



## HIGH COURT OF AUSTRALIA

27 February 2025

KMD v CEO (DEPARTMENT OF HEALTH NT) & ORS  
[2025] HCA 4

Today, the High Court unanimously allowed an appeal from a decision of the Court of Criminal Appeal of the Northern Territory ("NTCCA"). The Court found that the NTCCA erred in allowing an appeal by the Chief Executive Officer of the Department of Health of the Northern Territory ("the CEO") from a non-custodial supervision order ("NCSO") made by a judge of the Supreme Court of the Northern Territory ("the primary judge") under Part IIA, Division 5 of Schedule 1 to the *Criminal Code Act 1983* (NT) ("the Code") in respect of the appellant, KMD.

In 2013, KMD was arrested, charged with offences and found unfit to be tried. Subsequently, KMD was found not guilty of the offences by reasons of mental impairment and, in 2014, she was declared liable to be supervised under Div 5 of Pt IIA of the Code. That Division creates a scheme for the supervision of persons by either a custodial supervision order ("CSO"), committing the supervised person to custody, or an NCSO, releasing the supervised person into the community.

On 3 June 2015, KMD was committed to custody in a correctional facility under a CSO. On 12 July 2023, she was released into the community on an NCSO after the primary judge, after conducting a periodic review of the CSO, was not satisfied that the safety of KMD and of the public will be seriously at risk if she was released. The NTCCA allowed an appeal brought by the CEO against the NCSO on the basis that the primary judge's finding as to risk was "not reasonably open" on the evidence. The NTCCA set aside the NCSO and confirmed the previous CSO, returning KMD to custody after 12 months in the community on the NCSO.

The High Court found that the NTCCA erred in finding that the primary judge's review of the CSO had "miscarried" because KMD did not cooperate with medical experts whose reports and evidence were considered by the primary judge. That conclusion involved error because KMD was under no statutory obligation to cooperate with the medical experts. Having made that error, the NTCCA further erred in confirming the CSO without addressing the requirements of Pt IIA, Divs 5 and 7 of the Code. The High Court accordingly allowed the appeal, set aside the orders of the NTCCA and remitted the proceedings to the NTCCA for reconsideration according to law. The setting aside of the NTCCA's orders has the effect of restoring the orders of the primary judge in setting aside the CSO and making the NCSO, subject to a stay for a period of 14 days from today's date.

*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.*