

By Ngaire Watson

Where does one start, as a legal practitioner, to assist a client with a psychiatric injury? According to the Black Dog Institute, mental disorders are the third leading cause of the non-fatal burden of disease and injury in Australia.¹

Our society places much significance on the functioning of one's mind. It is inextricably linked with who one is – one's personality, the ability to function in the world. At the core, in law and in medicine, we highly value the ability to act autonomously. Dr Jungfer looks at how we determine whether a person can act autonomously through the medical assessment of capacity. This is our starting block. The quantification of the functioning of the mind is the realm of psychological testing. Tom Sutton takes up this topic and points out that choosing, and then interpreting, the right test from the batteries that exist takes much training and experience.

The case of the ex-Qantas pilot, discussed by Patrick Coetsee, serves well to highlight how a psychiatric injury can specifically affect a person in their work. As a highly functioning person, as a pilot, the man had an enormously responsible job at the time he developed obsessive compulsive disorder. The role of the lawyer is apparent in this case, as it is not until the evidence is assembled, and the connections are made, that the ex-pilot can bring his case and is ultimately successful in his workers' compensation claim.

A most serious repercussion of the failure of systems – health, educational and in the community at large – occurs when a person commits suicide. When this happens, the shock wave travels through families and the

community. David Hirsch identifies a disturbing statistic: that approximately every four hours in Australia a person takes their own life. Ian Freckelton points out from *Corr v IBC Vehicles Ltd*² that one judge, Lord Bingham, gave consideration to whether suicide is separate in some way from psychiatric and personal injury. This distinction is thought to have its origins in a previous time, when suicide was considered a crime, and how even now there remains a religious prohibition against suicide.

It is currently intensely politically topical – with a federal election approaching – to consider the association of psychiatric injury with people seeking asylum. Drs Rees, Silove, Phillips and Steel examine the duty of care owed by the Commonwealth of Australia towards immigration detainees. Australia's ethical responsibility will remain towards these people beyond the August election and the associated hype. It is concerning that the plight of desperate people has become a political football. Media images of people approaching Australia in crowded, leaking boats has whipped up a public storm which is ultimately based on ignorance, racism and fear. Prolonged detention in Australia brings its own trauma to people trying to escape oppression. ■

Notes: 1 Black Dog Institute, <http://www.blackdoginstitute.org.au/docs/FactsandFiguresfactsheet.pdf>, accessed 19/7/10.
2 [2008]UKHL 13.

Ngaire Watson is a barrister with a special interest in health law; she has a background in nursing. **PHONE** 0403 487 488

EMAIL ngaire.watson@counsel.net.au

NATIONAL COUNCIL **National President** Brian Hilliard **President-Elect** Greg Barns
DIRECTORS **ACT** Bill Andrews **NSW** Anthony Scarcella **NT** Nicole Dunn **QLD** Justin Harper
SA Anthony Kerin **TAS** Greg Barns **VIC** Geraldine Collins **WA** Tom Percy QC

BRANCH PRESIDENTS **ACT** Mark Blumer **NSW** Jnana Gumbert **NT** Nicole Dunn
QLD Adam Taylor **SA** Anthony Kerin **TAS** John Green **VIC** Geraldine Collins **WA** Tom Percy QC

STAFF **General Manager** Michel Geurts michel@lawyersalliance.com.au

Conference Manager Maja Maunic maja@lawyersalliance.com.au

Public Affairs Manager Mandy Wyer mandy@lawyersalliance.com.au

Member Services Officer Nancy Hanna nancy@lawyersalliance.com.au

Publications Officer Renée Harris renee@lawyersalliance.com.au

Legal and Policy Officer Patrick Coetsee patrick@lawyersalliance.com.au

Event Co-ordinator Jessica Younan jessica@lawyersalliance.com.au

PRECEDENT Editorial Committee Toni Emanuele, Jnana Gumbert, Michal Horvath, Jennifer Newman, Morgan O'Brien-Powell, Paul Ohm, Richard Royle, Tim Tobin SC, Ngaire Watson, Emma White, Ben Zipser

Editor and Production Manager Renée Harris renee@lawyersalliance.com.au **Phone:** (02) 9258 7721 **Locum Editor** Vicky Fisher

Design Tianli Zu tian@artstudiozz.com.au

This issue of Precedent is cited as (2010) 99 PRECEDENT. ISSN 1449-7719 © 2010 Australian Lawyers Alliance, ABN 96 086 880 499
Trading as the Australian Lawyers Alliance, GPO Box 7052, Sydney 2001, DX 10126, Sydney Stock Exchange **Phone:** (02) 9258 7700 **Fax:** (02) 9258 7777
Email: enquiries@lawyersalliance.com.au **Website:** <http://www.lawyersalliance.com.au>

PRECEDENT is published bi-monthly by the Australian Lawyers Alliance Ltd. Contributors and advertisers should submit their copy and/or artwork in electronic form by the agreed deadline.

Disclaimer: Views expressed by the contributors are not necessarily endorsed by the Australian Lawyers Alliance Ltd. No responsibility is accepted by the company, the editor or the contributors for the accuracy of the information contained in the text and advertisements. The Alliance does not necessarily endorse any of the products or services advertised. Copyright in this material is retained by the publisher, the Australian Lawyers Alliance Ltd. No part of this material may be reproduced or transmitted in any form or by any means, electronic or mechanical, without permission in writing from the publisher, the Australian Lawyers Alliance Ltd. Enquiries should be directed to enquiries@lawyersalliance.com.au.

Precedent is now being produced in a more ecologically sustainable manner. For details, see <http://www.lawyersalliance.com.au/precedent.php>

Lawyers

