Submission cover sheet

Inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025

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Inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025

January 2026

ACT Government

ACKNOWLEDGEMENT OF COUNTRY

The Justice and Community Safety Directorate acknowledges the Ngunnawal people as traditional custodians of the ACT and recognises any other people or families with connection to the lands of the ACT and region.

We respect the Aboriginal and Torres Strait Islander people, particularly our Aboriginal and Torres Strait Islander staff, and their continuing culture and contribution they make to the life of the Canberra city and region.

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INTRODUCTION

The ACT Government welcomes the opportunity to provide a submission to the Standing Committee on Legal Affairs' (the Standing Committee) Inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025 (the Bill).

The Bill is an omnibus Bill that includes amendments to improve how ACT laws respond to domestic, family and sexual violence. Domestic, family and sexual violence is not, and will never be, acceptable in the ACT. The ACT Government is deeply committed to preventing and responding to domestic, family and sexual violence in the ACT through law reform and investment in initiatives to support and protect victim-survivors of domestic, family and sexual violence.

The policy objective of the Bill is to improve the clarity of the laws on domestic, family and sexual violence and ensure that victim-survivors receive trauma-informed support from the justice system, hold perpetrators of violence to account.

The Bill progresses three substantive amendments that will:

- Prevent good character from being considered in sentencing child sex offences,
- Establish a Family Violence Safety Notice scheme, and
- Allow counselled persons to waive the protected confidence immunity in civil proceedings.

The Bill also progresses minor and technical amendments to streamline and clarify operational provisions in the *Family Violence Act 2016*, *Personal Violence Act 2016* and *Evidence (Miscellaneous Provisions) Act 2011*.

This submission seeks to assist the Committee by providing information on the background and objectives of the substantive amendments in the Bill, and the safeguards included to mitigate any potential issues that may arise. This submission also provides an overview of the minor and technical amendments included in the Bill and the objectives they seek to achieve.

This submission is intended to be read with the information presented in the Explanatory Statement to the Bill and the presentation speech of the Attorney-General, Tara Cheyne MLA.

PREVENT GOOD CHARACTER FROM BEING CONSIDERED IN SENTENCING CHILD SEX OFFENCES

THE AMENDMENT

The Bill amends section 34A(b) of the *Crimes (Sentencing) Act 2005* (Sentencing Act) to remove the words "to the extent that the offender's good character enabled the offender to commit the offence", to ensure that good character can never be considered as a mitigating factor in sentencing for child sex offences.

BACKGROUND

On 6 February 2024, Mr Andrew Braddock MLA tabled a Petition[1] in the ACT Legislative Assembly to 'Remove the Provision of Good Character References for Paedophiles in the Sentencing Procedure of Child Sexual Abuse Cases' on behalf of the *Your Reference Ain't Relevant* campaign (the Petition). The Petition requested that the Legislative Assembly amend the Sentencing Act to ensure that the court cannot reduce the severity of the sentence imposed for a child sexual offence because of the offender's good character.

Sentencing practices in the Sentencing Act and at common law provide that the court may consider the character of an offender when determining an appropriate sentence. During the sentencing process, the offender can provide evidence of their 'good character', which may include evidence of their personality traits, employment, family responsibilities, standing in the community or community contributions. A finding of good character does not automatically result in a reduced sentence. Rather, the court must weigh this evidence against the other circumstances of the offending to determine whether any mitigation should be given for the offender's good character, to ensure that the offender is adequately sentenced in a way that is just and appropriate.[2]

In 2018, the Sentencing Act was amended to limit the use of good character evidence in sentencing for child sexual abuse matters, [3] in accordance with Recommendation 74 of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). [4] Section 34A(b) of the Sentencing Act currently provides that for a sexual offence against a child, "a court must not reduce the severity of a sentence it would have otherwise imposed on an offender because of the offender's good character, to the extent that their good character enabled the commission of the offence." This provision was included in response to findings by the Royal Commission that factors cited as evidence of good character may also commonly enable the commission of a child sexual offence or the concealment of evidence of such an offence. In such cases, an offender may exploit their position or reputation to gain access to victims or create an environment where victims may be abused.[5]

In recent years, advocates, including the members of the Petition and the *Your Reference Ain't Relevant* campaign, have called for further reform to prevent the court from considering the good character of *all* offenders who are sentenced for child sex offences, not only those whose good character enabled the commission of the offence.

OBJECTIVES OF THE AMENDMENT

The purpose of the amendment is to address current discrepancies in sentencing of child sexual abuse matters, acknowledge the seriousness of all child sex offences and prioritise the protection and well-being of victim-survivors.

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[1] Andrew Braddock MLA, *Remove the Provision of Good Character References for Paedophiles in the Sentencing Procedure of Child Sexual Abuse Cases*, ACT Legislative Assembly, Petition E-PET-027-23 (6 February 2024) <Remove the Provision of Good Character References for Paedophiles in the Sentencing Procedure of Child Sexual Abuse Cases ACT Legislative Assembly>.

[2] *Ryan v The Queen* [2001] HCA 21.

[3] *Crimes (Legislation) Amendment Act 2018* section 16.

[4] Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I-II* (14 August 2017) p. 99, Recommendation 74.

[5] Ibid 98.

RESOLVE DISPARITIES IN SENTENCING FOR CHILD SEX OFFENDERS

Under the existing provision, only certain offenders with obvious standing such as teachers, religious leaders or sporting coaches are prohibited from using good character evidence, if their good character enabled the commission of the offence. However, offenders within the family or community, who may not have used their public standing to facilitate the offence, can still provide evidence of their good character to seek a lower sentence. The amendment recognises that child sex offences are often committed privately with no relevance to the offender's public reputation, and that an offender's perceived 'good character' in public may have in fact facilitated the grooming of the victim and the masking of their behaviour.

ACKNOWLEDGE THE SERIOUSNESS OF CHILD SEX OFFENCES

By preventing the consideration of good character evidence in sentencing, the amendment also acknowledges the seriousness of all child sex offences. As the Royal Commission identified, acceptance of good character evidence may minimise the "vindicatory aspects of criminal proceedings if the offender is regarded as not being fully responsible for the offence, and is consequently treated more leniently."[6] The amendment ensures that offenders are held accountable and that their conduct is unequivocally denounced with no mitigation offered by their reputation or public standing.

This applies regardless of whether the offender's perceived 'good character' relates to their behaviour before, during or after their offending, to ensure no such evidence can be considered in sentencing, recognising that the timing of any such behaviour does not reduce the seriousness or harm of their offending. This responds to recent case law where the offender's 'otherwise good character' post their offending was taken into account by the court as a mitigating factor, despite the current provision being relevant to the facts of the case.[7]

PRIORITISE THE PROTECTION AND WELL-BEING OF VICTIM-SURVIVORS

Finally, the amendment seeks to limit the distress and trauma caused to victim-survivors through the court proceedings. The Royal Commission reported that victims were often distressed when they heard evidence of an offender's good character, resulting in emotional harm. Hearing an offender described as a 'good' person may minimise the harm experienced by victims and be retraumatising, and may signal that the social standing of the offender is more important than the harm inflicted, leading to a sense of invalidation and a lack of vindication for the victim.

Although under the current provision the court retains its discretion and may not necessarily give significant weight to the good character evidence in determining the overall sentence, the admission of this evidence can nevertheless be highly distressing for victims, particularly if it is not clear how much weight has been attributed to this evidence in sentencing.

By preventing any weight to be given to an offender's good character, the amendment seeks to promote a trauma-informed response to victims throughout their engagement with court proceedings.

ISSUES AND SAFEGUARDS

While the amendment explicitly prevents the court from reducing the severity of an offender's sentence because of their good character, the court remains empowered to consider a broad range

[6] Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Parts VII-X and Appendices* (14 August 2017) p. 292.
[7] *DPP v Roberts* [2025[ACTSC 53.

of other factors to impose a sentence that is proportionate to the harm caused and the circumstances of the offender. These factors include an offender's subjective circumstances, such as their cultural background, age, mental condition, and demonstration of remorse, as well as other relevant sentencing considerations provided in section 33 of the Sentencing Act. In considering these factors, the court may continue to receive pre-sentence and assessment reports prepared for the offender, as well as any evidence from family members, friends, employers, medical experts or providers of rehabilitation services.

The courts may continue to use this evidence in considering the purposes of sentencing pursuant to section 7 of the Sentencing Act, which include denunciation, deterrence, and promoting the rehabilitation of the offender. By preserving these sentencing functions, it is intended that any restriction to judicial discretion is balanced and proportionate to the amendment's objectives.

ESTABLISH A FAMILY VIOLENCE SAFETY NOTICE SCHEME

THE AMENDMENT

The Bill introduces new Part 2A to the *Family Violence Act 2016* (ACT) (FV Act) to establish a police-issued Family Violence Safety Notice (FVSN) scheme to replace the current After-Hours Order (AHO) scheme at Part 7 of the FV Act. The FVSN scheme will allow police to issue a FVSN, which is a short-term notice designed to provide immediate protection to persons at risk of family violence.

The FVSN must be issued by a senior police officer (Sergeant rank or above) and may include conditions reasonably necessary for the safety and protection of the protected person, while being the least restrictive of the respondent's rights. Once issued and served, the FVSN will remain in force for a maximum of 14 days unless revoked by the court or superseded by a Family Violence Order (FVO).

BACKGROUND

Addressing and responding to family violence is a key priority for the ACT Government. In 2024-25, 4,478 family violence incidents were reported to ACT Policing, an average of 12 reports per day. These reports resulted in 163 charges being laid and 72 arrests over this period.[8]

The ACT is the only jurisdiction in Australia that does not have a scheme enabling police to issue a short-term safety notice or protection order where necessary to respond to family violence or risk of family violence. Currently, people affected by or at risk of family violence may apply to the court for a FVO to seek protection for themselves and any children exposed to family violence. However, this option is only available during the business hours of the Magistrates Court. The process of attending the Magistrates Court and applying for a FVO can be difficult for victim-survivors, particularly immediately after a family violence incident or where urgent protection is required.

Currently, in circumstances where police are called to a family violence incident outside of business hours, a police officer may apply to a judicial officer for an AHO, to provide immediate short-term protection to the affected person if arresting the respondent is not an available option. The 2020 *Review of the Implementation of the Family Violence Act 2016 (ACT)* (the Review) found that AHOs were not sufficient to protect victim-survivors given the limits on when they could be ordered, the brevity of their duration, and their under-utilisation by police. While stakeholders held mixed views

[8] ACT Policing, *Annual Report 2024-25* (2025) p. 3.

on the introduction of police-issued safety notices, the Review recommended that the ACT Government consider the practical advantages and disadvantages of adopting police-issued safety notices as an alternative model to AHOs.[9]

The ACT Government consulted with a broad range of stakeholders in developing the FVSN scheme, including through the circulation of a discussion paper and draft models for FVSNs based on the current AHO scheme and FVSN schemes in other jurisdictions. Many stakeholders consulted in development of the Bill expressed full or qualified support for FVSNs as important mechanisms to provide immediate short-term protection for victim-survivors, as they may reduce the practical barriers associated with AHOs by allowing police to provide an immediate response to family violence at any time.[10]

OBJECTIVES AND BENEFITS OF THE AMENDMENT

The policy objective of the FVSN scheme is to address a protection gap for victim-survivors of family violence. By providing an immediate safety mechanism and building upon the features of the superseded AHO scheme, the FVSN scheme seeks to offer protected persons sufficient time to make longer-term safety arrangements. There are a range of benefits to the introduction of FVSNs in the ACT, as outlined below.

PROVIDE IMMEDIATE PROTECTION FOR VICTIM-SURVIVORS

By allowing police to issue notices on-the-spot during the period of their attendance at an incident, people at risk of family violence will be able to access immediate and legally enforceable protection. This is critical, noting reprisals by perpetrators of family violence are a significant and documented aspect of abuse, often escalating after police or legal intervention.[11]

FVSNs are intended to be victim-focused, not respondent-focused. FVSNs will require respondents to comply with enforceable conditions which police consider necessary for the protected person's safety while not overly restricting the respondent's rights. This may include conditions which limit or prevent contact with the protected person, or requiring that the respondent leave the family residence, allowing the protected person to remain safe in their home. To ensure these conditions are targeted and appropriate, police will need to consider a range of factors when applying for and issuing the FVSN including the protected person's views and perception of the incident. Given FVSNs are to be issued by police, this also reduces the burden on the person experiencing or at risk of family violence to be responsible for their own safety and crisis management immediately following a family violence incident.

IMPROVE UPON THE AHO SCHEME

The FVSN scheme is not a wholesale departure from the current AHO framework but draws upon key features of the AHO scheme while addressing issues raised by stakeholders and in the Review.

The FVSN scheme incorporates similar foundational considerations to the AHO scheme across several primary areas, including the threshold criteria for applying for and issuing a FVSN, the nature and

[9] Ibid p. ix, Recommendation 2.
[10] NSW Standing Committee on Social Issues, 'Domestic violence trends and issues in NSW' Report 46 (August 2012) p. 236, [9.66]; Ellen Reeves, 'The potential introduction of police-issued family violence intervention order in Vicotria, Australia: Considering the unintended consequences' *Current Issues in Criminal Justice* (2022) 34(2) p. 207-218, 211.
[11] ACT Government, *ACT Domestic and Family Violence Risk Assessment and Management Framework: Supporting an integrated domestic and family violence system* (Community Services Directorate), 2022, p. 94.

scope of FVSN conditions, and the power of the court to amend and revoke a FVSN. By adopting these features, the FVSN scheme ensures that police officers carefully consider the application and issuing process while also providing a degree of judicial oversight by retaining the court's role in hearing applications to amend or revoke a FVSN.

However, the FVSN scheme also addresses the limitations of the AHO scheme to provide a more flexible and agile response to victim-survivors of family violence. AHOs are only available outside business hours, and police can only apply for an AHO if there are no grounds for arrest or it is not practicable for the respondent to be arrested. Once served, AHOs remain in force for up to two business days from the date of service. As a result, the AHO scheme limits the scope and length of time a protected person may be protected or seek to access long-term safety measures. In the Review, stakeholders almost unanimously viewed that AHOs could only be used in limited circumstances, and some stakeholders perceived that AHOs were under-utilised by police in responding to family violence incidents.[12] In consultation on the Bill, several stakeholders also noted the practical limitations of the AHO scheme, particularly regarding their short duration, and considered FVSNs could provide necessary time and space for protected persons to consider options for their safety.

The FVSN scheme responds to these issues by allowing police to issue a FVSN at any time and alongside arrest. This is intended to allow police to respond more flexibly to family violence, as an additional protective mechanism alongside the ACT's pro-arrest policy for family violence offences. While arrest serves to prevent further offending and facilitates investigation into the matter, it does not by itself prevent future contact with, or violent behaviour towards, the victim-survivor. The issuance of FVSNs alongside arrest will subject respondents to conditions, with non-compliance potentially resulting in criminal charges carrying a maximum penalty of two years' imprisonment. The enforceable nature of these conditions ensures that victim-survivors are provided with an additional degree of protection through a separate civil scheme, whether the respondent is released on bail or remanded in custody.

GIVE VICTIM-SURVIVORS TIME TO SEEK LONG-TERM SAFETY MEASURES

FVSNs are designed to immediately close risk gaps for a short period, ensuring protection for protected persons if and until the case formally enters the justice system, whether as a criminal prosecution or civil application for a longer term FVO.

FVSNs remain in force for a maximum of 14 days once served. In circumstances where the respondent is arrested and charged with an offence, FVSNs may promote the well-being of protected persons by deferring any potential pressure to immediately provide statements to police, allowing them to make informed decisions about their engagement with the criminal justice process without fear of interference.

In cases where the threshold for arrest is not met, FVSNs can provide protected persons with a crucial interval to consider and engage with support services in relation to secure, long-term safety planning. This also addresses barriers persons affected by family violence may face in applying to the court for a FVO, by providing protected persons with necessary time to gather documentation, seek legal advice, and prepare a considered application to the court for a FVO without facing imminent risk.

[12] Lorena Bartels et al, *Review of the Family Violence Act 2016 (ACT)*, ACT Government (14 December 2020) p. 28-29.

ISSUES AND SAFEGUARDS

The Bill also incorporates a range of safeguards to ensure the FVSN scheme can achieve the objectives and benefits outlined above, to operate safely and effectively in providing immediate protection for victim-survivors of family violence.

The following sections outline the safeguards incorporated within the Bill including:

- Providing additional layers of police oversight and procedural safeguards for the issuance of FVSNs;
- Ensuring FVSNs provide an additional mechanism for police to respond to family violence, while maintaining the ACT's pro-arrest policy;
- Providing a 14-day maximum duration for FVSNs;
- Safeguards to mitigate potential risks of misidentification;
- Clarifying the interaction between FVSNs and court orders;
- Providing a balanced maximum penalty for a breach of a condition of a FVSN;
- Enabling electronic service of FVSNs.

The Bill delays the commencement of the FVSN scheme by six months to ensure that the ACT Government and stakeholders are prepared to implement the scheme. The Bill also requires a statutory review to be undertaken in relation to the FVSN scheme two years from the date of commencement, to facilitate an evaluation of the scheme and provide recommendations for further work.

ADDITIONAL POLICE OVERSIGHT AND PROCEDURAL SAFEGUARDS

Unlike AHOs, FVSNs are issued by a senior police officer and not a judicial officer. As outlined above, this is to enable a more immediate and agile response to family violence in appropriate circumstances..

To provide additional safeguards over the issuance of FVSNs, the FVSN scheme incorporates a dual scrutiny mechanism, mandating that both the applying officer and senior issuing officer must independently review and be satisfied with the specified grounds and criteria for issuing a FVSN. This two-stage requirement ensures that the statutory thresholds are met and that the conditions are proportionate to the risk, giving paramount consideration to the safety of the protected person while being the least restrictive of the respondent's rights and liberties.

The FVSN scheme also includes a procedural safeguard by embedding the right for parties or the police to apply to the court for the amendment or revocation of a FVSN. This feature ensures the capacity for judicial oversight is preserved, allowing the court to address any necessary variations or terminations of the FVSN.

An alternative approach considered in the development of the Bill was for FVSNs to serve as a police-initiated application to the court for a FVO, to provide for judicial oversight. However, unlike other jurisdictions, the ACT does not have police prosecutors to take carriage of such matters and there are significant resourcing and implementation challenges to this approach. There may also be unintended consequences should a FVSN automatically serve as an application to the Court with the protected person as the applicant if they do not wish to apply for an FVO. The safeguards of additional police oversight, the limited 14-day duration of FVSNs and ensuring parties can apply to the Court to amend or revoke a FVSN are therefore better suited to respond to the ACT's unique context.

FVSNS AS AN ADDITIONAL INTERVENTION MECHANISM, ALONGSIDE THE PRO-ARREST POLICY

ACT Policing has a pro-arrest, pro-charge approach to family violence, and follows a pro-intervention policy where there is insufficient evidence to commence judicial proceedings.[13] FVSNs operate in support of this approach, as an additional mechanism for police to intervene in circumstances of family violence.

Under the current AHO scheme, an AHO can only be issued where there are not grounds to arrest the respondent for a family violence offence, or it is not practicable to arrest them.[14] This has led to some practical difficulties regarding the interaction between AHOs and powers of arrest, which can ultimately leave the victim-survivor without protection, as outlined above. Therefore, the FVSN framework does not replicate this requirement, meaning a FVSN can be issued alongside the arrest and charging of a respondent as an additional protective mechanism. This provides police with more options to respond to family violence in a protective way.

This recognises that different statutory grounds apply to the issuing of a FVSN, laying a criminal charge and making an arrest, requiring police to consider various factors to satisfy each test. In this regard, FVSNs do not alter or replace the pro-arrest and pro-charge policy, and police will still maintain the discretion to take relevant action if the grounds for laying a charge or making an arrest are met.

14-DAY DURATION OF FVSNS

A FVSN may be in force for a maximum period of 14 days. The 14-day duration of FVSNs recognises that victim-survivors will require time to access further support and protection, whether through FVOs or other safety planning mechanisms. At the same time, the purpose of a FVSN is to provide immediate, temporary protection, rather than act as a long-term restriction of the respondent's conduct. This duration balances these competing priorities to achieve the objective of providing immediate safety to the victim-survivor without unduly restricting the respondent's rights and liberties.

This reflects that in many circumstances, the two-day duration of AHOs may be too brief to provide adequate protection to victim-survivors or sufficient time for longer-term safety arrangements to be made.

SAFEGUARDS TO ADDRESS THE RISK OF MISIDENTIFICATION

The Bill incorporates a range of safeguards to mitigate risks that FVSNs may increase the consequences of misidentification of the victim-survivor as the primary perpetrator of family violence. Misidentification may occur where the complexities and dynamics of coercive control and family violence between the parties is not understood, and the violence is only considered as a singular incident rather than a broader pattern of abuse.[15] Victim-survivors from vulnerable and marginalised cohorts are disproportionately likely to be misidentified as the primary perpetrator.[16]

The Bill requires that as far as practicable in the circumstances, police consider the views of the affected person and respondent in relation to the issuing of the FVSN, as well as any previous family

[13] ACT Policing, *Annual Report 2024-25* 2025, p. 69.
[14] *Family Violence Act 2016* s 100(c).
[15] Commonwealth of Australia, *National Plan to End Violence Against Women and Children 2022-2032* (Department of Social Services) 2022, p. 74.
[16] Ibid.

violence between the parties and the affected person's perception of the nature and seriousness of the respondent's conduct. The Bill also prohibits mutual FVSNs being issued.

This means that if the issuing officer has issued a FVSN that names the first person as the respondent and the second person as the protected person, until the FVSN ceases to have effect, a police officer cannot issue a FVSN that names the first person as the protected person and the second person as the respondent. This is intended to reduce the risk of the victim-survivor being issued a FVSN in circumstances where police may be unable to identify the primary aggressor given the potential for cross-notices to be used as a mechanism for systems abuse.[17]

To further respond to this risk, the ACT Government will continue to work with key agencies to support the implementation of FVSNs, including improving police capability to reduce misidentification risks and exploring pathways for agency collaboration on holistic and trauma-informed responses to victim-survivors.

CLARIFYING THE INTERACTION BETWEEN FVSNS AND COURT ORDERS

The Bill clarifies the interaction between court orders and FVSNs, recognising FVSNs are notices issued by police and without judicial oversight. This approach balances the need to preserve the institutional independence and integrity of the court and court orders with the importance of providing that FVSNs can address newly emerging risk factors or the specific circumstances of the current situation.

The Bill qualifies the court's power to grant bail and provides that the conditions of a FVSN will prevail over the conditions of a bail order to the extent of any inconsistency. This ensures that the respondent is aware of which conditions they must comply with to reduce the risk of inadvertent breach while enabling police to respond proactively to family violence situations. This adopts a similar approach taken in Victoria to the interaction between FVSNs and bail orders.[18]

However, the conditions of a FVSN must not be inconsistent with the conditions of other existing court orders in force in the ACT. This preserves judicial due process and authority and minimises the risk of contradictory legal obligations on the respondent.

BALANCED MAXIMUM PENALTY

Under the Bill, the maximum penalty for breaching a condition of a FVSN is 200 penalty units, two years imprisonment, or both. This is lower than the maximum penalty for breaching an FVO or AHO, being 500 penalty units, five years imprisonment, or both.

This lower penalty has been adopted to balance the seriousness of the offence with the lesser oversight provided for a police-issued notice, as compared to a Court order. A two-year maximum penalty is consistent with the maximum penalty for first-tier offences of breaching a FVO in most other Australian jurisdictions, excepting Tasmania.

This also aligns with comparative penalties in the ACT. For example, this aligns with the penalty for the offence of failing to answer bail pursuant to section 49 of the *Bail Act 1992*, which applies to breaches of bail orders made by authorised police officers, noting this also relates to conditions

[17] Peta Malins and Lauren Caulfield, *Harm in the Name of Safety: Victorian Family Violence Workers' Experiences of Family Violence Policing*, Beyond Survival Project Report, Flat Out Inc (2025) p. 30; Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response: Final Report Volume 1*, ALRC Report 114, NSWLRC Report 128 (2010) p. 877-880.
[18] *Family Violence Protection Act 2008* (Vic) s 175AA, *Bail Act 1977* (Vic) section 5AAA(3).

imposed by a police officer. This is also aligned with other offences that involve harm to a complainant, such as the non-aggravated offence of common assault at section 26 of the *Crimes Act 1900*.

ENABLING ELECTRONIC SERVICE OF FVSNS

The Bill provides that a FVSN may be served on the respondent personally, or by electronic means if the respondent consents. Allowing for a FVSN to be served electronically where agreed by the respondent ensures police can serve the FVSN in a timely and efficient manner, including where personal service is impracticable, so the FVSN can be brought to the respondent's attention and enter into force without unreasonable delay.

There are several safeguards in the Bill to support this to operate safely. Regardless of whether the FVSN is served personally or electronically, the police officer must personally explain a range of identified matters to the respondent, including the purpose, conditions, effect and duration of the FVSN. Given the police officer is physically present with the respondent, this is in effect a hybrid model of electronic and personal service. Additionally, if a FVSN is served electronically the serving police officer must make a written record of the respondent's agreement to electronic service, the form of electronic communication used, and how the FVSN was served via electronic communication.

ALLOW COUNSELLED PERSONS TO WAIVE THE PROTECTED CONFIDENCES IMMUNITY IN CIVIL PROCEEDINGS

THE AMENDMENT

The Bill substitutes section 79J of the *Evidence (Miscellaneous Provisions) Act 2011* (EMPA) to provide for the waiver of the protected confidence immunity in a civil proceeding.

A 'protected confidence' is a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed (a 'counselled person').[19]

The new section 79J provides that in a civil proceeding, a counselled person who is at least 14 years old may consent in writing to the production, inspection or use of protected confidence evidence. If the counselled person is under 14 years old, a suitable person as determined by the Court may consent to the production, inspection and/or use of the protected confidence evidence.

The consent given by the counselled person or suitable person must expressly relate to the production, inspection or use of the evidence. The court must also be satisfied that the counselled person or suitable person is aware of the effect of Division 4.4.3 of the EMPA and has been given a reasonable opportunity to seek legal advice in relation to the consent given.

The Bill also makes minor and technical amendments to Division 4.4.3 of the EMPA to clarify that the protected confidences immunity applies in both civil and criminal proceedings and streamline the operation of the provisions under this Division.

[19] *Evidence (Miscellaneous Provisions) Act 2011* section 79A(1).

BACKGROUND

Division 4.4.3 of the EMPA provides for a qualified immunity for protected confidences against the disclosure of confidential counselling communications in respect of allegations of sexual assault or family violence. The purpose of the protected confidences immunity is to balance the importance of victim-survivors being able to access confidential therapeutic counselling and the sensitive matters discussed in counselling remaining confidential, with the public interest in ensuring the proceeding is conducted fairly and that the accused person can exercise their right to a fair trial. These competing interests are balanced by requiring the party seeking disclosure to obtain the leave of the court at three stages: (1) leave to compel production of protected confidences, (2) leave to inspect and make use of protected confidences and (3) leave to adduce that evidence in the court proceedings.[20]

Currently, section 79J of the EMPA provides that the protected confidence immunity applies regardless of whether or not the counselled person consents or does not object to the disclosure of the protected confidence. This means that the immunity cannot be waived by the counselled person.

Recent judgments by the ACT Supreme Court have observed that the process of seeking the disclosure of protected confidences in Division 4.4.3 is rigid, opaque and unnecessarily onerous.[21] As Mossop J observed in *BJT v Australian Capital Territory* [2025] ACTSC 69 at [13]:

> I observe, finally, that a review of the provisions relating to the disclosure of protected confidences may be appropriate in light of the operation of those provisions since their enactment. It seems eminently possible in civil cases, where a party consents, not to have a legislative regime which imposes upon them and the court the rigid process currently required under the Act. Those processes do not seem to accommodate the circumstance where the party who would be affected by the disclosure accepts, for the purpose of the proceedings, that the disclosure of the records is necessary and consents to their disclosure.[22]

OBJECTIVES OF THE AMENDMENT

The purpose of the amendment is to allow counselled persons to consent to the waiver of the protected confidences immunity in civil proceedings. This amendment achieves the objective of giving counselled persons more control over the way in which legal processes apply to their counselling communications and simplifies the process in which civil proceedings are conducted, saving time and resources for parties and the court.

ISSUES AND SAFEGUARDS

The amendment also requires the court to be satisfied that the counselled person in a civil proceeding is aware of the effect of Division 4.4.3 of the EMPA and has had the opportunity to seek legal advice. This acts as a safeguard to the risk that the counselled person is consenting to the disclosure without being appropriately informed and aware of their rights or under duress from the other party. This promotes their free and full consent to the production, inspection or use of the counselling communication.

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[20] *Evidence (Miscellaneous Provisions) Act 2011* sections 79F, 79G, 79D. See also *Stanley (a pseudonym) v Commonwealth of Australia* [2023] ACTSC 157 [11], [17]-[25] (McCallum CJ).
[21] See *BJT v Australian Capital Territory* [2025] ACTSC 69 ('*BJT*'), *DPP v Sheridan (a pseudonym) (No 4)* [2025] ACTSC 61 [37]-[41] (Baker J).
[22] *BJT* [13] (Mossop J).

Where the counselled person is under 14 years of age, the court must be satisfied that a suitable person is giving full and informed consent on their behalf. The court may determine that a person is a suitable person only if the person is not a party to the proceedings, the person is able to act in the best interests of the counselled person, and the court considers that this determination would not damage their relationship or cause undue embarrassment, humiliation or harm to the counselled person. These stringent requirements recognise the unique vulnerability of a child in the proceeding and the need for additional protection of the rights of children in court proceedings.

The amendment only applies to civil proceedings. This means that the protected confidences immunity will continue to apply in criminal proceedings, whether the counselled person consents or does not object to the disclosure of the protected confidence. This distinction is because whereas parties are usually legally represented in civil proceedings, many complainants in criminal proceedings may not have the opportunity to receive independent legal advice to give an informed decision about consent.

MINOR AND TECHNICAL AMENDMENTS

The Bill progresses minor and technical amendments to the FV Act, *Personal Violence Act 2016* (PV Act) and EMPA to improve the clarity and operation of the legislation.

The Bill amends the FV Act and PV Act to clarify the service requirements for notices and orders issued by the court, the obligations of parties to FVOs and Personal Protection Orders (PPOs), and the powers of the court to dismiss or decide FVO or PPO applications. The Bill also delays the statutory review of the FV Act to align with the statutory review of the FVSN provisions, to support a holistic evaluation of the operation of the legislation. The objectives of these amendments are to resolve ambiguities with the provisions and promote the operation of the provisions as intended.

The Bill also amends the EMPA to clarify the operation of Division 4.4.3 to address observations raised by the Federal Circuit and Family Court of Australia and ACT Supreme Court on the scope and application of the Division to criminal and civil proceedings. [23] The Bill makes it clear that the protected confidence immunity applies to all criminal and civil proceedings where a protected confidence is sought to be disclosed, not only proceedings related to sexual and family violence offences, and also clarifies that the considerations for the grant of leave to disclose protected confidences applies to both victims of sexual and family violence offences.

The Bill also includes intimate image offences within the definition of a 'sexual offence proceeding' in section 41 of the EMPA, to ensure that special requirements to protect the complainant (such as closing the court and limiting the admissibility of evidence about the complainant's prior sexual history) are available in those proceedings. Finally, the Bill includes a requirement in the EMPA that an accused person who is given a copy of a recorded statement in a family violence offence proceeding must return the statement after the proceeding is finalised, to limit any potential misuse of sensitive information disclosed.[24]

[23] See *Rossi v Hardwicke* [2024] FedCFamC1F 335; *Hall (a pseudonym) v Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn* [2025] ACTSC 113).

[24] Note: it is an offence under section 81J of the *Evidence (Miscellaneous Provisions) Act 2011* to publish a recorded statement without authority.

CONCLUSION

The Bill addresses complex issues with the way the justice system presently responds to domestic, family and sexual violence. It is the product of sustained engagement with stakeholders to ensure that the legislation achieves its objectives while proactively mitigating potential risks.

The ACT Government welcomes the Standing Committee's Inquiry into the Bill and looks forward to receiving further views of key groups, including stakeholders, legal professionals, advocates and the community. The Government recognises these insights as fundamental to shaping a justice system where victim-survivors are supported during legal proceedings and where domestic, family and sexual violence is dealt with equitably and with trauma-informed practice.

The passage of the Bill would strengthen the ACT Government's response to domestic, family and sexual violence and promote the rights of victim-survivors in the ACT, while holding perpetrators of violence accountable for their conduct. Ultimately, this legislation represents a foundational step towards a fairer, safer justice system that reflects contemporary understanding of violence and victim needs.