

Health News

Legal Issues update for the Health Profession



Snedden Hall & Gallop newsletter is designed for Health Professionals who we deal with to highlight the range of advice we can provide on health law as well as issues that may be relevant to your practice. For answers to all your questions call Richard, Bill or Tanya on 1800 23 1800.

Will your practice comply with the new employment laws?

Readers are no doubt aware that a new workplace relations system is being proposed by the Federal Government. While this article cannot cover the entire proposal, we thought it appropriate to set out some important areas for your initial consideration when implementing changes in your practice:

Termination of Employment The biggest change to employment comes with the Federal Government's proposal to remove employers with 100 or fewer employees from the unfair dismissal regime. If a person is terminated for discriminatory reasons, then the employee will still have rights to sue for unlawful termination. Discriminatory reasons include:

- ✗ Absence from work because of sickness or injury;
- ✗ Absence during maternity leave or parental leave;
- ✗ Trade union membership;
- ✗ Seeking or acting as an employee representative;
- ✗ Race, colour, sexual preference, age, physical or mental disability, marital status, family responsibility; pregnancy, religion, political opinion, national extraction or social origin; and
- ✗ Refusing to negotiate about an AWA.

If an employee is dismissed for one of these reasons, they are able to bring a claim against the employer.

Importantly the standard three month qualifying period will be extended to six months and employees who are made redundant will be excluded from the unfair dismissal system.

The distinction is important. Unfair dismissals (dismissals which are harsh, unjust or unreasonable) will be minimised. Unlawful dismissals (dismissals done for discriminatory and improper reasons) will continue to be actionable.

Fair Pay Commission and Fair Pay Standards The legislation will create a new body (The Australian Fair Pay Commission) whose job it will be to set fair pay and condition standards. These standards will include:

- ✗ Job classification and pay rates;
- ✗ Mandatory 38 hour week;
- ✗ Annual leave (4 weeks per annum but the ability to cash out up to 2 weeks per annum);
- ✗ Personal/carers leave (10 days per annum cumulative);
- ✗ Parental leave.

For more information on the workplace reform or to interpret those changes in your workplace please call Tal Williams (pictured) on (02) 6201 8900.



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Congratulations John James Memorial Hospital



The Partners and Staff of Stacks with Snedden Hall & Gallop would like to congratulate Phil Lowen and the staff at the John James Memorial Hospital on the recent opening of their clinical services building.

Snedden Hall & Gallop are proud to be the legal advisors to the hospital on this important medical project.

Masquerade Dinner a Success

The Division of General Practitioners recently held their annual AGM and dinner which was a huge success.

Snedden Hall and Gallop lawyers sponsored the masquerade theme dinner, together with a bevy of very-slick pharmaceutical companies. The dinner was attended by over 200 GP's from the ACT region and once again proved a great night out for all concerned.

Congratulations to Richard Bialkowski (AKA Darth Vader) and his team on the presentation of a great evening for all concerned.

Thank you to those that attended our recent health professionals dinner on Sports Law. Did you know we are now the legal advisors to The Canberra Raiders?

Go Raiders for 2006!



Medical Records in Court

Hopefully you will never be the subject of a review committee investigation, but did you know that your patient notes could be called on at any time?

It goes without saying that you must always ensure that you maintain complete, up to date and accurate records, both for the future treatment of the patient and for your own protection as a medical practitioner.

The enactment of the *Civil Law (Wrongs) Act 2002*, which commenced operation in 2003, brought into existence compulsory new disclosure provisions which oblige both parties in any claim for personal injury to disclose all documents, records and reports.

Section 72 of the legislation makes it clear that these requirements overrule any previous protection afforded by legal professional privilege. An interesting question arises as to whether the special privilege created under section 23 of the *Health Act 1993* would allow the person or body holding any documents which come within the scope of that section, to refuse to disclose such material despite

the disclosure requirements under the *Civil Law (Wrongs) Act*.

Section 23 of the *Health Act* basically creates a privilege for statements or documents given to or held by an approved private sector committee. It is suggested that the privilege was created to ensure that patient review committees could conduct investigations into patient care in a frank and open manner without fear of those investigations becoming public or available to all other parties. It is my view that, in the absence of any specific exemption for the privilege created under section 23 of the *Health Act*, there is a likelihood that a court would find that such patient review committee documents or records must be disclosed under the provisions of the *Civil Law (Wrongs) Act*.

If the medical profession, and the government, remain of the view that such patient review committees should enjoy a protection to enable proper investigation of patient care, it is my view that the government should be invited to amend chapter 5 of the *Civil Law (Wrongs) Act* to specifically allow for the privilege created in the *Health Act*.

For more information call Richard Faulks of Snedden Hall & Gallop on (02) 6201 8900.