

FILED

09 NOV 2012

MH



(Amended) STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	General
List	Common Law
Registry	Sydney
Case number	2012/237593

TITLE OF PROCEEDINGS

Plaintiff	JOHN EDWIN PINK
First defendant	THE STATE OF NEW SOUTH WALES
Second Defendant	ILLAWARRA SHOALHAVEN LOCAL HEALTH DISTRICT
Third Defendant	Dr. Matthew Hearps
Fourth Defendant	Dr. Sharat Lal
Fifth Defendant	Dr. Barbara Sinclair
Sixth Defendant	Dr. Harsha Ediriweera
Seventh Defendant	Dr. Paul Praser
Eighth Defendant	Dr. Tihoslav Pesut
Ninth Defendant	Dr. Mona Idris
Tenth Defendant	Dr. Hassan Abass
Eleventh Defendant	Dr. Ye Yint
Twelfth Defendant	Dr. Nalin Wijesinghe
Thirteenth Defendant	Dr. Roger Wenden
Fourteenth Defendant	Dr. Beverley Rayers
Fifteenth Defendant	Dr. Sara-Beth Magambo
Sixteenth Defendant	Dr. Charles J. Austin-Woods
Seventeenth Defendant	Dr. Narinder Panesar

For head JP 145713

John Edwin Pink

FILING DETAILS

Filed for **JOHN EDWIN PINK** the plaintiff

Contact name and telephone John Edwin Pink (02) 4285 3155

TYPE OF CLAIM

Torts – Trespass to Person – False Arrest, Assault, Battery, False Imprisonment

RELIEF CLAIMED

1. Ordinary Damages;
2. Aggravated Damages;
3. Exemplary Damages;
4. Interest pursuant to section 100 of the Civil Procedure Act 2005;
5. Costs, including fees paid to lawyers M. Russoniello, S. Tully, M. McCulloch, W. Baffsky and J. Emmett who did much preparatory work prior to my electing to represent myself; and
6. Such other orders as the Court thinks fit.
7. Ordinary, aggravated and exemplary damages totalling \$2 million from 1st defendant;
8. Ordinary, aggravated and exemplary damages totalling \$4.6 million from 2nd defendant;
9. Ordinary, aggravated and exemplary damages totalling \$40,000.00 from 3rd defendant;
10. Ordinary, aggravated and exemplary damages totalling \$400,000.00 from each of the 6th, 7th, 8th, 9th, 10th and 11th defendants, and
11. Ordinary, aggravated and exemplary damages totalling \$280,000.000 from each of the 4th, 5th, 12th, 13th, 14th, 15th, 16th, and 17th defendants.

[Damages from all defendants total **\$11,280,000.00** (11 million 280 thousand dollars)].

PLEADINGS AND PARTICULARS

The Plaintiff relies upon the following facts and assertions:

1. The first defendant is sued pursuant to the section 5 of the *Crown Proceedings Act 1988* (NSW).
2. At all material times each of the police officers referred to in this statement of claim were;
 - a) pursuant to section 6 of the *Law Reforms (Vicarious Liability) Act, 1983* (NSW), a person in the service of the Crown;
 - b) acting in the performance or purported performance of their functions as a police officer; and
 - c) so acting where the performance or purported performance of their functions was in the course of their service of the Crown or was an incident of that service.
3. By reason of the matters pleaded in paragraph 2 above, the first defendant is, pursuant to section 8(1) of the *Law Reform (Vicarious Liability) Act, 1983* (NSW) vicariously liable for the conduct of the police officers referred to in this statement of claim.
4. The second defendant is sued pursuant to s 22 *Health Services Act, 1997* (NSW) as a "Local Health District" as defined in s8 *Health Services Act, 1997* (NSW), constituted under s 17 *Health Services Act, 1997* (NSW).
5. The third to seventeenth defendants are sued pursuant to sections 12 to 16 of the *Mental Health Act, 2007* (NSW).
 - 5.1 The third defendant, Dr. Matthew Hearps is sued for assault for scheduling the plaintiff without justification.
 - 5.2 The fourth to seventeenth defendants are sued for assault and false imprisonment.

5.3 In addition, the sixth, seventh, eighth, ninth, tenth and eleventh defendants, respectively Drs. Ediriweera, Praser, Persut, Idris, Abass and Yint are sued for battery.

6. On 1 January 2011 the second defendant assumed responsibility from the South Eastern Sydney Illawarra Area Health Service (**SESIAHS**) for the conduct and management of the Wollongong Hospital and Shellharbour Hospital.
7. From 1 January 2011, the second defendant by virtue of Clause 15(2) *Health Services (Transfer of Assets, Rights and Liabilities) Order 2010* (NSW) assumed the liabilities of SESIAHS with respect to the Wollongong Hospital and Shellharbour Hospital.
8. At all material times the Wollongong Hospital and Shellharbour Hospital's medical practitioners, nurses and staff (**the NSW medical staff**), were in the employ of SESIAHS.
9. At all material times the second defendant was vicariously liable for the conduct of the NSW medical staff pleaded below.

First Detention

10. On or about 2 April 2010, the plaintiff was in his residence at 11 Lake Parade Corrimal East in the State of New South Wales (**the plaintiff's residence**).
11. At about 10.30 am on 2 April 2010 three (3) NSW police officers attended the plaintiff's residence together with two (2) Wollongong Community Mental Health Team workers and requested that the plaintiff accompany them for a medical assessment.
12. The plaintiff refused the police officers' request pleaded in paragraph 11 above.
13. The police officers then informed the plaintiff that he had been 'scheduled' and was required by law to accompany them for a medical assessment.

14. The representation pleaded in paragraph 13 was false.

Particulars

14.1 The plaintiff had not been “sectioned”; and

14.2 The plaintiff was not lawfully required to accompany the police officers for any reason whatsoever.

15. Induced by the belief that the representation pleaded in paragraph 13 was correct, the plaintiff agreed, notwithstanding his original refusal to do so, to accompany the police officers to the Mental Health Inpatient Unit at Wollongong Hospital.

16. The actions of the police officers in making the representation’s pleaded in paragraph 13 above and then taking the plaintiff to Wollongong Hospital amounted to a wrongful arrest and a false imprisonment of the plaintiff.

17. The actions of the police officer in touching the plaintiff amounted to a battery of him.

18. The plaintiff was thereafter held at Wollongong Hospital until 22 April 2010 as a direct consequence of the representations pleaded in paragraph 13 above.

19. The detention of the plaintiff at Wollongong Hospital constituted a continuing false imprisonment by the police officers.

20. The actions of the NSW medical staff pleaded in paragraphs 21 to 27 below constituted a series of batteries for which the first defendant is liable as a direct result of the matters pleaded in paragraphs 13 and 18 above.

21. On or about 6 April 2010 NSW medical staff represented to the plaintiff that he was required to take some medication under the Mental Health Act and if he did not voluntarily take the medication NSW medical staff would restrain him and he would then be injected with the medication.

Particulars

- 21.1 The Plaintiff was induced by NSW medical staff against his will to take 200 mg of Seroquel, and also Diazepam, both antipsychotic medications (**the medication**).
22. The actions of the NSW medical staff pleaded in paragraph 21 constituted an assault upon the plaintiff.
23. The administration of the medication and its subsequent effects constituted a battery of the plaintiff.
24. On or about 6 April 2010 after the plaintiff was assaulted and battered by NSW medical staff, he was transferred against his will by the NSW medical staff to Shellharbour Hospital.

Particulars

- 24.1 The plaintiff was strapped to a gurney in the back of an Ambulance.
25. Between 6 April 2010 and 22 April 2010 the plaintiff was wrongfully required by NSW medical staff to continue to take the medication.

Particulars

- 25.1 The Plaintiff was induced by NSW medical staff to take up to 600 mg a day of the medication under the falsehood that he was required to be medicated under the Mental Health Act.
26. The administration of the medication by NSW medical staff and its subsequent effects constituted a battery of the plaintiff.
27. On or about 9 April 2010 the plaintiff was transferred against his will by the NSW medical staff to Wollongong Hospital.

28. On or about 10 April 2010 the NSW medical staff forced the plaintiff against his will to have a CAT Scan.
29. The act of NSW medical staff to force the plaintiff have a CAT Scan constituted an assault against the plaintiff and the subsequent effects of the radiation from the CAT Scan constituted a battery of the plaintiff.
30. On 22 April 2010 the plaintiff was brought before Magistrate Mabbutt sitting in his capacity as a Magistrate of the NSW Local Court.
31. On 22 April 2010 Magistrate Mabbutt ordered the second defendant to release the plaintiff.
32. During the period 2 April 2010 until 22 April 2010 the plaintiff was detained by the second defendant against his will as an involuntary patient.
33. The detention of the plaintiff was intentionally and unlawfully affected by the NSW medical staff when they no reasonable cause or excuse to keep the plaintiff in hospital and amounted to a false imprisonment of the plaintiff.

Particulars

- 33.1 The plaintiff asserted to the NSW medical staff that that he was not mentally ill.
- 33.2 NSW medical staff ignored the plaintiff's assertion.
- 33.3 The plaintiff was not a mentally ill person as defined by section 14 of the Mental Health Act.
- 33.4 The plaintiff did not meet any of the criteria under the Mental Health Act for involuntary admission and detention in a hospital.

Second detention

34. At about 12.00 pm on or about 11 June 2010 NSW police officers and NSW medical staff attended and entered the plaintiff's residence and detained the plaintiff against his will informing the plaintiff that he must accompany them.

Particulars

- 34.1 The NSW medical staff represented to the plaintiff that he had been 'scheduled' and was required by law to accompany them.
- 34.2 The police officers represented to the plaintiff that he had been 'scheduled' and was required by law to accompany them.
35. Each of the representations particularised in paragraph 34 were false.

Particulars

- 35.1 The plaintiff had not been 'scheduled' at that time.
36. Induced by the belief that the representation pleaded in paragraph 34 was correct, the plaintiff agreed to accompany the police officers to the Mental Health Inpatient Unit at Wollongong Hospital.
37. The plaintiff was thereafter delivered against his will by the NSW police officers to the Emergency Department of Wollongong Hospital and in the course of so doing wrongfully touched the plaintiff.
38. On 11 June 2010 Dr Sharat Lal wrongfully issued a certificate under section 19 of the Mental Health Act

Particulars

- 38.1 The plaintiff was not a "mentally ill person" as defined by section 14 of the Mental Health Act;
- 38.2 There was no one who was at risk of serious harm; and
- 38.3 There was no proper basis upon which a certificate under section 19 of the Mental Health Act could be given.

39. The actions of the police officers and the NSW medical staff amounted to an unlawful arrest, a battery and a false imprisonment of the plaintiff.
40. At about 8.00 pm on or about 11 June 2010 the plaintiff was transferred against his will by the NSW medical staff to Shellharbour Hospital.
41. On or about 15 June 2010 the plaintiff was transferred against his will by the NSW medical staff to Wollongong Hospital.
42. From on or about 15 June 2010 to 17 June 2010 the plaintiff was told by NSW medical staff that he was required to take some medication.

Particulars

- 42.1 The NSW medical staff falsely represented to the plaintiff that he was required to be medicated under the Mental Health Act and was required to take two doses of 1 mg of Risperidone, an antipsychotic medication.
43. The act of NSW medical staff to requiring the plaintiff to take the Risperidone constituted an assault against the plaintiff and the subsequent taking of and the effects of the medication constituted a battery of the plaintiff.
44. During the period 11 June 2010 until 17 June 2010, the plaintiff was wrongfully detained by the second defendant against his will.

Particulars

- 44.1 The NSW medical staff had no reasonable cause or excuse to detain the plaintiff.
45. On 17 June 2010 the plaintiff was brought before Magistrate Beattie of the NSW Local Court.
46. On 17 June 2010 Magistrate Beattie ordered the second defendant to release the plaintiff.

Damages

47. In consequence of:

47.1 each of the false imprisonments; and

47.2 each of the assaults and batteries,

the plaintiff has suffered deprivation of liberty, fear, humiliation, indignity, outrage, discomfort, distress, damage to his reputation, and suffered great inconvenience, mental stress, loss and damage.

48. At all times while he was wrongfully arrested and falsely imprisoned, the plaintiff;

48.1 had a continuing apprehension of imminent physical contact whenever he was directed to do something; and

48.2 did not consent to being touched by members of the police force or officers of the NSW medical staff.

49. The plaintiff suffered unusual loss and claims aggravated damages.

Particulars of claim for aggravated damages:

49.1 The conduct of the NSW police officers and/or NSW medical staff in making the representations pleaded in paragraphs 13 and 34 was reprehensible in the circumstances;

49.2 the plaintiff's feelings of humiliation, insult, indignity, outrage, fear and distress were exacerbated by his belief that he was not a mentally ill person or a mentally disordered person and that he should not be taken to hospital and detained there against his will;

49.3 the police officers and the NSW medical staff ignored his repeated protestations that he was not mentally ill and did not want to be hospitalised and medicated ;

- 49.4 the plaintiff was taken away from his home in a police car;
- 49.5 the plaintiff was medicated and tied to a gurney;
- 49.6 the plaintiff feared that he might never be released from hospital;
- 49.7 the NSW medical staff who examined the plaintiff ignored his pleas that he wanted to be discharged;
- 49.8 the plaintiff was at times terrified during both periods of hospitalisation;
- 49.9 the NSW medical staff opposed his release before the NSW Mental Health Tribunal and the Local Court;
- 49.10 the NSW medical staff sought to delay the hearings before Magistrates Mabbutt and Beattie; and
- 49.11 the conduct of the NSW police was malicious.

50. In addition to general damages and aggravated damages, the plaintiff claims exemplary damages:

Particulars

- 50.1 the plaintiff repeats the particulars to paragraph 49 above;
- 50.2 The conduct of the NSW police officers and/or NSW medical staff was conscious and contumelious disregard for the plaintiff's rights;
- 50.3 The conduct of NSW police officers and/or NSW medical staff was high handed and an abuse of power; and
- 50.4 The conduct of NSW police officers and/or NSW medical staff was malicious.

51. The plaintiff claims damages, aggravated damages, exemplary damages, costs and interest.

SIGNATURE

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity Plaintiff

Date of signature

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- Law Access NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1. **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.

2. **If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
3. **If money is claimed, and you believe you owe part of the money claimed, by:**
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Civil Registry 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name **JOHN EDWIN PINK**
Address 283 Princess Highway Corrimal NSW 2518
Occupation Retired
Date

I say on oath/affirm:

1. I am the plaintiff.
2. I believe that the allegations of fact in the statement of claim are true.

SWORN/AFFIRMED..

..... at

Signature of deponent

Signature of witness

Name of witness

Address of witness

Capacity of witness Justice of the Peace/Solicitor

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

JOHN EDWARD PINK

First defendant

THE STATE OF NEW SOUTH WALES

Second Defendant

**ILLAWARRA SHOALHAVEN LOCAL
HEALTH DISTRICT**

Third Defendant

Dr. Matthew Hearps

Fourth Defendant

Dr. Sharat Lal

Fifth Defendant

Dr. Barbara Sinclair

Sixth Defendant

Dr. Harsha Ediriweera

Seventh Defendant

Dr. Paul Praser

Eighth Defendant

Dr. Tihoslav Pesut

Ninth Defendant

Dr. Mona Idris

Tenth Defendant

Dr. Hassan Abass

Eleventh Defendant

Dr. Ye Yint

Twelfth Defendant

Dr. Nalin Wijesinghe

Thirteenth Defendant

Dr. Roger Wenden

Fourteenth Defendant

Dr. Beverley Rayers

Fifteenth Defendant

Dr. Sara-Beth Magambo

Sixteenth Defendant

Dr. Charles J. Austin-Woods

Seventeenth Defendant

Dr. Narinder Panesar

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name

JOHN EDWIN PINK

Address

283 Princes Highway, Corrimal, NSW 2518

DETAILS ABOUT DEFENDANTS

First Defendant

Name **THE STATE OF NEW SOUTH WALES**
Address I V Knight
Crown Solicitor
Crown Solicitor's Office
Level 5, 60 – 70 Elizabeth Street
SYDNEY NSW 2000

Second Defendant

Name **ILLAWARRA SHOALHAVEN LOCAL HEALTH DISTRICT**
Address Level 4 Lawson House
Wollongong Hospital
WOLLONGONG NSW 2500

Third Defendant

Name **Dr. Matthew Hearps**
Address 450 Wilson Street
Darlington NSW 2008

Fourth Defendant

Name **Dr. Sharat Lal**
Address C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500

Fifth Defendant

Name

Dr. Barbara Sinclair

Address

C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500**Sixth Defendant**

Name

Dr. Harsha Ediriweera

Address

C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500**Seventh Defendant**

Name

Dr. Paul Praser

Address

80 Symons Road,
Sunnybank Hills, Qld 4109**Eighth Defendant**

Name

Dr. Tihoslav Pesut

Address

C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500**Ninth Defendant**

Name

Dr. Mona Idris

Address

56 Burbank Avenue
Picnic Point, NSW 2213

Tenth Defendant

Name **Dr Hassan Abass**
Address 17 Oyster Point Road
Banora Point, NSW 2486

Eleventh Defendant

Name **Dr. Ye Yint**
Address 6/170-172 The Entrance Road
The Entrance, NSW 2261

Twelfth Defendant

Name **Dr. Nalin Wijesinghe**
Address C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500

Thirteenth Defendant

Name **Dr. Roger Wenden**
Address C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500

Fourteenth Defendant

Name **Dr. Beverley Rayers**
Address C/O Illawarra Shoalhaven Local Health District
Level 4 Lawson House, Wollongong Hospital,
Wollongong NSW 2500

Fifteenth Defendant

Name **Dr. Sara-Beth Magambo**
Address 15 Parkview Grove,
Mt. Ousley, NSW 2519

Sixteenth Defendant

Name **Dr. Charles J. Austin-Woods**
Address 51 Seymour Drive,
Flinders, NSW 2529

Seventeenth Defendant

Name **Dr. Narinder Panersar**
Address 36 Evans Street,
Wollongong, NSW 2500