

COULD I FACE A CLASS ACTION IF I FAIL TO DIAGNOSE A PATIENT WITH COVID-19?

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Yes! The risk of this presently seems small given the current low rate of community transmission in Australia. However, there only need to be 7+ persons affected in a class action. This is certainly possible if there is an outbreak, for instance, at a workplace, detention centre or aged care facility.

COVID-19 CLASS ACTIONS

There are many situations that could give rise to a class action because of the pandemic. Claims against travel companies for cancellations, claims by employees who contract the virus at work and constitutional challenges to the restrictions on personal liberty come to mind.

The Ruby Princess saga is an example. Shine Lawyers are investigating an action on behalf of all 2,700 passengers against the owners and operators of the Ruby Princess “for failing to safeguard and protect its passengers from the impact of Coronavirus (COVID-19), despite allegedly having existing knowledge of the Coronavirus contamination”.¹ They are also investigating the actions of government authorities regarding the docking and disembarkation of the ship despite 158 cases of illness on board. Since disembarkation, over 440 people have been diagnosed with COVID-19.

In the health care context, class actions in Canada were brought concerning the allegedly insufficient measures taken to prevent the spread of the SARS virus.² Claims against hospitals (including doctors)³ for failures to adequately plan for the control, diagnosis and treatment of the disease concerned the use of respiratory equipment, proper isolation of known or suspected cases and the adequacy of systems to protect other patients and visitors.

Similarly, Australian health care facilities and professionals are required to have proper systems in place to deal with an outbreak. Doctors could be held liable for failing to recommend testing or failing to advise patients to go directly home and avoid public spaces after COVID-19 testing. Claims may also arise where testing results have not been advised to patients in a timely manner, or where inaccurate results are communicated.

We could also see claims against testing facilities, laboratories, and manufacturers or suppliers of testing equipment and PPE relating to failures to diagnose or protect against the virus.

In failure to diagnose cases, the outcome could be dire if a patient transmits the disease to others quickly. The risk of a second or third wave, as well as the known instances of “super spreaders”, suggest that the situation has the potential to remain volatile for some time

pending a vaccine or treatment. The reproductive rate, which is context specific, has been variably assessed at between 1.2 and greater than 44 since the pandemic began, accounting for the steep curves that we have seen on the various graphs.

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