



HIGH COURT OF AUSTRALIA

14 June 2017

STATE OF NEW SOUTH WALES v DC & ANOR [2017] HCA 22

Today the High Court revoked a grant of special leave to appeal against a decision of the Court of Appeal of the Supreme Court of New South Wales. The High Court unanimously held that the case was not an appropriate vehicle for considering the scope or extent of the duty of care owed by the State of New South Wales in the exercise of certain powers under child welfare legislation.

Two sisters were subjected to sustained physical and sexual abuse by their stepfather for many years. In April 1983, one of the sisters made a complaint about the abuse to the Department of Youth and Community Services ("the Department"), a department of the State. Under the now repealed *Child Welfare Act 1939* (NSW) ("the CW Act"), where the Director of the Department had been notified that a child had been assaulted or was a neglected child, the Director was required to take such action as he believed appropriate, "which may include reporting those matters to a constable of police". The Department took immediate steps following the complaint but did not exercise the power to report the abuse to the police.

In 2008, the sisters commenced proceedings in negligence in the Supreme Court of New South Wales against the State and one of the Department's officers. They claimed damages for harm caused by continued abuse by their stepfather after the complaint to the Department. The sisters contended that the Department breached its duty of care to them by not reporting the abuse to the police. The primary judge found that the Department had breached its duty of care to the sisters. However, the primary judge was not satisfied that the stepfather had continued to abuse the sisters after the complaint, and therefore found that the breach was not a necessary condition of the harm suffered by the sisters. The Court of Appeal, by majority, allowed an appeal by the sisters. The majority concluded that the abuse continued after the complaint to the Department. The majority also held that the Department breached its duty of care to the sisters. By grant of special leave, the State appealed to the High Court.

On 10 May 2017, the High Court revoked special leave in relation to a ground of appeal relating to the vicarious liability of the State. The ground was based on a concession which may not have reflected the true state of the applicable law at the relevant times, because the statute providing for vicarious liability of the Crown was not in force at the time of the complaint.

Today the High Court revoked special leave in relation to the remaining ground of appeal, which related to whether the scope of the duty of care owed by the State extended to exercising the power to report the abuse of the sisters to the police. The State accepted that there was a duty to use reasonable care in the exercise of the powers under the CW Act. Further, it accepted that there would be cases where the only reasonable exercise of those powers would be to report abuse to the police. The primary judge had made such a finding in this case. The High Court held that, in light of the course taken by the State, this case was not an appropriate vehicle for considering the scope or extent of the duty of care owed by the State.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*