

## Health Legal Report – April 2024

Welcome to the April 2024 edition of the Health Legal Report.

In this issue of the Health Legal Report we discuss:

- *Vision Australia Ltd v Elisha* [2023] VSCA 265
- The New Aged Care Act – Key Changes
- Mandatory reporting obligations

We also set out some of the Bills we are tracking throughout Australia.



## *Vision Australia Ltd v Elisha* [2023] VSCA 265

By Maria Toma, Compliance Solicitor

### Introduction

The question of whether an employer can be liable in damages for psychological injuries suffered by an employee in investigating allegations of misconduct is a developing area of law. A series of decisions have recognised that no such duty of care is owed under the law of negligence.

In *Vision Australia Ltd v Elisha* [2023] VSCA 265 the Victorian Court of Appeal reaffirmed this principle and overturned a decision of O'Meara J awarding damages to an employee (Mr Elisha) of Vision Australia on the alternative basis of breach of contract. Specifically, the Court of Appeal set aside a substantial (\$1.5 million) damages award on the basis that the psychological injuries suffered by Mr Elisha were too remote or – alternatively – were not available in claims like Mr Elisha's.

The High Court of Australia has granted special leave to appeal against the Court of Appeal's decision. The submissions are yet to be made available on the High Court's website. However a short summary on that website, states that the key questions for consideration are whether the Court of Appeal erred in concluding that:

- damages for psychiatric injury suffered by Mr Elisha not recoverable for breach of contract; and
- Vision Australia did not owe a duty to take reasonable care to avoid injury to Mr Elisha in its implementation of processes leading to and resulting in termination of his employment.

### Facts

#### Background

Mr Elisha had worked for Vision Australia since 2006. At the time his employment came to an end, he was employed as an Adaptive Technology Consultant. His position was terminated on 29 May 2015. Mr Elisha at the time was being treated by a clinical psychologist (Jonathon Walker). Mr Walker's records stated that he treated Mr Elisha for 'anxiety and depression' and referred to his 'significantly heightened sensitivity to particular sounds', 'chronic workplace stress' and 'interpersonal difficulties with

particular staff members' as factors inclining him to anxiety.

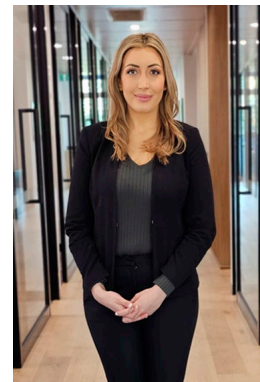
In May 2015, Mr Elisha was terminated by reason of alleged serious misconduct of 'aggressive and intimidating' behaviour towards a member of hotel staff (Ms Trch) during an overnight stay at the Bairnsdale International Hotel on 23 March 2015. Mr Elisha had made calls to Ms Trch to notify the hotel of a constant sound in his hotel room during the work stay. The interactions between Mr Elisha and Ms Trch had escalated as Ms Trch felt humiliated and intimidated. Prior to the incident that resulted in the termination of employment, Mr Elisha was also the subject of an investigation relating to his misuse of a company computer, which resulted in a warning and future restrictions on work devices for personal use.

Furthermore, in 2010, Mr Elisha was the subject of an allegation of sexual involvement with a client, which was found to be unsubstantiated. In late 2011, Mr Elisha lodged a grievance complaint about another employee, claiming 'continuous bullying, intimidation and harassment'. In May 2014, Mr Elisha made a complaint to the General Manager, Leigh Garwood, alleging 'micromanagement' and to having been 'singled out' by Janet Hauser, his manager.

Prior to commencing proceedings in the Court of Appeal, Mr Elisha had commenced unfair dismissal proceedings against Vision Australia in the Fair Work Commission.

#### *Initial Supreme Court Proceedings*

Mr Elisha commenced proceedings against Vision Australia in the Trial Division of the Supreme Court. Mr Elisha alleged that his contract of employment incorporated certain provisions (those being from a Vision Enterprise Agreement and a 2015 Disciplinary



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Procedure) and further alleged that Vision owed him a duty to ensure that reasonable care was taken for his safety. The judge made orders requiring Vision Australia to pay Mr Elisha damages in the sum of \$1,442,404.50 on the basis of his claim in contract, however rejected the claim in negligence.

Vision Australia appealed the decision of the judge, ultimately, on the basis of four grounds of appeal.

### Issues on Appeal

*Did clause 47.5 of the Vision EA and the 2015 disciplinary procedure form part of Mr Elisha's contract of employment?*

This ground of appeal focused on whether the judge correctly examined the employment contract (**Contract**) that Vision Australia and Mr Elisha had entered into. The Court of Appeal differed from the trial judge in finding that the Enterprise Agreement had not been incorporated into the Contract. However, this did not hold any significance when considering the ground of appeal because the Court of Appeal agreed with the trial judge that the 2015 Disciplinary Procedure did form part of the Contract. Consequently, their Honours agreed that Vision Australia had promised to act in a very specific way in the event it took disciplinary action within the Contract. The determination was made in accordance with the promise set out in the Contract outlining that the employee would receive a letter containing 'a written outline of the allegations' and to further provide the employee 'an opportunity to respond to the allegations' at the formal disciplinary meeting. Submissions made by both Mr Elisha and Vision Australia were considered and heard which ultimately led to the decision. It was evident that this had not occurred between the parties and therefore, the proposed ground for appeal was not established.

*Was Mr Elisha's contract of employment breached?*

The Court heard many statements of Vision Australia's witnesses, which included both oral and documentary evidence. In dealing with the question of breach, the Court of Appeal noted that it was vital to refer to the judge's general credit findings from the witnesses and not merely the circumstances surrounding the termination process.

By way of summary, the judge had found that the events which emerged in Bairnsdale were 'considerably less objectively dramatic' than later

suggested (and evidently accepted by Vision Australia). Their Honours considered that there were many contributing factors to what occurred, particularly the vulnerability of both Ms Trch (who had attended the incident in her pyjamas late at night) and Mr Elisha who suffers from anxiety and depression. The judge did not accept that in the course of events in Bairnsdale Mr Elisha was 'anything more than irritated and insistent (and therefore irritating).' Critically he found that 'Mr Elisha was not objectively aggressive, threatening or frightening' as alleged by Vision Australia in its termination decision.

Their Honours also noted that the stand down letter sent by Vision Australia to Mr Elisha on 18 May 2015, made no mention of any other incidents of aggression or any history of untenable excuse making (other than the 23 March 2015 incident) which indicated that the clauses of the Contract relating to the termination process were not exercised accordingly. Further, their Honours observed that neither Ms Hauser nor Ms Eagle were recorded in the file note of a meeting with Mr Elisha of 26 May 2015 as having said anything regarding Ms Hauser's claims concerning Mr Elisha's history of aggression and making excuses. Whilst all submissions made by the parties were considered, the outcome led to the proposed ground for appeal not being accepted.

*Were damages for psychiatric harm suffered by Mr Elisha were too remote?*

This ground of appeal focused on the psychiatric hardship suffered by Mr Elisha and whether the damages were too remote. The Court of Appeal disagreed with the trial judge and determined that damages for psychiatric injury were not anticipated by the parties when they entered into the Contract, thus not allowing the damages for psychiatric injury to stand. They reached this decision by applying the principles governing remoteness of damages for breach of contract as enunciated in the English case of *Hadley v Baxendale*. In this case, while there may have been a "possibility" of some psychological impact as a result of a failure to put allegations to an employee, the Court of Appeal held that the existence of such a remote possibility was insufficient, having regard to the degree of relevant knowledge of Vision at the requisite time (which was no knowledge whatsoever of Mr Elisha's vulnerability). Accordingly, the Court of Appeal held

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that it could not reasonably have been supposed to have been in the contemplation of the parties, at the time of making the Contract, that psychological or psychiatric injury to Mr Elisha would be “on the cards” if Vision failed to put allegations to him.

### *Did Vision owe Mr Elisha a relevant duty of care?*

Their Honours were not satisfied that the damages in contract for psychiatric injury in this case were available as employees in breach of contract claims resulting in dismissal cannot seek damages for psychiatric injury under a common law duty of care. This finding has significant implications for employees in Victoria as it limits their ability to claim damages in employment contract disputes by relying on the ground of a breach of duty of care at common law. Despite the submissions made regarding this ground for appeal, the Court of Appeal agreed with the Court’s decision that at common law, employers do not owe a duty of care to employees to avoid psychiatric injury in the disciplinary process. For this additional reason, their Honours determined that the damages award must be set aside.

### Decision

After considering all the evidence, submissions and the grounds of appeal submitted by Vision Australia and Mr Elisha, the Court of Appeal held that the judge was correct to find that there was no duty of care as alleged, with the result that the negligence case was not successful. Although the judge was also correct to find that Vision Australia had breached the Contract as it did, the damages for psychiatric injury could not stand due to the reasons

mentioned in the above paragraphs. Subject to hearing from the parties on the detailed form of the final order, including as to whether there should be nominal damages for the breach of contract the Court of Appeal ordered that:

- leave to appeal will be granted
- allow the appeal; and
- set aside the damages orders made by the judge.

This case may be heard in the High Court of Australia.

### Compliance Impact

Whilst the appeal was granted in Vision Australia’s favour, this case should serve as a reminder for organisations that where there is a concern with an employee’s performance or conduct, an employer is required to take measures to ensure that fair processes and procedures are followed.

Further, the matter is currently the subject of an appeal before the High Court of Australia which may decide differently to the Court of Appeal. In particular, the Court has previously indicated a willingness to consider the question of whether a duty of care in negligence should be owed by employers to employees in workplace investigations but has not had an appropriate vehicle to consider the question, until now.

We recommend seeking legal advice if your organisation is uncertain of the legal implications and consequences regarding the termination of an employee.

*If you have any questions arising out of this article, please contact **Maria Toma or Chris Chosich** on (03) 9865 1333, or email [chris.choisch@healthlegal.com.au](mailto:chris.choisch@healthlegal.com.au).*

### Staff Spotlight – Chris Chosich

Chris was admitted as a solicitor in 2016. He worked with Health Legal as a solicitor between 2016 and 2019 before recommencing with the firm in 2021.

Before rejoining Health Legal, Chris was an Associate to the Honourable Justice Quigley, President of the Victorian Civil and Administrative Tribunal, and also worked in a health litigation team for health practitioners and hospitals.

He is currently a member of Liberty Victoria’s Rights Advocacy Project Steering Committee. He has previously volunteered at the joint Springvale Monash Legal Service South Eastern Centre Against Sexual Assault clinic.

Chris has a particular interest in statutory interpretation, administrative law and governance related matters.

## The New Aged Care Act – Key Changes

By Giovanni Marino, Special Counsel

### Introduction

In December 2023, the Commonwealth Government released an exposure draft of the *Aged Care Bill 2023* (the **New Act**).

The New Act forms part of the proposed reforms of the aged care system, following the recommendations of the Royal Commission into Aged Care Quality and Safety (the **Royal Commission**).

The New Act has a proposed commencement date of 1 July 2024, but at the time of writing this article it has been reported that this commencement may be delayed until January or July 2025.

The New Act [will replace current legislation](#) which governs the aged care system, including the *Aged Care Act 1997* (Cth) (the **Old Act**), the *Aged Care (Transitional Provisions) Act 1997* (Cth), and the *Aged Care Quality and Safety Commission Act 2018* (Cth). The New Act also provides the framework for subordinate legislation, known as the ‘Rules’.

The New Act uses a rights-based approach and focuses on the individual receiving aged care services, rather than focusing on providers and funding frameworks as under the Old Act.

At the time of writing, draft versions of the Rules are not yet available. We also note that certain sections of the New Act are still to be drafted, for example, in relation to the fees and subsidies regime, and place allocation. In addition, the New Act does not currently include any reference to requirements for resident agreements or other consumer agreements for aged care services.

This article sets out some key changes that the New Act will provide and their impacts on providers of aged care services.

### Objects, Statement of Rights and Statement of Principles

The objects of the New Act, and the “Statement of Rights” and “Statement of Principles” set out in the New Act support the reforms to the aged care system, and reflect the person-centred approach of the new regulatory model.

The objects of the New Act include the upholding the rights of individuals under the Statement of Rights, enabling individuals accessing funded aged care

services to exercise choice and control in the delivery of those services, and providing a robust regulatory framework for the delivery of funded aged care services, including accessible complaint mechanisms for individuals.

The Statement of Rights differs to the current “Charter of Aged Care Rights” in the *User Rights Principles 2014* (Cth) in certain respects, including the following additional rights:

- the right to have services delivered by aged care workers who have appropriate qualifications, skills and experience;
- the right of equitable access to assessment or reassessment for funding aged care services, and palliative care and end-of-life care when required; and
- the right to opportunities, and assistance, to stay connected with:
  - significant persons in the individual’s life and pets;
  - the individual’s community, including by participating in public life and leisure, cultural, spiritual and lifestyle activities; and
  - if the individual is an Aboriginal or Torres Strait Islander person—community and Country.

It will be a condition of registration for providers under the New Act that they:

- demonstrate that they understand the rights of individuals under the Statement of Rights; and



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- have in place practices designed to ensure their delivery of aged care services is compatible with the rights of individuals under the Statement of Rights.

The Statement of Principles is intended to guide decision making of providers and other persons under the New Act, to ensure the New Act is administered in a manner consistent with its objects. The Principles include that the safety, health and wellbeing of people receiving aged care is the primary consideration, and that the aged care system puts older people first and supports their preferences and needs in the delivery of care.

### Registration requirements

The New Act provides a new registration model, which in broad terms will require more entities to be registered to provide funded aged care services than under the current “approved provider” model. Under the new universal registration model, any organisation which provides Commonwealth subsidised aged care services will need to be registered as “registered providers”.

Providers must register in one or more of the following provider registration categories (which are intended to be set out in the Rules):

- home and community services;
- assistive technology and home modifications;
- social support;
- clinical and specialised supports;
- home or community based respite;
- residential care.

The New Act sets out general and category specific requirements for registration, and residential care homes also need to be approved as part of the registration process (i.e., for the residential care category).

Category specific registration requirements are based in part on the level of risk associated with the service category. For example, providers in categories 4-6 will be audited and required to comply with the applicable Aged Care Quality Standards.

Breach of a condition of registration would currently attract a civil penalty of \$78,250, and breaches of conditions involving significant failures or systemic patterns of conduct would currently attract a penalty \$156,500.

Existing approved providers are expected to be “deemed” to registration categories at the commencement of the New Act, so that such providers are not required to apply for new registration.

The Department of Health and Aged Care has stated that while standard registration periods for providers are expected to be 3 years, to avoid all providers having to re-register at the same time, re-registration timeframes for deemed providers will be staggered.

### Statutory Duty

The New Act contains a statutory duty of registered providers to ensure, as far as reasonably practicable, that its conduct does not cause adverse effects to the health and safety of the care recipient.

What is “reasonably practicable” in the circumstances will be determined based on factors including the likelihood of occurrence and likely degree of harm of the adverse effect concerned, the availability of ways to prevent the adverse effect, and rights under the “Statement of Rights” such as a care recipient’s right to exercise choice and take personal risks.

Offences will apply where there is a “serious failure” of the registered provider to comply with the duty. A “serious failure” occurs where the registered provider’s conduct exposes an individual to risk of death or serious injury or illness and the conduct involves a significant failure or is part of a systemic pattern of conduct. These offences carry significant corporate penalties, up to a current maximum of \$2,973,500, where the conduct results in the death, serious injury, or illness of an individual and the registered provider is at fault.

### Compensation for individuals

The New Act also allows individuals to seek compensation from a registered provider where the provider breaches the above statutory duty.

### Responsible persons

The Old Act contains obligations relating to “key personnel” of approved providers. Under the New Act “responsible persons” are the same people who are “key personnel” under the Old Act, and will include an organisation’s Board members, executive officers and persons who have responsibility for overall management of nursing services.

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Responsible persons are required to exercise due diligence to ensure that the provider complies with compliance its statutory duty, including by understanding the requirements applying to registered providers under the New Act, the nature of the aged care services their organisation delivers and the potential adverse effects for individuals in the delivery of services, and ensuring their organisation implements processes for complying with requirements under the New Act.

Responsible persons will individually commit an offence where they do not comply with their duty of due diligence to ensure compliance and their conduct amounts to a “serious failure” to comply with that duty (meaning the responsible person’s conduct exposes an individual to risk of death or serious injury or illness and the conduct involves a significant failure or is part of a systemic pattern of conduct). Again, significant penalties will apply for these offences, up to a current maximum of \$313,000, 5 years imprisonment or both, where the conduct results in the death, serious injury, or illness of an individual and the responsible person is at fault.

### Further key conditions of registration

The conditions of provider registration in the New Act also include that the provider:

- comply with the Aged Care Code of Conduct (to be prescribed in the Rules);
- implement and maintain a complaints and feedback management system in accordance with the Rules;
- not victimise or discriminate against anyone for making a complaint or giving feedback;
- maintain a whistleblower policy in accordance with the Rules.

### New Aged Care Quality Standards

New, strengthened [Aged Care Quality Standards](#) are also being developed with the intention that they commence on 1 July 2024 with the New Act.

There will be 7 new Aged Care Quality Standards (to replace the current 8 Standards) which focus on the rights of people receiving aged care services, and

defines the kind of aged care services that providers need to provide, to ensure that individuals receive safe and quality services. The new Aged Care Quality Standards, in summary, are:

- **Standard 1: The Person**, describes the way that providers and their workers are expected to treat older people, and reflects important concepts about dignity and respect, older person individuality and diversity, independence, choice and control, culturally safe care and dignity of risk.
- **Standard 2: The Organisation**, sets out the expectations of the organisation and its governing body to meet the requirements of the Aged Care Quality Standards and deliver quality care and services.
- **Standard 3: The Care and Services**, sets out the way providers must deliver care and services for all types of services being delivered.
- **Standard 4: The Environment**, relates to covers environmental aspects of the service provision, and the intent of this Standard is ensure that older people receive care and services in a physical environment that is safe, supportive and meets their needs about care and services.
- **Standard 5: Clinical Care**, describes the responsibilities of providers to deliver safe and quality clinical care for older people, including that systems and processes ensure that sure clinical care is person-centred, safe, high quality, evidence-based and coordinated.
- **Standard 6: Food and Nutrition**. This Standard is relevant to residential care services, and reflects that access to nutritionally adequate food is a fundamental human right, and food and nutrition and the dining experience can impact on a person’s quality of life.
- **Standard 7: The Residential Community**. This Standard is relevant to residential services. This Standard reflects that it is critical that older people feel safe in the residential community, and have opportunities to engage in meaningful activities and maintain connections with people important to them.

*If you have any questions arising out of this article, please contact **Giovanni Marino** on (03) 9865 1339, or email [giovanni.marino@healthlegal.com.au](mailto:giovanni.marino@healthlegal.com.au).*

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### Law Compliance Update

Law Compliance is a legislative compliance business of Health Legal. Whilst initially focussed on health care organisations Law Compliance now provides compliance services to hundreds of organisations (and thousands of users) across Australia and this number grows each month. Our aim is to make compliance easy.

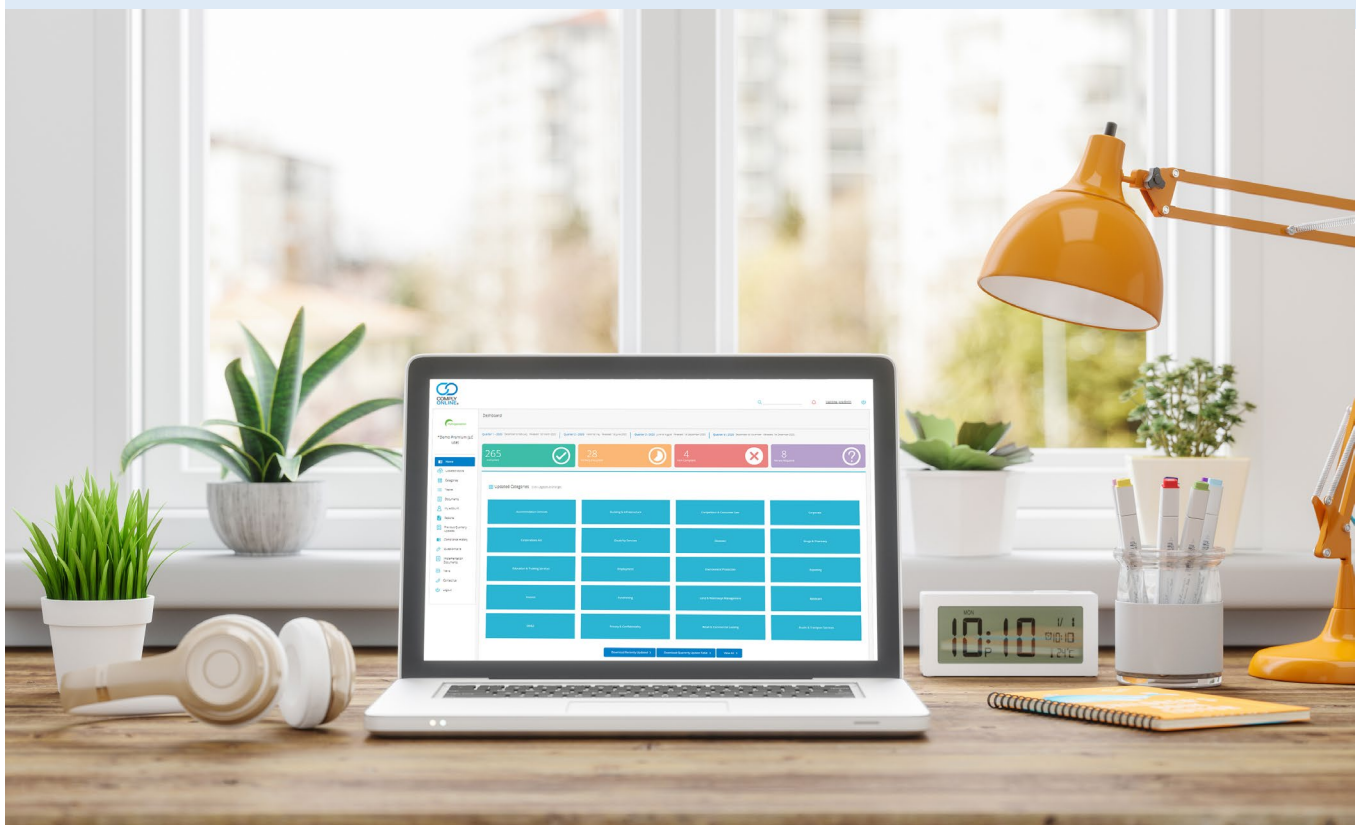
Our clients range from small rural community service organisations to government related entities to some of Australia's largest health care organisations, local councils, universities, charities, disability service providers, community service organisations, aged care providers and child care organisations.

Our online platform, **Comply Online**<sup>®</sup>, continues to be successfully rolled out across Australia. With Comply Online<sup>®</sup> our subscribers can easily assign topics to individuals within their organisation, monitor organisation wide compliance activity and produce a variety of compliance reports, including audit and risk compliance reports



We have also recently entered into a number of arrangements to allow clients to access our content via their GRC solution.

For more information or to arrange a free demonstration, please visit: <https://lawcompliance.com.au/comply-online/> or contact **Natalie Franks** on (03) 9865 1300 or [natalie.franks@healthlegal.com.au](mailto:natalie.franks@healthlegal.com.au).



**Health Legal** and **Law Compliance** are on LinkedIn. Follow us for current news and updates.



## Mandatory reporting obligations

By Chris Chosich, Senior Associate

There is no general duty to report breaches of the law. However, reporting/disclosure requirements are frequently imposed by legislation (e.g. s 326 of the *Crimes Act 1958* (Vic) prohibits concealing offences punishable by 5 years' imprisonment or more for benefit) in the pursuit of some public interest.

These 'mandatory reporting obligations' typically require reporting of some event or belief on pain of a criminal penalty. They cover a wide variety of topics, ranging from criminal offending to corruption, fraud and other losses (even if not a criminal offence).

Some non-exhaustive examples of mandatory reporting obligations are summarised in the following table:

Area	Example
Financial and governance (including anti-corruption)	Obligation to report significant or systemic fraud, corruption or other losses under the Standing Directions 2018 under the <i>Financial Management Act 1994</i> (Vic) to Department of Treasury and Finance  Obligation of CEOs of public entities to report corrupt conduct to IBAC
Employment and worker clearances	Obligation to make mandatory notifications to AHPRA (e.g. where there is a serious risk to patient wellbeing)
Child welfare and wellbeing	Staff obligations to report suspected neglect or mistreatment of children to child protection authorities
Clinical	Reporting deaths to the Coroner Reporting infectious diseases to the Department of Health  Reporting aged care 'serious incidents' to the Aged Care Quality and Safety Commissioner

Notifiable data breaches can also be reportable in some cases. Those obligations are complex and depend significantly on the nature of the entity (public or private) and the jurisdiction in which they are located. Those obligations are not discussed in this article. Some other obligations are summarised below.



### Financial and governance (including anti-corruption)

The public health sector faces unique corruption risks because it:

- has the largest budget and employs the most people of any sector operated by government.
- has access to controlled substances,
- uses complex employment agreements & billing systems, and
- has multiple complaints systems

The public health sector also faces more 'conventional' corruption and governance risks, such as conflict of interest and procurement-based risks.

These concerns have been examined in various reports and discussion papers published by anti-corruption bodies across Australia, including:

- Victoria's Independent Broad-Based Anti-Corruption Commission's report into [Corruption risks associated with the public health sector \(October 2017\)](#);
- New South Wales' Independent Commission Against Corruption's report [Investigation into the Conduct of a Principal Officer of Two Non-Government Organisations and Others \(Operation Tarlo\) \(September 2018\)](#); and
- Queensland's Crime and Misconduct Commission's report [An examination of how a \\$16.69 million fraud was committed on Queensland Health \(September 2013\)](#).

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Victorian public health services are required to report:

- Significant or systemic fraud, corruption or other losses under the Standing Directions 2018; and
- suspected 'corrupt conduct' to the Independent Broad-Based Anti-Corruption Commission.

Each of these obligations has its own complexities about the threshold for reporting.

These reporting obligations allow authorities responsible for monitoring financial and governance issues to be aware of possible financial and governance issues and to take appropriate action. Because of the overlap between these obligations, timing issues can arise with notification – as the Independent Broad-Based Anti-Corruption Commission generally expects that no actions (such as investigations or other notifications) to be taken on notified matters so that the subject of the notification is not alerted to the possibility of investigation.

### Mandatory notifications relating to health practitioners

Under the *Health Practitioner Regulation National Law*, employers of registered health practitioners (e.g. medical practitioners, nurses/midwives, pharmacists) are obliged to notify the Australian Health Practitioner Regulation Agency (**AHPRA**) on forming certain kinds of beliefs that the practitioner poses a particular kind of risk. Specifically mandatory notification obligations apply where the employer forms the belief that an employed or engaged practitioner is:

- practising with an impairment and placing the public at risk of substantial harm
- practising while intoxicated by alcohol or drugs
- practising in a way that significantly departs from accepted professional standards and placing the public at risk of harm, and
- engaging in sexual misconduct in connection with their practice.

Further information can be found on [AHPRA's website](#).

### Child welfare and wellbeing

Every State and Territory has mandatory reporting obligations for certain professionals who form a reasonable belief that a child is at risk of abuse.

For example, in Victoria, professionals (including medical practitioners, nurses, psychologists) must report to Child Protection or a police officer if:

- in the course of practising their profession or carrying out duties of their office, position or employment
- they form a belief on reasonable grounds that a child is in need of protection from physical injury or sexual abuse.

The precise obligation differs in each jurisdiction.

Those obligations often apply to the professional, rather than the organisation that employs or engages them. However, a failure of an employee or contractor to make a notification in accordance with these obligations may have reputational consequences and could be the subject of scrutiny in an inquiry or inquest.

### Clinical reporting obligations

There are numerous mandatory reporting obligations that apply to organisations that carry out clinical activities or their practitioners. These include:

- the obligation on medical practitioners to report deaths to the Coroner so that the Coroner may determine the required information under coronial legislation and whether an inquest should be held;
- medical practitioners and pathology laboratories being obliged to report notifiable diseases or conditions to the relevant Department of Health;
- reporting associated with compulsory assessment and treatment orders and the application of restraints in mental health contexts (amongst other things);
- reporting of serious incidents in aged care services – both residential aged care facilities and home care service providers under the Serious Incident Response Scheme.

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### Conclusion

This article has discussed some of the areas in which mandatory reporting obligations frequently arise. There are many others. Notably, this article has not discussed mandatory data breach notification.

Health Legal frequently advises on mandatory reporting obligations and associated issues (such as governance and investigations).

Law Compliance also compiles mandatory reporting obligations applicable to Victorian and New South Wales health services into a single document which can act as a valuable reference in managing the compliance risks associated with mandatory reporting.

*If you have any questions arising out of this article, please contact **Chris Chosich** on (03) 9865 1333, or email [chris.choisch@healthlegal.com.au](mailto:chris.choisch@healthlegal.com.au).*

### Frequently Asked Medico-Legal Questions

Health Legal has developed a Handbook covering all of the medico-legal questions which are frequently asked by health service staff. The Handbook is extensive (more than 100 pages) and focuses on the needs of the Victorian public and private health sectors.

Specifically, the Handbook covers a wide range of topics, including consent, refusal/withdrawal of treatment, patient privacy/confidentiality and dealing with adverse events and patient complaints.

The Handbook is updated every 6 months and is provided in an electronic format so that it can be easily placed on your intranet.

*For further information or to receive our Handbook, please contact **Lauren Heyward** on (03) 9865 1300 or email [lauren.heyward@healthlegal.com.au](mailto:lauren.heyward@healthlegal.com.au).*

### Cybersecurity and IT Management

Health Legal and Law Compliance are aware that everyone is constantly aiming to have the highest possible cybersecurity in place from spam and hackers, as we are too. Sometimes, unfortunately firewalls and spam filters are also preventing us from sending emails to our clients.

To ensure you receive all future communications promptly and avoid difficulties with our Law Compliance and Health Legal emails reaching you and/or your team (because of these varied spam filtering services falsely classifying emails as spam or going into junk folders), we ask that you please let your IT team know to whitelist the following addresses:

- [healthlegal.com.au](http://healthlegal.com.au);
- [info@mailgun.lawcompliance.com.au](mailto:info@mailgun.lawcompliance.com.au);
- [lawcompliance.com.au](http://lawcompliance.com.au);
- our account system [accountright@apps.myob.com](mailto:accountright@apps.myob.com)

*Should you or your IT team have further questions regarding this, please feel free to contact us.*

## Some of the Legislative Changes being tracked

**Western Australia**

Climate Change and Greenhouse Gas Emissions Reduction Bill 2021 (WA)  
 Electricity Industry Amendment (Alternative Electricity Services) Bill 2023 (WA)  
 Electricity Industry Amendment (Distributed Energy Resources) Bill 2023 (WA)  
 Retail Trading Hours Amendment Bill 2021 (WA)  
 Statutes (Repeals and Minor Amendments) Bill 2021 (WA)

**Queensland**

Agriculture and Fisheries and Other Legislation Amendment Bill 2023 (Qld)  
 Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023 (Qld)  
 Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Qld)  
 Energy (Renewable Transformation and Jobs) Bill 2023 (Qld)  
 Forensic Science Queensland Bill 2023 (Qld)  
 Health and Other Legislation Amendment Bill (No. 2) 2023 (Qld)

Integrity and Other Legislation Amendment Bill 2023 (Qld)  
 Land and Other Legislation Amendment Bill (No. 2) 2023 (Qld)  
 Marine Rescue Queensland Bill 2023 (Qld)  
 Pharmacy Business Ownership Bill 2023 (Qld)  
 State Emergency Service Bill 2023 (Qld)  
 Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023 (Qld)  
 Transport and Other Legislation Amendment Bill 2023 (Qld)  
 Work Health and Safety and Other Legislation Amendment Bill 2023 (Qld)

**Commonwealth**

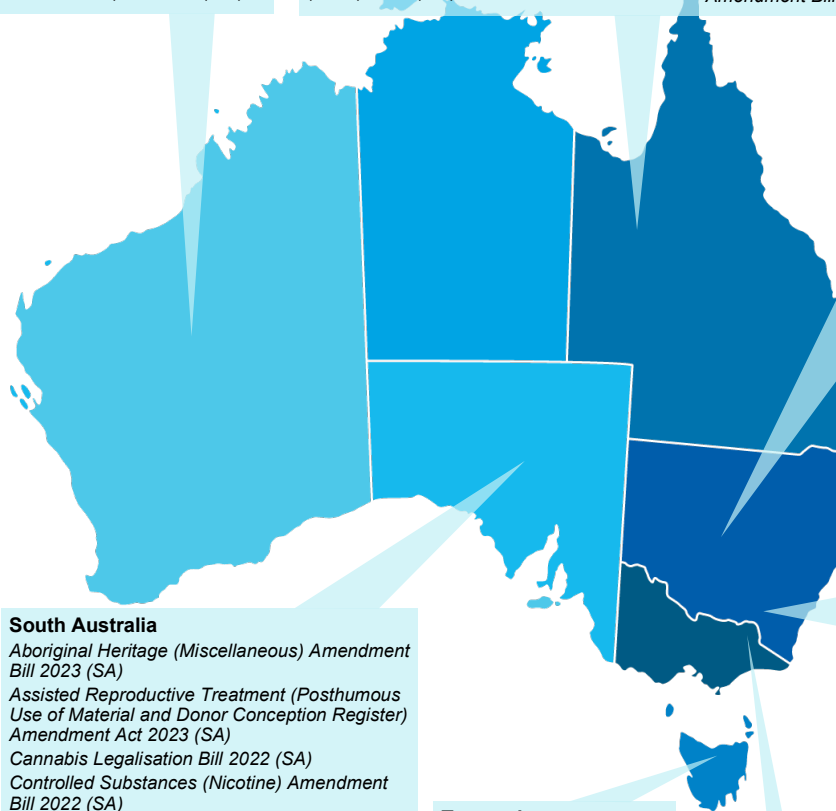
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023 No. (Cth)  
 Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Bill 2024 (Cth)  
 Attorney-General's Portfolio Miscellaneous Measures Bill 2023 (Cth)  
 Childhood Gender Transition Prohibition Bill 2023 (Cth)  
 Commonwealth Electoral Amendment (Voter Protections in Political Advertising) Bill 2023 No. (Cth)  
 Crimes Legislation Amendment (Combating Foreign Bribery) Bill 2023 No. (Cth)  
 Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022 No. (Cth)  
 Customs Amendment (Preventing Child Labour) Bill 2023 No. (Cth)  
 Defence Trade Controls Amendment Bill 2023 No. (Cth)  
 Digital ID Bill 2023 No. (Cth)  
 Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022 [No. 2] (Cth)  
 Fair Work Amendment (Right to Disconnect) Bill No.2 2023 (Cth)  
 Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 (Cth)  
 Lobbying (Improving Government Honesty and Trust) Bill 2023 (Cth)  
 National Redress Scheme for Institutional Child Sexual Abuse Amendment Bill 2023 (Cth)  
 National Vocational Education and Training Regulator Amendment (Strengthening Quality and Integrity in Vocational Education and Training No. 1) Bill 2024 (Cth)  
 Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 No. (Cth)  
 Treasury Laws Amendment (Consumer Data Right) Bill 2022 (Cth)  
 Treasury Laws Amendment (Cost of Living—Medicare Levy) Bill 2024  
 Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 (Cth)  
 Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 No. (Cth)

**New South Wales**

Conversion Practices Prohibition Bill 2023 (NSW)  
 Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024 (NSW)  
 Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW)  
 Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (NSW)  
 Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024 (NSW)

**ACT**

Assisted Reproductive Technology Bill 2023 (ACT)  
 Disability Inclusion Bill 2024 (ACT)  
 Domestic Violence Agencies (Information Sharing) Amendment Bill 2023 (ACT)  
 Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024 (ACT)  
 Government Procurement Amendment Bill 2023 (ACT)  
 Integrity Commission Amendment Bill 2022 (No 2)  
 Modern Slavery Legislation Amendment Bill 2023  
 Parentage (Surrogacy) Amendment Bill 2023 (ACT)  
 Property Developers Bill 2023 (ACT)  
 Residential Tenancies Amendment Bill 2024 (ACT)  
 Voluntary Assisted Dying Bill 2023 (ACT)  
 Workplace Legislation Amendment Bill 2024 (ACT)


**South Australia**

Aboriginal Heritage (Miscellaneous) Amendment Bill 2023 (SA)  
 Assisted Reproductive Treatment (Posthumous Use of Material and Donor Conception Register) Amendment Act 2023 (SA)  
 Cannabis Legalisation Bill 2022 (SA)  
 Controlled Substances (Nicotine) Amendment Bill 2022 (SA)  
 Disability Inclusion (Review Recommendations) Amendment Bill 2023 (SA)  
 Environment Protection (Cigarette Butt Waste) Amendment Bill 2023 (SA)  
 Explosives Bill 2023 (SA)  
 Fair Trading (Lifespan of Electrical Products) Amendment Bill 2022 (SA)  
 Freedom of Information (Miscellaneous) Amendment Bill 2023 (SA)  
 Health Care (Ambulance Response Targets) Amendment Bill 2023 (SA)  
 Heritage Places (Adelaide Park Lands) Amendment Bill 2022 (SA)  
 Heritage Places (Protection of State Heritage Places) Amendment Bill 2023 (SA)  
 Planning, Development and Infrastructure (Gas Infrastructure) Amendment Bill 2022 (SA)  
 Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022 (SA)  
 Statutes Amendment (Animal Welfare Reforms) Bill 2022 (SA)  
 Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)

**Tasmania**

Charities and Associations Law (Miscellaneous) Amendment Bill 2023 (Tas)  
 Industrial Hemp Amendment Bill 2023 (Tas)  
 Racing Regulation and Integrity (Consequential Amendments) Bill 2023 (Tas)  
 Residential Tenancy (Rental Market Reform) Amendment Bill 2021 (Tas)  
 Right to Information Amendment (Public Protected Areas) Bill 2021 (Tas)  
 Right to Information Amendment Bill 2021 (Tas)  
 State Litigator (Consequential Amendment) Bill 2023 (Tas)  
 Work Health Safety Amendment Bill 2023 (Tas)






**Victoria**

Children, Youth and Families Amendment (Home Stretch) Bill 2023 (Vic)  
 Children, Youth and Families Amendment (Raise the Age) Bill 2022 (Vic)  
 Drugs, Poisons and Controlled Substances Amendment (Pill Testing Pilot for Drug Harm Reduction) Bill 2023 (Vic)  
 Independent Broad-based Anti-corruption Commission Amendment (Ending Political Corruption) Bill 2023 (Vic)  
 Public Health and Wellbeing Amendment (Health Services Performance Transparency and Accountability) Bill 2023 (Vic)  
 Residential Tenancies Amendment (Rent Freeze and Caps) Bill 2023 (Vic)  
 State Electricity Commission Amendment Bill 2023 (Vic)  
 Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023 (Vic)

## April 2024 Edition

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