



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022

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Committee Secretary
Standing Committee on Justice and Community Safety
ACT Legislative Assembly

[By email: LACommitteeJCS@parliament.act.gov.au]

26 May 2022

Dear Committee Secretary

Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022

1. The ACT Human Rights Commission is pleased to provide the following submission to the Standing Committee on Justice and Community Safety's inquiry into the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (the bill).
2. The bill will extend the operation of the *Terrorism (Extraordinary Temporary Powers) Act 2006* (TETP Act), which is due to expire on 19 November 2022, for a further five years, that is, to 19 November 2027.
3. The TETP Act provides for the detention of individuals under a preventative detention order, without charge, for up to 14 days, to prevent imminent terrorist acts or preserve evidence of recent terrorist acts. Preventative detention laws were enacted across Australia in 2005-2006, after the London bombings in July 2005. The Council of Australian Governments (COAG) agreed to develop nationally consistent terrorism laws, which required the States and Territories to enact complementary legislation.
4. The ACT, which was the only Australian jurisdiction with a Human Rights Act at the time, took steps to ensure that its preventative detention laws were modelled on best practice and achieved a high level of consistency with human rights standards. As a result, the ACT legislation was drafted to include range of significant human rights safeguards that distinguish it from comparable schemes elsewhere in Australia, including:
 - Full judicial review and oversight;
 - Higher and more stringent tests for making preventative detention orders;
 - Express prohibition on the admissibility of evidence obtained from torture;
 - Shorter duration of interim orders;
 - Restrictions on rolling warrants;
 - Limitations on duration of preventative detention orders;
 - Court ordered compensation for wrongful detention;
 - Presumption of confidential legal communications;
 - Assistance for legal representation;

- Prohibition on the detention of children - the minimum age of 18 years in the ACT legislation distinguishes the ACT scheme from other jurisdictions;
 - Additional safeguards during detention, for example:
 - detainees must be separated from people who are on remand or who are convicted, there must be appropriate support for persons with special needs, including psychiatric disabilities and that detention arrangements accommodate cultural or religious needs;
 - provision to develop protocols on the humane treatment of detainees. The practical detention arrangements can be improved by guidelines and protocols developed by the Chief Police Officer with the approval of the Attorney-General;
 - additional safeguards for children and persons with impaired decision-making ability who are in the care of the person subject to a detention application;
 - No offences for disclosures of information acquired under the TETP Act;
 - Detainees must be held at a facility that is appropriate to their needs and the risks they pose;
 - Transparency in application process – an application must fully disclose all matters, both favourable and adverse to the making of the order;
 - Requirement to appoint a Public Interest Monitor to safeguard the public interest at a hearing for a preventative detention order or a prohibited contact order;
 - Additional accountability and oversight by the Ombudsman and Human Rights Commissioner.
5. The Commission notes that the TETP Act has not been used to date. However, given the cross-jurisdictional nature of Australia’s response to terrorism, we consider that it would be appropriate to extend the Act by a further five years.
 6. As we noted in our submission to the government’s 2021 review of the Act,¹ a key benefit of retaining the TETP Act is for its value as a human rights consistent model for responding to the threat of terrorism. As a human rights consistent model for responding to the threat of terrorism, the TETP Act can play an important role in moderating the approach taken elsewhere in Australia, including at the Commonwealth level. As noted in the explanatory statement to the bill, allowing the TETP Act to lapse “would leave the ACT without effective counter-terrorism laws and would require law enforcement to rely on the Commonwealth’s more rights restrictive preventative detention scheme to detain terrorism suspects.”²
 7. We note that the bill also requires a further statutory review of the TETP Act be submitted to the Legislative Assembly a year before the expiry of the next extension, that is, no later than 19 November 2026.
 8. The Commission considers that the inclusion of a 5-year sunset clause and provision for a further statutory review of the Act are essential safeguards to ensure that the measures in the Act remain

¹ *Statutory Review of the Terrorism (Extraordinary Temporary Powers) Act 2006*, April 2021, available at https://www.parliament.act.gov.au/_data/assets/pdf_file/0009/1762587/Statutory-Review-of-theTerrorism-Extraordinary-Temporary-Powers-Act-2006.pdf.

² ES to the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022, p 6.

proportionate to their objectives. To ensure that extraordinary legislation does not become ordinary by default, we consider that it must be reviewed regularly and publicly.

Additional safeguards

9. The bill also includes several amendments aimed at further strengthening human rights protections for individuals detained under the TETP Act, relating to:
 - contact with diplomatic representatives;
 - increasing protections for people with impaired decision-making ability by extending the contact time with family and requiring police officers to take reasonable steps to assist them in exercising their contact rights; and
 - allowing identification material to be taken to record any illness or injury suffered while in detention.
10. The Commission welcomes the proposals to:
 - (i) increase the special contact limit from 2 hours to 4 hours;
 - (ii) require police to exercise best efforts to locate the detainee's support person; and
 - (iii) require police to explain reasons if a contact person has been deemed unacceptable.
11. We consider that the addition of these safeguards would help to ensure that reasonable adjustments are made for detainees with impaired decision-making ability and that they are treated fairly and safely.
12. The Commission also supports the proposal to enable a detainee to contact the consular office of the country of which the person is a citizen, which will provide additional protections for non-citizens who are detained under a PDO. We are similarly not opposed to the proposal to enable identification material to be taken for the purpose of recording any illness or injury suffered by a person while they are detained under a PDO, provided that these powers are exercised appropriately and subject to robust safeguards.

We thank the Committee for the opportunity to provide this submission.

Yours sincerely,



Dr Helen Watchirs OAM

President and Human Rights Commissioner