



Shane Rattenbury MLA

Attorney-General
Minister for Consumer Affairs
Minister for Water, Energy and Emissions Reduction
Minister for Gaming

Member for Kurrajong

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Our ref: PRO22/1562

Dear Mr Cain

I refer to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 16 of 19 May 2022 in which the Committee made comments on the *Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022* (the Bill). This Bill was introduced in the Legislative Assembly on 5 May 2022.

The Committee's comments related to:

- proposed amendments to allow the taking and use of identification material to record an injury or illness a person may suffer while detained; and
- contextual information in the Explanatory Statement accompanying the Bill.

Having considered the Committee's comments, I propose to bring forward government amendments. I also propose to provide a revised Explanatory Statement.

Proposed government amendments

Taking of identification material

The Committee commented on the permissive nature of the current amendment which may allow police officers to not take identification material where a person has suffered an injury or illness while in detention.

To address this, I am proposing to move a government amendment to make it mandatory for police officers to take identification material to record an injury or illness where a police officer forms

belief, on reasonable grounds, that the detained person has suffered an injury or illness. This amendment will help improve accountability for the welfare of a person in this form of detention.

Use of identification material taken to record an injury or illness

The Committee queried the scope of the use that may be made of identification material taken to record an injury or illness suffered by a person while detained and commented that this use should be more clearly restricted to protecting individuals who suffer that illness or injury while being detained.

I agree with the Committee's comments and am proposing to move a government amendment to clarify that this material may only be used in a complaint, investigation or proceeding that relates to the injury or illness suffered by a detained person while in detention.

Response to Committee comments

The Committee made a number of other comments, to which I respond below.

Using identification material for other purposes

The Committee noted that police officers may take identification material to identify the limit or absence of an injury or illness and may use this to defend against any potential proceedings that may be brought. I note that it is an offence under the Act to use identification material taken under section 59 for any purpose other than those specified in section 60 of the Act. It would be in contravention of the Act to take identification material to establish the lack of an injury or illness and any such material would not be permitted to be used in proceedings.

Operation of amendment with section 58 of the Act

The Committee comments that it is unclear how this amendment will operate with section 58 of the Act. I consider that section 58 of the Act and this amendment will complement each other in their operation.

Section 58 prohibits the questioning of people detained under a preventative detention order, except for three specified purposes one of which is ensuring the safety and wellbeing of the person. Where a police officer questions a person for one of the three specified purposes, an audio or video recording is required to be taken of the questioning.

If, during the questioning of the detained person to ensure their safety and wellbeing, it becomes apparent the detained person is suffering or has suffered an injury or illness, the police officers will then be required, under the amendment, to take identification material (namely, photographs and videos) of the injury for the purposes of documenting this injury or illness. This will ensure that it may be used in further complaints, investigations or proceedings that relate to the circumstances resulting in the injury or illness being suffered while in detention.

An audio or video recording taken in accordance with section 58 may or may not provide sufficient evidence of the injury or illness so that it may later be used in proceedings, which is how the amendment complements this provision.

Application of Schedule 1 of the Act

I agree with the Committee's comment that Schedule 1 of the Act, which relates to the conduct of personal searches, does not apply to the amendments. If a police officer forms a belief during a personal search that the detained person has suffered an injury or illness while detained, the taking of identification material to record this injury or illness must only be undertaken once the personal search has been completed.

Reference to ACT Policing policies and practices in Explanatory Statement

The Explanatory Statement references policies and practices of ACT Policing. I note the Committee's concern that these are not reflected in, and may potentially be inconsistent with, the amendment.

The policies and practices referenced in the Explanatory Statement are drawn from the ACT Policing ACT Watch House Operations Handbook. These policies and practices apply generally when any person enters the custody of ACT Policing at the ACT Watch House. They are not specific to detention under the Act.

Insofar as there may be inconsistency between these practices and the amendments, the current practices relating to the removal of clothing of a person, reflect existing police powers. The Explanatory Statement notes that this is only currently undertaken if it is for the purposes of preventing or responding to immediate potential instances of self-harm of the detainee. As the amendments will impose new obligations on ACT Policing which may require items of a detainee's clothing to be removed for the purpose of taking photos or videos of injury or illness suffered in detention, relevant policies and practices will need to be updated to reflect these new obligations.

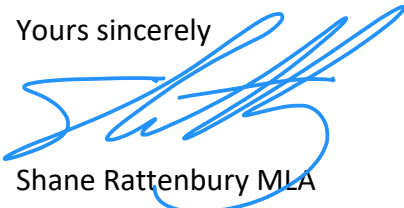
Reference to statutory review in the Explanatory Statement

The Committee requested amendments be made to the Explanatory Statement of the Bill to include references to the recent statutory review which was undertaken into the *Terrorism (Extraordinary Temporary Powers) Act 2006* (the Act).

A revised Explanatory Statement has been prepared to include reference to the review and that its purpose was to inform the possible extension of the Act.

Thank you for your consideration of the Bill. I trust the information above is of assistance to the Committee.

Yours sincerely



Shane Rattenbury MLA
Attorney-General

16/7/22