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# Mandatory counselling? Queensland Supreme Court says "No"
# *James v State of Queensland* [2018] QSC 188

## Key Points

- The plantiff (a paramedic) claimed mandatory follow-up post trauma by the Queensland Ambulance Service (QAS) would have reduced his psychiatric injury and should have been imposed.
- The plantiff was aware that counselling was available to him under QAS' autonomous mental wellbeing support programme.
- The law must respect individual autonomy and not mandatorily enforce treatment following traumatic incidents.

## Background

Mr James, a paramedic with the QAS (**plaintiff**), claimed for psychiatric injuries after attending various horrific traumatic incidents, including a teenage boy who was mauled by dogs who subsequently died from his injuries.

The plaintiff alleged that his injury would not have been as severe and prolonged if the QAS had mandatorily supported him through its "Priority One" mental well-being support programme for staff members.

The Court was to determine whether the QAS had breached their duty of care in reference to Priority One, and not activating a Critical Incident Stress Debriefing (**CISD**).

## The Law

Justice Henry followed Keane JA in *Hegarty v QAS*[1] concerning the extent of an employer's obligation to counsel traumatised workers, i.e. that there were limits to what an employer can impose upon a worker having regard to the vital values of autonomy, privacy and dignity in the context of ambulance officers and psychiatric injuries.

This is related to the well known principle that there are very few situations where individuals can be forced to undergo health care against their will.

[1] *Hegarty v QAS* [2007] QSC 90.

## Conclusion

**Priority One**

Justice Henry found the plaintiff was well aware of the availability of counselling via Priority One. Also, the plaintiff had received training and education in recognising critical incident stress indicators to allow him to identify if he needed to seek treatment.

During the 1990s, a mandatory follow-up of paramedics by Peer Support Officers following critical incidents was trialled in QAS districts. However, more problems than benefits arose out of the trial which caused it to be discontinued prematurely after only a few months. As a result, the QAS deemed that mandated follow-ups were not suitable or needed.

Justice Henry held that the QAS was not obliged to mandatorily impose assistance on the plaintiff as 'the employer's obligation is to take reasonable care, not invasive or dictatorial care.'[2] And so the Priority One programme was a reasonable response to the risk.

**Critical Incident Stress Debriefing**

Justice Henry held that CISD was not required to be implemented after the plaintiff's first incident as it was designed for groups, rather than individual intervention.

## Lessons Learnt

Employers are not obliged to provide mandatory counselling. A voluntary counselling programme will discharge an employer's duty so long as employees are made aware of the availability of counselling and how to access it.

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[2] *James v State of Queensland* [2018] QSC 188, 40 [148].