



HEALTH ALERT

21 March 2016

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JUDGMENTS

Victoria

15 March 2016 - **Inquest into the death of Reginald Johns Brooks** - On 20 December 2013, Mr Brooks, a 99 year old male, fell and fractured his femur while admitted at South Eastern Private Hospital. He was advised that the only way to avoid persistent pain would be to undergo surgical repair. Mr Brooks agreed to the surgery being scheduled for the afternoon of 31 December 2013. Written consent was obtained by the orthopaedic surgeon prior to operating. Following the surgery, Mr Brooks' Power of Attorney (**PoA**) expressed concern over not being consulted prior to it occurring. The Coroner considered this at inquest. Mr Brooks died of unrelated causes a week later.

The Coroner considered that notifying a PoA is only necessary when the giver of that PoA is incompetent to make decisions due to incapacity. In this instance, Mr Brooks' cognition appeared to fluctuate day to day. The Coroner agreed with submissions that this would not preclude someone from providing informed consent at a particular time. Medical records leading up to the day of surgery described him variously as "confused", "alert", "disoriented" and "oriented". Importantly however, the nurse who undertook the pre-operative checklist shortly before consent was obtained by the orthopaedic surgeon gave evidence that Mr Brooks was able to provide correct answers to a series of questions and "did not appear to be confused". The surgeon maintained that Mr Brooks was capable of and gave a formal informed consent. The Coroner concluded that Mr Brooks, although confused at times, had the capacity to consent to surgery at the relevant time.

New South Wales

16 March 2016 - **Smith v Hunter New England Health District [2016] NSWSC 248** - The plaintiff is the wife of the deceased who committed suicide three days after being discharged from a psychiatric hospital. The statement of claim was filed almost 12 years after the alleged negligence occurred. The plaintiff sought a declaration that the cause of action commenced within the limitation period. To succeed, the plaintiff needed to demonstrate that the claim was made within three years of discovering both: that an action could be brought, and that there was available an expert opinion to support her claim.

Following her husband's death, the plaintiff met with hospital staff on numerous occasions. She also requested a coronial inquest, and filed a complaint to the Health Care Complaints Commission. The hospital maintained its treatment was appropriate; her request for an inquest was refused; and the complaint to the HCCC had not resulted in any action. At this point, the plaintiff considered she had exhausted all options available to her. She returned to work to support her children.

Some years later, she was advised for the first time that she could take legal action against the hospital. The plaintiff then engaged a solicitor. She subsequently read an expert report that supported her argument. It was argued that this is when the limitation period began. The defendant contended that the plaintiff failed to take 'all reasonable steps' to discover that an action could be brought prior to this. The court found in favour of the plaintiff, declaring that these proceedings were commenced within the limitation period.

Commonwealth. Federal Court

14 March 2016 - **Walker v Secretary, Department of Health and Ageing [2016] FCA 233** - ADMINISTRATIVE LAW – appeal from Administrative Appeals Tribunal (AAT) - whether AAT misconstrued s 130(1) of the Health Insurance Act 1973 (Cth) – information with respect to the affairs of another person – whether s130(1) applies to another person's professional or business affairs or is limited to personal information – freedom of information – exempt document under s 38 of Freedom of Information Act 1982 (Cth)

Western Australia

17 March 2016 - **Medical Board of Australia v Woollard [2016] WASAT 26** - Abuse of process - Delay - Prejudice - 'Double jeopardy' - Public interest

United Kingdom

15 March 2016 - **[The Professional Standards Authority for Health and Social Care v The General Medical Council & Anor \[2016\] EWHC 524](#)**

LEGISLATION

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

Commonwealth

18 March 2016 - **[Private Health Insurance \(Complying Product\) Amendment Rules 2016 \(No. 1\)](#)** F2016L00353 as made

17 March 2016 - **[National Disability Insurance Scheme \(Becoming a Participant\) Amendment Rules 2016](#)** F2016L00345 as made

17 March 2016 - **[National Disability Insurance Scheme \(Facilitating the Preparation of Participants' Plans—Queensland\) Rules 2016](#)** F2016L00342 as made

Australian Capital Territory

18 March 2016 - **[Transplantation and Anatomy Amendment Act 2016](#)** Commenced

REPORTS

Australia. Department of Health

Media releases

17 March 2016 - **[National Rural Health Student Network celebrates milestone](#)** - Minister for Rural Health, Fiona Nash, has congratulated the National Rural Health Student Network on 21 years of operation and the promotion of rural health careers.

11 March 2016 - **[Government Supports Closing the Gap in Eye Health](#)** - Senator Fiona Nash, Minister for Rural Health and Deputy Leader of the Nationals, has announced \$2.5 million in funding to provide continued support to the Indigenous Eye Health Unit at the University of Melbourne.

11 March 2016 - **[Health Secretary outlines the challenges of health reform to Committee for Economic Development of Australia](#)** - The broad reform agenda that the Australian Government is embarking on in health is being enthusiastically embraced by the Federal Department of Health as it moves to better deliver strategic policy advice and action.

Private Health insurance Circulars

15 April 2016 - **[PHI 17/16 - Private Hospital Information: Name Change](#)**

Consultations

29 April 2016 - **[Pharmacy Trial Program](#)**

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

17 March 2016 - **[Update on revised Professional Indemnity Insurance arrangements registration standard](#)** - A revised registration standard for professional indemnity insurance (PII) arrangements has been published by the Osteopathy Board of Australia since December 2015.

16 March 2016 - **[Renewal of registration explained in video for nurses and midwives](#)** A video explaining the renewal of registration process for nurses and midwives was launched today.

11 March 2016 - **[Communiqué from the Board](#)** - The Psychology Board of Australia has released the February 2016 meeting communiqué.

Australia. Therapeutic Goods Administration (TGA)

17 March 2016 - **GMP clearance process for MRA countries** - Australian sponsors of medicines manufactured overseas have a responsibility to ensure that all required documents are submitted with a GMP Clearance application.

17 March 2016 - **Changes to adrenaline and noradrenaline labels** Information published to clarify changes to adrenaline and noradrenaline labels.

17 March 2016 - **Reasons for scheduling delegate's final decisions** - Reasons for decisions for amendments to the Poisons Standard.

16 March 2016 - **Regulatory requirements for in-house IVDs** - This guidance will assist laboratories manufacturing in-house IVDs to understand the regulatory requirements.

16 March 2016 - **Idelalisib (Zydelig) 100 mg and 150 mg tablets** - TGA is investigating a significant safety concern involving idelalisib 100 mg and 150 mg tablets, which are marketed in Australia as Zydelig.

15 March 2016 - **Cancel unnecessary ARTG entries before 30 June 2016** - Cancel unnecessary ARTG entries before 5pm 30 June 2016 to avoid incurring an annual charge for 2016-2017

15 March 2016 - **Consultation: Draft clinical evidence guidelines - Medical devices** - The TGA is seeking comments from interested parties on the draft Medical Devices Clinical Evidence Guidelines. Closing date: 10 June 2016

Australia. Australian Institute of Health & Welfare (AIHW)

16 March 2016 - **Admitted patient care 2014–15: Australian hospital statistics** and related **media release: Australian private hospital admissions rising faster than public hospital admissions**

17 March 2016 - Chronic respiratory conditions (web update): **Asthma and COPD**

10 March 2016 - **National Aged Care Places Stocktake Reporting Tool** (dynamic data display)

25 February 2016 - **Health status and risk factors of Australians with disability 2007–08 and 2011–12** and related **Media release: Significant health gap remains between Australians with disability and those without disability**

Australia. National Mental Health Commission

8 March 2016 - **Suicide in Australia – 2014 Causes of Death data (ABS)**

Australia. Pharmaceutical Benefits Scheme (PBS)

11 March 2016 - **Information Session - Recent PBS Statutory Pricing Changes** - The presentation slides from the 4 March 2016 information session on recent PBS statutory pricing changes have been published on the Pricing of PBS items.

11 March 2016 - **Pharmaceutical Benefits Advisory Committee (PBAC) Guidelines Review** - The assessment of co-dependent technology chapter of the draft revised PBAC Guidelines has now been published on the PBS website.

8 March 2016 - **Post-market Reviews of Chronic Obstructive Pulmonary Disease (COPD) medicines and Ezetimibe – Public Consultation** - The public submission process is now open for the Post-market Reviews of Chronic Obstructive Pulmonary Disease medicines and Ezetimibe.

4 March 2016 - **PBAC Public Summary Documents - November 2015 meeting** - The Public Summary Documents (Positive Recommendations and Subsequent Decisions Not to Recommend) from the November 2015 Pharmaceutical Benefits Advisory Committee (PBAC) meeting are now available.

4 March 2016 - **DUSC public release documents, October 2015 meeting** - The public release documents from the utilisation analyses considered at the October 2015 DUSC meeting are now published.

4 March 2016 - **Post-market Reviews of Chronic Obstructive Pulmonary Disease (COPD) medicines and Ezetimibe – Public Consultation** - The public submission process is now open for the Post-market Reviews of Chronic Obstructive Pulmonary Disease medicines and Ezetimibe.

1 March 2016 - **PBS Website Update - 1 March 2016** - The Schedule of Pharmaceutical Benefits was updated on 1 March 2016.

Australian Capital Territory (ACT). Health Directorate

11 March 2016 - **Gastroenteritis outbreak related to Enlighten Night Noodle Markets** - ACT Health has today been notified of several cases of food poisoning possibly linked to a market stall at the 2016 Enlighten Night Noodle Markets. These cases have reported becoming ill with diarrhea approximately 10-13 hours after eating food from a stall at the Festival. ACT Health Protection Service is confident that there is no ongoing risk to public health from food sold at this stall, and that this outbreak has been controlled

New South Wales. Ministry of Health

Information Bulletins

15 March 2016 - **BCG Vaccine Shortage** IB2016_010

Queensland. Department of Health

17 March 2016 - **Age is no barrier for Surat's Betty Brooks** - At almost 83 and matriarch of five generations, Betty Brooks is up early each day to start her full-time job at Surat Multipurpose Health Service (MPHS).

17 March 2016 - **Where did all the smokers go?** - If you have ever stood waiting at the bus stop annoyed that someone else's plume of cigarette smoke is over your head, you're probably rejoicing at the changes being made to smoking legislation in Queensland. If you are a smoker however, you're no doubt realising that the list of places you can legally smoke is about to shrink.

14 March 2016 - **Parents taking unnecessary risk with unreliable online info** - More Queensland parents are turning to unreliable websites rather than a reputable source for health advice.

Tasmania. Department of Health & Human Services

17 March 2016 - **RE-ISSUED - RHH Redevelopment in safe hands** - Bec White's resentment of the Hodgman Liberal Government being able to rescue the Royal Redevelopment after the former government left it in a mess, know no bounds.

17 March 2016 - **12 new residential rehabilitation beds open in the North West** - Increasing the number of rehabilitation beds in the North West is an important part of our Plan to create One Health System for everyone with higher quality services and better results for patients.

16 March 2016 - **Positive signs of health system improvement** - The Hodgman Liberal Government has a renewed focus on health this year, as we continue to build a better health system for everyone.

15 March 2016 - **Greens get Health funding wrong – at least they are consistent** - Rosalie Woodruff's claims that the Government is planning to shift \$27m from the Consolidated Fund into health is wrong and is clear evidence that the Greens just don't understand budgets – only how to cut them and misrepresent them.

12 March 2016 - **\$21 million Glenorchy Health Centre** - An important milestone has been reached with tenders called today for the construction of the \$21 million Glenorchy Health Centre.

11 March 2016 - **Tasmanian Suicide Prevention Strategy launched** - Every life lost to suicide is one too many and comes at a huge personal cost to families, friends and communities.

9 March 2016 - **AGENDA 2016 - Government focus continues on Health** - With the economy growing and the budget coming back under control, the Hodgman Liberal Government is able to put a renewed focus on the core business of Government in 2016, this means a continued investment in better hospital care as well as a focus on keeping people healthy and out of hospital.

8 March 2016 - **Tasmanian businesses encouraged to tender for next stage of RHH works** - The RHH Redevelopment project will deliver a state-of-the-art health facility for generations of Tasmanians to come as well as provide significant employment opportunities for Tasmanians during construction.

11 March 2016 - **Taking Action on Suicide Prevention** - On Friday 11 March 2016, the Minister for Health released the Tasmanian Suicide Prevention Strategy 2016-2020; the Youth Suicide Prevention Plan for Tasmania 2016-2020 and the Suicide Prevention Workforce Development and Training Plan for Tasmania 2016-2020. Together this suite of documents sets the course for collaborative action to reduce suicide over the next five years.

Victoria. Department of Health

18 March 2016 - **New Joan Kirner Hospital one step closer** - The new \$200 million Joan Kirner Women's and Children's Hospital is one step closer, with the appointment of a managing contractor to build the new hospital announced today. Visiting Sunshine Hospital today, Minister for Health, Jill Hennessy, joined local Member for St Albans, Natalie Suleyman, to announce Lend Lease Building Contractors Pty Ltd will build the new hospital.

18 March 2016 - **\$19.6 million cancer research boost to help save lives** - The Andrews Labor Government will deliver close to \$20 million in grants to support Victorian researchers who are at the forefront of the latest discoveries in the fight against cancer. Twenty nine research projects will be supported through the latest Victorian Cancer Agency funding round, with projects focusing on a range of cancers such as blood, breast, bowel, head and neck, lung, melanoma, oesophageal, ovarian, pancreatic and prostate cancer. For the first time, health services have received funding for cancer research, with a focus on addressing important issues to help improve the quality of life of cancer patients

16 March 2016 - **New app helps carers to design a dementia-friendly home** - An innovative new app has been developed by Alzheimer's Australia Vic to help families and carers create a home that is more suitable for loved ones with dementia, helping them to lead fuller and more independent lives.

15 March 2016 - **New look hub boosts access to genetic services** - Parliamentary Secretary for Medical Research, Frank McGuire, today launched a new look service providing public genetic services for patients and families across north-east Victoria. Genetics in the North East (GENE) is the new name for Victoria's clinical genetic service hub encompassing Austin Health and Mercy Health campuses in Heidelberg and Northern Health in Epping. The hub provides clinical genetic services such as medical diagnosis of genetic conditions and genetic counselling, as well as genetic testing for patients and their families in north-east Victoria.

15 March 2016 - **Showcasing Victoria's health services to the world** - Minister for Health, Jill Hennessy, today officially opened Victoria's inaugural International Health Week that will showcase the state's healthcare, health education, aged care, and medical research sectors to key international business leaders.

14 March 2016 - **Young women urged not to be complacent as cervical screening rates fall** - Young women are being urged to have regular Pap tests to help prevent cervical cancer, after new data revealed a concerning drop in screening rates for women aged 20 to 29 years.

Victoria. Victorian Institute of Forensic Medicine

22 March 2016 - The Clinical Communiqué will release its latest newsletter. The Communiqué is an educational resource for medical practitioners and health professionals with a focus on patient safety in acute health care settings. Written by clinicians for clinicians about lessons learned from deaths investigated by the Coroners Court. [Read more](#)

Western Australia (WA). Department of Health

Media Releases

18 March 2016 - **Minister for Health and Minister for Regional Development: New Mid-West health service model consultation** - Extensive refurbishments will convert Mullewa Health Service and the Dongara Eneabba Mingenew Health Service into contemporary primary health centres, creating fit-for-purpose health facilities for local communities.

18 March 2016 - **Minister for Health and Minister for Regional Development: New telehealth service provides lactation advice** - New mothers in the Wheatbelt can now access breastfeeding advice thanks to a new telehealth service developed by the WA Country Health Service and King Edward Memorial Hospital.

14 March 2016 - **Minister for Health and Minister for Regional Development: Construction starts at Katanning Health Service** - Work has begun on the \$32 million redevelopment of the Katanning Health Service, which will include a new emergency department.

14 March 2016 - **Minister for Mental Health: WA youth drinking rates lowest in a decade** - State Government initiatives to reduce alcohol consumption in young people have resulted in fewer young people aged 12 to 17 consuming alcohol than at any time in the past decade

14 March 2016 - **Clean bill of health for local produce** - Western Australian consumers can enjoy eating locally grown fruit and vegetables without fear of chemical residue risks. A new WA Health report has shown minimal risk from agricultural chemical residues on our local produce.

11 March 2016 - **Algal bloom warning for Kent Street Weir, Canning River** - Kent Street Weir and upstream in the Canning River due to an algal bloom.

Operational Directives

16 March 2016 - **OD 0665/16** - WA Complementary and Alternative Medicines Policy

10 March 2016 - **OD 0664/16** - Requesting Police Assistance for Transport under the Mental Health Act 2014

10 March 2016 - **OD 0663/16** - Provision of Treatment to Medicare Ineligible Patients in WA Public Hospitals

10 March 2016 - **OD 0662/16** - Radiology Procedure for Imaging Pregnant Patients

Reports and Publications

15 March 2016 - **Environmental Health Report Elizabeth Quay**

10 March 2016 - **Elective Surgery Wait List reports**

9 March 2016 - **St John Ambulance chief psychiatrists review**

New Zealand. Ministry of Health

18 March 2016 - **Diabetic Retinal Screening, Grading, Monitoring and Referral Guidance** - New Zealand already has a variety of local diabetic retinopathy screening services, some of which are very effective. The updated standards for grading, referral and monitoring set out in this guidance document recognise that some established programmes will have to adjust their processes and also that technology is quickly evolving. As a result this guidance aims to promote further convergence of regional services thereby reducing variation and providing a national benchmark.

The guidance outlines the key components of an organised diabetic retinal screening service so that high-quality, equitable screening can be provided for all those at risk of diabetic eye disease. It represents a statement of best practice, based on stakeholder consultation, evidence and is intended to guide the delivery of a nationally consistent programme.

Australian Medical Association (AuMA)

17 March 2016 - **Genuine collaboration needed to make big advanced in closing the gap** On National Close the Gap Day, AuMA President, Professor Brian Owler, said that Australia needs to see an era of genuine collaboration between all political parties to close the Indigenous health gap.

17 March 2016 - **Know your product - AuMA message to consumers about private health insurance** - The AuMA today released its *Private Health Insurance Report Card 2016*, the first report of its kind, with a clear message to consumers – know your product. AuMA President, Professor Brian Owler, said the aim of the Report Card is to provide Australian families – who contribute a substantial proportion of their

household income towards private health insurance – with clear, simple information about how health insurance really works.

10 March 2016 - **The human cost of Commonwealth cuts to public hospital funding – Federal Government must act** - AuMA President, Professor Brian Owler, said today that public hospitals, doctors, other health workers, and patients are under increasing pressure as a result of reduced capacity – and things will only get worse without a massive injection of long-term funding from the Federal Government in the May Budget.

7 March 2016 - **Media release AuMA puts spotlight on the benefits of a career in general practice** - The AMA launched the new AuMA Vision for General Practice in Training 2016 at the annual AMA Trainee Forum, which was conducted in Melbourne over the weekend.

7 March 2016 - **Media release Grattan Institute report an unfair attack on GPs over chronic disease care** - The Grattan Institute report, *Chronic failure in primary care*, released today, is an unfair attack on Australia's hardworking GPs, according to the AuMA.

ABOUT US

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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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