

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Human Rights Commission

Question No. SBE16/027

Senator Lambie asked the following question at the hearing on 18 October 2016:

Senator LAMBIE: Professor Triggs, I would like to take a few minutes to hear what you have to say about private members' bills where I propose to give parents—working with family doctors and others, if that is what it takes—the right to involuntarily detox their ice-addicted children. At the moment, Australian parents do not have the right to involuntarily detox drug-addicted children. I realise involuntary detox and medical treatment involve a breach of human rights, but I bring to your attention the use of involuntary mental health orders, which can be applied to people who are suffering from a mental health condition which makes them dangerous to themselves and others. So I simply ask, why can't the same legal precedent and ethical codes which apply to people with serious mental health problems also apply to our ice-addicted children, who are also often dangerous to themselves and others?

Prof. Triggs: Thank you very much, Senator Lambie. I think you raise a very important issue, and you make the point of contrast with mental illness and sectioning as a form of involuntary detention. I cannot answer your question precisely. I am sorry to disappoint, but I will need to take that on notice. I can only complete what I am saying by recognising that you raise an issue of very great concern to many members of the Australian community, and of course you do raise, ultimately, the concern of the right to good health and access to health services.

Senator LAMBIE: The Hippocratic oath famously states that doctors should do no harm. Just sitting back and waiting for an ice-addicted child to agree to medical treatment—isn't that actually doing harm to our children?

Prof. Triggs: If I may, Senator Lambie, I will take that as a rhetorical point.

Senator LAMBIE: Okay. And don't our children deserve the right to a life without a harmful drug addiction?

Prof. Triggs: I think there is virtually no answer to that except of course, you are right.

Senator LAMBIE: I guess I am asking here: can't we simply ignore the human rights textbooks in order to bring about a much-needed early medical intervention—in order to protect our children from a cheap, easily bought and highly addictive and harmful drug that is now threatening our children?

Prof. Triggs: I am not sure that your premise is correct. I think that one can use human rights law to achieve the outcome that you would like—which is an earlier intervention, particular with children who are at risk or who are addicted to seriously damaging drugs. Again, I will take that on notice. It is an important question and we will respond to you fully from the commission.

Senator LAMBIE: Thank you, Professor Triggs.

The answer to the honourable senator's question is as follows:

The Convention on the Rights of the Child sets out a range of relevant international human rights standards that apply to children, including relating to protection from drugs and being held in any place of detention, which includes a secure medical or mental health facility. Most relevantly, the CRC contains human rights protections to ensure that:

- the best interests of the child is a primary consideration in all actions concerning children (Article 3 of the CRC)

- governments ensure the survival and development of children (Article 6)
- children are protected from drugs (Article 33) and
- children are not arbitrarily deprived of their liberty, and that adequate safeguards are in place, including judicial oversight and access to advice (Article 37).

The UN Office on Drugs and Crime (UNODC) have also released useful guidance in the context of drug treatment as an alternative to criminal justice sanctions.

Any proposal for compulsory drug treatment through detention in secure facilities would likely involve infringement of the human rights of the child. Accordingly, an assessment of the proposed approach would need to establish whether the scope and severity of the infringement of human rights of the child involved is justifiable, on the basis that it is a reasonable and proportionate response to the issue. This would include by considering whether there are other, more appropriately targeted alternative approaches that could be adopted.

It should also be noted that there are four Australian jurisdictions which have existing models of compulsory alcohol and other drug (AOD) treatment: Northern Territory, New South Wales and Victoria and Tasmania.ⁱ The Australian Human Rights Commission has not conducted any assessment of these legislative schemes.ⁱⁱ However, some concerns have been expressed, for example, with regard to the Northern Territory legislation, the length of time for which people can be held involuntarily, the punitive nature of the compulsory treatment, the questionable efficacy of the program and the lack of protections for individual's rights.ⁱⁱⁱ

ⁱ *Alcohol Mandatory Treatment Act 2013* (NT); *Drug and Alcohol Treatment Act 2007* (NSW); *Severe Substance Dependence Treatment Act 2010* (Vic); *Alcohol and Drug Dependence Act 1968* (Tas).

ⁱⁱ The Australian National Council on Drugs reported that 'the empirical evidence for the effectiveness of compulsory treatment is inadequate and inconclusive': E Pritchard, J Mugavin, A Swan, *Compulsory treatment in Australia: a discussion paper on the compulsory treatment of individuals dependent on alcohol and/or other drugs* (Australian National Council on Drugs) (2007).

ⁱⁱⁱ See for example Fiona Lander, Dennis Gray and Edward Wilkes, 'The Alcohol Mandatory Treatment Act: evidence, ethics and the law', (2015) 203(1) *The Medical Journal of Australia* 47-49;