



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into the Justice and Community Safety Bill 2022

Submission Number: 003

Date Authorised for Publication: 14 November 2022

9 December 2022

Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Committee,

Inquiry into the Justice and Community Safety Legislation Amendment Bill 2022 (No. 2)

Thank you for the opportunity to comment on the proposed amendments to *Evidence (Miscellaneous Provisions) Act 1991* (ACT) (EMPA), introduced by the Justice and Community Safety Legislation Amendment Bill 2022 (No. 2).

Noting the brief timeframe in which to offer feedback, the ACT Law Society provides the following comments on the proposed amendments.

The Society does not oppose the amendments in-principle. However, we note the extremely limited timeframe in which stakeholders were initially asked to consider the proposal and offer feedback. In this context, we note the possibility for unintended consequences to arise.

While we do not oppose the nature of the proposed amendments, we note the difficulty of offering considered, informed feedback without further detail as to the quality of in-court recordings, the position from which the recordings would be taken, and the extent to which recordings would be able to capture the witness so as to allow the jury to properly assess the evidence.

We also note the possibility that the recording itself may indicate to the jury that the trial they are presiding over is a retrial. We query whether consideration has been given to the possible need for further jury directions, in order to address this. Prima facie, section 72 of the EMPA will also need to be amended to add the same warning to juries for such evidence as is currently given when evidence is adduced via audio-visual link.

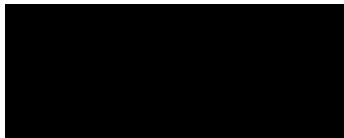
Noting also that this proposal will require the courts to have cameras with audio-visual recording capacity in all court rooms, we also query whether the courts have been consulted on the resourcing demands of this proposal.

Further, we are concerned that this may potentially create uncertainty for the parties around how the evidence will be presented, if a case is retried. We consider it imperative that parties are not

placed on an unequal footing in this regard. Given these concerns, we question the rushed approach to implementing this reform.

We consider it imperative that express, clear consent is given by the witness before their evidence can be recorded, given the possibility that the recording will be the mode through which their evidence is presented at a later proceeding.

We strongly encourage further engagement with stakeholders on the implementation of this proposal and welcome the opportunity for further consultation.



Chief Executive Officer