

2022

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**REPORT NO. 8 OF THE STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
INQUIRY INTO THE TERRORISM (EXTRAORDINARY TEMPORARY POWERS) AMENDMENT
BILL 2022 - GOVERNMENT RESPONSE**

**Presented by
Shane Rattenbury MLA
Attorney-General
October 2022**

Introduction

The ACT Government welcomes the Standing Committee on Justice and Community Safety's (the Committee) Report on the inquiry into the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (the Bill).

The Bill makes a number of amendments to the *Terrorism (Extraordinary Temporary Powers) Act 2006* (the Act) to extend the operation of the Act for a further five years from 19 November 2022, provides for a further mandatory statutory review into the operation and effectiveness of the Act and introduces a number of human rights protections for persons detained under the Act.

The Bill was introduced into the Legislative Assembly on 5 May 2022. On 11 May 2022, the Committee resolved to undertake an inquiry into the Bill, noting that the Act had been extended a number of times since it first commenced in 2006. The Committee invited public submissions and held a public hearing on 6 June 2022.

The ACT Government acknowledges the value of public discussion about terrorism and community safety and of the amendments proposed by the Bill and has considered the Committee's recommendations.

Recommendations and Government Response

Recommendation 1: *The Committee recommends that the ACT Government review the application of the law in respect of minors who are exempt from the ACT legislation and whether they would instead be subject to the Commonwealth legislation which does not offer the same level of human rights protections.*

Government Response: *Agreed.*

The ACT Government is committed to ensuring the Territory upholds its obligations in relation to the human rights of all people in the Territory.

When the Act was introduced in 2006, the ACT Government did not permit the preventative detention of people under the age of 18, as it was considered that such detention could not be justified on any grounds. The Convention on the Rights of the Child states that children

should only be detained as a last resort and when the Act was being introduced, the ACT Government noted that a limitation on a child's rights could only be justified on the basis of clear and compelling evidence of a substantial threat from persons under the age of 18 that could not be appropriately dealt with by means other than preventative detention. At the time of the Act's introduction, there was no evidence to suggest minors presented such a threat.

The ACT legislation has additional safeguards and human rights protections, compared to the Commonwealth preventative detention scheme. For example, in the ACT, there is full judicial oversight of the process for obtaining a preventative detention order, as these orders can only be made by the Supreme Court of the ACT. Additionally, the ACT has a Public Interest Monitor, an independent person appointed to represent the public interest when an application is made for a preventative detention order. Additionally, persons detained under ACT legislation have additional rights to contact their family, friends or guardian and if a detained person cannot afford private legal representation, Legal Aid ACT is required to represent the detained person.

The ACT Government will review the existing provisions and consult with stakeholders to determine if there is reasonable evidence to suggest that minors under the age of 18 should fall within the scope of ACT legislation, so that they may be preventatively detained under ACT legislation and are afforded appropriate human rights protections.

Recommendation 2: *The Committee recommends that the Assembly pass the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022.*

Government Response: *Noted.*

The ACT Government welcomes the Committee's recommendation that the Legislative Assembly pass the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022.