



Submission cover sheet

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

Submission number: 007

Submitter: Domestic Violence Crisis Service

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Standing Committee on Legal Affairs

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

Dear Committee Members,

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

Thank you for the opportunity to provide feedback on the *Family, Personal and Sexual Violence Legislations Amendment Bill 2025*. The Domestic Violence Crisis Service (DVCS) commends the ACT Government for its ongoing focus on improving responses to domestic and family violence and holding perpetrators of violence accountable, including through the measures in the Bill.

Amendments to Evidence (Miscellaneous Provisions) Act 1991

Family violence is a pattern of behaviour intended to make people feel unsafe, limited in their choices and undermine their autonomy. DVCS supports clients to regain their control and autonomy, including making choices about how they want to address the violence they have experienced. DVCS also recognizes that our clients are experts in their own lives and their safety, they are best able to identify the pattern of behaviour of the perpetrator and the risk it poses in their life.

Amending the protected confidence immunity to allow the counselled person to consent to the disclosure of protected confidence evidence in civil proceedings upholds these principles and has the potential to reduce the burden on victim-survivors who carry the significant load of service navigation to support their safety.

DVCS strongly advocate for additional amendment to *the Evidence (Miscellaneous Provisions) Act 1991* section 79D (General immunity for protected confidences) to ensure that communications with specialist domestic and family violence crisis services like DVCS are covered by the scope of the provisions. DVCS has received mixed legal advice in the past about whether the existing immunity for protected confidences applies to our service. As we are not a counselling service, our records may not be considered 'counselling communications' often dependant on DVCS funding expensive legal representation to work to protect the communications of a victim survivor not always with success.

There is a clear risk to public interest in allowing perpetrators of violence who are respondents in FVO matters to obtain access to specialist DFV records. It would have a deterring effect on people's access to legal processes to protect their safety. It would be a barrier to people seeking support from services like ours and permanently damage trust of existing clients if our records were used against them in legal processes. It would open another pathway for people to perpetrate systems abuse against victim-survivors. It also burdens an already complex period of escalated risk in the periods of action of an FVO.

As you know, the *Family Law Act* has recently been amended to better protect confidential communications, including extending protection to communications occurring when a person seeks treatment or support from a specialist family violence service. We seek further changes to the ACT provisions that are reflective of these Commonwealth changes, to ensure communications with services like ours are unambiguously protected.

Amendments to the Family Violence Act 2016 including Family Violence Safety Notices

DVCS supports the establishment of a Family Violence Safety Notice (FVSN) regime as a positive option for improving safety and support for victim-survivors. It is our observation that the use of existing After-Hours Orders is piecemeal, difficult to access and inconsistently utilised, meaning it is not meeting the needs of people in high-risk domestic and family violence (DFV) situations.

An FVSN could be beneficial to the safety of a victim-survivor when it aligns with the victim-survivor's goals, their assessment of risk and forms part of a plan to increase their safety. For example, DVCS are aware of situations in which police have attended a family violence incident over the weekend and served a 24-hour 'keep the peace order', advising the victim-survivor to attend court to seek a family violence order during business hours. However, the peace order has expired within 24 hours, well before the victim-survivor is able to attend court and have their matter heard should they choose to do so.

In some cases when an order has been sought, it can take weeks for an FVO to be served to the person using violence, meaning the victim-survivor is forced to return to their home and proceed with everyday routines, work and social engagements without legal protection alongside a potentially escalated level of risk. We are also aware of circumstances in which perpetrators of violence have been remanded into custody and continue to contact and threaten DVCS clients, which could be addressed by a FVSN regime that allows notices to be issued even when a person using violence is already charged with a criminal offence again in line with the victim survivors goals for increasing safety and managing risk.

While FVSNs could improve safety for some victim-survivors, it is essential the changes are accompanied by a range of checks, capability-building measures and broader system reform to mitigate the considerable risk of further harm.

Victim-survivors are experts in their own experiences and safety

Family Violence Orders of any description (including FVSNs) do not always increase safety and can increase the risk of violence, leaving victim survivors at greater risk of harm. Part of the role of services like DVCS is supporting victim-survivors to assess whether an FVO fits into their safety plan, and what the potential impacts are of an order being in place. Where a victim-survivor wishes to remain in the relationship or is managing their safety with the knowledge that an FVO would increase the risk to them, an FVSN made with little consideration to the views and needs of the victim survivor could escalate violence.

It is well known to DVCS and to ACT Policing that high-risk DFV offenders can be more likely to ignore orders and breach conditions repeatedly. Few consequences are laid for the person using violence in cases where police and judicial systems do not respond to breaches as reported by victim-survivors, which erode the trust victim-survivors vest in systems and make them less likely to seek support in the future.

Having orders in place which are not enforced leaves the ongoing and often escalated risk management on the shoulders of victim/ survivors and often results in systems becoming less likely to respond over time as a victim/ survivor or support service advocates for the breaches to be responded to.

DVCS strongly advocate that victim-survivors' views should be considered in assessing whether an FVSN is appropriate, and their assessment of risks should be reviewed and shared as part of that process. However, we also note that some clients report safety benefits if they can separate themselves from actions being taken by police, in a way that means perpetrators don't hold them responsible.

Ideally, police would be well-trained to hear the victim-survivor's risk assessment, while also understanding the context in which these views are provided. If a victim-survivor is experiencing high levels of coercive control or is managing their safety in relation to the person using violence, this may impact how information is communicated to police. To undertake this assessment in a way that manages risk and improves safety, police need training in identifying coercive control and the dynamics of DFV.

Address the risk of misidentification

Introducing FVSN will in practice result in an increase in the authority and power of the police, where effectiveness depends on the ability of police officers to identify DFV. It is our observation that general duties officers have varying degrees of DFV understanding.

Police already routinely misidentify victim-survivors of violence as perpetrators, which represents particular risks for victim-survivors in marginalised communities. For example, First Nations women already experience racism, marginalisation and poor system responses when they engage with the justice system and extremely high rates of removal of First Nations children, leading to an understandable fear of engaging with police.

Police are also known to dismiss reports of family violence experienced by trans and gender-diverse people and people in same-sex relationships, or to fail to recognise the pattern of violence in LGBTQIA+ relationships both in the context of intimate partner violence and family violence.

DVCS suggests that additional requirements and protections should be in place for approval of an FVSN than what is proposed in the Bill. Rather than requiring the approval of a Sergeant, we believe approvals could be sought from higher-level police officers who have obtained certain capabilities in identifying and responding to coercive control, and understanding intersectionalities with DFV, including disability, cultural diversity, gender and sexuality.

We also see value in requiring the police to refer to historical information about past behaviours and patterns of violence, and to reach out to services like DVCS to obtain that information if necessary.

Protections must be in place to ensure FVSNs are not used to enable coercive control. The FVSN system could amplify the risk of persons using violence involving the police to identify themselves as a victim and erode system trust for survivors subjected to their violence.

DVCS is ready and willing to work with government, police and the justice system to build the system's understanding and share our expertise as family and domestic violence specialists.

Require police to provide information and referrals to legal and support services

DVCS has a Memorandum of Understanding with ACT Policing that requires police attending a family violence related incident to offer the victim-survivor a referral to DVCS. It is not clear whether identical support will be offered and available to people when an FVSN is issued.

While the FVSN may provide short-term protections, it does little to assure long-term safety. The FVSN could be an opportunity to establish safety measures and plan next steps with the victim-survivor, but only if they are adequately supported during the period the notice is active. At a minimum, people should be provided with information about how to seek legal advice and referred for support around safety planning.

Tailored information and referrals should be provided for people in marginalised communities. If the person experiencing violence is a member of the First Nations community, we would expect information to be made available about community-based supports. For people in the LGBTIQIA+ community, referrals to peer services should be made, and information shared about the support available through the LGBTIQIA+ Police Liaison Officers.

FVSNs should be short-term and not able to be extended

We support a short-term FVSN system akin to the Victorian and NSW system, rather than the long-term orders in jurisdictions like Queensland. Long-term FVSNs risk undermining the victim-survivor's autonomy in cases where they were not supportive of its provision and prolongs the damage in cases where the victim was misidentified as the primary aggressor.

We had suggested 1-2 weeks as the maximum length for FVSN, which appears to be reflected in the Bill. We have also previously expressed we are not supportive of FVSNs being extended, which is also reflected in the Bill.

Amendments to the Crimes (Sentencing) Act 2005

DVCS commends the ACT Government on the steps taken in this bill to amend the Crimes Sentencing Act (2005) to prevent any reduction of the severity of sentences for all sexual offences against children because of an offender's 'good character'.

We know that many victim-survivors of child sexual abuse who engage with the legal and court system have an overwhelmingly negative experience and can experience re-traumatisation through the process. Victim-survivors themselves are the experts in their experiences of the criminal justice system. The lived experience advocates who have formed the Your Reference Ain't Relevant campaign have repeatedly emphasised that the provision of good character references in child sexual abuse matters hinders the pursuit of justice for victims, acts as a barrier to people reporting their abuse and inadvertently diminishes the gravity of the offences committed.

While the amendment is a positive step forward, DVCS advocates that the principles underlying this change should apply across all sentencing and calls on the ACT Government to extend this amendment to all sentencing in line with the NSW's Government announcement this week to abolish 'good character' reference at sentencing.

We look forward to continuing to work with you to improve legal responses and outcomes for victim-survivors of domestic, family and sexual violence in the ACT. Please do not hesitate to contact us should you wish to discuss this submission further.

For further information:

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