

Minter Ellison Health News

5 March 2010

National Health Reform Plan

On Wednesday 3 March the Rudd Government released its National Health Reform Plan: 'A National Health and Hospitals Network For Australia's Future'. The Reform Plan, said to deliver the most 'significant reforms to Australia's health and hospital system since the introduction of Medicare...' picks up a number of recommendations from the National Health and Hospitals Reform Commission's Final Report.

The structural reforms will mean that the Commonwealth Government will:

- become the majority funder of public hospitals
- take over all funding and policy responsibility for general practice and primary health care services
- dedicate around one third of annual Goods and Services Tax allocations currently directed to state and territory governments to fund this change in responsibilities for the health system
- change the way hospitals are run by introducing Local Hospital Networks - small groups of public hospital with a geographic or functional connection to deliver services
- change the way hospitals are funded by paying Local Hospital Networks directly for each hospital service they provide, rather than by a block grant from the Commonwealth to each State

The Government will take the Reform Plan to the States at a COAG meeting in April.

Over the next few months, the Government will announce additional reforms across a range of areas including the health workforce, GP care and e-health. We will provide you with a further update, once these additional reforms are announced.

[Click here for the government response](#)

Case law

Peterson v Merck Sharpe & Dohme (Aust) Pty Ltd [2010] FCA 180 (Jessup J)

Earlier today, the Federal Court delivered its eagerly awaited judgment in the case about the liability of the pharmaceutical manufacturer Merck for the sale of the popular arthritis medication Vioxx.

Mr Peterson sued the both the Australian distributor and the international manufacturer of the Vioxx, the promotional name of the arthritis drug Rofecoxib. His case was tried as a representative proceeding in a broader class action based on a link between the drug and heart disease.

The drug was sold in Australia between late 2000 and September 2004. In March 2000 a clinical trial signalled the possibility of a potential heart risk associated with the drug, but it was inconclusive. It was only in September 2004 that a clinical trial discovered that the drug caused heart attacks. On the basis of the results of the 2004 clinical trial, the judge found that the use of the drug doubled the risk of heart attack, but that it did not contribute to other cardiovascular conditions such as stroke.

The drug contributed to a heart attack suffered by Mr Peterson in December 2003. The distributor and the manufacturer of the drug did not know about the risk of heart attack at the time that the drug was being sold, but they were aware of a possible risk because of the March 2000 clinical trial.

Mr Peterson sought compensation for his heart attack. In addition to the common law of negligence, his case relied on the sections of the Trade Practices Act 1974 (the Act) that concern misleading conduct, liability for defective products, and implied warranties of fitness for purpose and merchantable quality.

His central claim in failed because the duty of care owed to him did not compel the withdrawal of the drug on the basis of the inconclusive 2000 clinical trial, and because the defendant drug companies conducted a sufficient investigation into the possible risks that were identified in 2000. The Australian distributor, however, failed to discharge its duty of care to the extent that it actively promoted the safety of the drug and did not warn Mr Peterson's doctor about the drug's possible risks. The conduct of the distributor did not, however, contribute to Mr Peterson's heart attack because there was no evidence that he would have not taken the drug after being warned by his doctor of the risks that were suspected in March 2000.

The distributor's conduct was found to have been misleading and therefore in contravention of section 52 of the Act, but likewise, this contravention could not be shown to have contributed to Mr Peterson's heart attack.

Similarly, although the drug was defective under section 75AD of the Act, the level of scientific knowledge at the time that the drug was on the market in Australia did not allow the defect to be discovered and therefore there is no liability for it.

Mr Peterson was only successful in establishing an entitlement to compensation under the warranties of fitness for purpose and merchantable quality imposed by sections 74B and 74D of the Act respectively. Because Vioxx doubled the risk of heart attack, it was not fit for the purpose of relieving arthritis pain. Under the Act, there is no defence to this on the basis of the inadequate level of scientific knowledge that led to the drug being on the market during the period that it was.

The compensation required to be paid to Mr Peterson was assessed to be \$85,000 for pain and suffering, \$84,354 for past economic loss and \$84,788 for future economic loss.

Not only does this decision set a vital precedent for the continuing class action and for any future pharmaceutical class actions in general, but it represents a new application of the Trade Practices Act 1974 in the context of alleged negligence by drug distributors on this scale.

[Click here for the decision](#)

Federal Court

Killesteyn, re an application for an inquiry in relation to an election for offices in the Australian Salaried Medical Officers' Federation, Queensland Branch

The Electoral Commissioner lodged an application in the NSW registry of the Federal Court of Australia to obtain a court order that would allow the Commissioner to enquire into alleged irregularities in the 2009 election of a Federal Council Delegate within the Queensland Branch of the Australian Salaried Medical Officers' Federation. The application was made under section 200 of the *Fair Work (Registered Organisations) Act 2009* and was lodged in NSW because that is where the Federation has its head office. The Federation applied for an order to have the matter transferred to the Queensland registry under section 48 of the *Federal Court of Australia Act 1976*.

In the Queensland registry, the Federation had already commenced separate proceedings seeking the reconstitution of the Queensland branch under section 323 of the *Fair Work (Registered Organisations) Act 2009*.

Flick J granted the order sought and transferred the NSW proceedings to Queensland because if the Federation's application to have the Queensland Branch reconstituted is successful, a determination of whether an officer in that branch had been properly elected would be irrelevant to the legal outcome, and it would therefore be expeditious for the two proceedings to be managed together.

[Click here for decision](#)

News

Aged Care

Viability of aged care sector in doubt: Report

Profit margins and investment returns in Australia's aged care sector have shrunk so far that an industry expert believes the entire sector's viability is in doubt.

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E-Health

Tight deadline for e-health identifier bill inquiry

The Healthcare Identifiers Bill has been referred to a Senate inquiry, but interested parties will need to meet a very tight deadline for comment, with a report due back before Federal Parliament by March 15.

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General Health

Streamlined Approvals Process for Medical Advances

The Federal Government will implement a series of reforms to streamline the process and reduce the cost involved with assessing new medical technologies and procedures for use in Australia.

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Hospital venture collapses as receivers brought in

Owen Ferguson Health has collapsed less than a week after the state government expressed confidence in working with it on a \$51 million hospital at Homebush Bay.

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Medical Board responds to AMA call for recognition of vocationally registered GPs as 'Specialist GPs'

The AMA welcomes the decision by the Medical Board of Australia to include vocationally registered GPs on the Specialist Register of the new national registration scheme that takes effect from 1 July 2010.

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Medicos fight to keep 'doctor' to themselves

Doctors are arguing with chiropractors and podiatrists over exclusive use of the titles "doctor" and "surgeon" in a dispute triggered by a national scheme meant to unify the caring professions.

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\$150 million boost to health and medical research


The Federal Government is providing more than \$150 million to boost the nation's health and medical research efforts. Projects range from research into malaria and epilepsy through to finding a treatment for stuttering and ways to improve chronic disease outcomes for Indigenous Australians.

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Health Insurance

Private health insurance to rise at double the inflation rate

Private health insurance fees are set to increase by close to 6 per cent this year, double the rate of inflation, Health Minister Nicola Roxon revealed.



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NIB Holdings tracks profit target

A big boost in investment income has helped NIB Holdings' first-half net profit to jump, as the health insurer expects to beat market growth rate over the full year in the number of policy-holders it has.

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Hospitals

Prescription for more efficient health system: AMAQ

The Australian Medical Association Queensland (AMAQ) has presented the State Government with a plan to improve efficiency in the State's health system.

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Ramsay posts 46% profit growth in H1

Ramsay Health Care Limited has posted a 46 per cent rise in first half net profit, and has reaffirmed guidance of profit growth of 18-20 per cent for the full year.

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Pathology

Sonic Healthcare looks to offshore growth

Sonic Healthcare Limited is on track to meet full-year guidance on the back of a strong performance for the first half.

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Pharmaceuticals

Trading halt adds to Sigma's headache

Sigma Pharmaceuticals Limited has requested a trading halt on its shares so it could work on "end-of-year adjustments" to its accounts.

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General Practice Pharmacies – A positive health reform for patients

The AMA is calling on the Federal Government to legislate to allow doctors to own and operate pharmacies. AMA President, Dr Andrew Pesce, said that co-locating pharmacies within, adjacent to, or in close proximity to a general practice – under the ownership of the doctor – would provide significant benefits and convenience to patients.

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Preventative Health

Heart attack risks missed by 'too busy' GPs

Up to 70 per cent of people at risk of having a heart attack or stroke are not prescribed the right drugs when they visit their GP because doctors are too busy to look at a person's overall health, research has found.

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Obesity costing \$56b a year: study

Just a quarter of Australians are at a healthy weight, according to a study which also put the total cost of caring for the nation's overweight and obese people at more than \$56 billion a year.

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COAG Independent Review of Food Labelling Law and Policy

The Committee conducting the Independent Review of Food Labelling Law and Policy is about to embark on the planned second round of public consultations in Australia and New Zealand.

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New test a glimmer of hope in the fight against ovarian cancer

One woman dies, on average, every 11 hours in Australia from ovarian cancer and 60 per cent die within five years of being diagnosed.

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Paracetamol can prevent heart attack

Australian researchers have found "very promising" evidence that paracetamol can protect against heart disease.

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New Zealand

Hospital sacks employee over accessing files

A Hutt Hospital employee has been fired for accessing patient files without legitimate reasons.

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Ambulance delay may have cost my son's life, father says

The father of a man who drowned in the Waikato River on Sunday says his son could have been saved if the ambulance had not been delayed in reaching the scene.

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Minister approves health boards' merger

New Zealand Health Minister Tony Ryall has approved the Southland and Otago district health boards' plans to merge.

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Chief nurse quits after inquiry

A senior Health Ministry official resigned without notice soon after an investigation into his expenses.

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