therapeutic Goods – whether earlier inclusion on Australian Register of Therapeutic Goods of pharmaceutical good before molecule isolated could form basis for extension of term of patent in suit under s 70.

### Queensland

17 October 2014 (published 31 October 2014) – [Physiotherapy Board of Australia v Browning \[2014\] QCAT 509](#)

Professions and trades – health care – physiotherapist – complaints and discipline – professional misconduct – sexual misconduct – codes of practice – level of sanction.

16 October 2014 (published 31 October 2014) – [Psychology Board of Australia v Wakelin \[2014\] QCAT 516](#)

Professions and trades – health care – psychologist – disciplinary proceedings – referral under s 193 of National Law – Australian Psychological Society Code of Ethics – termination of professional relationship followed within one month by sexual relationship – false statements to Board during investigation of complaint – need for good faith in dealings with professional board – form of order – conditions not registrable when no subsisting registration – suspension not able to be ordered when no subsisting registration – appropriate to disqualify respondent under s 196(4) from applying for re-registration before stated time – level of sanction.

### Western Australia

6 November 2014 – [Pisano v Health Solutions \(WA\) Pty Ltd \[2014\] WASC 356](#)

Practice and procedure – defendants successful on preliminary point – whether entitled to judgment – whether entitled to costs.

## LEGISLATION

### Commonwealth

**Therapeutic Goods (Medical Devices) Amendment (Australian Manufacturers) Regulation 2014** F2014L01465 • SLI 2014 No. 159 as made • 30/10/2014.

### Victoria

**Paramedics Registration Bill 2014 – Exposure Draft**

## REPORTS

### Australia. Department of Health

Media releases

5 November 2014 - **New measures in the fight against ebola.**

7 November 2014 - **Tackling impact of alcohol on babies and children.**

Private Health insurance (PHI) Circulars

3 November 2014 - **PHI 64/14 Amendment to August 2014 Prostheses List.**

31 October 2014 - **PHI 63/14 Private Health Insurance (Benefit Requirements) Amendment Rules 2014 (No. 5) Changes to the Private Health Insurance (Benefit Requirements) Rules 2011**

### Australia. Department of Social Services

25 October 2014 - **Request for tender for the my aged care regional assessment service**

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

7 November 2014 - Media release AHPRA and the National Boards have released their 2013/14 Annual Report on the National Registration and Accreditation Scheme. **Read More**

6 November 2014 - Tribunal reprimands and suspends physiotherapist The Queensland Civil and Administrative Tribunal has reprimanded Mr Alexander Browning and suspended his registration as a physiotherapist for two months. **Read More**

6 November 2014 - Tribunal fines and reprimands medical practitioner The State Administrative Tribunal of Western Australia has reprimanded Dr David Evan Roberts, ordered audits of his communication with patients and fined him \$15,000 for unprofessional conduct. **Read More**

6 November 2014 - **Communiqué from the Board** - The Chinese Medicine Board of Australia releases its latest communiqué. **Read full article**

3 November 2014 - **Communiqué from the Board** - The National Board has published its September communiqué. **Read full article**

3 November 2014 - **Communique from the Board** - The Psychology Board of Australia has released the October 2014 communique. **Read full article**

31 October 2014 - **Communiqué from the Board** - The Chinese Medicine Board of Australia releases its latest communiqué. **Read full article**

31 October 2014 - **Communiqué from the Board** - The Podiatry Board of Australia releases its latest communique. **Read full article**

### Australia. Therapeutic Goods Administration (TGA)

7 November 2014 - **Consultation: Interim guideline on antimicrobial resistance risk data** The TGA is seeking comments from interested parties on any part or all of the proposed Interim guideline on antimicrobial resistance risk data. Closing date: 19 December 2014.

7 November 2014 - **Payment options** Updated payment option details.

6 November 2014 - [ACB meeting statement, Meeting 5, 25 September 2014](#) Role of the Advisory Committee on Biologicals (ACB) in the TGA's regulatory decision making process The Advisory Committee on Biologicals.

6 November 2014 - [Australian Therapeutic Goods Advisory Council meeting statement, Meeting 5, 5 August 2014](#) 2014 - The Australian Therapeutic Goods Advisory Council (Council) met for the fifth time at the Therapeutic Goods Administration Offices in Symonston on Tuesday 5 August 2014.

6 November 2014 - [Advisory Committee on Non-prescription Medicines \(ACNM\)](#) 4 December 2014 meeting cancelled.

5 November 2014 - [Drug Master File \(DMF\) – Administrative Details](#) This form is to be used by industry stakeholders (e.g manufacturers of active pharmaceutical ingredients) who provide Drug Master Files.

5 November 2014 - [TGA advisory committee guidelines](#) Declarations of interests, managing conflicts of interests and confidentiality obligations, Version 1.6, October 2014.

5 November 2014 - [International Coalition of Medicines Regulatory Authorities \(ICMRA\)](#) ICMRA provides direction for a range of areas that are common to many regulatory authorities' missions.

3 November 2014 - [Relief ACP Oral Care gel](#) Recall – may contain incorrect gel.

3 November 2014 - [Medical Devices Safety Update, Volume 2, Number 6, November 2014](#) Urogynaecological surgical mesh implants review; Latest National Joint Replacement Registry data offers insight into orthopaedic implants; Recent safety alerts; Warning – incidents relating to use of walking frames as wheelchairs.

3 November 2014 - [Australian Public Assessment Reports for prescription medicines \(AusPARs\)](#) Added Drospirenone and ethinyloestradiol (as betadex clathrate), Taliglucerase alfa rpc.

31 October 2014 - [Updates to the list of designated orphan drugs](#) added Ruxolitinib (JAKAVI).

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

7 November 2014 - [Fetal alcohol spectrum disorders: strategies to address information gaps](#)

5 November 2014 - [National cervical cancer prevention data dictionary version 1: working paper](#)

4 November 2014 - [Australian sports injury hospitalisations 2011-12 | media release](#)

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

5 November 2014 - [A better way to care for patients with cognitive impairment in hospital](#) Improving the safety and quality of care for patients with cognitive impairment (dementia and delirium) is the focus of new resources launched today by the Commission. Cognitive impairment is common among older people admitted to hospital. Around 30 per cent of patients in Australian hospitals who are aged over 70 have some form of cognitive impairment.

On the Radar – 3 November 2014 – Issue 198 ([PDF 93KB](#)) ([Word 123KB](#))

#### **Australia. National Mental Health Commission**

6 November 2014 - [Thirty "Champions" to be selected to help grow the mental health peer workforce](#)

#### **New South Wales. Ministry of Health**

Media Releases

7 November 2014 - [2014 NSW Aboriginal Health Awards finalists](#)

7 November 2014 - [NSW Rural Health Plan: A new road map for country health services](#)

5 November 2014 - [New honour for excellence on Thank a Paramedic Day](#)

3 November 2014 - [Innovation and improvement celebrated at NSW Health Awards](#)

Information Bulletins

5 November 2014 - [Standards for Paediatric IV Fluids](#) IB2014\_066

#### Northern Territory. Department of Health

5 November 2014 - [Opening of the "Our Health Our Way" Conference](#)

#### Queensland. Department of Health

7 November 2014 - [Sunnies day targets school children](#). Primary-aged school children in Queensland are being targeted on National Sunnies Day to wear sunglasses to protect their eyes. Health Minister Lawrence Springborg is passionate about the campaign to protect eyes from sun damage, because as a child he experienced pterygium, an eye.

6 November 2014 - [Birthing to return to Weipa by 2016](#). Mothers-to-be on Cape York Peninsula have something new to look forward to with the return of birthing services at Weipa after an absence of nearly 20 years. Health Minister Lawrence Springborg said the LNP Government was committed to rebuilding ante-natal and other key health services.

#### South Australia. Department for Health & Ageing

6 November 2014 - Transforming health feedback rolls in Hon Jack Snelling MP More than 500 written responses have been received and more than 3000 people have attended community and staff events since release of the Transforming Health discussion paper three weeks ago. [Read more...](#)

#### Victoria. Department of Health

4 November 2014 - [Contract signed for long-term health study](#). Monash University has been appointed to lead a long-term health study into the potential health impacts of exposure to emissions from the Hazelwood open cut coal mine fire.

30 October 2014 - [Innovation fund brings hospitals to the fore](#). Victoria's hospitals and health services will share in around \$80 million in funding for significant information technology upgrades to keep them at the forefront of the latest computer systems, Health Minister David Davis announced today.

29 October 2014 - [Protecting paramedics and the public](#). The Victorian Coalition Government is calling for public comment on its proposal to establish a scheme for the registration and regulation of paramedics.

29 October 2014 - [Time for union to accept ambulance deal](#). Statements made this week by the ambulance union have for the first time outlined in detail its position on what would be required to settle enterprise bargaining negotiations for paramedics, Minister for Health David Davis said today.

28 October 2014 - [New helipad for University Hospital Geelong](#). The Naphthine Coalition Government will build a new helipad at University Hospital Geelong, providing a direct link for critically ill patients to the emergency department, Minister for Health David Davis announced today.

28 October 2014 - [Major boost to health services across Geelong](#). The new Waurin Ponds Community Hospital will be delivered by Epworth HealthCare, providing public health services overseen by Barwon Health, closer to home for the communities of Geelong's south west, Minister for Health David Davis said today.

#### Western Australia. Department of Health

Operational Directives (OD)

6 November 2014 - [OD 0573/14](#) Hospital Fees and Charges 2014-15 (Amendment to Motor Vehicle Third Party Insurance Rates). This directive informs all WA public hospitals of the amended Motor Vehicle Third Party Insurance Patient rates, gazetted 21 October 2014 and effective from 22 October 2014.

6 November 2014 - [OD 0572/14](#) Information Use Policy. The Information Use Policy outlines the principles that must be applied by all authorised users of WA Health information. This ensures WA Health information is used in a responsible, ethical and lawful manner to achieve business, operational and legislative requirements.

#### New Zealand. Ministry of Health

3 November 2014 - [Quality Standards for Diabetes Care Toolkit 2014](#)

### United Kingdom. Department of Health

- 6 November 2014 - [Update on Savile investigations relating to the National Health Scheme \(NHS\)](#).
- 6 November 2014 - [NHS Litigation Authority 2014 review](#).
- 6 November 2014 - [New regulations for how NHS auditor panels work](#).
- 6 November 2014 - [Price of branded medicines: clarification of regulations](#).
- 5 November 2014 - [Clinics authorised to carry out abortions](#).
- 5 November 2014 - [The efficient management of healthcare estates and facilities \(HBN 00-08\)](#) Part of a collection: [DH Health building notes](#).
- 5 November 2014 - [Troubled families: supporting health needs](#).
- 3 November 2014 - [The Department of Health's agencies and partner organisations](#).
- 3 November 2014 - [DH non-executive appointments](#).
- 3 November 2014 - [Language controls for healthcare and associated professions](#).
- 31 October 2014 - [Draft NHS Pension Scheme Transitional Regulations 2014](#) Part of a collection: [NHS pensions](#).
- 31 October 2014 - [Response to Sustain's campaign about hospital food standards](#).
- 31 October 2014 - [Monitor accountability meeting minutes](#).
- 31 October 2014 - [Equality for mental health and joining up health and care](#).

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

- 31 October 2014 - [HHS releases the 2014 HHS Strategic Sustainability Performance Plan and 2014 HHS Climate Change Adaptation Plan](#).

### Australian Medical Association (AMA)

- 6 November 2014 - [AMA President A/Prof Brian Owler, Doorstop at Westmead Children's Hospital in Sydney, 5 November 2014](#). Transcript: AMA President A/Prof Brian Owler, Doorstop at Westmead Children's Hospital in Sydney, 6 November 2014. [Read more](#)
- 6 November 2014 - [Emergency department survey reinforces the need for national leadership on alcohol harms](#). AMA President, A/Prof Brian Owler, said today that the latest survey of alcohol harm in hospital emergency departments is further proof that national leadership from the Federal Government is needed. [Read more](#)
- 6 November 2014 - [Proposed co-payment model a costly red tape nightmare for medical practices – Independent report](#). The AMA today released an independent report that shows the Government's proposed co-payments for general practice, pathology, and diagnostic imaging would be a costly red tape nightmare for medic. [Read more](#)
- 5 November 2014 - [AMA Media Alert – Doorstop – AMA President A/Prof Brian Owler – Ebola in West Africa](#) Ebola in West Africa – Australian Support. [Read more](#)
- 5 November 2014 - [Applications invited for AMA Indigenous People's Medical Scholarship](#). AMA President, A/Prof Brian Owler, today encouraged Indigenous medical students to apply for the 2015 AMA Indigenous Peoples' Medical Scholarship. [Read more](#)

### British Medical Association (BMA)

- 5 November 2014 - [Parliamentary launch for vulnerable children in custody report](#).
- 4 November 2014 - [Child detention – BMA advises doctors on how to stop it](#).
- 31 October 2014 - [Doctors' well-being: back from the brink](#).

## Canadian Medical Association (CMA)

3 November 2014 - Canadian Medical Association President Chris Simpson has urged Canadians not to be lulled into "a false sense of security" by recently released health care spending figures indicating growth in health spending is at a 17-year low in Canada. The figures were released last week by the Canadian Institute for Health Information (CIHI).

## American Medical Association (AmMA)

4 November 2014 - [Release of Disappointing Meaningful Use Data Prompts Industry Leaders to Urge HHS to Take Immediate Action](#) AmMA, CHIME, HIMSS and MGMA Call for Flexibility and Shortened Reporting Period.

## 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.

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