

# Minter Ellison Health News

1 July 2009

## Caselaw

### New South Wales

#### ***HCCC v Schmich***

The NSW Nurses and Midwives Tribunal (the Tribunal) heard two complaints against Anthony Schmich, a nurse, whose registration had been administratively cancelled. The first complaint was that Schmich had been convicted of a number of criminal offences, which rendered him currently unfit in the public interest to practice nursing. The second complaint was that Schmich was not of good character.

During the period covered by the first complaint, Schmich was convicted of 10 different offences including drug offences, stealing-related offences, and firearms-related offences. The Tribunal indicated that the mere effluxion of time does not demonstrate that previously absent fitness to practice nursing has been restored and found no evidence that Mr Schmich had become fit again in the public interest to practice nursing.

In respect of the second complaint, the Tribunal found that it was satisfied that Schmich is currently a person who is not of good character.

The Tribunal ordered that Schmich not be entitled to apply to be either registered or enrolled as a nurse or midwife in New South Wales.

[Click here for decision](#)

### Queensland

#### ***Newman v State of Queensland***

Mr Newman applied to the Supreme Court of Queensland to extend the period within which he was entitled to bring an action for negligence.

Mr Newman was assaulted at a hotel in Moree, NSW. After initial treatment at the Moree District Hospital, Mr Newman was treated at the Princess Alexandra (PA) Hospital, where a gracilis flap procedure was carried out on him. Mr Newman gave evidence that he had been informed by a specialist in Brisbane that the Moree Hospital may not have handled the infection to his wound properly. Subsequently, Mr Newman brought a claim against the Moree Hospital. A medical report commissioned in pursuit of that claim revealed that Mr Newman also had grounds for a claim against the PA Hospital. By the time this information had been revealed, Mr Newman was statute barred from bringing a claim against the PA Hospital.

The Court allowed Mr Newman's application and held that the report and its contents was not reasonably within the means of his knowledge within the period set out under the *Limitation of Actions Act 1974* (Qld). The Court acknowledged that extending the time was inherently prejudicial to the State of Queensland as the defendant to the action, but not to a degree that justified rejecting Mr Newman's application.

[Click here for decision](#)

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## Legislation

### Commonwealth

#### ***Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 (Cth)***

The *Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009* (Cth) was introduced into the Legislative Assembly and received its second reading speech on 24 June 2009. The Bill makes minor amendments consequential to the enactment of the (proposed) *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009* (Cth), including to provide that offences against the Act are a "relevant offence" under the *Medicare Australia Act 1973 1974 No. 41* (Cth) and that a Commonwealth contribution is a relevant offence for the purpose of Division 3, Part IID (Investigative powers of CEO) of that Act.

[Click here for Bill](#)

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#### ***Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 (Cth)***

The *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009* (Cth) was introduced into the House of Representatives on 24 June 2009. According to the explanatory memorandum, the purpose of the Bill is to give effect to the Commonwealth Government's new professional indemnity scheme for certain midwives. The Bill would establish a system in which the Commonwealth provides assistance to insurers for the cost of the claims against eligible midwives. The proposed contribution amounts payable by the Commonwealth are: (a) for the first \$100,000, no contribution as the cost will be borne by the insurer; (b) for each claim between \$100,000 and \$2 million, 80% of the costs; and (c) for each claim that exceeds \$2 million, 80% of the costs for the first \$2 million, plus 100% of the remaining costs. The Commonwealth will also contribute to the "run-off cover" provided by the insurer to eligible midwives where a claim is made after they have ceased practice for certain reasons. The Bill would also provide for apportionment where a claim has been made in relation to the same incident which involves a person other than the midwife or the eligible insurer. The Bill will only cover incidents that occur on or after 1 July 2010.

[Click here for Bill](#)

#### ***Midwife Professional Indemnity (Run-off Cover Support Payment) Bill (Cth)***

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explanatory memorandum, the purpose of the Bill is to give effect to the Commonwealth Government's new professional indemnity scheme for certain midwives.

[Click here for Bill](#)

### ***Therapeutic Goods Amendment (Medical Devices and Other Measures) Act 2009 No. 38 (Cth)***

The *Therapeutic Goods Amendment (Medical Devices and Other Measures) Act 2009 No. 38 (Cth)* was assented to on 17 June 2009. The legislation proposes to amend the *Therapeutic Goods Act 1989 1990 No. 21 (Cth)*. The Bill was introduced into the Senate on 3 December 2008. According to the explanatory memorandum, the Bill would: (a) exempt some medical devices to allow their usage in medical emergencies; (b) reformulate the test of whether a person is "fit and proper" to hold a manufacturing licence or a medical device conformity assessment certificate; (d) increase public access to information held by the Therapeutic Goods Administration; (e) provide that controls on prohibited representations apply to advertisements in all media for therapeutic goods; (f) clarify penalty provisions; and (g) make other miscellaneous amendments.

[Click here for Bill](#)

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## News

### Aged Care

#### **Aged-care safety policy too costly**

A Productivity Commission report argues that new regulations for aged-care facilities have driven up costs for providers but deliver limited benefits.

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### E-Health

#### **Medicare the base for e-health IDs**

Patients' medical records will be linked across health providers using the present Medicare number and card, under the \$98 million Unique Healthcare Identifier (UHI) program being developed by the National E-Health Transition Authority.

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### General Health

#### **Plan to reduce red tape will benefit patients**

Draft proposals by the Productivity Commission designed to reduce the red tape burden on medical practices will benefit patients, the AMA said.

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**Relative Needs index study, SA and NSW**

The demand for public dental services exceeds the capacity of available resources. Services are therefore rationed by categorising them into those seeking emergency or general dental care and then, most commonly, by chronological queuing.

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**Health-care reform in America: this is going to hurt**

Diagnosing what is wrong with America's health-care system is the easy part. Even though one dollar in every six generated by the world's richest economy is spent on health, almost twice the average for rich countries—infant mortality, life expectancy and survival-rates for heart attacks are all worse than the OECD average.

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## Health Insurance

**NIB warns shareholders they may be targets for unsolicited offers**

NIB Holdings Limited is warning its shareholders they may be targeted for unsolicited, below-market offers for their stock.

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**Health system needs radical surgery**

In its budget, the Federal Government expressed concern that the cost of the private health insurance rebate was growing rapidly and, without changes, was expected to more than double to \$9.3 billion a year by 2019-20. The Government also felt that the rebate disproportionately favoured taxpayers on higher incomes.

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## Hospitals

**Health-care reformers look beyond hospitals**

The Federal Government will be handed proposals for the redirection of health spending away from hospitals, with the Health Minister Nicola Roxon forecasting that they are likely to trigger a "difficult" debate.

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**Performance of Public and Private Hospital Systems**


An issues paper for the study on the Performance of Public and Private Hospital Systems was released on 22 June 2009.

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## Pharmaceuticals

**Vioxx marketing campaign was misleading, Federal Court told**

Lawyers for the man who is suing the manufacturer of anti-arthritis drug Vioxx claim the company is negligent because it was misleading in the way it marketed the product. Julian Burnside QC told the Federal Court that Merck & Co and its Australian subsidiary,



Merck, Sharp and Dohme, gave general practitioners inaccurate information about the cardio-vascular safety of Vioxx.

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### **Glaxo signs deal with Chroma 'worth £1bn'**

Glaxosmithkline, Europe's biggest pharmaceutical company, signed an exploratory agreement with biotechnology group Chroma.

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## **Preventative Health**

### **War on chronic disease to shift out of hospitals**

Higher taxes on cigarettes and tighter controls on food and drink promotion to counter obesity and alcohol abuse are likely to be among measures recommended to turn health spending away from hospitals.

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### **Swine flu vaccine made but not ready to use**

Scientists at the University of Queensland have developed a vaccine for swine flu. The breakthrough against the influenza A(H1N1) virus will be announced at the university's Australian Institute for Bioengineering and Nanotechnology.

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### **Device hopes to cut cancer chemotherapy**

Human trials of a cancer treatment which aims to dramatically cut the amount of chemotherapy patients need may begin within weeks at three Melbourne hospitals.

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### **Healthy ads pledge a 'pre-emptive strike'**

Nutritionists and public health officials have described a pledge by fast-food companies to market only healthier products to children as spin and a pre-emptive strike by advertisers to stave off regulation.

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### **Alcohol Consumption and Alcohol-Related Harms**

Australians drink a large volume of alcohol overall, and many drink at harmful levels, including teenagers and young adults. Young Australians are starting to drink at an earlier age, and most drink in a way that puts their own and others' health at risk.

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### **This year's heart toll: 10,000 lives and \$18 billion**

Nearly 90,000 Australians will suffer a heart attack or serious chest pain this year, costing the economy about \$18 billion in lost productivity and treatment, a report says.

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## New Zealand

### Up to 30 people fear infection after HIV case details revealed

A number of people are likely to seek testing after the identity of a man charged with intentionally infecting others with the HIV virus was revealed on Friday.

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### Labtests takeover to start month early

The start of the transition to a new community laboratory provider in Auckland has been advanced by nearly a month, and broken into three stages.

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### Mother's plea: Why did my baby die?

A mother whose 3-day-old daughter died hours after a doctor prescribed paracetamol for flu and sent her home is demanding answers.

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