



Standing Committee on Justice and Community Safety

Inquiry into the Administration of Bail in the ACT ANSWER TO QUESTION TAKEN ON NOTICE

Asked by Mr Peter Cain MLA on 18 June 2024: Mr Scott Lee, Chief Police Officer took on notice the following question:

Reference: Hansard [uncorrected] proof transcript [18 June 2024] [PAGE 48]

In relation to:

THE CHAIR: Any supplementaries on that? A fresh substantive my way. Look, I am making reference now to the submissions from Ms Janine Haskins, and also in particular to the addendum to her submission, and she has—as part of the coronial inquiry into her daughter’s death, she is stating that an AFP officer stated—and I am quoting—“stated under oath that officers do not have the authority to drug test people in their places of residence”. Can you confirm that that statement is accurate.

Mr Lee: I might pass to the DCPO on that. I think it would depend—we would need to understand the full circumstances of that I think but I might pass to the DCP on that one.

THE CHAIR: Again, that is a statement that she is claiming an AFP officer said under oath during the coronial inquiry. We are just trying to see if that statement is actually true.

Mr Whowell: My understanding is that that is true but I will take it on notice to check because where we use drug testing and alcohol testing is really largely limited to our road safety responsibilities and the testing of drivers.

THE CHAIR: So largely limited. Does that mean that—

Mr Whowell: They are the only powers that I am aware of that we have under the—

THE CHAIR: So you will take that on notice?

Mr Whowell: Absolutely.

THE CHAIR: Just to confirm—I mean, I am just really trying to find if that is an accurate statement or not. As you would see, and again her submission is public—it is available to you

as well as to anyone—she does state she had been advised by someone who was actually drug tested in 2018 at his place of residence by the AFP. Again, that is something I am just reading from her submission and the addendum so that is something you can refer to.

I guess I just want some clarity as to whether there is accuracy or otherwise of what is being said there.

Mr Lee: Yes, we will take that as a question on notice.

ACT Policing: The answer to the Member's question is as follows:

The *Bail Act 1992* (Cth) allows for the imposition of bail conditions requiring a person to submit to alcohol or drug testing.

However, current case law supports a position that without specific statutory authority to do so, a bail condition cannot authorise police to enter onto a person's residential premises and require a person to submit to a drug or alcohol test.

Currently, there are no ACT statutory provisions which would authorise drug or alcohol testing at a private residence.

In the absence of a statutory power which authorises entry onto premises for the purposes of testing, ACT Policing can confirm that no member of the AFP can enter a premises and require a person to participate in a drug or alcohol test.

In comparison, under Section 9.6 of the *Corrections Management Act 2007*, Custodial and Community Corrections Officers are able to obtain a sample of breath, saliva, urine, hair, blood or anything else prescribed by regulation.

Community Corrections Officers (CCOs) may undertake testing of offenders who are subject to community-based orders, or who are having an assessment or report completed for alcohol and/or drug use.

Drug testing is conducted in accordance with the [Drug and Alcohol Testing Community Instruction](#). While the preferred method of drug testing is via urinalysis (conducted by trained and qualified collectors in the Community Corrections office, oral swab testing and alcohol breath testing are secondary options for CCOs to consider, if urine testing is unavailable or unsuitable for the individual. This testing may be conducted during home or field visits (if privacy allows).

It is noted that specialist training is required for CCOs to undertake oral swab testing, which is conducted in accordance with the [Oral Fluid Test Process Community Instruction](#).

The practice of CCOs being able to undertake oral swab drug testing, which may include testing in someone's home, commenced in 2016 and thus was in place in 2020.

Without further information, ACT Policing is unable to confirm if a drug test to confirm bail compliance was conducted by an AFP officer at a residence in 2018.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:

A handwritten signature in black ink, appearing to read 'Peter Whowell', written in a cursive style.

Date: 5 July 2024

Mr Peter Whowell - Executive General Manager – Corporate, ACT Policing