



HUMAN RIGHTS ACT TRAINING WORKSHOP

SCENARIO ONE – MOHAMMED OMAR

Mohammed Omar has a history of sexual offending against teenage boys and was convicted of rape. Before his release date, the Supreme Court made a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

One of the conditions of that order is that Mohammed comply with every reasonable direction of a corrective services officer, not inconsistent with another requirement of the supervision order.

Since being released on a supervision order, Mohammed has progressed from stage 1 curfew (24 hours) through to stage 4 curfew (12 hours). He has started showing insight into his offending which he attributes to his return to practising his religion. It is important to him that he visit his local mosque each Friday. He also has strong family supports, with his mother and sister both visiting him in his home at least once a week, though the times are never consistent as they need to fit their visits into their busy schedules. His mother and sister both do shift work and their rosters are always changing.

You are a corrective services officer within the High Risk Offender Management Unit, and you have oversight of monitoring Mohammed while he is in the community. Over the last month, the team has noticed that Mohammed has started acting erratically and is increasingly evasive. Review of his internet searches reveals that he has begun looking up pictures of teenage boys. Though none are pornographic, the frequency of the searches indicates he is becoming fixated. The last search of his phone revealed that he had been in communication with a teenage boy.

Given that Mohammed's risk factors are escalating rapidly, you decide to give the following directions to Mohammed:

- That he return to stage 1 curfew
- That he not receive any visitors without prior approval from a corrective services officer.

Question 1

Would these proposed directions limit any human rights? If so, which ones?

- | | |
|---|---|
| <input type="checkbox"/> Right to equality and non-discrimination (section 15) | <input type="checkbox"/> Cultural rights – generally (section 27) |
| <input type="checkbox"/> Right to life (section 16) | <input type="checkbox"/> Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) |
| <input type="checkbox"/> Protection from torture and cruel, inhuman or degrading treatment (section 17) | <input type="checkbox"/> Right to liberty and security of person (section 29) |
| <input type="checkbox"/> Freedom from forced work (section 18) | <input type="checkbox"/> Right to humane treatment when deprived of liberty (section 30) |



- | | |
|---|--|
| <input type="checkbox"/> Freedom of movement (section 19) | <input type="checkbox"/> Fair hearing (section 31) |
| <input type="checkbox"/> Freedom of thought, conscience, religion and belief (section 20) | <input type="checkbox"/> Rights in criminal proceedings (Section 32) |
| <input type="checkbox"/> Freedom of expression (section 21) | <input type="checkbox"/> Children in the criminal process (section 33) |
| <input type="checkbox"/> Peaceful assembly and freedom of association (section 22) | <input type="checkbox"/> Right not to be tried or punished more than once (section 34) |
| <input type="checkbox"/> Taking part in public life (section 23) | <input type="checkbox"/> Retrospective criminal laws (section 35) |
| <input type="checkbox"/> Property rights (section 24) | <input type="checkbox"/> Right to education (section 36) |
| <input type="checkbox"/> Privacy and reputation (section 25) | <input type="checkbox"/> Right to health services (section 37) |
| <input type="checkbox"/> Protection of families and children (section 26) | |

Question 2

Would the directions be authorised by law? (s 13(1))

Question 3

What is the purpose of the directions? Is that a proper purpose? (s 13(2)(b))

Question 4

Are the directions suitable or rationally connected? Would they help to achieve their purpose? (s 13(2)(c))



Question 5

Are the directions necessary? Are there any less drastic ways of achieving the purpose? Would those alternatives be as effective in achieving the purpose? (s 13(2)(d))

Question 6

Do the directions strike a fair balance between their purpose and Mohammed's human rights? (s 13(2)(e), (f), (g))

Question 7

Would the directions represent a justified limit on human rights? (s 13)

Question 8

Do any exceptions to the obligation to act compatibly with human rights apply? (s 58)

- ☐ Required by law – no discretion (section 58(2)) ☐ Private act exception (section 58(4))
- ☐ Religious exception (section 58(3))



SCENARIO TWO – DOM JONES

Dom Jones is serving a sentence of life imprisonment at the Wolston Correctional Centre for armed robbery in company with others. Dom was born with male physiological sex characteristics and identifies as transgender. She has always wanted to change her name from Dom to Lily to reflect her female gender identity.

Section 27(1) of the *Corrective Services Act 2006* provides that a person in the chief executive's custody must obtain the chief executive's written permission before applying to change their name under the *Births, Deaths and Marriages Registration Act 2003*.

Section 27(2) provides that in deciding whether to give permission, the chief executive must consider each of the following:

- Whether the proposed name change poses a threat to the security of a corrective services facility;
- The safety of the person and other persons;
- Whether the proposed name change could be used to further an unlawful activity or purpose;
- Whether the proposed name change could be considered offensive to a victim of crime or an immediate family member of a deceased victim of a crime.

You hold a delegation from the chief executive to decide whether written permission should be given.

You have considered Dom's reasons for her request. You have also considered each of the above factors outlined in s 27(2). In particular, it has come to your attention that Lily is the middle name of the victim of the armed robbery offence for which Dom is presently incarcerated.

You have formed the view that the name of Lily may be considered offensive to the victim. You decide to not give written permission.

Relevant provisions of the *Corrective Services Act 2006*:

27 Change of name

- (1) A person in the chief executive's custody must obtain the chief executive's written permission before applying to change the person's name under—
 - (a) the *Births, Deaths and Marriages Registration Act 2003*; or
 - ...
- (2) In deciding whether to give the permission, the chief executive must consider each of the following—
 - (a) whether the proposed name change poses a threat to the security of a corrective services facility;
 - (b) the safety of the person and other persons;
 - (c) whether the proposed name change could be used to further an unlawful activity or purpose;
 - (d) whether the proposed name change could be considered offensive to a victim of a crime or an immediate family member of a deceased victim of a crime.
 - ...



Question 1

Does your decision limit any human rights? If so, which human rights?

- | | |
|---|---|
| <input type="checkbox"/> Right to equality and non-discrimination (section 15) | <input type="checkbox"/> Cultural rights – generally (section 27) |
| <input type="checkbox"/> Right to life (section 16) | <input type="checkbox"/> Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) |
| <input type="checkbox"/> Protection from torture and cruel, inhuman or degrading treatment (section 17) | <input type="checkbox"/> Right to liberty and security of person (section 29) |
| <input type="checkbox"/> Freedom from forced work (section 18) | <input type="checkbox"/> Right to humane treatment when deprived of liberty (section 30) |
| <input type="checkbox"/> Freedom of movement (section 19) | <input type="checkbox"/> Fair hearing (section 31) |
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| <input type="checkbox"/> Peaceful assembly and freedom of association (section 22) | <input type="checkbox"/> Right not to be tried or punished more than once (section 34) |
| <input type="checkbox"/> Taking part in public life (section 23) | <input type="checkbox"/> Retrospective criminal laws (section 35) |
| <input type="checkbox"/> Property rights (section 24) | <input type="checkbox"/> Right to education (section 36) |
| <input type="checkbox"/> Privacy and reputation (section 25) | <input type="checkbox"/> Right to health services (section 37) |
| <input type="checkbox"/> Protection of families and children (section 26) | |



Question 2

Is your decision authorised by law? (s 13(1))

Question 3

What is the purpose of your decision? Is that a proper purpose? (s 13(2)(b))

Question 4

Is your decision suitable or rationally connected? Does your decision help to achieve the purpose? (s 13(2)(c))

Question 5

Is your decision necessary? Are there any less drastic ways of achieving the purpose? Would those alternatives be as effective in achieving the purpose? (s 13(2)(d))

Question 6

Does your decision strike a fair balance between the purpose and Dom's human rights? (s 13(2)(e), (f), (g))



Question 7

Does your decision represent a justified limit on human rights? (s 13)



SCENARIO THREE – SABRINA MAYFAIR

Sabrina Mayfair is serving a sentence for murder at the Brisbane Women's Correctional Centre.

Sabrina describes herself as a "witch" and practises the pagan religion.

She recently received a package in the mail containing a tarot deck and a book of spells. On reviewing the images used for the tarot cards, some look like they could encourage disruptive behaviour, such as the "Death" card, "The Devil" card, and "The Tower" card depicting people falling to their deaths.

As to the book of spells, while some are benign, some spells appear to be intended to be harmful, such as one for making a voodoo doll.

A decision is made to remove the three cards and provide the remainder of the tarot deck to Sabrina. Because it will take too long to review the book of spells in its entirety, a decision is made to seize the whole book of spells.

Relevant provisions of the *Corrective Services Act 2006*.

48 Seizing ordinary mail and things contained in it

- (1) A corrective services officer may seize a prisoner's ordinary mail, or anything in it, to stop—
 - (a) anything that poses a risk to the security or good order of the corrective services facility entering or leaving the facility; or
 - (b) anything that appears to be intended for the commission of an offence, or a breach of a court order, entering or leaving the facility; or
 - (c) threatening or otherwise inappropriate correspondence leaving the facility; or

Example of inappropriate correspondence—

correspondence by a prisoner, who has been convicted of a sexual offence against a child, to a child with whom the prisoner had no relationship before being imprisoned

 - (d) a prohibited thing entering or leaving the facility; or
 - (e) the prisoner purchasing goods or services without the chief executive's written approval.
- (2) Subsection (1) does not apply to a document to which legal professional privilege attaches.

138 Seizing property

- (1) A corrective services officer may seize—
 - (a) anything found in a corrective services facility, whether or not in a person's possession, that the officer reasonably considers poses, or is likely to pose, a risk to—
 - (i) the security or good order of the facility; or
 - (ii) the safety of persons in the facility; or ...

Question 1

Would the decision to seize the cards and book limit any human rights? If so, which ones?

☐ Right to equality and non-discrimination (section 15)

☐ Cultural rights – generally (section 27)

☐ Right to life (section 16)

☐ Cultural rights – Aboriginal peoples and Torres Strait Islander peoples



(section 28)

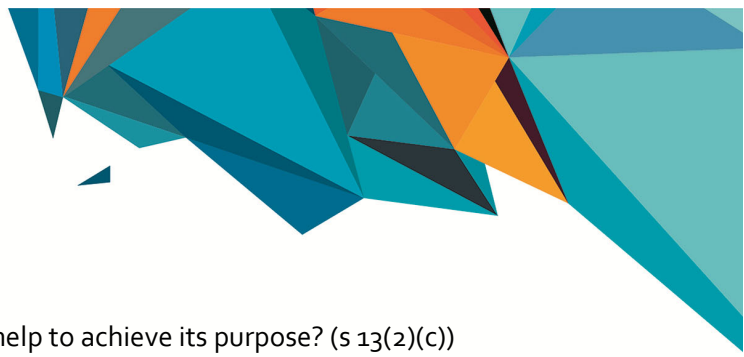
- | | |
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| <input type="checkbox"/> Freedom of expression (section 21) | <input type="checkbox"/> Children in the criminal process (section 33) |
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| <input type="checkbox"/> Privacy and reputation (section 25) | <input type="checkbox"/> Right to health services (section 37) |
| <input type="checkbox"/> Protection of families and children (section 26) | |

Question 2

Would the decision be authorised by law? (s 13(1))

Question 3

What is the purpose of the decision? Is that a proper purpose? (s 13(2)(b))



Question 4

Is the decision suitable or rationally connected? Would it help to achieve its purpose? (s 13(2)(c))

Question 5

Is the decision to seize the cards and book necessary? Are there any less drastic ways of achieving the purpose? Would those alternatives be as effective in achieving the purpose? (s 13(2)(d))

Question 6

Does the decision strike a fair balance between their purpose and Sabrina's human rights? (s 13(2)(e), (f), (g))

Question 7

Would the decision represent a justified limit on human rights? (s 13)

Question 8

Do any exceptions to the obligation to act compatibly with human rights apply? (s 58)

- ☐ Required by law – no discretion (section 58(2)) ☐ Private act exception (section 58(4))
- ☐ Religious exception (section 58(3))