

PRESENTING THE 30TH ANNIVERSARY

# Medico Legal Congress

22 – 23 March 2021 | Swissôtel Sydney

## KEYNOTE ADDRESSES:



### **Covid 19 in Australia: Perspectives from the frontline**

Dr Stephen Parnis, *Emergency Physician, St Vincent's Hospital, Royal Victorian Eye & Ear Hospital, Werribee Mercy Hospital and former Vice President, AMA*



The Honourable Justice Ian G. Harrison

## ALSO FEATURING:



Professor Susan Kurrle, *Curran Professor in Health Care of Older People, Faculty of Medicine and Health, University of Sydney, Clinical Director, Northern Sydney LHD Aged Care and Rehabilitation Network & Senior Staff Specialist Geriatrician, Hornsby Ku-ring-gai and Eurobodalla Health Services*



Philip Bates, *Barrister, Sir Anthony Mason Chambers*



Bill Madden, *Special Counsel, Carroll & O'Dea Lawyers*



Professor Damon Eisen, *Acting Director Infectious Diseases and Infection Prevention, Peninsula Health*



Annabelle Mann, *General Counsel, The Royal Children's Hospital Melbourne*



Dr Eliana Close, *Australian Centre for Health Law Research*



Professor Anne-Maree Kelly, *Senior Emergency Physician, Western Health, Melbourne, Adjunct Professor, ACHLR, Queensland University of Technology*



Dr Kym Jenkins, *Chair, Council of Presidents of Medical Colleges (CPMC), Immediate Past President, RANZCP*



Dr Sam Bendall, *Deputy Director WellMD Centre, SLHD, Emergency Physician, Royal Prince Alfred Hospital, Retrieval Specialist and Director of Education, CareFlight & NSW Ambulance State Retrieval Consultant*



Dr Anne Tonkin, *Chair, Medical Board of Australia*



Dr Vijay Roach MBBS MRCOG FRANZCOG, *President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists*



Andrea de Souza, *Barrister, Greens List*



Tim Bowen, *Manager, Advocacy & Legal Services, MIGA*



Vicky Antzoulatos, *Practice Leader Class Actions, SHINE LAWYERS*

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**8:20** Registration

**8:50 Opening remarks from the Chair**

Janine McIlwraith, *Principal Lawyer, Slater and Gordon Lawyers*

**9:00 KEYNOTE OPENING ADDRESS | Covid 19 in Australia: Perspectives from the frontline**

Dr Stephen Parnis, *Emergency Physician, St Vincent's Hospital, Royal Victorian Eye & Ear Hospital, Werribee Mercy Hospital and former Vice President, AMA*

**9:40 The Royal Commission into Aged Care Quality and Safety: What have we learnt?**

This presentation will summarise key findings and recommendations from the Aged Care Royal Commission and look at how they will impact on how aged care is delivered in the future. It will also discuss the lessons learnt during the COVID-19 pandemic with respect to how older people are treated by both the health system and the aged care system, and how we can do better in the future.

Professor Susan Kurrle, *Curran Professor in Health Care of Older People, Faculty of Medicine and Health, University of Sydney, Clinical Director, Northern Sydney LHD Aged Care and Rehabilitation Network & Senior Staff Specialist Geriatrician, Hornsby Ku-ring-gai and Eurobodalla Health Services*

**10:15 Medical Board of Australia's updated: Code of Conduct – Good Medical Practice**

- Discrimination, bullying, sexual harassment and vexatious complaints
- Cultural safety, including a new definition, and
- Career transitions for doctors

Dr Anne Tonkin, *Chair, Medical Board of Australia*

**10:50** Networking, stretch & refreshment break

**11:20 Wrongful birth damages: To question even those things we thought we knew**

Bill Madden, *Special Counsel, Carroll & O'Dea Lawyers*

**11:55 Why do health care workers get COVID-19**

- How do we protect against COVID-19?
- How do we prove where HCW's were infected?
- How might HCW's be affected by COVID-19?

Professor Damon Eisen, *Acting Director Infectious Diseases and Infection Prevention, Peninsula Health*

**12:30 Open disclosure and a duty of candour**

- Disclosure of adverse events - Ethics, policy and guidelines
- Barriers and enablers for open disclosure
- Consequences for medical practitioners of failure to disclose adverse events - Disciplinary consequences and civil liability
- Do we need a statutory duty of candour in Australia?

Associate Professor Tina Cockburn, *Australian Centre for Health Law Research*

**13:05** Networking & lunch break

**14:05 Doctors using social media – Recent changes, controversies and cases**

Tim Bowen, *Manager, Advocacy & Legal Services, MIGA*

**14:40 The child in the middle – Clinical decision-making where parents disagree**

- In most cases, parents agree with each other on the treatment to be provided to their child but how do we manage the cases where they don't?
- What does the law say about what to do when one parent objects to the recommended treatment?
- How does this play out in practice and what are the ramifications for the clinician, the hospital and, most importantly, the child?

Annabelle Mann, *General Counsel, The Royal Children's Hospital Melbourne*

**15:15 Voluntary Assisted Dying in Australia: Current law and future reforms**

- History of reform efforts
- Almost two years of the Voluntary Assisted Dying Act 2017 (Vic): where are we now?
- Status of reform efforts: WA law, Queensland Bill/law, Tasmanian law (if this passes)
- Contrast Australian position with select international jurisdictions
- Monitoring, reporting and oversight – Are current mechanisms sufficient and where are the gaps?

Dr Eliana Close, *Australian Centre for Health Law Research*

**15:50** Networking & refreshment break

**16:15 Australian Commission on Safety and Quality in Health Care new guidance for clinicians on how to obtain informed consent in health care**

- Requirements, application and implications

Kylie Agland, *Partner, HWL Ebsworth*

**16:50 IN CONVERSATION | The Patients behaving badly – Balancing duty of care and trespass to the person**

- It is uncontested that ED staff owe a duty of care to patients who are aggressive or violent but what constitutes a breach of that duty is less clear
- Sometimes ED staff restrain and sedate aggressive patients against their will in order for tests to rule out serious illness to be done or for time to elapse and diffuse the situation
- But could such action, in certain circumstances, be trespass to the person or false imprisonment?
- What would be the 'reasonable' steps a clinician should take before deciding a course of action?

Professor Anne-Maree Kelly, *Senior Emergency Physician, Western Health, Melbourne, Adjunct Professor, ACHLR, Queensland University of Technology*

Bill Madden, *Special Counsel, Carroll & O'Dea Lawyers*

Associate Professor Tina Cockburn, *Australian Centre for Health Law Research*

**17:30** Closing remarks from the Chair & Networking Function

8:30 Registration

9:00 Opening remarks from the Chair

### 9:10 KEYNOTE OPENING ADDRESS

The Honourable Justice Ian G. Harrison

### 9:50 Widely accepted professional practice

How do doctors and lawyers think differently about what is a 'widely accepted competent professional practice' that provides a defence to an allegation of negligent breach of duty in section 50 of the Civil Liability Act 2002 (NSW) and elsewhere in Australia?

— This defence is adapted from the 1957 English case of *Bolam v Friern Hospital Management Committee*.

Philip Bates, *Barrister*, Sir Anthony Mason Chambers

### 10:25 Covid class actions (Ruby Princess and Aged Care in Victoria)

Vicky Antzoulatos, *Practice Leader Class Actions*, SHINE LAWYERS

11:00 Networking, stretch & refreshment break

### 11:30 Impairment in physicians: Often not total and permanent

From a predominantly clinical perspective this talk will address;

- What do we really mean by a physician being impaired?
- Consideration of impairment as being state dependant and situation sensitive
- The importance of recognising impairment in clinicians
- Complexities in addressing physician impairment

Dr Kym Jenkins, *Chair, Council of Presidents of Medical Colleges (CPMC), Immediate Past President, RANZCP*

### 12:05 Medical staff burnout POST COVID19: What is it, why we should care and what is being done about it?

Dr. Sam Bendall, *Deputy Director WellMD Centre, SLHD, Emergency Physician, Royal Prince Alfred Hospital, Retrieval Specialist and Director of Education, CareFlight & NSW Ambulance State Retrieval Consultant*

### 12:40 Boxell & Ors v Peninsula Health [2019] VSC 830 – Courts and the acceptance of clinical uncertainty

- Chest pain is common in ED. A very rare cause is aortic dissection that, if undiagnosed, is usually fatal. Aortic dissection is over-represented in coronial and medical litigation cases
- For chest pain, Emergency Departments aim to rule out to a reasonable extent serious causes while balancing the risks of investigations. In about 70% of cases, no firm diagnosis is made
- The estimated prevalence of aortic dissection in ED chest pain patients is 1:1000. About 40% are 'missed' on initial assessment
- What level of risk is reasonable and how can that be communicated to courts?
- Duelling experts and the peer professional practice defence

Professor Anne-Maree Kelly, *Senior Emergency Physician, Western Health, Melbourne, Adjunct Professor, ACHLR, Queensland University of Technology*

13:15 Networking & lunch break

### 14:05 Gaining consent for medical treatment for trans and gender diverse youth in Australia

- The Australian legal framework for consent to medical treatment for trans and gender diverse (TGD) youth has occupied a controversial and shifting landscape
- It sits alongside advancing medical knowledge and an increasing incidence of young TGD people seeking treatment
- This presentation examines the case law governing consent for medical treatment of TGD youth, recent key cases and practical difficulties the current law presents for TGD youth, their families and treating doctors

Dr Steph Jowett, *Australian Centre for Health Law Research, School of Law, QUT*

### 14:40 AN ANAESTHETIST'S PERSPECTIVE | When patients want to go home alone after surgery – Who is responsible and what are the alternatives?

- Day surgery has become commonplace over the last 30 years
- Patients are asked to have someone they know take them home and stay with them after their surgery, but some patients choose to go home alone
- What are the risks for a patient who goes home alone and are patients informed of their risks?
- Who is responsible for an adverse outcome if a patient chooses to go home alone?

Dr Amanda Smith, *Private Practice Anaesthetist Perth, Western Australia; LLB student, Murdoch University*

### 15:15 The civil claims area of causation

Richard O'Keefe, *Barrister*, Maurice Byers Chambers

15:50 Networking & refreshment break

### 16:10 Junk Science and Expert Evidence: Is there too much junk in the Australian medical expert's trunk?

- An exploration of the US concept of 'junk science' and its practical application in Australian medical negligence claims

Andrea de Souza, *Barrister*, Greens List

Shari R. L. Libby, *Accredited Personal Injuries Specialist, and Principal Lawyer in Medical Negligence, Slater and Gordon Lawyers*

### 16:45 CLOSING PANEL DISCUSSION | The future of healthcare and hospitals – From GPs to surgery in a post COVID world – What will the next 5/10/20 years present?

- Emerging issues
- Wait lists
- Increase in consumer knowledge
- Use of AI in all aspects of health care
- Telehealth transformations

Moderated by: Richard Laufer, *Chief Legal Officer, Northern Health*

Dr Vijay Roach MBBS MRCOG FRANZCOG, *President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists*

Janine McIlwraith, *Principal Lawyer, Slater and Gordon Lawyers*

Dr Penny Browne, *Chief Medical Officer, Avant*

Professor David Watters AM OBE, *University Hospital Geelong, Barwon Health, Alfred Deakin Professor, Deakin University & Chair, Victorian Perioperative Consultative Council*

17:30 Closing remarks from the Chair & End of Congress

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