

## ***Paramedic Perceptions of Law***

### **Summary of study findings**

The *Paramedic perceptions of law* study was designed to explore the extent to which perceptions of 'the law' influenced the decisions made by paramedics in the field. Ten registered Australian paramedics with experience ranging from two to thirty-four years' participated in one thirty-minute telephone interview each during March and April 2020. This study was approved by both the ANU Human Research Ethics Committee, (Protocol 2019/905 approved 16 December 2019) and the ACT Health Human Research Ethics Committee (Protocol 2019.LRE.00262 / REGIS #2019/ETH13983, approved 29 January 2020).

#### **Participant perceptions**

##### *What does the law require?*

Most participants felt that the law required them to strictly adhere to the requirements of their Treatment Protocols or Clinical Practice Guidelines (CPGs). In some jurisdictions there was an internal process within the ambulance service for submitting a variation to clinical practice. Participants from these jurisdictions appeared to believe that diverging from a CPG while treating a patient, and not subsequently reporting this variation, could constitute a breach of the law and attract disciplinary action.

##### *Should the CPGs always be followed?*

Almost every participant recounted a time when they had been involved in treating a patient, and where following the CPGs would not have been in the best interests of that patient. The more problematic CPGs described involved those which strongly favoured transport to hospital, or required extensive clinical surveys including electrocardiography and blood glucose monitoring before paramedics were permitted to leave the patient at home. Although participants felt that the majority of patients did not need to be transported, these additional checks were described as invasive, time consuming and unnecessary, such that they were ultimately not in the patient's best interests.

##### *What if CPGs are not followed?*

Most participants felt that any variation to the CPG was likely to meet disciplinary action from their employer and possibly from the Paramedicine Board. Although participants discussed discipline by the Board and the Service as synonymous, participants' language suggested that the fear of being fired was generally greater than the fear of professional sanction. Several participants reported that they would not feel comfortable diverging from the CPGs, even if it was in the best interests of their patient, for fear of losing their job.

##### *What about mental health patients?*

Although mental health law was not a predetermined focus of this study, participants spontaneously raised their uncertainties about the application of their jurisdiction's *Mental Health Act*. Multiple participants reported fears that they or their colleagues may not understand the criteria in the Act. Some participants expressed concern that some patients had been transported to hospital without either their consent or appropriate statutory authority. One participant also expressed concerns about the degree to which they are expected to assist police in detaining a person when police and paramedics disagree about whether the person meets the criteria for detention under the Act.

## Responding to the issues

'Clinical practice guidelines' and 'treatment protocols' are both regarded by the Court as 'guidelines.' These documents set out key the factors for paramedics to consider when faced with particular presentations, but these guidelines do not mandate that paramedics take a particular course of action. In my paper, I discuss the two key cases of *Ambulance Service of NSW v Worley* [2006] NSWCA 102 and *Masson v State of Queensland* [2019] QCA 80 in detail.

In *Masson*, the Queensland Supreme Court reasoned that although they could not proscribe a course of conduct, the CPGs did require the paramedic to at least consider the treatment described in it. The Supreme Court did not accept that the paramedic genuinely considered adrenaline as required by the CPG, and instead administered intravenous salbutamol well in excess of the recommended dosage. For these reasons, the Supreme Court found that the paramedic had acted negligently.

The current research was conducted for an honours thesis due and submitted early June 2020. On 13 August 2020 the High Court of Australia unanimously overturned the Queensland Supreme Court's findings in favour of the trial judge's determination – that the paramedic was not negligent.

The High Court found that the paramedic had weighed up the numerous competing clinical considerations as best they could in the circumstances. The High Court also recognised the urgency with which the paramedic had to make the decision, noting that the situation could easily 'have gone either way' (*Queensland v Masson* [2020] HCA 28 at [139]). The High Court recognises that paramedics must be able to exercise their clinical judgement, and diverge from the CPGs where it is in the patient's best interests do to so.

On the surface, Australia's *Mental Health Acts* appear to be uniform however on close examination there are significant differences between jurisdictions. Everywhere except Victoria and Western Australia, a paramedic may detain a person and take them to hospital without their consent if they have a mental disorder and, because of that disorder, they pose a risk of serious harm to themselves or others. In some jurisdictions, a person may be detained if there is a risk that they will damage property, or if their detention is necessary to treat another condition. The definition of 'mental illness' or 'mental disorder' varies between jurisdictions; some states set out relevant considerations while others offer no assistance to the treating officer. In only some jurisdictions can a person's drug or alcohol use can be considered when making this assessment. Based on the views expressed by participants in this study, it is apparent that Australia's ambulance services could do more to educate their paramedics on the law as it applies in their jurisdiction, including which officer has decision-making authority when multiple emergency services attend the same case.

This research was conducted for an Honours project to conclude my Bachelor of Science & Bachelor of Laws (Honours) double degree. The final thesis has been graded but will need to be rewritten to incorporate markers' comments and update the discussion of *Masson*.

The full thesis as was submitted for grading can be downloaded [here](#) (PDF, 384KB).

I must again thank all ten participants for their time and frank discussions. Please feel free to contact me to discuss any questions you may have about the study process or these findings

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