LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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

Members:

MR P CAIN (Chair)
DR M PATERSON (Deputy Chair)
MR A BRADDOCK

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 6 JUNE 2022

Secretary to the committee:
Ms K de Kleuver (Ph: 620 70524)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

GLENN, MR RICHARD, Director-General, Justice and Community Safety Directorate.....**7**

GREENLAND, MS KAREN, Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate.....**7**

RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction **7**

WATCHIRS, DR HELEN, President and Human Rights Commissioner, ACT Human Rights Commission **1**

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Amended 20 May 2013

The committee met at 3.40 pm.

WATCHIRS, DR HELEN, President and Human Rights Commissioner, ACT Human Rights Commission

THE CHAIR: As Chair of the Standing Committee on Justice and Community Safety, I declare open the public hearing of the inquiry into the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022. I acknowledge that we meet on the land of the Ngunnawal people, and we respect their continuing culture and the contribution they make to the life of this city and this region.

The Assembly referred this inquiry to the committee on 5 May 2022. The committee has received four submissions, three of which are available on the committee website. The committee will hear today from the ACT Human Rights Commission, the Attorney-General and officials from the Justice and Community Safety Directorate. The proceedings are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live.

We now move to our first witness, Dr Helen Watchirs, from the ACT Human Rights Commission. On behalf of the committee, thank you for appearing today and for your written submission to this inquiry. Could you confirm for the record that you have understood the privilege implications of the privilege statement?

Dr Watchirs: Yes, I have.

THE CHAIR: Thank you very much. Dr Watchirs, would you like to make a brief opening statement?

Dr Watchirs: In the interests of time, no; I will just answer questions.

THE CHAIR: Thank you. We will move to substantive questions and I will begin. If this bill is not passed and these powers are not extended, yet something of the order of these powers is needed, what mechanisms are available to the government to respond to an emergency that is anticipated under the current provisions?

Dr Watchirs: Without an ACT law, we would then be reliant on the commonwealth law. That only allows people to be preventatively detained for 48 hours; whereas under state and territory legislation, because of the constitutional arrangements, we can detain people for up to 14 days. It has never been used in the ACT, but we are the seat of parliament and a government department, so it is not unreasonable to think that we could be a target. We have been at a moderate risk since 2015.

If we did not have this legislation, we would then be reliant on the federal legislation, which has a lot of shortcomings in terms of human rights. In 2006, when the original legislation was enacted, the ACT had the only Human Rights Act in Australia. Since then we have had one in Victoria and, more recently, in Queensland. There are good human rights provisions in those, but the ACT one is the most comprehensive. It is a great model for other jurisdictions to follow. If we do not have it then we are reliant on the commonwealth's, which is probably the worst legislation in Australia.

THE CHAIR: So the provisions that would prevail in the commonwealth legislation—if this bill was not passed—in your view are less than satisfactory compared to the current ACT legislation?

Dr Watchirs: Absolutely. There is a whole raft of reasons why the ACT's is better. We have judicial authorisation of the process. A police officer makes a decision in the commonwealth regime. They have disclosure offences. We do not have disclosure offences. You can tell your family where you are and why you are there; whereas with the commonwealth scheme you are only allowed to say that you are in a safe place and you cannot tell them any more.

Where it is a five-year offence, we have a public interest monitor—that is, a panel of lawyers—if you cannot be present in a hearing because of terrorism evidence. Ours does not apply to children. In other states and the commonwealth it applies to children. We have protocols for police to develop and training in terms of human rights protection. We have to have a statement of reasons. There are none in the commonwealth regime.

We have a much higher threshold: it has to be the least restrictive means to prevent a terrorist act or preserve evidence of a terrorist act; whereas the commonwealth only has "substantially assist" in those tests. We have compensation for wrongful detention and the presumption of confidentiality of legal communication. That is not present in the commonwealth one.

We have legal representation explicitly by Legal Aid if you cannot afford legal representation, and there is an express prohibition on the use of evidence when obtained by torture, such as someone who was subject to rendition overseas. There are a whole raft of ways in which the ACT's is much better.

THE CHAIR: Thank you. Your submission outlines much of this.

DR PATERSON: Australian Lawyers for Human Rights outline that, under the International Covenant on Civil and Political Rights, detention may not exceed a few days. As you said, the commonwealth have a 48-hour window. What are your views on the fact that we may contravene international human rights through this law, and what are your views of the 14-day period?

Dr Watchirs: I think the UK may have changed the number of days. Could I take on notice checking what the current regime is there? They have had a number of judicial interpretations of that scheme and it has been tested. There was a scheme where it only applied to overseas-born citizens. That was found to be discriminatory, so it was overruled. Could I have more time to look at that issue of the 14 days? Certainly, it was deemed compatible back in 2006. We were told that that was absolutely necessary, so we did not find that it was incompatible at the time. There are so many thresholds. You could not keep them for the whole 14 days unless you had that evidence all the way through.

MR BRADDOCK: Australian Lawyers for Human Rights—I apologise that you have not been able to see their submission; the committee has not yet published it—

say they are concerned that people with disabilities and impaired decision-making capacity, mental illnesses and Aboriginals or Torres Strait Islanders have particular vulnerabilities. Are you concerned about the human rights impacts on those particular cohorts under the PDOs?

Dr Watchirs: Certainly, they are vulnerable populations. Probably culturally and linguistically diverse populations would be the most subject to it, given that there have been a number of terrorist acts in Australia. This change of having the contact hours for a person with impaired decision-making being from two to four hours a day is a big improvement. Requiring police to exercise best efforts to locate a support person is also good, as well as having to explain reasons if the support person is deemed unacceptable. I like the idea of legal aid. That could have an extra requirement of keeping records of why someone is unacceptable so that it could be challenged in a later complaint.

Of course, any law can be disproportionately focused on vulnerable populations. We have seen that in relation to bikie gang laws. The Ombudsman did a report which showed some were disproportionately used on young people and Aboriginal people—that is, move-on powers and those kinds of laws. It can be used in that way, but in the ACT it has never been used. It has only been used three times in New South Wales and once in Victoria. I am not sure we have the evidence of that yet, but it would be something that we would look for and monitor carefully.

I can understand their concern about that, but we do not yet have the evidence, apart from general evidence that it happens with police powers. I think if there was a more transparent regulation of police, I would be more confident about saying that. If they could make a complaint under the Discrimination Act or if there was a complaint power under the Human Rights Act generally then that could be a form of accountability against police, which I think would be an improvement, particularly for those vulnerable populations.

THE CHAIR: Just on the nexus between the commonwealth law and the ACT law, I do not believe we are in a situation—and I would invite your comment—where there is an inconsistency in having legislation on similar matters in a commonwealth act and an ACT act. I think you touched on that a bit earlier.

Dr Watchirs: Yes. The commonwealth act does not cover the field because of their lack of power to hold people for longer periods. There was that COAG meeting back in September 2005, where it was agreed—and all the jurisdictions kept their promise—that they would have complementary legislation, although it does vary from state to state as to what the detail is and how far human rights are protected by that. The public interest monitor was a Queensland development and we copied that. That was quite a good one. It varies from state to state.

THE CHAIR: This is a very general question: when the law has never really been applied, it is very hard to test either avoidable inconsistencies or incorrect applications.

Dr Watchirs: There are often unforeseen consequences in laws that you fix up later. Even these amendments, as I explained just recently, we should have thought about in the first place. Over time you think of things and improve it. I am reluctant to extend

legislation that restricts rights so significantly, but I think the option of having only the commonwealth law makes me think it is definitely much better to have the ACT law, as well as the fact that we could be a spotlight for terrorist activity, just by the nature of the institutions that are housed in the ACT.

THE CHAIR: Are you aware, either through your own efforts, your own commissioned efforts, or the government's, of the concerns about the commonwealth legislation? Or is it simply a case of saying, "We've got our own laws, so that's how we've expressed our concerns"?

Dr Watchirs: I am not aware that the commonwealth legislation has been used. As I said, we know it has been used in New South Wales and Victoria. They are not as good as the ACT. Certainly, in public forums we made submissions back in 2005 and 2006 regarding concerns about the commonwealth scheme. There have been other extensions of the scheme in New South Wales and Victoria and rumours of the commonwealth doing a similar thing, but they have not happened yet. We certainly keep in contact with commonwealth attorneys-general on any inquiries on those. We will make submissions and say how they could be improved to be more like the ACT model.

THE CHAIR: You are saying you have not actually made any submissions to the commonwealth Attorney-General on their approach?

Dr Watchirs: We certainly appeared back in 2005 or 2006 before the Senate committee looking at the issue. It was a hearing held in Sydney. The Chief Minister appeared, and I appeared separately, and expressed, in the same way, our concerns with that model bill. You may remember that then Chief Minister Stanhope put the bill on the website because it was not available to the public, which was quite controversial at the time, but it meant that the debate was informed—and I approved.

THE CHAIR: I think it is time to have that discussion again, given that we have moved so far from that original time and also the world has changed quite a lot. For example, there is no presence in Afghanistan or Middle Eastern regions which, we can see, were a very obvious source of some of these acts that we are seeking to be addressed by this law.

Dr Watchirs: But we do have homegrown right-wing terrorism, as evidenced by the Christchurch massacre.

THE CHAIR: Yes.

Dr Watchirs: So it is a possibility. I do not like to think that it could occur, but the risk is moderate, according to the national measure.

MR BRADDOCK: By way of clarification: because the ACT legislation prohibits the detention of children, is the window still open for the commonwealth to detain children for up to two days?

Dr Watchirs: Yes, it is.

DR PATERSON: The Ombudsman's submission stated:

> However, neither the Act nor the Bill define precisely where someone is to be held once taken into custody …

I believe I read somewhere that they cannot be held with remandees. I may have just dreamt that; I am not sure.

Dr Watchirs: That is in the original bill.

DR PATERSON: It is?

Dr Watchirs: The original act, yes.

DR PATERSON: Do you have any views on the fact that it is not clarified where someone should be detained?

Dr Watchirs: I think there needs to be either a notifiable or some other instrument regarding where a person can be held. I expect it would either be at our watch house or the Alexander Maconochie Centre, or another place that could be created. We have a Symonston temporary remand centre. It is not very good accommodation; the standard of it is very low compared to those others.

DR PATERSON: Do you think it needs to be specified or is that just something that can be worked out at the time?

Dr Watchirs: I think it is something that could be worked out. I am not that concerned about it.

DR PATERSON: You spoke in your submission about ensuring that the extraordinary legislation does not become ordinary by default. I think that is pretty much why we are doing the inquiry.

Dr Watchirs: Yes, and this is the third time it has been extended. It is not a waste of time. It is absolutely appropriate that we have deliberately had sunset clauses. We deliberately look at the risk and what is happening in other jurisdictions around Australia and globally and make a considered choice about whether, even though it has not been used, there is still a good reason to keep it because of the commonwealth legislation having so many human rights problems.

THE CHAIR: Given that the errant behaviour at this extreme level will always be with us, I suspect, is there a case to entrench this in a statute book?

Dr Watchirs: I do not think we have seen the evidence yet. If it had been used then that might be more of a case. It is the fact that it has not been used. We have always said it should have a sunset clause, so I would stick to that line.

THE CHAIR: Why do you hold that position?

Dr Watchirs: Because it is extraordinary legislation. It would be wonderful if we did

not have to have preventative detention orders to hold someone without charge when we are not satisfied that they have been charged with a crime. Given the devastation that could be caused by a terrorist act, the gravity of that is what makes those restrictions proportionate under section 28 of the Human Rights Act. I do not think you can say that on an ongoing basis. I think it has to be assessed on a regular basis. It has been considered by a different Legislative Assembly every five years. I think it is appropriate that this Assembly considers whether it is necessary.

THE CHAIR: On behalf of the committee, I thank Dr Watchirs for appearing today on behalf of the ACT Human Rights Commission. When available, a proof transcript will be forwarded to witnesses to provide an opportunity to check the transcript and identify any errors of transcription. I do not believe there were any questions taken on notice.

Dr Watchirs: There was one.

THE CHAIR: We do have a question on notice. An answer for that would be appreciated within one week from the date of this hearing.

Short suspension.

RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction
GLENN, MR RICHARD, Director-General, Justice and Community Safety Directorate
GREENLAND, MS KAREN, Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

THE CHAIR: We will move to our next witnesses today, the Attorney-General, Mr Shane Rattenbury, and officials from the JACS Directorate in the ACT government. On behalf of the committee, thank you for appearing today. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement that is before you on the table. Could you confirm for the record that you each understand the privilege implications of the statement?

Ms Greenland: Yes, I do.

Mr Glenn: Yes.

Mr Rattenbury: Yes.

THE CHAIR: All witnesses have done so. Attorney-General, before we commence with questions, would you like to make a brief opening statement?

Mr Rattenbury: Thanks, Chair; I had not intended to. What I can quickly flag for the committee, as you will have picked up, is that, obviously, this bill has a sunset clause in it. That came up during the COVID period. We put a one-year extension in place just to allow for some further consideration and consultation. This, essentially, seeks to re-enact the bill for another five years but with a series of amendments. I am happy to explore elements of either those amendments or the bill generally, as you wish, today.

THE CHAIR: Thank you. I note for the record that you have not put in a submission in terms of being a published view for our inquiry.

Mr Rattenbury: No. I guess that is an interesting question.

THE CHAIR: I am not criticising that; I am just saying—

Mr Rattenbury: No. I think the bill and the ES would be our submission under this process of bill inquiry.

THE CHAIR: Apparently, you also went very public in the *Canberra Times* a couple of weeks ago. There was an article in the *Canberra Times* with a few quotes from you.

Mr Rattenbury: We were asked about it, yes.

THE CHAIR: We have heard from the Human Rights Commission this afternoon. Obviously, their submission is also available. Dr Watchirs is still in attendance as a guest of the committee. At the high level, why do we need this extension? There are

commonwealth powers to deal with such an emergency. What are your concerns about leaving it in the hands of the commonwealth?

Mr Rattenbury: Obviously, as you allude to, we have the two layers of legislation. There is an overarching commonwealth bill and the territory bill. There are differences between the two levels of legislation. Having considered this carefully, in light of whether we should renew the legislation or not, with the Human Rights Act operating in the ACT and a general commitment from the ACT government over a number of terms now—and various attorneys and chief ministers have worked on this legislation—my view is that we have a better bill here, in the sense that it offers a range of additional protections and human rights considerations that did not exist in the commonwealth bill.

An example would be full judicial supervision and oversight of the program in the territory. That would be one. Another example, at an entirely different level, is that police officers are required to undertake human rights training for exercising these special powers at the ACT level, and that is not a requirement at the commonwealth level. They are the sorts of differences that I think mean that the ACT provisions are preferable. Whilst my preference would be not to have this bill at all, in the context of that commonwealth legislation, our leaving the field to the commonwealth would diminish protections for ACT citizens.

THE CHAIR: Obviously, neither power seems to have been used, as far as we are aware, so it is hard to actually test the application at this stage. What have you modelled? I know you have some amendments in here as well, but have you done any modelling on other legal jurisdictions where there has perhaps been a real application of these?

Mr Rattenbury: I might defer to my colleagues on that one. What I can say, in terms of both this question and your previous one, is that certainly ACT Policing have made the case to government that they wish to have the availability of these powers in the event a terrible circumstance happens and it is envisaged that, under the legislation, they feel they need these powers to enable them to operate in those particularly exceptional circumstances. In terms of an international comparison?

Mr Glenn: In terms of looking across other jurisdictions, we have drawn some of the amendments that are in this bill from other jurisdictions—New South Wales, Victoria and Queensland—

Ms Greenland: That is correct.

Mr Glenn: where there have been uses of the powers. Obviously, in terms of our own experience of how this process works in the ACT jurisdiction, because we have not had, thankfully, a need to use the powers as yet, we have not had that experience. Like many law reform processes, we draw from our colleagues interstate to get the latest learnings to be able to introduce any initiatives that they come across that we think are worthwhile here.

Ms Greenland: In conducting the review, we also looked at the review that had been undertaken at a commonwealth level of its provisions. That particular review—and I

would have to get the title of it for you—did actually cite the ACT legislation quite favourably. It acknowledged the high level of protections that were in the ACT legislation. As the attorney has mentioned, we obviously have consulted quite closely with ACT Policing. Our expectation would be that they would be talking to their colleagues in those jurisdictions where the equivalent provisions have been used and identifying whether they felt that lessons had been learnt from those jurisdictions that might necessarily need some sort of consideration in our legislation as well.

THE CHAIR: Are you happy to send a link or copy of that commonwealth review?

Ms Greenland: Yes, I can do that.

THE CHAIR: Thank you.

DR PATERSON: A question that came to mind, listening to Dr Watchirs' evidence, was what, if someone was detained under these laws, would be their complaints process. If they felt they were unfairly detained, would it be a complaint against the police?

Ms Greenland: They could have a number of complaints processes. There would be 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. My understanding is that there would be a whole range of complaints mechanisms that would be available to someone detained under the powers.

Mr Glenn: I might add that, 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. 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 be heard in relation to it.

DR PATERSON: As a layperson trying to understand this, 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: The initial application would be for a maximum of seven days. That is the first one. You cannot get 14 days at the outset. Then the matter would have to go back before the court to get an extension of another seven days.

DR PATERSON: The submission from Australian Lawyers for Human Rights points to the United Nations Human Rights Committee. The International Covenant on Civil and Political Rights states that the time people can be detained should not exceed a few days. Do you think that 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 CHAIR: Thank you.

MR BRADDOCK: Going to earlier evidence: in terms of the requirement for an instrument to designate a place of detention for the purposes of this act, is that something that can be done in a timely fashion, should it be required, as the circumstances may happen in an incident?

Ms Greenland: I cannot see why it could not. An instrument can be notified, potentially, the same day that it is made. As the committee has heard, there has not been the opportunity, in a practical sense, to test these provisions in the ACT. The making of an instrument would be able to be done fairly quickly, I would think.

THE CHAIR: This will be the third extension; is that right?

Mr Rattenbury: Yes.

THE CHAIR: Do you believe there is a case to entrench this law into the statute book?

Mr Rattenbury: My personal preference would be that these laws would be ultimately removed from the statute book, both from perhaps a national security point of view and from how we might deal with these matters with the existing police powers. On that basis, I would be reluctant to entrench them at this point. They are quite extraordinary powers. The title of the bill, "temporary and extraordinary powers", I think sums up the thinking that was in place.

There have been various reports over the years on whether this legislation should continue. We saw the report in, I think, 2016 by Bret Walker SC—who was then the independent national security legislation monitor—who recommended the repeal of the laws at the commonwealth level. I think that security experts might suggest the environment has changed since that report was written with the rise of homegrown extremism particularly. It is an active debate and, at this point, I think the better position for the ACT, whilst having these powers, is to keep them under review, given their very extraordinary nature.

DR PATERSON: In the examples where these types of laws have been used in New South Wales and Victoria, do you know the breakdown between those that were planned attacks versus those that were actually carried out and people were charged under those terrorism laws? Where I am going with this is: given what you said about homegrown terrorism being where things are at at the moment, do you think there should be different laws for those that are planning a terrorist attack versus those that have carried out a terrorist attack?

Mr Glenn: Certainly, I am not aware of the numbers of preventative detention orders in anticipation, or the expectation, that an attack, an incident, would occur, as opposed to the evidence-gathering phase at the other end of it. Perhaps there is a distinction between the use of these orders for those purposes and the extent to which terrorist offences are charged and the offences that are committed in relation to that.

Ultimately, though, given the definition of terrorism, it could be as a result of politically or religiously motivated violence that has an extraterritorial impact. It could equally arise from more ideologically driven motivations that could be entirely

domestic. The effect is much the same, if the illegal acts occur. I think the mechanisms around charging those offences are probably right in the sense that they are the same regardless.

MR BRADDOCK: What were the learning points from the other jurisdictions who have utilised similar laws?

Ms Greenland: I am unable to provide any particular detail there because it is more information, I think, that would be shared with Policing, law enforcement services. It is not something where we have received advice from other jurisdictions around particular learnings. As I say, as we have done these reviews in the past, we have gone to ACT Policing to seek their views and, in turn, relied on any intelligence of learnings having come through other jurisdictions that would be conveyed to a law enforcement agency that would actually be utilising the provisions. I cannot say that we are aware of any particular learnings that have been shared openly about how other jurisdictions have found these laws to be useful or require a change.

MR BRADDOCK: Have we shared any learnings in terms of the human rights aspects of the laws that we might not necessarily expect the police to be across?

Ms Greenland: Shared with other jurisdictions?

MR BRADDOCK: Learnt from Queensland or Victoria.

Ms Greenland: We have certainly looked at other jurisdictions' legislation where there have been some changes made to their legislation. Some of the provisions that are in the bill that we are now considering are ones that have been drawn from those jurisdictions.

MR BRADDOCK: In terms of protections in this bill for vulnerable populations, particularly under the PDOs, are we satisfied that the rights of disabled people and people of culturally and linguistically diverse backgrounds—those sorts of groupings—have been adequately protected as part of these arrangements?

Mr Rattenbury: Certainly, that is a key endeavour in this legislation generally, both the existing framework and the new measures that are coming forward. For example, we have measures like a public interest monitor must be appointed when an application is made for a preventative detention order. That is the sort of provision that provides that independent external oversight. The applicability of that for people who might be deemed vulnerable is obviously particularly important. I think there are a range of provisions there. It is certainly intended that those protections are there.

You will have noted in this round of amendments that there are additional safeguards for detainees who are not citizens or permanent residents of Australia. I think that was identified as an area of vulnerability for those who might be in the country potentially from overseas who conduct a terrorist act. Whilst that is obviously particularly unwelcome, there would be language barriers and unfamiliarity with the system. So that would be a type of vulnerability that I think this caters for. Across the board, there are a series of provisions.

Ms Greenland: I think that has covered it, Attorney.

MR BRADDOCK: Forgive me if this was raised in a previous iteration: the vulnerability of being under 18, where they would not be detained under the PDOs but they could be detained under the commonwealth legislation. Have we considered that in terms of the potential implications for under-18s?

Ms Greenland: Our legislation only applies to adults. They cannot be detained if they are under 18.

MR BRADDOCK: That is partly my question. We are consigning those under-18s to be detained under commonwealth legislation. Is that better or worse than what we have on the books?

Mr Rattenbury: That is an interesting question. It is a judgement question. I think implicit in your question is: will we be better off lowering the age category in the ACT legislation and bringing that group in under a set of ACT protections?

MR BRADDOCK: I do not know.

Mr Rattenbury: I realise you were not arguing that point. That is a fair question that has not been contemplated in the range of consultations that have been undertaken. That has not been raised in terms of the review of the act that we did last year. It involved consulting with the Human Rights Commission and various legal groups across the community, and nobody has raised that point previously.

THE CHAIR: There is some criticism of the commonwealth scheme. The explanatory statement, on page 6, states:

> The Commonwealth preventative detention scheme contains significantly fewer human rights protections than detainees are afforded under the TETP Act.

I am assuming your view is that you would rather have the ACT regime than the commonwealth's. Given that, have you sought to persuade the commonwealth to adopt a more appropriate approach for the ACT, at least?

Mr Rattenbury: Yes. Obviously, the commonwealth does not have the human rights framework that the ACT does. Given that is the genesis of a lot of protections here in the territory, it is unclear whether the commonwealth would adopt those positions.

THE CHAIR: Even a fresh Attorney-General, perhaps?

Mr Rattenbury: Maybe. It is a fair prompt. When I speak to him, I will raise that proposition. We have a few things to raise with him, but I will add that to the list, Mr Cain.

DR PATERSON: My question is around the proposal to enable identification material to be taken for the purpose of recording any illness or injury suffered by the person while they are detained. There were some concerns raised in the scrutiny committee around this. The Human Rights Commission say that they agree to this, as

long as there are robust safeguards in place. The scrutiny committee felt that further protections were needed. Can you speak to that aspect of the bill and your understanding of, or confidence in, the current amendments?

Ms Greenland: We appreciate the comments that were made by the scrutiny committee. Certainly, the intention of those provisions around the taking of identification material is protective of a person who is in custody, to ensure that if the person does suffer injury or illness in custody there can be evidence taken of that having occurred.

We noted the committee's comments and are in the process of talking with ACT Policing about whether we need to have another look at the wording just to make sure that that intent is captured, including making sure that any such material that is taken would not be able to be used other than in proceedings or complaints that relate to the treatment of the person in custody. We are in the process of talking with ACT Policing about whether there is any need to have a look at the wording, just to make sure that that is achieving the intended purpose of protecting the person in custody and maintaining transparency of what occurs.

DR PATERSON: Just for the record, the Human Rights Commission's submission says that we need to ensure that extraordinary legislation does not become ordinary by default. I am asking for your comment on that quote.

Mr Rattenbury: It is clear that preventative detention is a very invasive erosion of human rights. As our human rights legislation sets out, of course, human rights are not absolute, and there is a weighing up process and a balancing of the various rights. One might loosely call it the right of the community to be safe versus the right of individuals to have their freedoms and liberties protected. What we have sought to do in this legislation is to get that balance right, as I say, particularly in the context of the commonwealth legislation, to make sure that, from an ACT citizen point of view, we are doing the best job we can as this legislature to make sure that ACT citizens have those rights balanced as well as possible.

THE CHAIR: On behalf of the committee, I thank the Attorney-General, Mr Shane Rattenbury, Mr Glenn and Ms Greenland for appearing today. When available, a copy of the proof transcript will be forwarded to witnesses to provide an opportunity to check the transcript and identify any errors in transcription.

If witnesses undertook to provide further information or took questions on notice during the hearing, answers to these questions would be appreciated within one week from the date of this hearing. On behalf of the committee, I thank all of the witnesses who have appeared today. If members wish to lodge questions on notice, please provide them to the committee secretary within five working days of this hearing.

The committee adjourned at 4.23 pm.