



24 AUGUST 2015

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JUDGMENTS

Victoria

17 August 2015 - Bourke v Coroners Court [2015] VSC 418

The Supreme Court heard an appeal from a determination of the Coroner Court of Victoria not to conduct an inquest into the death of Mr Johannes Steenvoorden. The Coroner had refused the appellant's request to hold an inquest. Pursuant to section 82 of the *Coroners Act 2008* (Vic), the appellant sort orders that the Coroners Court conduct an inquest.

The appellant, the deceased's daughter, alleged various errors of law in relations to the Coroner's determination to conduct a chamber finding instead of an inquest into Mr Steenvoorden's death at the Geelong Hospital in September 2010.

Among other things, the appellant submitted that: the Coroner did not take into account relevant information or materials for the purpose of her determination; the Coroner did not have regard to relevant information to rule out that Mr Steenvoorden's death was due to homicide; and, the Coroner made an error of law by failing to refer an alleged falsification of medical records to the Director of Public Prosecutions.

Justice Zammit of the Supreme Court dismissed the appeal. Her Honour commented that the appellant had attempted to "inflate' questions of fact into questions of law', concluding that there were no identifiable errors of law.

Commonwealth. Federal Court

14 August 2015 - Otsuka Pharmaceutical Co., Ltd v Generic Health Pty Ltd [2015] FCA 848

Justice Nicholas of the Federal Court ordered the operation of certain orders made by Justice Yates to be stayed until further order, or the determination of appeal proceedings between Otsuka Pharmaceutical Co., Ltd ('Otsuka'), Bristol-Meyer Squibb Company ('BMS') (together 'the appellants') and Generic Health Pty Ltd ('Generic Health' or 'the respondent').

The Appellants commenced proceedings in 2012 against Generic Health for threatened infringement of Patent No 2005201772 ('the Patent'). The trial judge found in favour of Generic Health, holding that each of the relevant claims of the Patent were invalid for lack of novelty and lack of inventive step. His Honour went on to revoke claims of the Patent; dismiss Otsuka's infringement claims against Generic Health; and vacate an interlocutory injunction restraining Generic Health from trading in certain pharmaceutical products.

Although the trial judge granted a stay of the orders revoking the claims and vacating the injunction, his Honour expressed that the stay only operate until the determination of any further application for a stay pending the determination of an appeal. The appellants, therefore, sought orders staying until their appeal is determined.

By reference to the balance of convenience, and assessment of the strength of the appeal, Nicholas J granted a further stay of the order revoking the relevant claims and vacating the interlocutory injunction. However, his Honour made the stay subject to Otsuka providing further security, and an undertaking in respect of future listing on the Pharmaceutical Benefits Scheme.

17 August 2015 - Cartisano v Sportsmed SA Hospitals Pty Ltd [2015] FCCA 2140

INDUSTRIAL LAW – Application for a penalty and compensation following unfair dismissal proceedings in Fair Work Commission – FWC ordered reinstatement – applicant claims she has not been properly reinstated – applicant seeks orders requiring respondent to take particular steps in the workplace – respondent opposes making of such orders on the basis that the applicant has been reinstated and it is oppressive to require it to modify its work practices – application to dismiss summarily aspect of the claim – matters to be considered.

14 August 2015 - NSW Nurses & Midwives' Association v SOS Nursing & Home Care Service Pty Ltd & Anor [2015] FCCA 2181

INDUSTRIAL LAW – Application for pecuniary penalties against employer and managing director of employer for multiple breaches of a term of a collective agreement contrary to s.719(1) of *Workplace Relations Act 1996* (Cth) and multiple contraventions of a term to the same effect of an agreement-based transitional instrument contrary to Item 2(2) of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendment) Act* 2009 (Cth) – whether imposition on 19 May 2011 of a pecuniary penalty for contraventions of the term of the collective agreement and agreement-based transitional instrument in relation to one employee on the basis that such breaches and contraventions constituted one contravention precludes the Court from imposing a pecuniary penalty for breaches and contraventions of the term that occurred before 19 May 2011 in relation to other employees because that would involve the imposition of another penalty for the same contravention – Court is so precluded.

Commonwealth. Fair Work Commission

17 August 2015 - National Union of Workers v Clifford Hallam Healthcare Pty Ltd [2015] FWC 5525 - Proposed protected action ballot of employees of Clifford Hallam Healthcare Pty Ltd.

New South Wales (NSW)

- **20** August **2015** *Dr Crickitt v Medical Council of New South Wales* [2015] **NSWCATOD 86** Medical practitioner charged with murder of wife-appeal from suspension order under sec 150 Health Practitioner Regulation National Law (NSW).
- **19 August 2015 Health Care Complaints Commission v Ng [2015] NSWCATOD 85 HEALTH CARE PRACTITIONER Osteopath digital penetration during course of treatment -constitutes both unsatisfactory professional conduct and professional misconduct.**
- **18 August 2015 BVS v Sydney Local Health District** [2015] **NSWCATAD 171 Privacy Health information health privacy principle security access use disclosure.**

Queensland

18 August 2015 - Pharmacy Board of Australia v Jattan [2015] QCAT 294

PROFESSIONS AND TRADES - HEALTH CARE PROFESSIONALS - HEALTH PRACTITIONERS REGULATION NATIONAL LAW GENERALLY - where Pharmacist found to have behaved in a way that amounts to professional misconduct - where joint submissions as to sanction put before the Tribunal - whether *Barbaro v The Queen* prohibits the Tribunal from considering joint submissions as to sanction - whether Director, Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union applies to disciplinary proceedings —where a decision under ss 241 or 243 of the *Health Practitioner* (*Disciplinary Proceedings*) *Act 1999* may be suspended under s 247 of that Act - where a suspended decision cannot be dealt with further by the Tribunal because of the repeal of ss 126 and 250 of the *Health Practitioner* (*Disciplinary Proceedings*) *Act 1999* - whether an ancillary order may be made under s 114 of the *Queensland Civil and Administrative Tribunal Act 2009* which would operate to similar effect as the repealed ss 126 and 250 of the *Health Practitioner* (*Disciplinary Proceedings*) *Act 1999*.

South Australia (SA)

20 August 2015 - Marin v The Chiropractic Board of Australia [2015] SADC 119

Appeal from President's decision in Health Practitioners Tribunal to deal with matters by preliminary hearing under s15(4) - The referral contested by the appellant - President determines to reconsider and reverse the referral of jurisdictional matter owing to the absence of findings - Determines to proceed to form an opinion whether the national Law and s4(3) unconstitutional - Forms an opinion the legislation is constitutionally valid - Appellant appeals the determination to refer both the jurisdiction matter as well as the matter as to constitutional validity - Whether the President's decision an appealable decision pursuant to s23 of the National Law - Meaning of 'decision' in this context - Whether error in referring the jurisdiction matter before the making of findings as to factual circumstances - Whether error in referring the constitutional matter for consideration - Whether an opinion amounts to a determination or order or is anterior thereto - Limits on the Tribunal to deal with constitutional matters - Tribunal not a Court -

Circumstances in which Tribunal can form an opinion for the purpose of deciding the matters that can be litigated before it - Abrogation of the legislative power of Parliament in constitutional law - Whether s4(3) of the National Law constitutes abrogation - Appeal dismissed.

United Kingdom (UK)

19 August 2015 - *Gosalakkal v General Medical Council* [2015] **EWHC 2445 -** ADMINISTRATIVE LAW - Appeal to decision of Fitness to Practise Panel - complaints.

17 August 2015 - BP v Cardiff & Vale University Local Health Board [2015] EWHC B13 - AWARDED COSTS - entitled to costs of a claim for damages for clinical negligence - proportionality of the costs claimed - format of the Claimant's bill - costs budgeting.

LEGISLATION

Commonwealth

21 August 2015 - Health Insurance Legislation Amendment (2015 Measures No. 1) Regulation 2015.

Queensland

- 21 August 2015 Proclamation commencing remaining provisions: *Health and Other Legislation Amendment Act 2014.*
- 21 August 2015 Ambulance Service Regulation 2015.
- 21 August 2015 Health Legislation Amendment Regulation (No. 2) 2015.
- 21 August 2015 Research involving human embryos and prohibition of human cloning for reproduction regulation 2015.

REPORTS

Australia. Australian Prudential Regulation Authority (APRA)

Media Release

- 20 August 2015 APRA releases general insurance statistics for June 2015.
- 20 August 2015 APRA has released two superannuation statistical publications for June 2015.
- 18 August 2015 APRA has released seven quarterly statistical publications for the private health insurance industry.

Australia. Department of Health

Media releases

16 August 2015 - **Diamond's Netball World Cup Victory** - Congratulations to our world-conquering Diamonds following their hard-fought victory in the 2015 Netball World Cup Grand Final.

18 August 2015 - **Hearing loss: Early intervention the key** - Early intervention remains the key to reducing the rate of hearing loss in Australians, Assistant Minister for Health Fiona Nash said.

Publications

Tackling Indigenous Smoking and Healthy Lifestyle Programme Review 2014

The Mental health of children and adolescents

Australia. Department of Social Services

15 August 2015 - **2015 Aged Care Approvals Round (ACAR)** - An Invitation to Apply for 10,940 residential places, 6,045 home care places and up to \$67 million in capital grants appeared in major metropolitan and leading regional newspapers on Saturday 15 August 2015.

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

20 August 2015 - The Medical Radiation Practice Board of Australia releases its March newsletter. Read more.

18 August 2015 - Public consultation commences on draft National examination guidelines. Community and health practitioner feedback is sought on the draft National examination guidelines. Consultation is open until 16 October 2015. Read more.

18 August 2015 - The National Board has released its quarterly registration data. Read more.

14 August 2015 - Call for applications to the Queensland Board of the Psychology Board of Australia. **Read more.**

14 August 2015 - The Chiropractic Board of Australia releases its July communiquè. Read more.

14 August 2015 - The Osteopathy Board of Australia releases its latest newsletter. Read more.

Australia. National Health & Medical Research Council (NHMRC)

21 August 2015 - New research to target type 2 diabetes in low and middle income countries.

14 August 2015 - NHMRC Health Tracker - August 2015.

Australia. Therapeutic Goods Administration (TGA)

18 August 2015 - Vertical Expandable Prosthetic Titanium Rib caudal rib supports - Hazard alert - risk of implant breakage that could cause adverse events and require additional surgery.

20 August 2015 - Using the online Clinical Trial Notification (CTN) form - Updates on using the online CTN form.

20 August 2015 - Clinical trials FAQs - Updates to the Clinical trials frequently asked questions.

20 August 2015 - Medical devices and IVDs: Cancellations from the ARTG.

19 August 2015 - International Generic Drug Regulators Programme (IGDRP) - Updates on the International Generic Drug Regulators Programme.

19 August 2015 - ACNM meeting statement, 6 August 2015 - Advisory Committee on Non-prescription Medicines, 6 August 2015, meeting statement.

13 August 2015 - Sodium glucose co-transporter 2 inhibitors - used to treat type 2 diabetes - Safety advisory - risk of diabetic ketoacidosis.

Australian Institute of Health & Welfare (AIHW)

18 August 2015 - Screening for domestic violence during pregnancy: options for future reporting in the National Perinatal Data Collection August 2015.

Australian Commission on Safety and Quality in Health Care

17 August 2015 - On the Radar - Issue 236 (PDF 130KB) (Word 136KB).

Australia. Medical Benefits Schedule (MBS)

21 August 2015 - The 1 September 2015 MBS XML is now available.

Australian Capital Territory (ACT). Health Directorate

24 August 2015 - Review of Emergencies Act - Members of the community are invited to have their say on the operation of the *Emergencies Act 2004*. Closes today.

20 August 2015 - Innovative design modules delivered for ED expansion - The first modules have been craned into place at Canberra Hospital as part of the \$23 million Emergency Department expansion underway on the hospital campus.

19 August 2015 - Art In, Butt Out a breath of fresh air for teens - The Art In, Butt Out competition provides an opportunity for high school students from across the ACT to design an anti-smoking advertisement.

New South Wales (NSW). Ministry of Health

Media Releases

19 August 2015 - \$5.5 million for research tools to fast track cancer discoveries - Health Minister Jillian Skinner today announced the 17 recipients of the 2015 Cancer Institute NSW Research Equipment Grants. The \$5.5 million investment will provide leading researchers from eight institutions with the tools they need to gain new insights into cancer and novel treatments.

19 August 2015 - **NSW Government grants \$5 million To St Vincent's to plan campus future** - Health Minister Jillian Skinner today announced a grant of \$5 million to plan the future of the St Vincent's hospitals and research campus.

17 August 2015 - \$40.9 million Forbes Hospital redevelopment on track - Health Minister Jillian Skinner and Member for Orange Andrew Gee today visited Forbes to view progress on the new Forbes Hospital building, which is being delivered as part of the \$113.4 million Lachlan Health Service Project.

Policy Directives & Guidelines

20 August 2015 - Smoking Cessation Brief Intervention at the Chairside: The Role of Public Oral Health/Dental Services PD2015 030.

Information Bulletins

20 August 2015 - Public Health Service Employees Skilled Trades (State) Award Increase in Expense Related Allowances.

Northern Territory (NT). Department of Health

19 August 2015 - Funding to support programs for young parents in Darwin and Palmerston - Young parents in Darwin and Palmerston will get more help to deal with the financial and emotional challenges of parenting as a result of Northern Territory Government funding for two local support services.

Queensland. Department of Health

- 19 August 2015 Sunshine Coast Public University Hospital will not repeat commissioning mistakes
- An expert in the commissioning of hospitals will commence in September to help make sure that the mistakes made in the lead-up to the opening of the Lady Cilento Children's Hospital in Brisbane are avoided on the Sunshine Coast Public University Hospital project.
- 19 August 2015 Future of Nambour General Hospital secure Health and Ambulance Services Minister Cameron Dick visited Nambour General Hospital today with the Member for Nicklin Peter Wellington to meet staff at the hospital and receive detailed briefings on the construction and importantly the preparations for the commissioning.
- 18 August 2015 Palaszczuk Government delivers \$14.6 million brain injury funding boost The Palaszczuk Government is delivering an extra \$14.6 million to support Queenslanders living with brain injuries.
- 18 August 2015 New pet program promotes seniors' well-being with furry friends A new pet program for seniors will provide older Queenslanders with greater companionship and quality of life by helping them adopt and care for a furry friend.
- 18 August 2015 Palaszczuk Government says Not Now, Not Ever Premier Annastacia Palaszczuk has announced the Queensland Government will implement all 140 recommendations in Dame Quentin Bryce's landmark Not Now, Not Ever report into domestic and family violence.
- 16 August 2015 Palaszczuk Government achieves peace with doctors The Queensland Government has reached an in-principle agreement with the major unions representing doctors under which they will be offered a new pay deal which guarantees them an annual 2.5 per cent wage rise for the next.

South Australia (SA). Department for Health & Ageing

- 19 August 2015 **SA Health update on Port Pirie lead results** SA Health has published its first blood lead level results following the introduction of a new national guideline for investigating lead exposure. SA Health's Director of Public Health, Dr Kevin Buckett, said 'blood lead levels have been monitored in Port Pirie for many years, with dramatic reductions in lead exposure during this time. A decade ago the average blood lead level of Port Pirie children under five years old was 8.3 micrograms per decilitre (µg/dL), well above the new National Health and Medical Research Council (NHMRC) exposure investigation guideline level of 5 micrograms per decilitre.'
- 19 August 2015 Northfield ambulance station plans unveiled Planning is well underway for the new \$3.6 million Northfield ambulance station with details about the station design unveiled for the first time. Health Minister Jack Snelling said construction would start in October and the new station was ideally located to provide quality ambulance services to the community. 'This new station is one of three new stations we will build as part of \$9.1 million committed at the last state election,' Mr Snelling said. In addition to this, we are investing a further \$15 million in our SA Ambulance Service as part of our Transforming Health program.
- 15 August 2015 Hands off our ambos message getting through In the two months since launching a campaign aimed at reducing violence and aggression towards ambulance officers and paramedics, the number of reported incidents is 45 percent less than at the same time last year. Health Minister Jack Snelling said initial figures were encouraging as any violence and aggression against paramedics and ambulance officers is unacceptable. 'The social media led campaign launched in May, 'Keep your hands off our Ambos', has been incredibly successful,' Mr Snelling said. The campaign video has reached 2.3 million people in 13 countries including the United States, Germany and Saudi Arabia.

Tasmania. Department of Health & Human Services

- 19 August 2015 **Sharing the Hidden stories of family violence** Sharing stories of family violence through poetry, prose and artwork, a new book launched today will help others with similar experiences.
- 19 August 2015 Project Plan approval gives certainty for homelessness initiatives The Hodgman Liberal Government is committed to helping Tasmanians who are homeless or at-risk of homelessness.
- 19 August 2015 Five extra police officers to help address family violence The Hodgman Liberal Government is committed to working with the community to keep women and their children safe from family violence.
- 19 August 2015 Boost to nursing numbers another step towards fixing broken health system The Hodgman Liberal Government is making better health care for Tasmanians a high priority.
- 19 August 2015 White should apologise for false scare campaign Record funding for the Mersey Community Hospital is fully locked in and both the Tasmanian and Commonwealth Government are following.
- 18 August 2015 **Medical intern process improved** The placement process for medical interns has been improved to give Tasmanian graduates the best possible opportunity to stay in the state.
- 18 August 2015 Family Violence Amendment Bill Today marks another significant step forward as we pave the way to a Tasmania where families feel safer, with the tabling of the Family Violence Amendment Bill.
- 17 August 2015 North-West child protection notifications The Hodgman Liberal Government takes child protection very seriously. That's why we have been working on reforming child protection.

Victoria. Department of Health

17 August 2015 - Federal Government urged to support new medical research centre - The Andrews Labor Government has repeated its call for the Federal Government to contribute \$60 million towards the establishment of the \$180 million Aikenhead Centre for Medical Discovery. The Aikenhead Centre for Medical Discovery will be Australia's first research and education centre for biomedical engineering, bringing together doctors, scientists and researchers at one of Victoria's leading hospitals. The Centre will

focus on chronic conditions such as cardiovascular disease, arthritis, cancer and diabetes, and advance cutting-edge treatments and technologies, including robotic hands, heart tissue engineering and spinal cord repair. One example of a project being undertaken by the Centre is a world-first procedure to build a man a new heel bone using 3D printing, which will save him from losing part of his leg to cancer.

17 August 2015 - Building a health system Victorians can rely on - The Andrews Labor Government is improving, innovating and investing in Victoria's health system to ensure Victorians can get the care they need, when they need it. Minister for Health Jill Hennessy has today provided the Government's response to the Travis Review, the most comprehensive audit ever undertaken into the capacity of Victoria's hospitals. In conducting the Review, respected surgeon and former AMA Victoria President Dr Doug Travis was asked to recommend strategies to improve the capacity of Victoria's public hospitals. The Government has accepted all of the recommendations of the Travis Review.

16 August 2015 - Enhanced 'No Jab No Play' to protect more children - The Andrews Labor Government is expanding and strengthening its 'No Jab No Play' commitment, to ensure more Victorian children are protected from serious and potentially life---threatening illnesses. Legislation will be introduced into the Parliament this year, to require children to be to be fully vaccinated in order to attend childcare and kindergarten from 1 January 2016. The Government's commitment has been expanded to include kindergartens, and to close the conscientious objector exemption. The only exemption will be for children who have a documented medical reason that they cannot be fully immunised. The removal of the exemption for conscientious objection recognises that vaccinations save lives, and is supported by extensive scientific evidence and expert medical advice. Vaccinations provide young children with maximum protection against serious and potentially life---threatening illnesses, and help control and manage public health risks. The removal of this exemption is in line with changes made by the Federal Government to eligibility for childcare benefit payments.

- 12 August 2015 Agency Information Management System (AIMS) Manual 2015-16 The AIMS public hospital user manual describes form specific reporting requirements and data definitions, online data entry instructions and online reports.
- 12 August 2015 Non-admitted clinic management system manual 2015-16 A user guide for the non-admitted clinic management system on the HealthCollect portal.
- 12 August 2015 Schedule for Submissions of AIMS forms 2015-16 This document details due dates for 2014-15 AIMS forms.

Western Australia (WA). Department of Health

Media Releases

- 18 August 2015 Minister for Health and Minister for Regional Development: A country milestone as health projects complete Part of the biggest investment in country health in the State's history, two significant milestones of the Southern Inland Health Initiative (SIHI) have been reached this month with the completion of improvement works at the Tambellup Nursing Post and Kojonup Hospital.
- 18 August 2015 WACHS hospital upgrades completed As part of the biggest investment in country health in the State's history, two significant milestones of the Southern Inland Health Initiative (SIHI) were reached this month with the completion of improvement works at the Tambellup Nursing Post and Kojonup Hospital.
- 18 August 2015 Chance for doctors to learn change management If you work in the health service but have come across something that you think you could do better, here's the perfect opportunity for you to step up and make a difference.
- 17 August 2015 Rare diseases workshop for WA Western Australia's Department of Health could soon offer fresh hope to Western Australians with baffling medical conditions.

New Zealand. Ministry of Health

14 August 2015 - The National Travel Assistance Scheme: Your Guide for Claiming Travel
Assistance: Brochure - The National Travel Assistance Scheme provides financial assistance to people

who are referred by their specialist to see another specialist, and need to travel long distances, or travel frequently.

12 August 2015 - Demonstrating Changes to Disability Support: Evaluation Report - This report is an independent evaluation of the demonstration of changes to disability support, covering the new supports of: Local Area Coordination, Enhanced Individualised Funding, Choice in Community Living, and Supported Self-Assessment as a new approach to collecting information from disabled people and whānau.

- 12 August 2015 Evaluation of the Implementation of Choice in Community Living: Phase One 2013
- This report is an independent evaluation of the first 12 months of the Choice in Community Living demonstration in the Auckland and Waikato regions, New Zealand.
- 12 August 2015 **Evaluation of Local Area Coordination** This report provides an independent evaluation of Local Area Coordination in the Bay of Plenty, New Zealand, for the Ministry of Health.

United Kingdom (UK). Department of Health

- 17 August 2015 Nutritional and health claims legislation bulletins 2015.
- 14 August 2015 Cure for dementia moves forward as thousands volunteer for research.
- 13 August 2015 Improvements to care in the last days and hours of life.
- 13 August 2015 Higher risk of death associated with weekend hospitalisation.
- 12 August 2015 Better mental health for the young: where, when and how to target funding.
- 11 August 2015 Smoking in vehicles.

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

- 18 August 2015 Ryan White CARE Act Celebrates 25th Anniversary.
- 18 August 2015 HHS announces new funding to preserve Native languages and strengthen early childhood development and tribal courts.
- 17 August 2015 Development of new anthrax vaccine underway with HHS support.
- 11 August 2015 During National Health Center Week, HHS announces an additional \$169 million in *Affordable Care Act* funding to 266 community health centers.
- 10 August 2015 HHS and DOJ issue technical assistance for child welfare systems under the *Americans with Disabilities Act* and section 504 of the Rehabilitation Act.

Australian Medical Association (AuMA)

17 August 2015 - Higher drug price fears in trade deal fall-out - Health groups remain concerned the massive Trans-Pacific Partnership trade deal will push up the cost of medicine and hamper public health initiatives despite indications United States negotiators are prepared to give ground on controversial intellectual property protections. While the future of the controversial trade pact is clouded following the failure of officials from 12 nations to seal an agreement in Hawaii last month, reports have emerged that the US is willing to back down on demands that data used to produce biologic medicines be subject to a 12-year exclusivity clause. The clause would delay the competition pharmaceutical companies would face from cheaper generics, adding billions of dollars to their bottom line.

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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