

# STRICT ADHERENCE TO THE MENTAL HEALTH ACT, IS IT NECESSARY?

23 NOVEMBER 2017 | HEALTH SECTOR

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The Supreme Court of the ACT has determined that the defendant's failure to have the plaintiff assessed in accordance with the *Mental Health (Treatment & Care) Act 1994* (ACT) was a breach of its duty as the entity responsible for the management of the hospital, and was causative of the injuries suffered by the plaintiff.

## In Issue

- Whether the failure to adhere to the *Mental Health (Treatment & Care) Act 1994* (ACT) constitutes a breach of duty of care.
- Whether there was a causal connection between the breach and the damage.
- Whether the standard of care provided to the plaintiff was consistent with widely accepted peer professional opinion.

## The Background

The plaintiff was taken to the emergency department of Canberra Hospital in the early hours of 12 September 2007 following an attempt to commit suicide.

Some hours later, the plaintiff fled the ward into a multi-level car park. He was located and subsequently chased by a security guard resulting in the plaintiff jumping from the car park onto the ground.

The fall resulted in the plaintiff sustaining fractures to both his feet and ankles.

## The Decision

The finding of the court turned on the relevant expert evidence of the parties and whether the actions of the defendant were considered to be widely accepted competent professional practice in Australia. Of importance was the determination as to whether the plaintiff had been adequately assessed pursuant to the *Mental Health (Treatment and Care) Act 1994* (ACT) (the Act).

Ultimately the court accepted the evidence of the plaintiff's expert, Dr Raftos, who considered that had the plaintiff received a properly conducted mental health assessment within four hours of his arrival at the Hospital (as required under section 40 of the Act), it would have resulted in an order for involuntary detention under section 41 of the Act.

Further, had that occurred, it was considered probable that the plaintiff would not have been able to abscond and would not have sustained the claimed injuries.

The court deemed that there was a failure by the defendant to respond adequately to the knowledge that the plaintiff was delusional and prone to self-harm, in part evidenced by its failure to have the plaintiff assessed by a medical practitioner within the four hour timeframe and the consequent failure to obtain authorisation for involuntary detention under the Act.

On the basis of the evidence of Dr Raftos, the court was satisfied that a competent authority in charge of management of the plaintiff in 2007 would have complied with the requirement of the Act. As such, the court was satisfied that there was a breach of duty of care. The court deemed that there was a sufficient causal nexus between the breach of duty and the damage sustained by the plaintiff to found an action in negligence.

The plaintiff was awarded \$130,440.10 in damages including an award of \$95,000 for general damages.

### Implications for you

This case reaffirms the obligations of medical authorities to adhere to legislative requirements and that a failure to do so will leave them potentially exposed to an action in negligence. Further, the case is a timely reminder to authorities to ensure employees are aware of their obligations pursuant to the various Acts.

*LC by his litigation Guardian KS v Australian Capital Territory [2017] ACTSC 324*

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