



## Standing Committee on Justice and Community Safety

### **Inquiry into Dangerous Driving** **ANSWER TO QUESTION TAKEN ON NOTICE**

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Asked by Dr Marisa Paterson MLA on 18 November 2022: Dr Helen Watchirs took on notice the following question(s):

Reference: Hansard [uncorrected] proof transcript 18 November 2022 [PAGE 26]

In relation to: Sentencing Administration Board

**DR PATERSON:** We just heard from the Sentencing Administration Board that they can direct people coming out on parole or—to drug and alcohol rehabilitation. But the board was saying that the—they cannot direct medical intervention. And potentially breaching human rights there.

But my question is, if we—and in respect to mental health medical attention as well, if we are redirecting people to drug and alcohol services, I am interested to understand what the difference is between that and health services. And do you think it is a breach of people's human rights to direct that they seek medical attention?

**Dr Watchirs:** I think we would have to take that on notice.

Human Rights Commissioner: The answer to the Member's question is as follows: –

The Sentence Administration Board (SAB) operates under the *Crimes (Sentence Administration) Act 2005*. That law sets out the core parole conditions that must be complied with by the parolee and authorises the SAB to impose any additional conditions the SAB considers are appropriate on a parole order, which the parolee must also meet in order to remain at liberty in the community. Core conditions include that a person does not use a prohibited substance or abuse a lawfully prescribed medication. ACT Corrective Services can also require parolees to submit to drug tests to check their compliance with those core conditions.

In respect of additional conditions that may be imposed, the legislation confers a broad discretion on the SAB to include any additional conditions it considers appropriate as part of the order. This might include that they obtain mental health support or undergo a drug rehabilitation, but we are unaware of the usual practice of the SAB. Ideally the offender would be involved in a therapeutic and consultative process of identifying treatment options such that they could give free and informed consent to the inclusion of such a parole condition on any order to support their compliance with it.

Generally, the right to protection from forced medical treatment in s 10(2) of the *Human Rights Act 2004* reflects existing legal principles that there are very few circumstances where specific medical interventions can be performed on a person *without* their free consent. Such circumstances are carefully prescribed by law, involve specialist medical or psychosocial input and generally require authorisation by the ACT Civil and Administrative Tribunal or a Court. However, as the SAB is a public authority and required to make decisions consistently with human rights, it is clear that additional conditions requiring medical treatment must be reasonable, proportionate and justifiable. In this sense, s 10(2) does not operate as a blanket prohibition on medical treatment in a parole order with the consent of the offender.

In our view SAB and ACT Corrective Services should focus on making sure the parolee is supported with a properly resourced 'throughcare' model that supports them to engage with health services before and after release, voluntarily, in order for parolees to have the best chance of addressing underlying health challenges and successfully meeting their parole obligations. Where there is continued risk to the community requiring specific or intensive treatments, that may be better addressed alongside specialist forensic or other mental health responses under the mental health law framework or other laws that may, for example, disqualify a person from driving because of unfitness to drive.

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

Signature:

A handwritten signature in blue ink that reads "Helen Watchirs". The signature is written in a cursive style and is positioned above a thin horizontal line.

Date: 9 December 2022

By the Human Rights Commissioner, Dr Helen Watchirs