



HEALTH ALERT

27 April 2010

Welcome to this week's edition of Health Alert. The Health Alert is transmitted on Monday of each week (unless there is a public holiday on Monday).

Health Alert is a summary of the critical judgments, legislation, press releases and news items which have come to our attention each week. Many of the summaries will contain a hyperlink.

If an item is of special interest, we may insert commentary into the body of Health Alert. However in general, Health Alert is a quick and effective means of ensuring that you are aware of significant recent changes with little or no commentary from ourselves.

If you would like to include a colleague or contact on our distribution list, or be removed from the list and not receive further issues from us, please contact **Anne Arfi** at anne.arfi@dlaphillipsfox.com with the relevant contact details.

Nigel Preston and the DLA Phillips Fox Health Team

JUDGMENTS

Australia. High Court

Tabet v Gett [2010] HCA 12 (21 April 2010)

The issue in this case was whether under tort law a person could be compensated for the loss of a chance of a better outcome.

This case involved an alleged delay in diagnosis of a brain tumour in a child who now suffers significant brain damage. On 14 January 1991, Reema Tabet (**Plaintiff**) suffered a seizure, and after a CT scan and EEG were performed, the Plaintiff was diagnosed as suffering a brain tumour. As a result of the brain tumour, the operative procedure and subsequent treatment, the Plaintiff suffered irreversible brain damage (the latter two causes which were not alleged to be negligent). The Plaintiff alleged that if Dr Gett (**Defendant**) had ordered the CT scan to be performed earlier, either on 11 or 13 January, the Plaintiff would have had a chance at a better outcome.

At the initial trial, the trial judge concluded that the Defendant was negligent in not ordering a CT scan on 13 January. This led to the Plaintiff losing a chance of a better medical outcome had the brain tumour been detected on 13 January 1991. The trial judge concluded that the Plaintiff had lost a 40% chance for a better outcome and awarded damages on that basis.

The Court of Appeal dismissed this finding. Whilst it agreed that the Defendant had been negligent in his failure to order a CT scan on 13 January, it concluded on the balance of probabilities the Defendant's negligence did not cause the harm suffered to the Plaintiff, and that damages could not be awarded for the loss of a chance. The Plaintiff appealed the decision to the High Court and sought to reinstate the initial ruling.

The High Court reaffirmed the position that in medical negligence cases, the doctor's negligent act or omission must be proved, on the balance of probabilities, to have caused the harm suffered. It confirmed that compensable loss could not be established by reference to a loss of opportunity.

Accordingly, the High Court dismissed the appeal.

ABOUT US



Lex Holcombe

Lex has many years experience in public sector agencies such as the then Department of Industry, Science and Tourism, AusIndustry, IP Australia, and the Civil Aviation Safety Authority.

Lex specialises in government law, particularly in the areas of administrative law advising and litigation, Commonwealth financial framework and governance.

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LEGISLATION

Commonwealth

Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010 - C2010A00029 - Health - An Act to amend the law relating to health and to make amendments consequential on the enactment of the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010, and for related purposes

Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010 - C2010A00030 - Health - An Act to make provision in relation to professional indemnity cover for certain midwives, and for related purposes

Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010 - C2010A00031 - Health - An Act to impose a tax on premium payments for midwife professional indemnity cover, and for related purposes

Private Health Insurance Legislation Amendment Act (No. 1) 2010 - C2010A00040 - Health - An Act to amend the law in relation to private health insurance, and for related purposes

Health Insurance (Radiation Oncology) Determination 2010 - F2010L00994 - Health - This Determination revokes and replaces the Health Insurance (Radiation Oncology) Determination 2009 to amend items to assist in the appropriate management of Medicare expenditure for radiation oncology treatment verification procedures.

National Health Act 1953 - Amendment determination under section 84AH - exempt items (No. PB 26 of 2010) - F2010L01008 - Health - This Determination amends the National Health Act 1953 - Determination under section 84AH - Exempt items (No. PB 58 of 2007) to add two drugs to the exempt pharmaceutical items listed on the Pharmaceutical Benefits Scheme.

National Health (Variation of Benefits) (No. 13) Repeal Regulations 2010 - F2010L00853 - Health - These Regulations repeal the National Health (Variation of Benefits) (No. 13) Regulations, made in 1975, as they have been superseded by other legislation and are no longer required.

New South Wales

Carers (Recognition) Bill 2010 - Legislative Assembly 21/4/2010

Queensland

Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010 No. 14 - assented to on 21/04/2010

REPORTS

Australia. Department of Health & Ageing

Media releases

- **23 April 2010-Seasonal Flu Vaccine and young children**-Due to a spike in the numbers of young children in Western Australia experiencing fever and convulsions following seasonal flu vaccinations, Australia's Chief Medical Officer, Professor Jim Bishop, is advising all GPs and immunisation providers to stop giving seasonal flu vaccine to children five years and under until a cause is established.
- **22 April 2010-Australia mourns the passing of an Olympic trailblazer**-The Minister for Sport Kate Ellis paid tribute to former International Olympic Committee President Juan Antonio Samaranch.
- **22 April 2010-Australian Health Ministers' Conference Joint Communiqué - 22 April 2010**-Australian Health Ministers from the Commonwealth and all States and Territories met in Perth on 22 April 2010

and discussed a range of health issues including the groundbreaking national health reforms negotiated at COAG this week.

- **21 April 2010-\$2.4 million to enhance Wellbeing Centres across Cape York** -The Minister for Indigenous Health and Rural and Regional Health, Warren Snowdon, today announced an additional \$2.4 million for upgrades to four Wellbeing Centres across Cape York.
- **21 April 2010-\$3.5 Million in Community Grants to Increase Dementia Support**-Minister for Ageing Justine Elliot, announced \$3.5 million in grants will be provided to fund 82 community projects to provide support and raise awareness for people with dementia and their families.
- **21 April 2010-\$637,000 funding to enhance Wellbeing Centre and Clinic in Mossman Gorge** -\$637,000 funding to enhance Wellbeing Centre and Clinic in Mossman Gorge - Announced today by the Minister for Indigenous Health and Rural and Regional Health, Warren Snowdon.
- **21 April 2010-Productivity Commission Inquiry into Aged Care**-The Assistant Treasurer, Senator Nick Sherry, and the Minister for Ageing, Justine Elliot MP, have announced the terms of reference for the Productivity Commission's public inquiry into aged care.
- **20 April 2010-\$2.4 million to enhance Wellbeing Centres across Cape York** -The Minister for Indigenous Health and Rural and Regional Health, Warren Snowdon, today announced an \$885,000 investment to expand facilities and staffing at Aurukun's Wellbeing Centre in Queensland's Cape York region.
- **20 April 2010-\$536,800 to enhance Hope Vale's Wellbeing Centre** -The Minister for Indigenous Health and Rural and Regional Health, Warren Snowdon, today announced a \$536,800 investment to expand facilities at the Hope Vale Wellbeing Centre in Queensland's Cape York region.
- **20 April 2010-Australian Government Invests \$17.5 million in the Future of Cricket**-Australia's place as the world's leading cricketing nation has been bolstered with \$17.5 million for Cricket Australia's Centre of Excellence.
- **20 April 2010-Australian Government to Invest \$1.6B in 1300 Sub-Acute Care Beds**-The Australian Government will invest \$1.6 billion to deliver a guaranteed 1300 new sub acute care beds by 2013-14.
- **20 April 2010-Expanding Elective Surgery Capacity in Our Public Hospitals**-As part of its drive to reduce elective surgery waiting times, the Australian Government will invest \$800 million to improve timely access to elective surgery across the country.
- **20 April 2010-Historic Health Reform**-An historic agreement was reached today to deliver better health and better hospitals for Australian working families. This will deliver the most significant reforms to our health and hospitals system since the introduction of Medicare. From July 1 this year the Australian Government will start delivering \$5.3 billion in additional funding over the next four years.

- 20 April 2010-**Improving the Nation's Mental Health System**-Australians with mental health needs, especially young people, will receive improved care through a \$174 million investment in mental health services.
- 20 April 2010-**Taking Pressure off Public Hospital Emergency Departments**-The Australian Government will invest \$750 million in expanding the capacity of public hospital emergency departments to deliver faster treatment for patients.
- 19 April 2010-**Special Olympics open in Adelaide**-The Minister for Sport Kate Ellis and Parliamentary Secretary for Disabilities Bill Shorten joined more than 850 athletes to open the ninth National Special Olympics in Adelaide.

Private Health Insurance Circular - **PHI 20/10 – Private Health Insurance (Benefit Requirements) Amendment Rules 2010 (No.2) – Changes to Second Tier Eligible Hospitals**

Australia. Productivity Commission

The Australian Government has asked the Commission to undertake an inquiry into **Caring for Older Australians**.

Australia. COAG

On 20 April 2010, COAG agreed, with the exception of Western Australia, to sign the following National Health and Hospitals Network Agreement. - **National Health and Hospitals Network Agreement RTF 1.05 MB | PDF 406KB**

Australia. IP Australia

Implementing the TRIPS Protocol - discussion paper - Background. - The power to issue and amend licences- Pharmaceutical products covered - Eligible importing countries - Criteria for ordering the grant of a licence - Conditions on licences granted - Challenges to a licence - TGA issues - Australia-US Free Trade Agreement issues

Australia. National Health & Medical Research Council

NHMRC Tracker 16 April 2010

Australian Institute of Health & Welfare

Crisis Accommodation Program 2008-09 - This report presents data for the 2008¿09 Commonwealth State Housing Agreement (CSHA) Crisis Accommodation Program (CAP) data collection.... Published 23 April 2010.

Dementia and the take-up of residential respite care - In the current policy and service environment respite care is a key service designed to provide support for carers and those they care for.... Published 21 April 2010.

Dementia and the take-up of residential respite care: an analysis using the PIAC cohort - In the current policy and service environment, respite care is a key service designed to provide support for carers and those they care for.... Published 21 April 2010.

Australian Health Practitioner Regulation Authority

Thursday 22 April 2010 - **The Thirteenth meeting of the Agency Management Committee** - The thirteenth meeting of the Agency Management Committee was held in Melbourne on 13 April 2010.

Australia. National E-Health Transition Authority

E-Health to assist treating mental health

Australian Commission on Safety & Quality in Health Care

Media Release 20 April 2010 - **Improving patient medication safety in Australia World Health Organization's High 5s Project** - Today, the Australian Commission on Safety and Quality in Health Care (ACSQHC) has, with the participation of 28 hospitals across Australia, launched a program to improve the safety of patients receiving medicines in hospitals

Australian Capital Territory. Department of Health

Media release

- **Record amount of scholarship funding for ACT nurses and midwives**
Katy Gallagher, MLA April 18 2010

New South Wales. Department of Health

NSW Health News Update

Northern Territory. Department of Health & Families

Media releases

- 21 April 2010 - **Paul Henderson - Historic Health Reform Puts NT Patients First** - The Chief Minister Paul Henderson has agreed to fundamental reform of hospitals and the health system in the Territory
- 19 April 2010 - **Kon Vatskalis - Banyan House Upgraded With NT Government \$4 Million Support** - The alcohol and drug treatment facility Banyan House has received a significant upgrading thanks to a \$4 million investment package from the NT Government.
- 19 April 2010 - **Kon Vatskalis - Healthy Territory: Major Boost to Child Protection Services** -An additional 76 child protection staff will be employed as part of a \$14.6 million funding boost to NT Families and Children in 2010-11, the NT Government announced today.

Queensland. Department of Health

Media release

- 18/04/2010 **Queensland Health Payroll - Progress But Not Perfect**

Advance Care Planning

South Australia. Department of Health

Media release

- National health agreement good for South Australia - Wednesday, 21 April 2010 - Health Minister John Hill says the deal brokered by State and Territory Premiers and the Prime Minister yesterday will secure the long term future of Australia's health and hospital system. [Read more...](#)
- Get protected against flu this winter - 21 April 2010 Doctors and nurses at the Royal Adelaide Hospital rolled up their sleeves today to get vaccinated against seasonal influenza. SA Health's Chief Medical Officer, Professor Paddy Phillips, said it's important for health care workers to protect themselves and their patients from the virus. [read more...](#)
- Meningococcal Case - 21 April 2010 - A 4 year-old male from metropolitan Adelaide has been admitted to hospital with invasive meningococcal disease, and is in a serious but stable condition. [read more...](#)

Job opportunities in Port Augusta - 16 April 2010 - Country Health SA are looking for skilled and enthusiastic people to come and work with the Aboriginal community in the Port Augusta area. [read more...](#)

Tasmania. Department of Health & Human Services

Happy Interns - 19 Apr 2010

Investigation into Rosebery health concerns - 19 Apr 2010

Victoria. Department of Health

Media releases

- Victorian Government Investment Delivers New Theatres For Frankston Hospital Published: - 21/04/2010
- Easy Online Access To Help For Carers – Neville Published: - 20/04/2010

Chief Psychiatrist's Guideline - Reportable Deaths - March 2010 (PDF file 960KB)
CPG100301

Western Australia. Department of Health

- Influenza vaccine program for young children suspended 22 Apr 2010
Hames
- State Government and Lifeline announce suicideTALK forums across WA 22 Apr 2010
Jacobs
- State Government's four-hour target reduces patient waiting times 17 Apr 2010
Hames
- WA Health responds to CCC report 22 April 2010
- Western Australians encouraged to adopt healthier lifestyles 19 April 2010

- **All Patients Safe Following Fire at King Edward Memorial Hospital**
17 April 2010

19 April 2010 - **Health and Wellbeing of Adults in Western Australia 2009, Overview and Trends (PDF 1.02MB)**

New Zealand. Ministry of Health

23 Apr: Customary Tattooing Guidelines for Operators_(English) - Ta'iala mo Tufuga Tā Tatau a Sāmoa (Samoan) - These guidelines address measures to improve the safety of customary tattooing and are of relevance to tattooists, public health units and Medical Officers of Health.

New Zealand. Medical Council of New Zealand

Consultation on strengthening recertification requirements for doctors registered in a general scope of practice. - Council wants to ensure that the current collegial relationship and CPD model for doctors registered in a general scope of practice is robust, helps assure the public that the doctor is competent and fit to practice, and improves the current high standards of practice of doctors in New Zealand. Council is seeking feedback on the proposal set out in the **consultation document**, to strengthen the recertification process for those doctors registered in a general scope of practice. We would welcome your views. The closing date for comment is 11 June 2010. Feedback can be made using the **online form**.

Canada. Health Canada

Government of Canada Delivers on Promise to Protect Kids from Tobacco
[2010-04-20]

Health Canada response to "Caffeine in juice bad move" (Edmonton Journal, Letter to the Editor, March 24, 2010) [2010-03-26]

Government of Canada Releases Draft Assessments for 17 Substances included in the Chemicals Management Plan [2010-03-22]

Health Canada Completes Safety Assessment of Caffeine use in Non-Cola Beverages [2010-03-19]

Health Canada Reminds Parents and Caregivers to Take Steps to Prevent Unintentional Poisoning [2010-03-15]

United States of America. Department of Health & Human Services

April 22, 2010 - New CDC Report Says Increased Efforts, High-Impact Strategies Needed to Reduce Smoking and Save Lives - This new report not only gives a state-by-state snapshot of efforts to cut tobacco use, but also showcases strategies that are reducing smoking, lowering smoking-related disease, and saving lives.

April 21, 2010 - NIH-led Interagency Group Identifies Research Needs to Study Climate Change and Human Health Impacts - A report released by a federal working group highlights 11 key categories of diseases and other health consequences that are occurring or will occur due to climate change.

Australian Medical Association

Productivity Commission inquiry incomplete without examination of medical care for the elderly 21 April 2010 - AMA President, Dr Andrew Pesce, said today that the terms of reference for the Productivity Commission's public inquiry into aged care are missing one vital component - medical care of the elderly in residential aged care.

Health reform agreement – COAG has listened; now give local hospital networks a fair go 21 April 2010 - AMA President, Dr Andrew Pesce, said today that it is now up to the Local Hospital Networks to deliver better hospital services for patients and for the States and Territories to support them in the spirit of cooperation that marked yesterday's COAG agreement.

Volumetric alcohol tax in Australia is cost-effective and improves health gains 18 April 2010 - MJA Media Release - A volumetric alcohol tax in Australia, which applies the same rate of tax per litre of alcohol across all beverages, would provide greater health benefits and cost savings to the health sector than the existing taxation system, according to research published in the *Medical Journal of Australia*.

Call to extend zero drinking laws for new drivers until age 21 years 18 April 2010 MJA Media Release - Imposing a zero blood alcohol limit on drivers until the age of 21 years can significantly reduce the number of alcohol-related road crash deaths in young Australians, according to an article published in the *Medical Journal of Australia*.

Evidence is clear that homeopathy is not an effective treatment 18 April 2010 - MJA Media Release - Current evidence showing that homeopathic medicines are ineffective treatments is not biased against homeopathy, as some homeopaths have argued, according to a review published in the *Medical Journal of Australia*.

After-hours GP clinics can reduce non-urgent presentations to hospital EDs 18 April 2010 - MJA Media Release - Establishing after-hours general practice clinics in areas with limited existing after-hours GP access can be associated with a substantial reduction in low-urgency presentations to hospital emergency departments, according to research published in the *Medical Journal of Australia*.

Canadian Medical Association

04/22/2010 - **CMA hopes simpler third-party forms will mean fewer headaches for MDs**

04/15/2010 - **MP's bill targets tanning-bed dangers**

04/01/2010 - **MSF issues plea for specialist volunteers**

04/12/2010 - **CMA offers cash grants to medicine's young leaders**

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ABOUT DLA PHILLIPS FOX

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