



Department of Justice and Community Safety

Secretary

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Our ref: EBC 23125277

His Honour David Ryan
Coroner
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Dear Coroner Ryan

I refer to your findings and recommendations made on 5 October 2023, following the inquest into the death of Ms Ruby-Lee (Ruby) Gold, who tragically passed away on 28 October 2021 from her injuries, sustained after falling from an overpass. Ruby had absconded from Sunshine Hospital.

While Ruby was not in prison custody at the time of her death, she was residing at the Dame Phyllis Frost Centre (DPFC) when bailed and discharged from prison custody on 26 October 2021. Ruby was subject to an Inpatient Assessment Order (IAO) under section 28 the *Mental Health Act 2014*.

You made one recommendation directed to the Department of Justice and Community Safety (the department) and the Department of Health, to implement a system to enable Corrections Victoria (or a suitable contractor) to undertake the role of transporting persons released from custody on an assessment order under the *Mental Health and Wellbeing Act 2022* to a designated mental health service. The department's response to the recommendation is as follows:

This recommendation is not accepted, as it is unable to be implemented.

On 19 April 2023, Ms Jenny Hosking, Assistant Commissioner, Sentence Management Division, Corrections Victoria, provided a statement to the Court. Ms Hosking distinguished the difference between persons who are in the legal custody of the Secretary of the department (Secretary) under Part 1A of the *Corrections Act 1986* ('prisoners') and those who are not ('non-prisoners'). Part 1A of the *Corrections Act* sets out the circumstances in which a person will be deemed to be in the legal custody of the Secretary. Part 1A also sets out when a person will no longer be in the custody of the Secretary. This occurs, for example, upon the expiration of the person's sentence of imprisonment, or when the Secretary releases the person from the Secretary's legal custody under lawful direction or authority or in accordance with an Act (such as an order for release on bail). Where an order for imprisonment ends, Corrections Victoria is required to release the person by no later than midnight on the last date of their imprisonment.

Ruby was granted bail on 26 October 2021 and arrangements were made for her release from prison custody that day and as required. As Ruby was subject to an IAO, Corrections Victoria liaised with the designated mental health services, Ambulance Victoria and Victoria Police to facilitate a non-urgent ambulance transfer for Ruby to be taken to a designated mental health service upon her release.

Prisoners may be transferred from prison to a designated mental health service by way of a Secure Treatment Order (STO) under the Mental Health Act. This may be made by Court Order or by Order of the Secretary on the advice of two psychiatrists, where a prisoner has a mental illness and requires immediate compulsory treatment to prevent serious deterioration in their mental or physical health or serious harm to the person or to another person. Once an STO is made, Corrections Victoria is responsible for the physical transfer of the prisoner to the designated mental health service. During this physical transfer, the prisoner remains in the custody of the Secretary and, as such, her powers under the Corrections Act apply. Arrangements for the transfer to and from designated mental health services are made following liaison with the authorised psychiatrist or the admitting officer of the designated mental health service.

The transport of a non-prisoner to a designated mental health service will typically occur when a person has been released from Corrections Victoria's custody but is subject to an IAO under the Mental Health Act, as occurred in Ruby's case.

As detailed in Ms Hosking's statement, there are distinct processes for the transport of persons from prisons to designated mental health services, depending on whether they are prisoners or non-prisoners. These different processes reflect the applicable legislative framework and powers under the Corrections Act and Mental Health Act.

The transport of prisoners to and from a designated mental health service via a STO is the responsibility of Corrections Victoria. The process for these types of transfers is well established, with prisoners escorted by Prison Officers and contracted service providers in accordance with powers under the Corrections Act and the directives in Commissioner's Requirements and Deputy Commissioner's Instructions.

Corrections Victoria is not responsible for the transport of non-prisoners subject to IAOs and further, has no powers to detain, escort or supervise people that are no longer in the legal custody of the Secretary under Part 1A of the Corrections Act. To ensure that these people are safely transported from prison to a designated mental health service, Corrections Victoria coordinates an ambulance transfer.

In 2022, the Department of Health, Corrections Victoria, Victoria Police and Ambulance Victoria had discussions on alternative transport options for people released from prison subject to IAOs. These discussions were aimed at relieving pressure on Ambulance Victoria and Victoria Police and to ensure that people were promptly transported to a designated mental health service once they were released from Corrections Victoria's custody. During the discussions various alternative transport options were explored, including whether transport could be facilitated by Prison Officers following a person's release from custody by prescribing Prison Officers as a class of 'authorised persons' under the Mental Health Act. This option has not been pursued as it was not considered appropriate for Prison Officers to escort non-prisoners having regard to the objectives of the new *Mental Health and Wellbeing Act 2022* as Prison Officers do not have the requisite specialist medical skills necessary should medical restraints be required. Further, a Prison Officer's powers under the Corrections Act would not be applicable to these transfers, leaving prison staff vulnerable.

In response to Counsel Assisting's submissions, the department reiterated its concerns and Corrections Victoria committed to continuing to work with all other relevant agencies, under the leadership of the Department of Health, to address the issue. Further, that those discussions would need to consider all of the potential implications of change and the Victorian Government would need to endorse the approach and provide new funding to support the establishment and operation of any new services.

On 19 December 2023, Ms Hosking met with the Department of Health and Forensicare to discuss the recommendation. Despite fulsome discussions, it was agreed by all parties that this recommendation could not be accepted, for the same reasons provided in evidence.

For completeness, this response is this department's response and not the response of the Department of Health, as I note your findings and recommendation have been provided to the Secretary of the Department of Health separately.

Should you require any further information, please do not hesitate to contact Ms Melissa Westin ACM, Deputy Commissioner, Custodial Operations, Corrections Victoria

Yours sincerely



Ryan Phillips
Acting Secretary

02/01/2024