



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),  
Mr Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022

**Submission Number: 01**

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Standing Committee on Justice and Community Safety  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra ACT 2601

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Dear Committee,

**RE: Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022**

Thank you for the opportunity to contribute to the Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 ('the Bill').

Legal Aid Commission (ACT) ('the Commission') appreciates the importance of legislation that provides mechanisms allowing timely responses to threats of terror, while also protecting and preserving the civil and political rights of individuals.

The Commission, therefore, supports the Bill's extension of the current sunset clause contained in the *Terrorism (Extraordinary Temporary Powers) Act 2006* ('the Act') to 19 November 2027. Extending the Act's expiration date by five years is consistent with previous extensions and is necessary to ensure that a terrorist threat in the ACT is addressed and managed.

The Commission also welcomes the amendments aimed at increasing the protection of the human rights of those individuals subject to the Act's provisions. Some of the Bill's amendments are further discussed below.

**1. Section 50A**

The proposed section 50A, introducing the right for a foreign person detained under the Act to have a diplomatic or consular representative informed about their detention, is appropriate and ensures equality of treatment among detainees. Indeed, the amendment mirrors the right that is already afforded to detainees under section 66(1)(f) of the *Corrections Management Act 2007*.

**2. Section 53**

The Commission also supports the amendments of section 53 of the Act. The increased hours of contact for detainees with impaired decision-making ability from two to four hours, and the police officer's positive duty to take reasonable steps to assist the

detainees in exercising their right to have contact with a person under subsection (2) represent important measures to allow people with impaired decision-making ability to exercise their rights, providing the necessary adjustments that recognise their condition.

Importantly, the Bill supports transparency in decision-making by requiring police officers who refuse to allow a detainee with impaired decision-making ability to have contact with a person under subsection (2)(b) to provide reasons for the refusal, unless doing so would disclose information in relation to a terrorist act. Following such refusal, the Bill also allows the detainee to nominate a different person, therefore ensuring the exercise of their right under the section.

Nevertheless, with respect to the above proposed provision, the Commission recommends introducing record keeping requirements whenever a police officer refuse to allow a detainee with impaired decision-making ability to have contact with a person under subsection (2)(b).

The provision introducing record keeping requirements could mirror section 52(11), which prescribes that police officers must make a written record when a person asks to contact a lawyer or legal aid. The provision should require the police officer to record in writing:

- The time, date and request of contact made by the detainee;
- The reasons why such request was refused, even when such reasons were not communicated to the detainee because doing so would have disclosed information in relation to a terrorist act; and
- Whether, after the refusal, the detainee was reminded of their right to nominate another person and whether they elected to do so.

Internal policies or an additional provision could be developed to establish restrictions in relation to how, who and when the record could be viewed.

Providing a formal requirement to keep a record would further increase transparency of the reasons why a detainee's right has been limited, while also provide a record should there be future complaints to be investigated.

### **3. Sections 59(2)(b) and 60(1)**

Under the Act's current formulation, a police officer may take or cause to take 'identification material' from a detained person, meaning fingerprints, sample of a detained person's handwriting, photographs and other similar things,<sup>1</sup> only if the person consents in writing or if the police officer believes, on reasonable grounds, that taking the material is necessary to confirm the person's identity as the person stated

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<sup>1</sup> Section 9 of the Act states '*identification material*, for a person, means—

- (a) prints of the person's hands, fingers, feet or toes; or
- (b) recordings of the person's voice; or
- (c) samples of the person's handwriting; or
- (d) photographs (including video recordings) of the person.'

in the order. The material can only be used for the purpose of identifying that the person detained is indeed the one stated in the order.

The Commission is supportive of the proposed reformulation of sections 59(2)(b) and 60(1), which also allow police officers to take detainees' identification material for the purpose of recording illness or injury suffered by a person while detained and to use the material taken for that purpose solely for complaints, investigations or proceedings in relation to the detainee's apprehension or detention.

The amendments allow and encourage the gathering of evidence of a detainee's illness and injury to be used to address a potential breach of the person's rights, while also ensuring that the material taken as evidence, which is sensitive material, is only used for restricted purposes (being for a complaint, investigation or proceeding) and not misused.

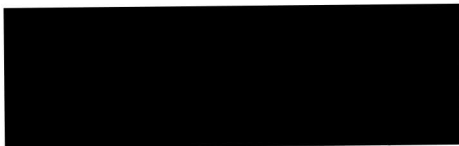
#### **4. Conclusion**

The Commission believes that the Bill's amendments support the protection of the public against threats of terror while also assuring that detainees' rights are protected.

We, therefore, welcome the extension of the Act and the other amendments proposed by the Bill, subject to the specific recommendation at paragraph 2.

Should you have any questions in relation to the above submissions, please do not hesitate to contact me at [REDACTED].

Yours sincerely



Dr John Boersig PSM  
Chief Executive Officer  
**Legal Aid ACT**