

## QUESTION TAKEN ON NOTICE

**ADDITIONAL ESTIMATES HEARING: 27 February 2017**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(AE17/055) - Statutory provisions regarding 'dry cells' - Programme 1.5: IMA Offshore Management**

Senator Gallacher, Alex (L&CA 101) asked:

Mr Quaedvlieg: Yes, it was, and as I understand it that officer—and I would stand to be corrected—came from a correctional services environment, where this practice is common, and they have state powers to do it, and assumed mistakenly that it was also the same statutory power and policy of the department, but it is not.

CHAIR: Are you certain that some of the states in correctional service institutions actually have that power?

Mr Quaedvlieg: I am confident, but it may vary from state to state or territory.

CHAIR: I was going to ask whether you or your general counsel could take as a question on notice to just refer me to some state legislation where—

Mr Quaedvlieg: I can do that, but I can also give you, on notice, our statutory provisions which enable us to do that at the border.

CHAIR: Would the same legislation apply within detention centres as would apply at the borders?

Mr Quaedvlieg: No, it does not.

CHAIR: Sorry: the wording of the statute that allows you to do it at the borders—if that were used in a context of detention centres, would that be sufficient without—

Mr Quaedvlieg: Potentially not. The border powers relate to actions enabled to be taken under the Customs Act, which is about the prevention of prohibited goods coming into the country, whereas the detention centres are operated under the Migration Act, so they are different statutes.

CHAIR: You were asked whether there were any legal actions being taken by detainees for being put into dry cells, and the answer of course is no, because you do not do it, except on this one occasion. And I think you said that on that one occasion there was not any legal action.

Mr Quaedvlieg: Well, there was not, but I was admonished by my chief operating officer in the break saying that I should not have been as definitive and they would like our counsel to check whether there is a litigation in place or not. But I have taken that question on notice.

CHAIR: It is just that I would be curious as to how someone who was perpetrating if not a crime then a misdemeanour could sue the authorities for trying to expose this crime or misdemeanour, depending on how it is classified. I guess there are some lawyers around who would make a field day out of it. But you cannot help me on that, because it has not happened to you.

Mr Quaedvlieg: Not that I am aware of, no.

*Answer:*

As far as we are aware one such example includes the use of dry cells in New South Wales prisons.

Dry cells are used in NSW prisons for the limited purpose of facilitating the urinalysis testing of a prisoner.

The *Crimes (Administration of Sentences) Regulation 2014* (NSW) provides for drug test samples to be carried out whether or not drug use is suspected (Regulation 159 and 160 refer).

### **Statutory provisions at the border**

By way of clarification, there are no statutory provisions under portfolio legislation that relate to the use of dry cells. However, controlled toilets are available for use at customs places, for example in airports. Controlled toilets are not dry cells.

There are various detention provisions under Part XII of the Customs Act, including detention for the conduct of a frisk or external search. On these occasions, should the person wish to go to the toilet, they will be directed to a controlled toilet, where one is available. The controlled toilet allows for the examination of any items that have been internally concealed but passed by the person into the toilet, usually through the operation of a catchment device.