
Index

Advance directives (living wills) – see also Power of attorney

- clinical discretion and, 751-758
- appropriate care, 756
- autonomy, information and interpretation, 752-754
- directives and discretion, 754-755
- hypothetical scenarios, 751-752
- meaningful lives, autonomy and enabling, 756-758
- Ulysses' bargain, 755-756
- psychiatric, 891-894
 - legal recognition and status, 894-897
 - making future health care decisions now, 892-893
 - problems, 900-903
 - reasons for recognising, 898-900

Advertising – see Drugs, therapeutic**Aged care**

- resident abuse and reporting obligations, 216-219
 - elder abuse, 216-218
 - protection of residents, 218

Apologies

- by medical practitioners to patients (NSW), 200-208
- definition and effects of apologies, 201-203
- ethical, professional and legal duties, 205-207
- liability, 203-204
- provisions in Australian statutory civil liability schemes, 204-205

Assault

- cause of action in medical law, 862-884
- boundaries of consent, 863-883
 - assault in South African medical law, 868-883
 - nature of treatment and its consequences, 865-867
 - other jurisdictions, 863-865
 - South Africa, 867-868

Assisted death – see Euthanasia**Assisted reproductive technology – see also Preimplantation genetic diagnosis**

- regulation (NSW), 120-131
 - Assisted Reproductive Technology Act 2007 (NSW), 122-126

Australian regulation, 121-122
reviewing NSW regulation, 126-131

Australia–United States Free Trade Agreement

newspaper reporting of – see Patents

Autopsies – see also Coroners

- book review, 371-372
- decision-making (Qld), 458-465
 - role of autopsy in coronial investigation, 461-462
 - study method, 460
 - value of autopsy, 462-465

Bioethics

- Nazi era, 555-567
 - biomedical perspective, 556-557
 - euthanasia, 557-558
 - legacy for regulation of medicine, 564-567
 - medical experimentation, 560-562
 - Nuremberg Code, 563-564
 - Nuremberg Laws and the Holocaust, 559-560
 - Nuremberg Nazi Doctors' Trial, 562-563
 - sterilisation legislation, 557
- UNESCO Declaration, 187-192
 - adoption, 189
 - International Bioethics Committee Report (2003), 188-189
 - ramifications, 191-192
 - Round Table of Ministers of Science (2001), 187-188
 - steps toward, 187
 - substance of Declaration, 189-191

Blindness – see Eyesight**Boxing**

- legal ethics, 684-695
 - cause of harm, 687-689
 - legality, 690-692
 - reasons for banning, 689-690
 - review of common law, 692-694
 - review of consent, 694

Bullying

- employers' liability for psychiatric injuries, 9-16
 - future for bullying litigation, 16
 - Green v DB Group Services (UK) Ltd, 13-16
 - Naidu v Group 4 Securities Pty Ltd, 11-13
 - workplace bullying, 9-10

Index

- Capacity to decide – see also Competence**
- determination of, 25-35
 - best tests, 31-32
 - definition of capacity, 27-28
 - educational implications, 34-35
 - expert agreement, 28
 - expert disagreement, 28-31
 - Qld GAAT cases, 26-27
 - variety of methods, 27
 - legal and medical interface – *see Competence*
- Character**
- medical practitioner regulation, 488-511
 - application of good character concept in registration, 496-500
 - “fit and proper” persons, 501-502
 - law, 492-494
 - legislative provisions for registration, 495-496
 - meaning of concept of good character, 489-490
 - psychology and philosophy, 490-492
 - recent decisions, 505-509
 - recovery of good character, 502-504
- Chemotherapy agents**
- costs (NZ), 103-108
- Child – see Children (minors)**
- Child abuse**
- mandatory reporting by nurses
 - attitudes and knowledge (Qld), 288-304
- Children (minors) – see also Child abuse**
- cosmetic surgery and procedures – *see Cosmetic surgery and procedures*
 - obesity – *see Obesity*
 - solariums (Qld), 653-665
- Chronic fatigue**
- workplace legal concerns, 817
- Chronic illness**
- workplace legal concerns, 803-821
 - chronic fatigue and diabetes, 817
 - drug testing at work, 809-811
 - employees’ obligation to disclose, 814-815
 - risk of danger to other workers, 820
 - employers’ obligation to accommodate workers, 815-817
 - exclusion of employees from work, 811-814
 - eyesight, blindness and colour blindness, 817
 - medical examination and testing, and contract of employment, 805-809
 - mental illness and stress-related conditions, 820
 - obesity, 818-819
- Civil conscription**
- health care standards and privatisation, 36-48
 - industrial conscription, 39-40
 - legislation controlling medical services as hospital benefits, 41-42
 - meaning of civil conscription, 44-46
 - practical compulsion, 42-44
 - Selim v Lele, 37-39
- Cloning**
- therapeutic
 - legislation (Australia), 139-140
 - Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2007 (Cth), 143-147
 - somatic cell nuclear transfer, 141-143
 - unresolved issues, 147-160
 - Lockhart Committee – *see Lockhart Committee*
- Colour blindness – see Eyesight**
- Community consultation**
- Lockhart Committee – *see Lockhart Committee*
- Community treatment orders – see Mental illness**
- Competence – see also Advance directives; Capacity to decide; Consent**
- determination of, 25-35
 - best tests, 31-32
 - definition of capacity, 27-28
 - educational implications, 34-35
 - expert agreement, 28
 - expert disagreement, 28-31
 - Qld GAAT cases, 26-27
 - variety of methods, 27
 - legal and medical interface, 789-802
 - dimensions of the problem, 790-794
 - legal context, 796-798
 - substitute decision-making, 799-801
 - testamentary competency, 798-799
 - therapeutic jurisprudence, 794-796
 - undue influence and duress, 801-802

- patients
 professional incompetence and, 25-35
 testamentary capacity, 798-799
- Competency – see Competence**
- Complementary medicine**
 practitioners
 regulation of, 413-418
 New South Wales
 model, 417-418
 moves toward regulation, 414-415
 New Zealand model, 416-417
 South Australia inquiry, 415
 unregulated health professionals, 414
 Victorian proposal, 416
- Conscription, civil – see Civil conscription**
- Consent – see also Informed consent**
 boundaries of – see Assault
 posthumous reproduction – see Posthumous conception
- Constitution – see Civil conscription**
- Consumers**
 rights
 New Zealand, 85-102
 Health Practitioners Disciplinary Tribunal, 88-91
 Human Rights Review Tribunal, 87
 issue of proceedings, 98-101
 remedies, 91-97
 legislative framework, 85-87
 matters covered by ACC legislation, 97-98
 suing in court, 101
- Coroners**
 death investigation – see Autopsies
 inquests
 book review, 545-546
 law reform
 Australian Capital Territory, 387-388
 international, 379-392
 Ireland, 384-385
 major current issues, 388-392
 New Zealand, 381-382
 Ontario, 385
 United Kingdom, 383-384
 Victoria, 385-386
 Western Australia, 387
 “obesity” in deaths reported to, 21-24
- therapeutic jurisprudence, 442-457
 family statements, 453-454
 implementation of model, 454-455
 mediation, 448-450
 non-adversarial or comprehensive approaches, 442-446
 problem-solving approach, 446-448
 restorative justice, 450-453
- Cosmetic surgery and procedures**
 children and young persons
 legislation (Qld), 653-665
 access to cosmetic procedures, 657-662
 access to solariums, 656-657
 background, 655-656
 comment, 662-665
 New Zealand Medical Council Statement, 625-652
 appearance medicine, 625-627
 contents of Statement, 638-639
 critique, 639-651
 previous regulatory framework, 627-629
 Medical Council response to concerns, 635-638
 problems, 629-635
- Crime victims – see Victims of crime**
- Death – see also Autopsies; Coroners**
 causation
 obesity, 21-24
 certification, 426-441
 Queensland, 436-439
 United Kingdom, 428-436
 Victoria, 439-441
 investigation – see also Autopsies
 suspicious deaths (book review), 371-372
- Diabetes**
 workplace legal concerns, 817
- Disability**
 serious
 prenatal and neonatal decision-making, 233-245
 legal significance of “disability”, 233-241
 uncertain limits of “serious disability”, 241-244
 United Nations Convention, 17-20
 Art 25: the right to health, 18-19
 Australia’s obligations under, 19-20

Index

- drafting process, 18
- Disciplinary hearings**
- criminal allegations (NZ), 393-394
 - abuse of power, 400-404
 - standard of proof, 394-400
- New Zealand, 595-613
 - decrease, 604-606
 - increase, 604
 - pre-Cartwright era, 599-601
 - statistics, 597, 608
 - procedural fairness (NSW), 512-522
- Discrimination – see Genetic discrimination**
- Distributive justice**
- book review, 710-712
- Doctor-patient relationship – see also Medical practitioners**
- New Zealand, 595-613
 - accountability of doctors, 606-613
 - Cartwright Report's impact, 601-603
 - Medical Practitioners Act 1968, 598-601
 - statistics, 603-604
- Doctors – see Medical practitioners**
- Drug costs**
- chemotherapy agents (NZ), 103-108
- Drug testing**
- workplace legal concerns, 809-811
- Drug trials**
- protection of participants (NZ), 885-890
 - application of Code of Rights, 886-888
 - current legislative regulation, 885-886
 - evaluation of legal environment, 888-889
 - reform suggestions, 889-890
- Drugs, therapeutic – see also Nanomedicine**
- advertising, 220-232
 - Alphapharm v Lundbeck, 226-230
 - Apotex v Servier, 222-226
 - direct-to-consumer advertising of prescription medicines (Aust), 666-683
 - effectiveness of ban
 - quality use of medicines, 669-677
 - shielding consumers, 677-680
 - trade agreements, 680-682
 - regulation, 667-669
 - generics in Australian regulatory system, 231-232
- Embryonic stem cell research**
- regulation, 580-589
 - DDP and NAR, 580-582
 - licensing, 586-587
 - Lockhart Review – *see Lockhart Committee*
 - minimum number of embryos, 587
 - naked utilitarian ‘regulation’ (NU“R”), 586
 - child of reason and trust, 588-589
 - treating embryos with respect, 587-588
- Employment**
- bullying-induced psychiatric injuries – *see Bullying*
 - chronic illness – *see Chronic illness*
 - civil conscription – *see Civil conscription*
 - genetic discrimination – *see Genetic discrimination*
- End-of-life decisions – see also Euthanasia**
- double effect principle, 74-84
 - confusions in Magnusson’s position, 79-80
 - critical consideration of Magnusson’s proposal, 82-84
 - moral tradition, 76-79
 - withdrawal of life-support measures and ordinary/extraordinary means, 80-82
- Euthanasia – see also End-of-life decisions**
- book review, 176-178
 - Nazi era, 557-558
- Eyesight**
- surgeons – *see Surgery*
 - workplace legal concerns, 817
- Fair trading – see Trade practices**
- Fairness, procedural – see Procedural fairness**
- Families**
- statements by (coroners’ courts), 453-454
- Fat – *see Obesity***
- Fatigue, chronic – *see Chronic fatigue***
- Female genital mutilation**
- hymenoplasty and, 161-175
 - consequences of loss of virginity, 164-165
 - cosmetic genital surgery, 167-168
 - ethics of revirgination surgery, 165-166
 - legal responses to female genital mutilation, 168-174

- virginity and circumcision, 162-164
- Fertility treatment – see Assisted reproductive technology**
- Genetic analysis – see Human tissue**
- Genetic diagnosis**
- pre-implantation – see Preimplantation genetic diagnosis
- Genetic discrimination**
- employment, 770-788
- anti-discrimination laws, 775-778
- definition of genetic discrimination, 773-774
- employers' defences, 778-781
- Essentially Yours report, 774-775
- ethics, 773
- legislative reform
- inherent function of the job, 771-773
- inherent requirements defence, 781-782
- probability of disease manifesting, 786-787
- science identifying genes and diseases, 771-773
- Globalisation**
- health law (book review), 708-710
- Good character – see Character**
- Health law**
- distributive justice (book review), 710-712
- globalisation and (book review), 708-710
- Health professionals – see also Complementary medicine; Medical practitioners; Nurses; Pharmacists**
- competence – see Competence
- disciplinary cases – see Disciplinary hearings
- incompetence – see Competence
- misconduct – see Professional misconduct
- telephoned medical advice – see Telephone advice
- trade practices and fair trading legislation – see Trade practices
- Human rights**
- international instruments
- UNESCO Bioethics Declaration, 187-192
- Nazi era medicine, 555-567
- Human tissue – see also Human tissue donation**
- collection, use and transfer of samples
- non-consensual genetic analysis (NZ), 246-262
- elements of offence, 253-261
- genetic analysis, 246-252
- newborn screening (Vic), 523-544
- ALRC/AHEC report, 533-535
- applicable regulatory framework, 528-533
- meaningful consent, 540-544
- unresolved issues, 536-540
- VCGS Ltd contract, 525-528
- Victorian Newborn Screening Committee, 535-536
- Human tissue donation – see also Organ donation**
- legislation (Aust), 590-594
- background, 590-591
- funding for Authority, 593
- scope, 591-593
- Hymenoplasty**
- female genital mutilation and – see Female genital mutilation
- Informed consent – see also Consent**
- assault as cause of action in medical law, 862-884
- boundaries of consent, 863-883
- assault in South African medical law, 868-883
- nature of treatment and its consequences, 865-867
- other jurisdictions, 863-865
- South Africa, 867-868
- Inquests – see Coroners**
- Intention**
- social mores and ethical decisions, 209-215
- case of father killing severely impaired daughter (NZ), 209-212
- intent and its determination, 212-213

Index

- Litigation**
vexatious – *see Vexatious litigants*
- Living wills** – *see Advance directives*
- Lockhart Committee**
approaches and methods, 132-138
critique of, 580-589
call for responses, 727
moral framework and methods used, 134-138
process, 133
- Media**
newspaper reporting of Australia–United States Free Trade Agreement – *see Patents*
- Mediation**
clinical negligence claims
role of health care professionals, 858-861
absence of health care professionals, 859
interests of health care professionals, 860
participation, 861
patient interests, 860
coroners, 448-450
- Medical examinations**
workplace legal concerns, 805-809
- Medical negligence**
hindsight and outcome bias, 846-857
consequent injury (causation), 855-856
debiasing strategies, 856-857
effect in legal determination of liability, 850-855
review method, 847-849
social construction of negligence, 849-850
mediation of claims – *see Mediation*
- Medical practitioners** – *see also Complementary medicine; Doctor-patient relationship*
accountability (NZ), 606-613
apologies to patients – *see Apologies*
“character” and regulation – *see Character*
competence – *see Competence*
incompetence – *see Competence*
Nazi era – *see Bioethics*
New Zealand, 595-613
accountability of doctors, 606-613
Cartwright Report’s impact, 601-603
Medical Practitioners Act 1968, 598-601
statistics, 603-604
- patient relationships – *see Doctor-patient relationship*
professional misconduct – *see Professional misconduct*
visual standards – *see Surgery*
- Medical treatment** – *see Cosmetic surgery and procedures; Drugs, therapeutic; Medical practitioners; Nurses; Surgery*
- Medicines**
newspaper reporting of Australia–United States Free Trade Agreement – *see Patents*
- Mental health**
advance directives – *see Advance directives*
- Mental illness**
offenders with
court-ordered treatment for serious offenders, 405-412
advances in treatment, 408-409
controversies, 409-410
early history, 405-406
legislative reform in England and Wales, 409
McNaughton trial, 406-408
mental health courts, 410-411
Queensland Mental Health Court, 411-412
special hospitals, 408
hospital orders, 568-573
practical challenges, 572-573
sentencing in Australia, 568-569
types of hospital orders, 569-570
Victoria
former regime, 570-571
new regime of restricted involuntary treatment orders and restricted community treatment orders, 571-572
review of regime, 571
victim support – *see Victims of crime*
workplace legal concerns, 820
- Nanomedicine**
history and definitions, 824-826
safety and cost-effectiveness
regulatory system, 822-845
Abraxane’s challenges to PBAC process, 836-841
Abraxane’s clinical and regulatory history, 826-828

- Australia, 828-831
reforms provoked by nanomedicines, 841-844
challenges to quality, safety and efficacy regulators, 831-835
- Nazi era – see Bioethics**
- Negligence, medical – see Medical negligence**
- Neonatal care**
screening and tissue banking regulation – *see Human tissue*
serious disability – *see Disability*
- Newborn care – see Neonatal care**
- Not-for-resuscitation orders – see Resuscitation**
- Nuremberg Code**, 563-564
- Nurses**
aged care resident abuse and reporting obligations – *see Aged care*
child abuse and neglect reporting (Qld), 288-304
study of nurses' attitudes, 290-304
numbers and skill mix
impact on patient outcomes, 759-763
calculation of nursing composition and numbers, 761-762
departmental policies, 761
implications of coroner's recommendations, 762
observations, 760-761
staff levels, 760
- Obesity**
childhood
prevention and legislative program, 49-56
need for reform proposals, 52-54
proposals for legal reform, 54-55
protection from information and materials injurious to wellbeing, 49-52
rights-based approach, 55-56
deaths reported to coroners, use of term in, 21-24
workplace legal concerns, 818-819
- Organ donation – see also Human tissue donation**
legal, medical and policy issues of post-mortem donation, 696-707
diagnosis of death, 701-706
legal interpretation and legal purpose, 697-701
- responsible scholarship, 706-707
legislation (Aust), 590-594
background, 590-591
funding for Authority, 593
scope, 591-593
practice and clinical guidelines, 335-355
Australian ethical guidelines on organ donation after cardiac death, 351-352
brain death, 338-340
current medical definition, 340-344
cardiac death, 344-349
dead donor rule, 349-350
guardianship legislation, 352-354
- Patents**
newspaper reporting of Australia–United States Free Trade Agreement, 356-370
conceptual framework, 359-361
discussion, 367-370
findings, 361-366
orientation and justification for study, 357-358
- Patients – see Competence; Doctor-patient relationship**
- Pharmaceutical industry – see Drug trials; Drugs, therapeutic**
- Pharmacists**
disciplinary processes and outcomes, 109-119
decisions, 110-112
definitions and actions, 110
publicity of outcomes, 112
Queensland cases, 112-118
- Policy development – see Lockhart Committee**
- Posthumous conception**
consent and its limitations, 279-287
legal background, 280-281
other considerations, 285-286
problems with obtaining consent, 281-285
social context, 286-287
- Post-mortem examination – see Autopsies**
- Post-mortem organ donation – see Organ donation**
- Post-mortem reproduction – see Posthumous conception**

- Power of attorney**
- enduring
 - solicitors witnessing documents (Qld), 466-487
 - current practice and best practice, 485-487
 - executing and witnessing, 467-470
 - Guardianship and Administration Tribunal
 - file analysis, 470-473
 - publicly available court and tribunal decisions, 474-481
 - survey of solicitors, 481-485
- Preimplantation genetic diagnosis**
- susceptibility conditions, 263-278
 - ethical and social issues, 266-272
 - legal responses, 265-266, 275-277
 - regulatory restraint and reproductive liberty, 272-275
 - science of susceptibility, 264-265
- Prenatal diagnosis** – *see also Preimplantation genetic diagnosis*
- serious disability – *see Disability*
- Problem-solving approach** – *see Therapeutic jurisprudence*
- Procedural fairness**
- medical investigations and disciplinary proceedings, 512-522
 - complaints and investigation, 514-517
 - discipline, 517-522
 - procedural fairness, 513-514
 - purpose of investigation and discipline, 512-513
- Professional misconduct** – *see also Disciplinary hearings*
- criminalisation (Vic), 193-197
 - disparity between States, 198
 - double jeopardy, 197
 - funding, 198
 - mitigation, 198
 - protection or punishment, 194-196
 - standard of proof, 197
- Psychiatric advance directives** – *see Advance directives*
- Psychiatric injury**
- bullying-induced – *see Bullying*
- Reproduction** – *see also Posthumous conception*
- politics and law in Italy (book review), 905-906
- Research** – *see also Embryonic stem cell research; Nuremberg Code*
- commercialisation of academic research, 419-425
 - contracts of employment, 421-422
 - “experimental use” exemption or defence, 422-423
 - public funding and social benefits of open research, 423-424
 - University of Western Australia v Gray, 420
- Restorative justice** – *see Therapeutic jurisprudence*
- Restrictive trade practices** – *see Trade practices*
- Resuscitation**
- not-for-resuscitation orders, 305-334
 - criminal law, 326-333
 - death and dying, 305-309
 - duty of care, 324-326
 - justification for orders, 313-324
 - orders, 309-313
- Revirgination** – *see Hymenoplasty*
- Serious disability** – *see Disability*
- Sight** – *see Eyesight*
- Solariums**
- children and young people
 - Queensland legislation, 656-657
- South Africa**
- assault and informed consent – *see Assault*
- Sport** – *see Boxing*
- Standards, statutory**
- civil conscription – *see Civil conscription*
- Sterilisation**
- Nazi era legislation, 557
- Stress**
- workplace legal concerns, 820
- Suicide** – *see also Euthanasia*
- Kirkland-Veenstra v Stuart
 - facts, 729-730
 - proceedings, 731-732

- prevention, 728-744
attempted suicide, 737-738
common law, 738-742
policy considerations
 Mental Health Act 1986 (Vic), s 10, 733-737
pure mental harm, 742-744
statutory powers, 732
 Australian jurisdictions, 732-733
- Surgery – see also Cosmetic surgery and procedures; Informed consent**
- visual standards for surgeons, 614-624
anti-discrimination and disability legislation, 623-624
definition of “surgeon”, 620-621
doctors with disability, 615-620
other high-risk occupations, 621-622
recommendations, 622-623
- Susceptibility – see Preimplantation genetic diagnosis**
- Telephone advice**
- public expectations of health professionals, 57-73
ethical considerations, 58-63
liability implications, 66-73
social and policy implications, 63-66
- Testamentary capacity, 798-799**
- Therapeutic cloning – see Cloning**
- Therapeutic drugs – see Drugs, therapeutic**
- Therapeutic Goods Administration (Australia)**
- legal developments, 764-769
outsourcing to foreign regulators, 768-769
Pan Pharmaceuticals litigation
 background, 764-764
 regulatory implications, 767-768
powers of product recall and licence suspension, 766
- Therapeutic jurisprudence**
- competence, 794-796
coroners – see Coroners
- Trade practices**
- health practitioners regulation, 574-579
 Campbell Report (Vic), 575
compensation orders by disciplinary tribunals, 577
 Cousins v Merringtons litigation, 576-577
 Nuera/Rana litigation, 576
role of trade practices/fair trading regulators, 577-579
- Transplantation – see Human tissue donation; Organ donation**
- United States**
- newspaper reporting of Australia–United States Free Trade Agreement – see Patents
- Vexatious litigants**
- law reform, 721-727
data about vexatious litigants, 723-724
diversity of Australian approach, 724-725
Victorian LRC recommendations, 725-727
- Victims of crime**
- support for victims of offenders with mental illness, 745-750
classified patient information orders, 746-748
forensic patient information orders, 748-749
promoting greater balance in Mental Health Act (Qld), 746
victim information registers, 746
Victim Support Service (Qld), 749-750
- Violence**
- boxing – see Boxing
- Virginity – see Hymenoplasty**
- Vision – see Eyesight**
- Visual standards**
- surgeons – see Surgery
- Voluntary euthanasia – see Euthanasia**
- Wills – see also Advance directives**
- testamentary capacity, 798-799
- Workplaces**
- bullying – see Bullying
chronic illness – see Chronic illness
discrimination – see Genetic discrimination
- Young persons – see Children (minors)**