



**Inquiry into Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022**  
**ANSWER TO QUESTION TAKEN ON NOTICE**  
**6 June 2022**

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Asked by Dr Marisa Paterson MLA on 6 June 2022: Ms Karen Greenland took on notice the following question(s):

[Ref: Hansard Uncorrected Proof Transcript 6 June 2022 [PAGE 11-12]]

In relation to:

**DR PATERSON:** Just a question that came to mind, listening to Dr Watchirs' evidence, I was wondering, if someone was detained under these laws, what would be their complaints process? Like if they wanted to—if they felt they were unfairly detained, how—would it be a complaint against the police or how—

**Ms Greenland:** So they could have a number of complaints processes, so police—the police complaints process, the ombudsman would be another potential complaints process, I believe they potentially could make a complaint to the Human Rights Commission but I stand to be corrected if that is not the case, but my understanding is there would be a whole range of complaints mechanisms that would be available to someone detained under the powers.

**Mr Glenn:** I might add, because the process has judicial oversight, people need to go before the court for the imposition of the powers, so there is actually an opportunity there. And so, there is perhaps a distinction between a complaint about how one might have been treated subject to an order and the process of being subject to the order and being able to heard in relation to it.

**DR PATERSON:** And just as a lay person trying to understand this, is it—with the 14-day rule in the ACT, how many times would you go before the judicial review to keep them detained for 14 days?

**Ms Greenland:** You would—the initial application would be for a maximum of seven days, so that is the first one, so you cannot get 14 days at the outset. And then, the matter would have to go back before the court to get an extension of another seven days.

**DR PATERSON:** And so, in the submission from Australian Lawyers for Human Rights, they point to the United Nations Human Rights Committee, it is the international covenant on civil and political rights, that states that people should not be detained—it should not exceed a few days. So do you think the seven days is too long as an additional detention point?

**Mr Rattenbury:** That has not been a consideration that has been raised with us in the review processes, we can certainly have a look at that submission.

**The answer to the Member's question is as follows:–**

Most stakeholders consulted for the review of the Terrorism (Extraordinary Temporary Powers) Amendment Act 2022 did not raise any concerns regarding the maximum 14-day detention period.<sup>1</sup>

The provisions allowing for preventative detention for up to an initial 7 days, and up to a maximum of 14 days in total, are consistent with those in corresponding legislation in other states and the Northern Territory<sup>2</sup>. These provisions were developed with advice from law enforcement about the time period which law enforcement agencies may reasonably need to investigate a planned terrorist attack or a terrorist act that has been carried out.

The Act and the amendments proposed to be made by the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 include significant safeguards for a person who has been detained and reflect the need to balance the human rights of those who are detained against the human rights of members of the broader community, such as the right to life. This latter right is safeguarded by preventative detention powers that temporarily limit the rights of a person who is suspected of planning or carrying out a terrorist act.

The comments of the Australian Lawyers for Human Rights refer to Article 9 of the International Covenant on Civil and Political Rights (ICCPR). Article 9 relevantly states:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.*
- ...
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

It is important to note that, under the Act, a preventative detention order (PDO) can only be made by the Supreme Court of the ACT. This ensures that the human rights of the individual who is suspected of planning or carrying out a terrorist act are protected and that the PDO is determined judicially to be reasonably necessary given the circumstances<sup>3</sup>. Moreover, the Supreme Court must determine the actual 'end time' for each preventative detention order, which may be sooner but 'must be no later' than the maximum time periods specified in the Act.

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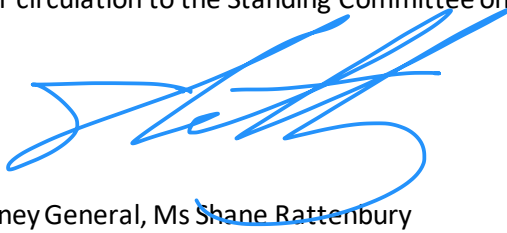
<sup>1</sup> The submission in opposition to this was from one stakeholder whose expressed the view that the Act and Bill should not exist.

<sup>2</sup> All other Australian jurisdictions, except the Commonwealth, allow for a maximum of up to 14 days preventative detention, see section 26K of the Terrorism (Police Powers) Act 2002 (NSW); section 12 of the Terrorism (Preventative Detention) Act 2005 (Qld); section 13G of the Terrorism (Community Protection) Act 2003 (Vic); section 9 of the Terrorism (Preventative Detention) Act 2005 (Tas); section 10 of the Terrorism (Preventative Detention) Act 2005 (SA); section 13 of the Terrorism (Preventative Detention) Act 2006; and section 21K of the Terrorism (Emergency Powers) Act 2003 (NT)

<sup>3</sup> See section 20(2) of the Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT).

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:

A handwritten signature in blue ink, appearing to be 'Shane Rattenbury', written over the printed name.

Date: 16 June 2022

By the Attorney General, Ms Shane Rattenbury