

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY REPORT NO. 25 - INQUIRY
INTO THE SEXUAL, FAMILY AND PERSONAL VIOLENCE LEGISLATION AMENDMENT BILL
2023 - GOVERNMENT RESPONSE**

**Presented by
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Introduction

The Sexual, Family and Personal Violence Legislation Amendment Bill 2023 (the Bill) was referred to the Standing Committee for Inquiry on 8 November 2023. The Inquiry into the Bill called for public submissions by 29 November 2023.

Six submissions were received to the Inquiry. These submissions were from ACT Law Society, the Australian Federal Police Association, the Victims of Crime Commissioner, Women's Legal Centre ACT, Domestic Violence Crisis Service and Legal Aid ACT.

The Standing Committee released Report No. 25, *Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023* (the Inquiry Report) on 14 March 2024. The Inquiry Report contains six recommendations.

The Government Response will discuss the Government's position on each of the Report's recommendations.

ACT Government Response to Recommendations

Recommendation 1

The Committee recommends that the ACT Government puts in place processes to ensure that protected persons who turn 18 and other relevant parties are:

- **made aware of what the proposed changes will mean in respect of any parenting orders that were in place under the *Family Law Act 1975* once the protected person turns 18; and**
- **advised of what actions are required if they want the contact between the protected person and respondent to continue.**

Agreed

The Bill proposes to clarify that children who are protected persons under a protection order, who turn 18, will remain protected for the duration of the original order. This was to ensure ongoing protection for young people so that they do not need to apply for a fresh protection order upon turning 18.

The ACT Government acknowledges that there are some complexities in allowing protection orders to continue after a person turns 18 where a protection order also contains exceptions to allow contact/communication between the child and the respondent under a parenting plan made under the *Family Law Act 1975* (Cth). A parenting plan will expire once a child turns 18, however, if the parenting plan expires and the protection order (with the contact/communication exception) is extended, then the protection order will continue to prohibit the respondent from contact/communication with the young person unless the protection order is amended.

The Government agrees to provide further information on the impact of the reforms on protected persons turning 18 who have a parenting order under the *Family Law Act 1975* (Cth). The ACT Courts and Tribunal's website will be updated to provide more information:

- on the interaction between a protection order and a parenting plan under the *Family Law Act 1975* (Cth) and what the proposed changes will mean in respect of a protected person who is about to turn 18 and is subject to both a protection order and parenting order under the *Family Law Act 1975* (Cth); and
- how to seek an amendment of protection orders if a protected person wishes for the contact between them and the respondent to continue pursuant to any parenting orders.

The ACT Courts and Tribunal will also consider whether it would be appropriate to update any existing material including relevant court forms.

The Explanatory Statement will be revised to further clarify the impact of this legislative change on the cohort of protected persons with a parenting order in place.

Recommendation 2

The Committee recommends that the ACT government develop guidelines for defining what is an ‘unacceptable risk’ for purposes of making decisions on whether to have preliminary conferences.

Agree in principle

The Bill proposes to amend the *Family Violence Act 2016* and the *Personal Violence Act 2016* to provide the Magistrates Court a discretion to refuse to hold a preliminary conference where there is unacceptable risk to a person’s safety or if a preliminary conference would be unlikely to achieve its objects. Stakeholders have called for clarification of the threshold term: ‘unacceptable risk to a person’s safety’.

The ACT Government agrees in principle to this recommendation on the basis that, while the Government agrees that it is important to have a clear concept of the term ‘unacceptable risk’ to promote consistent decision making, it is not appropriate for the Government to develop guidelines which would inhibit the discretion exercised by judicial officers and registrars exercising quasi-judicial powers.

Instead, the Explanatory Statement will be revised to provide greater clarification of circumstances which might give rise to ‘unacceptable risks to a person’s safety’ and to provide assurance that the presence of a safety concern will not automatically result in a preliminary conference being dispensed with.

The Explanatory Statement currently provides some guidance on possible circumstances where an unacceptable risk may arise. The Explanatory Statement also currently provides guidance that an unacceptable risk to safety will be determined by identifying the nature and degree of risk and whether, with or without safeguards, it is acceptable – this principle is derived from a high court decision of *M v M* [1988] HCA 68 referenced by the National Domestic and Family Violence Bench Book.

Recommendation 3

The Committee recommends that the ACT Government further explore the complex issues raised in relation to the misidentification of respondents and victim-survivors.

Agreed

The Justice and Community Safety Directorate is working closely with the Domestic, Family and Sexual Violence Office (Community Services Directorate) to further explore ways to facilitate appropriate identification of the victim-survivors and respondents including to develop greater awareness of patterns of coercive control. It is the ACT Government’s view that increased awareness and understanding of coercive control will go some way to aid misidentification of respondents and victim-survivors.

This recommendation intersects with recommendations from the first report of the [ACT Domestic and Family Violence Review](#) (Death Review) which made 12 recommendations and had a focus on perpetrator behaviours, including the use of coercive control.

Recommendation 4 of the Death Review calls for the ACT Government to introduce a tool for ACT Policing and the Courts to assess patterns of coercive control that would detect which party is the perpetrator and which party is using violent resistance to ongoing abuse. Minister Berry as the Minister for the Prevention of Domestic and Family Violence is leading the Government's consideration of the Death Review report.

Noting that misidentification is often in the context of coercion and control, ACT Policing provides specific training to members on coercion and control principles, in the following ways:

- all new incoming members of ACT Policing must undertake a week long Family Violence Package where coercive control is covered; and
- all front-line members received a refresher in Coercive Control Awareness Training in the first quarter of 2023.

Further, ACT Policing's Family Violence and Vulnerable Persons Teams are planning a review of the current internal Training Continuum regarding domestic and family violence investigation, including coercive control, victim/perpetrator misidentification, trauma informed policing methodologies; and victim resistive behaviour. This review aims to ensure that what is being taught to front line members is current and best practice.

On a national scale, the ACT has been working with other jurisdictions through the Family Violence Working Group, established under the Standing Council of Attorneys-General (SCAG), to develop nationally agreed principles on coercive control in domestic and family violence.

At the SCAG meeting in September 2023, the National Principles to Address Coercive Control in Family and Domestic Violence (National Principles) were agreed upon and endorsed by Attorneys-General. The National Principles set out a shared understanding of the common features and impacts of coercive control, as well as guiding considerations to inform responses to this issue.

The ACT Government is now working to communicate the National Principles and raise public awareness of coercive control in the community.

Recommendation 4

The Committee recommends that the ACT Government introduce amendments to the Bill (in proposed subsections 82B(2) and 82B(3)) to make the language consistent in relation to the Magistrates Court making provisional amendments.

Agreed

The ACT Government agrees with this recommendation. An amendment will be made to the Bill to ensure the language in section 82B is consistent with other provisions in the Act, which provide that the Magistrates Court ‘may make an order/amendment’.

The Explanatory Statement will also be revised to address stakeholders’ concerns raised at the time of drafting of the Bill about special or exceptional circumstances being a threshold for a hearing to be scheduled.

Recommendation 5

The Committee recommends that the ACT Government introduce amendments to the Bill that will also allow decisions of a Registrar relating to the refusal of conditions to be reviewed by a Magistrate.

Agreed

The ACT Government agrees to this recommendation and will amend the Bill to allow decisions of a Registrar relating to the refusal of conditions to be reviewed by a Magistrate.

The Bill seeks to codify a review process for family violence orders and personal protection orders that is already provided for in Practice Direction 2 of 2018. The Government amendments, as called for by this recommendation, will ensure that a current practice which has not been made explicit in the Practice Direction is upheld.

The Government amendments will improve access to justice by providing parties to a family violence order or personal protection order application another more accessible review avenue.

The amendments will allow a Magistrate to review a registrar’s decision in relation to the refusal to grant an interim order condition, rather than requiring an applicant to appeal the registrar’s decision in the Supreme Court.

Recommendation 6

The Committee recommends that the ACT Government develop guidance for applicants on how to make a request for a review by a Magistrate of a decision by a Registrar.

Agreed

The Government agrees to this recommendation. To provide further clarity, the Government will introduce an amendment to the Bill which will clarify that a request for a review of a relevant decision made by a Registrar can be made orally or in writing.

To support this amendment and align with the recommendation, further guidance on how to make a request for a review of a decision will also be provided on the ACT Courts and Tribunal's website.

Conclusion

The ACT Government thanks the Committee for its consideration of the Bill and for the Report.