

## Written evidence from Professor Emeritus Clive Walker (CHIS0007)

1 This submission arises from my research which has focused for many decades on terrorism and counter-terrorism, as well as broader issues in criminal justice, miscarriages of justice, and human rights.<sup>1</sup> I have also written specifically about the legal regulation of Covert Human Intelligence Sources ('CHIS').<sup>2</sup> I hold the title of Professor Emeritus at the University of Leeds. My appointments also include the role of Senior Special Advisor to the Independent Reviewer of Terrorism Legislation (Jonathan Hall QC). I have made many submissions to Parliamentary committees and acted as an appointed advisor to the Civil Contingencies legislation committee in 2003-04.

2 This paper is short. The reason is that several other commentators have already identified the main defects of this proposed legislation, including:

- the range of empowered authorities;
- the absence of limits on the types of wrongdoing;
- the legalisation of such wrongdoing, rather than more limited forms of immunity, going beyond the position in the 'Third Direction' case;<sup>3</sup>
- the weak mechanisms of accountability and oversight.

All of these criticisms are fully endorsed by the author.

3 Rather than elaborate afresh those arguments, this paper highlights the shoddiness of the proposed legislation by reference to much more comprehensive legal statements in closely allied jurisdictions. Even without awaiting the results of the Undercover Policing Inquiry,<sup>4</sup> it is evident that the proposed legislation not only deals inadequately with the issues which have been selected for reform but also is highly selective in which issues are deemed to require early attention. Instead of addressing only the discomfort of the government arising from the 'Third Direction' case, there is a need for a far more comprehensive and considered response to the problems inevitably engendered by CHIS.

4 In order to assist the JCHR in appreciating this wider picture, this paper simply lists some sources from the closest comparable jurisdictions where helpful precedents can be found. All represent a much more comprehensive legal statement. In addition, most address the issues around CHIS in more acceptable detail regarding the four bullet points above. This paper will refrain from further suggestions for reform, save to note that there is a chasm between the Covert Human

---

<sup>1</sup> See Hogan, G and Walker, C.P., *Political Violence and the Law in Ireland* (Manchester University Press, Manchester, 1989); Walker, C.P. and Starmer, K., (ed.), *Miscarriages of Justice* (Blackstone Press, London, 1999); Walker, C.P., *Terrorism and the Law* (Oxford University Press, Oxford, 2011); Walker, C.P., *The Anti-Terrorism Legislation* (Third edition, Oxford University Press, Oxford, 2014); Lennon, G. and Walker, C. (eds.), *Routledge Handbook of Law and Terrorism* (Routledge, Abingdon, 2015).

<sup>2</sup> Hyland, K., and Walker, C., 'Undercover policing and underwhelming laws' [2014] *Criminal Law Review* 555-574.

<sup>3</sup> *Privacy International* IPT/17/86 & 87H, 20 December 2019.

<sup>4</sup> <https://www.ucpi.org.uk/>.

Intelligence Sources (Criminal Conduct) Bill and the extent of reform now required. Ideas around suitable and comprehensive responses can be found in the following:

(a) Australia:<sup>5</sup> At Federal level, see the Crimes Act 1914, Part 1AB (controlled operations) which also deals with contentious issues such as assumed identities and witness identity protection. There is also state legislation such as the (New South Wales) Law Enforcement (Controlled Operations) Act 1997; (New South Wales) Law Enforcement and National Security (Assumed Identities) Act 2010.

(b) Canada: Canadian Security Intelligence Service Act 1985, s.20.

(c) US:<sup>6</sup> Attorney General, *Guidelines Regarding the Use of Confidential Informants* (2002); Attorney General, *Guidelines regarding the Use of FBI Confidential Sources* (2006). These are considered in: US Government Accountability Office, *Confidential Informants* (GAO-15-807); Office of the Inspector General, Department of Justice, *Audit of the FBI's Management of its Confidential Human Source Validation Process* (20-009, 2019).

**16/10/2020**

---

<sup>5</sup> See further Gray, G., 'You can't charge me, I'm a cop' (2018) 41 *University of New South Wales Law Journal* 670.

<sup>6</sup> See further Joh, E.E., 'Breaking the law to enforce it' (2010) 62 *Stanford Law Review* 155.