



Submission cover sheet

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

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About the Canberra Rape Crisis Centre

CRCC is a not for profit organisation and the only specialist organisation working to eliminate sexual violence in the ACT. Our services are available for anyone who has experienced any form of sexual violence, whether recent or in the past.

We provide trauma-informed crisis counselling, advocacy and therapeutic support for people who have experienced sexual violence. We also support victim-survivors in understanding and accessing other services within our community. Our service is informed by 50 years of practical expertise and a deep understanding of victim-survivors and their journey of healing.

Introduction

Canberra Rape Crisis Centre (CRCC) welcomes the opportunity to provide a submission to the *inquiry on the Family, Personal and Sexual Violence Legislation Amendment Bill 2025* (the Bill). We recognise and value the ACT Government's commitment to supporting victim-survivors of sexual violence to access a trauma-informed justice system.

Victim-survivors of sexual violence in the Australian Capital Territory continue to face systemic barriers when seeking protection and justice. Despite national and jurisdiction-based efforts to strengthen legislative and service responses, practical gaps remain in the early stages of intervention. This plays out in the ongoing protection of victim-survivors navigating legal processes.

CRCC supports the proposed Bill and the improvements it brings to legislative responses for victim-survivors. This submission responds to various components of the Bill and makes recommendations to further strengthen the legislative framework.

Feedback

1. Intimate image abuse

CRCC is supportive of the Bill's updated definition of 'sexual offence' in the *Evidence (Miscellaneous) Provisions Act 1991* (EMPA) to include an intimate image abuse offence against Part 3A of the *Crimes Act 1900*. This ensures the protections available to witnesses in other sexual offence proceedings will also be available in proceedings for intimate image abuse offences.

The eSafety Commissioner's report, *Technology-facilitated abuse: family, domestic and sexual violence* (eSafety Commissioner, 2023) revealed there is a high rate of technology-facilitated abuse in Australia and ongoing under-reporting. In 2022, a representative national survey of 4,562 of Australian men and women aged 18 years and over found one in four (25 %) had experienced image-based abuse (Powell et al. 2022a).

2. Breaching protection orders

CRCC is supportive of the Bill's amendments to confirm breaching a Family Violence Order (FVO) or a Personal Protection Order (PPO) can occur no matter how the order was served on the respondent. Previously, the legislation was explicit and required an order to be personally served for a breach to occur.

Similarly, we are supportive of this provision being included in the new Family Violence Safety Notice Scheme.

3. Good character references

CRCC strongly supports the exclusion of an offender's 'good character' as a mitigating factor in sentencing for all child sexual abuse cases. Currently, under section 34A(b) of the *Crimes (Sentencing) Act 2005*, a child sexual abuse offender's 'good character' can only be excluded as a mitigating factor in sentencing if that 'good character' enabled them to commit the offence.

Child sexual abuse is a significant issue in Australia impacting 28% of Australian children (1 in 3 girls and 1 in 5 boys) (Australian Child Maltreatment Study, 2024). It is imperative legislative responses safeguard the protection of victim-survivors, particularly children, and hold perpetrators to account. Offenders use their charisma and reputation to groom and abuse children. This reform supports the objectives of the *Your Reference Ain't Relevant* campaign and recognises that perceived good character plays an instrumental role in facilitating child sexual abuse. Additionally, the use of good character evidence during sentencing proceedings is highly distressing and re-traumatising for victim-survivors.

To further increase alignment with contemporary understandings of sexual violence, CRCC recommends the exclusion of an offender's 'good character' be extended to all sexual violence offences. This is consistent with advice from Bravehearts and the Queensland Sexual Assault

Network (QSAN). At a minimum, CRCC recommends that perpetrators of sexual violence offences against other vulnerable individuals (i.e. older people, people with a disability, culturally and linguistically diverse people) should also be excluded from having 'good character' references considered during sentencing.

Prior criminal history as a sentencing consideration

Section 33 of the *Crimes (Sentencing) Act 2005* mandates the court to consider an offender's criminal history during sentencing. This includes consideration as to whether the offence formed part of a series of similar criminal acts. If an offender has no criminal history, this may decrease their sentence.

It is probable that many offenders who have committed sexual violence offences may not have a criminal history recorded for similar offences. Only 57% of women seek advice or support following their most recent sexual assault perpetrated by a male. Approximately 9 in 10 women do not report their most recent experiences of sexual violence to the police (Australian Bureau of Statistics, 2023). In 2021, 93% of sexual offence cases reported to ACT Policing resulted in no charges laid (ACT Government, 2024). Additionally, many victim-survivors do not disclose sexual violence until years after the violence occurred. The Royal Commission into Institutional Responses to Child Sexual Abuse revealed that on average it takes 23.9 years to disclose child sexual abuse and some victim-survivors never disclose (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

Relying on a lack of prior criminal history as a mitigating factor in sentencing fails to account for delayed or absent reporting, and low conviction rates. There is a risk sentences are reduced for individuals who, in reality have engaged in similar sexual violence offences, but whose criminal history remains hidden due to systemic barriers outlined above. For this reason, CRCC agrees with Bravehearts and recommends legislative reform to ensure courts cannot consider prior criminal history in sexual violence matters or at a minimum for child sexual abuse.

Recommendation 1: Expand the exclusion of an offender's 'good character' as a mitigating factor in sentencing from child sexual abuse to all sexual violence offences, alternatively, expand this exclusion to identified vulnerable population groups.

Recommendation 2: Exclude consideration of an offender's prior criminal history in sentencing for sexual violence offences or at a minimum for child sexual abuse.

4. Family Violence Safety Notice

CRCC supports ensuring adequate emergency response and crisis support is available to victim-survivors experiencing domestic and family violence. Family Violence Safety Notices (FVSNs) are intended as an emergency measure for when courts are unable to issue Family Violence Orders and safety concerns have been identified by police. We highlight some concerns with the proposed design of FVSNs replacing the After Hours Family Violence Orders Scheme.

Preventing misidentification and assessing coercive control

Victim-survivors of sexual violence continue to face systemic barriers when seeking protection and justice. One of the most pressing issues is the misidentification of the predominant aggressor during police call outs and initial legal responses. Multiple inquiries have documented high rates of women and other marginalised groups being wrongly identified as aggressors due to the failure to assess broader contexts of domestic and family violence and sexual violence (DFV and SV), such as coercive control (Victorian Government, 2021; ANROWS, 2023; ABC News, 2024). This can occur for multiple reasons including; trauma responses being misunderstood, language barriers or a lack of culturally safe practice. The consequences are serious including inappropriate legal action and a loss of access to children, housing or support.

This risk is particularly relevant with the extension of duration to orders under the FVSN scheme. While FVSNs provide important interim protection for victim-survivors by enabling police to issue immediate short-term orders, expansions of the scheme must be designed with clear safeguards to reduce the risk of misidentification and compounding harm. Without proper training, oversight and access to victim-survivor informed tools for police decision-making, there is a real danger that FVSNs will replicate or exacerbate existing issues.

Misidentification can be driven by incident-based police responses to DFV and SV, which focus on responding to one incident of violent behaviour and overlook the continuing context of coercive control (Nancarrow et al., 2020). Coercive control is commonly present in the experiences of sexual violence victim-survivors. In the ACT, coercive control was present in 11 of 12 domestic and family violence homicides reviewed between 2000-2022 (ACT Domestic and Family Violence Review, 2023).

Duration of a FVSN

CRCC notes the 14-day duration of the FVSN cannot be renewed or extended (unless it is revoked by the Court or superseded by a FVO made by the Court). This is an improvement to the limited 2-day duration of the current After-Hours Orders. However, CRCC is concerned that the provisions do not provide police with adequate flexibility to determine an appropriate time limit. As a result, victim-survivor safety may be unintentionally compromised.

For example, in deciding whether to incorporate an exclusion condition in a FVSN, the issuing police officer must consider the accommodation needs of, and alternative accommodation options available to the respondent, protected person and any child, and the length of time for these parties to find alternative accommodation. Whilst this rightfully recognises the respondent's rights, it may create circumstances where police are reluctant to issue an exclusion order, or the FVSN itself, due to concerns about a respondent's accommodation options (i.e. financial hardship or potential homelessness) given the fixed 14-day duration.

A fixed 14-day duration carries a further risk that courts may begin to deprioritise hearing cases where a FVSN is in place, creating an unintended delay in the victim-survivor's application for a FVO, or the protected persons application to have the order lifted. FVSNs are intended as temporary, emergency stop-gap measures for when courts are unavailable rather than an

extended arrangement. The automatic 14-day period risks courts treating the notice as a sufficient interim measure and delaying the urgent judicial oversight required for a FVO hearing.

For these reasons, CRCC recommends the provision around the duration of a FVSN is updated to allow police discretion to issue a shorter notice, where appropriate.

Recommendation 3: Require police to assess patterns of coercive control when considering or issuing a FVSN.

Recommendation 4: Amend the duration of FVSNs to allow for police discretion in determining a notice period between 5 to 14 days, rather than an automatic 14-day period.

5. Protected confidence immunity

The Bill amends section 79J of the EMPA to ensure protected confidence immunity in civil proceedings can be waived if express consent is given by the counselled person. This amendment is grounded in trauma-informed practices and increases the capacity for victim-survivors to exercise their rights and waive the privilege of protected confidence in civil proceedings.

In an earlier submission CRCC recommended to the Justice and Community Safety Directorate that the requirements to waive protected confidence consider more than age under section 79J. We support the inclusions within the Bill that require the counselled person to be aware of the effect of the division and have a reasonable opportunity to seek legal advice about whether to waive a protected confidence.

We appreciate the Bill responds to concerns made by the ACT Supreme Court in *BJT v Australian Capital Territory* [2025] and *DPP v Sheridan (a pseudonym)* (No 4) [2025]. However, CRCC recommends the Bill explicitly incorporates a further suggestion made in *DPP v Sheridan* regarding first access. In this case, the ACT Supreme Court recommended that amendments made to section 79J consider providing the counselled person with a right of first access to any document produced following a grant of leave to produce documents. We advise the Bill incorporates this suggestion to ensure the counselled person understands precisely what protected information is in question before waiving immunity.

Recommendation 5: Amend section 79J to explicitly state the counselled person has a right of first access to any document produced following a grant of leave to produce documents.

6. Delay of Family Violence Act Review

The Bill proposes to delay the statutory review of the *Family Violence Act 2016* (FVA) until two years after FVSN commences, with a report to be presented to the Legislative Assembly within 12 months of the review's commencement. The last review was completed by the Australian National University in 2021, which led to the ACT Government introducing the *Family Violence Legislation Amendment Bill 2022*. The next statutory review was scheduled to commence in 2025.

Delaying the FVA review would result in a substantial gap in assessing the effectiveness of the legislation. If the review is delayed until two years after the FVSN commences, the time between statutory reviews would span seven or eight years. CRCC recommends the legislation is reviewed sooner to ensure ongoing alignment with community expectations, contemporary understandings of sexual violence, continues to further centre victim-survivors and keeps pace with evolving technology. Additionally, it ensures consideration can be given to adequate resources allocation required for effective implementation and support services in the ACT.

Recommendation 6: Amend the Bill to ensure the statutory review of the FVA commences not later than one year following the commencement of the FVSN scheme.

Recommendations

Recommendation 1: Expand the exclusion of an offender's 'good character' as a mitigating factor in sentencing from child sexual abuse to all sexual violence offences, alternatively, expand this exclusion to identified vulnerable population groups.

Recommendation 2: Exclude consideration of an offender's prior criminal history in sentencing for sexual violence offences or at a minimum for child sexual abuse.

Recommendation 3: Require police to assess patterns of coercive control when considering or before issuing a FVSN.

Recommendation 4: Amend the duration of FVSNs to allow for police discretion in determining a notice period between 5 to 14 days, rather than an automatic 14-day period.

Recommendation 5: Amend section 79J to explicitly state the counselled person has a right of first access to any document produced following a grant of leave to produce documents.

Recommendation 6: Amend the Bill to ensure the statutory review of the FVA commences no later than one year following the commencement of FVSN scheme.

Conclusion

CRCC welcomes the ACT Government's commitment to strengthening responses to sexual violence through legislative reform. The proposed changes present an opportunity to enhance early intervention and improve the administration of justice for victim-survivors. The recommendations within our submission support achieving the policy objective to ensure persons experiencing or at risk of DFV and SV can access a trauma-informed justice response, hold persons using violence to account, and improve the clarity of legislation regarding DFV and SV in the ACT.

To provide the most informed and meaningful feedback, we would have welcomed the opportunity to holistically review the Bill in entirety and further engage with policy makers, prior to its tabling before the ACT Legislative Assembly on 3 December 2025. While we acknowledge, and appreciate that we, alongside other community organisations, were invited to

consult on specific provisions of the Bill, reviewing the complete draft assists us to provide our highest quality feedback in support of achieving the policy objectives

CRCC remains committed to working alongside the government, police, legal services and the broader community to ensure all victim-survivors are able to access protection and justice without retraumatisation or risk. These reforms are likely to increase reporting of sexual violence which further increases demand on our front-line services for victim-survivors. We will continue to highlight the need for funds to continue to meet increasing demand and complexity.

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