



# Protecting your medical equipment

*Hospital operators should ensure that their agreements clearly set out their rights as to ownership and access of equipment*

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Private hospital operators, including specialist oncology facilities, commonly invest in expensive medical equipment, such as linear accelerators. The recent case of *Re Cancer Care Institute of Australia Pty Limited* [2013] NSWSC 37 highlights the issue of protecting ownership in medical equipment. Hospital operators should clearly set out in their agreements with landlords and financiers their ownership rights to equipment that is necessary to operate their hospital facility.

### When does medical equipment become a fixture?

Under Australian law, a chattel (such as equipment) that is affixed to the land, can be regarded as part of the land and ownership can transfer to the landlord once the lease has expired or terminated.

In the above case, Cancer Care Institute of Australia (CCIA) contracted to purchase two Clinic iX linear accelerators and associated equipment (equipment) from Varian Medical Systems Australasia Pty Limited (Varian) for approximately \$9 million.

The equipment was delivered and installed in leased premises within a substantial medical centre situated at Hurstville, NSW, known as the Medica Centre (containing a surgical hospital), owned by Cortez Enterprises Pty Limited (Cortez).

An administrator was appointed to CCIA, and a dispute arose in relation to the ownership of the equipment.

The equipment was attached to steel base frames that were cemented or grouted to the floor of the premises. CCIA granted to Varian and Varian registered a purchase money security

interest (PMSI) over the equipment on the Personal Property Securities Register pursuant to the *Personal Property Securities Act 2009* (Cth).

Justice Black of the NSW Supreme Court held that the equipment had not become a fixture and therefore title had not passed to the landlord, Cortez. The reasons included the following:

- the base frames (which were affixed to the building) were not part of the equipment
- removal and de-installation of linear accelerators was not unusual
- linear accelerators could be removed without substantial damage to the premises or equipment
- the value of the equipment far surpassed the cost of removal (approximately \$60,000)
- the fact that CCIA did not have a registered or written lease or agreement before purchasing the equipment and installing it in the premises tends strongly against any objective intention of CCIA that the equipment had become a fixture (and therefore was to revert to the landlord), due to the equipment's expense and the lack of long-term tenure
- the fact that the equipment was purchased on credit where Varian had a PMSI was inconsistent with an objective intention of CCIA that the equipment would form part of the premises

### Financiers

Whilst the above case did not deal in detail with Varian's security interest, the case is a reminder for hospital operators to carefully read the conditions of security interests which they sign/grant over their assets. Security interests include:

- Romalpa clauses (also known as retention

of title clauses commonly included in terms and conditions of equipment manufacturers or suppliers) and terms of equipment leases

- General Security Deeds (formerly known as fixed and floating charges)

Hospital operators should be aware of “triggers” within the securities which grant to the financier a right to enforce their security interest by either seizing and repossessing the equipment or appointing an administrator or liquidator over the company which granted the security.

### Grants

Whilst not discussed in the above case, last but not least, expensive medical equipment is quite often linked to commonwealth grants. The Radiation Oncology Health Program Grants Scheme provided by the commonwealth pursuant to Part IV of the *Health Insurance Act 1973 (Cth)* provides funding in relation to linear accelerators. It is important that hospital operators ensure that they continue to comply with relevant legislative requirements and grant conditions to secure ongoing grant monies.

The above case is a reminder to hospital operators that various people can claim a right in relation to hospital equipment and to ensure that their agreements clearly set out their rights as to ownership and access. 📄



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*This article is provided for general information purposes only and should not be relied upon as legal advice.*

# IMPORTANT NOTICE

## National briefing sessions on new accreditation requirements – 1.16

As of 1 January 2013, private hospital accreditation requires meeting the 10 NSQHS Standards. Open disclosure (Standard 1.16) is a new requirement, and includes having appropriate policies in place and training all staff prior to your next scheduled recertification audit or organisation-wide accreditation visit.

### These briefings will provide:

- Accreditation requirements for open disclosure
- An organisational readiness checklist
- Changes in the new 2013 open disclosure standard that impact accreditation
- Strategies for successful implementation and staff training, including lessons from leading healthcare organisations

**Who should attend:** CEOs, Directors of Clinical Services, Quality and Risk Managers

**Cost:** \$195, limited places available

### Dates:

- **Brisbane** 3 September
- **Melbourne** 17 September
- **Perth** 10 September
- **Sydney** 18 September
- **Adelaide** 11 September
- **Canberra** 19 September



The national briefing sessions will be presented by **Dr Mark O'Brien**, Medical Director of the Cognitive Institute. The Institute is recognised as an international leader in open disclosure education, and has provided training

to more than 10,000 clinicians in the past 10 years. Its open disclosure work with Mater Health Services in Brisbane is recognised as a successful case study by the Australian Commission on Safety and Quality in Health Care.

**For more information or to register your attendance:**  
phone 07 3511 5000 or visit [cognitiveinstitute.org](http://cognitiveinstitute.org)