



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Justice and
Community Safety

Inquiry into Family Violence Legislation Amendment Bill 2022

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety

Approved for publication

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10th Assembly
April 2022

About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020. The Committee's areas of responsibility are:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

Committee members

Mr Jeremy Hanson CSC MLA, Chair (until 10 February 2022)

Mr Peter Cain MLA, Chair (from 10 February 2022)

Dr Marisa Paterson MLA, Deputy Chair

Ms Jo Clay MLA (until 9 December 2021)

Mr Andrew Braddock MLA (from 9 December 2021)

Secretariat

Dr David Monk, Committee Secretary (until 28 March 2022)

Ms Kathleen de Kleuver, Committee Secretary (from 28 March 2022)

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About this inquiry

The Family Violence Legislation Amendment Bill 2022 (the Bill) was presented in the Assembly on 10 February 2022. It was then referred to the Standing Committee on Justice and Community Safety and Community Safety (the Committee) as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months except for those bills introduced in the last sitting week of the calendar year, such as this one, where the committee shall report in three months of their presentation.

The Committee decided to inquire into the Bill on 18 February 2022.

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Acronyms

Acronym/ Abbreviation	Long form
ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service Inc.
Bill	Family Violence Legislation Amendment Bill 2022
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
Committee	Standing Committee on Justice and Community Safety
CSC	Conspicuous Service Cross
MLA	Member of the Legislative Assembly
SA	South Australia
Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
WA	Western Australia

Recommendations

Recommendation 1

The Committee recommends additional investment in family violence rehabilitation programs, alongside culturally appropriate and safe restorative justice processes.

Recommendation 2

The Committee recommends that the ACT Government, before bringing the Bill forward for debate, review the impacts on an offender's ability to access restorative justice practices and community corrections orders, as a result of longer sentences under the aggravated offence scheme.

Recommendation 3

The Committee recommends that the ACT Government investigate whether sentencing based on breaches of trust, rather than breaches in the context of family relationships, may result in fairer justice outcomes.

Recommendation 4

The Committee recommends that the amendment to include technological abuse in the definition of family violence be supported by training and resourcing, including for police attending family violence matters.

Recommendation 5

The Committee recommends that in two years from the commencement of the Act, the Attorney-General provide an update to the Assembly on the impact of the legislation.

Recommendation 6

The Committee recommends that the ACT Government, as part of the review of the legislation after three years, assess the impact on offender rehabilitation of longer sentences under the aggravated offence scheme.

Recommendation 7

The Committee recommends that the Assembly pass the Family Violence Legislation Amendment Bill 2022.

1. Conduct of the inquiry

Referral and decision to inquire

- 1.1. The Family Violence Legislation Amendment Bill 2022 was presented to the Legislative Assembly on 10 February 2022 by the Attorney-General, Mr Shane Rattenbury MLA.
- 1.2. In accordance with the resolution of establishment of the Standing Committee on Justice and Community Safety, the Bill was referred to the Committee for examination.
- 1.3. On 14 February 2022, the Committee resolved to undertake an inquiry into the Bill.

Conduct of inquiry

- 1.4. On 14 February 2022, the Committee resolved to set a hearing date of 11 March (later amended to 18 March), to meet the deadline for reporting of 14 April 2022. The Committee agreed to invite public submissions, with a closing date of 7 March 2022.
- 1.5. On 18 February 2022, the Committee issued a media release inviting the community to participate in the inquiry by making a submission. The Committee also released a media release on 18 March 2022 with information about the public hearing.
- 1.6. The Committee received two submissions which were published on the inquiry webpage and are listed at Appendix A.
- 1.7. A public hearing was held on 18 March 2022. The Committee heard evidence from witnesses listed in Appendix B. The [transcript](#) and video recording is available on the Assembly website. There was one Question Taken on Notice during the hearing as listed in Appendix C. Details from that Question Taken on Notice are listed in Appendix D.

2. Bill background and contents

- 2.1. The policy objective of this Bill is to ensure that domestic and family violence offenders are held to account, and to help improve access to justice and minimise trauma for victims involved in court proceedings.
- 2.2. The Bill is a significant bill. Significant bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.¹
- 2.3. A Human Rights Compatibility Statement has been included with the Explanatory Statement, describing the limitations on Human Rights in the Bill as proportionate and justified in the circumstances, because they are the least restrictive means available to achieve the purpose of protecting victims, particularly of domestic and family violence, and the community as a whole.²
- 2.4. The Bill was also considered by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (details below – see paragraph 3.1).
- 2.5. The Bill amends the following legislation:
 - *Crimes Act 1900*;
 - *Crimes (Sentencing) Act 2005*;
 - *Evidence (Miscellaneous Provisions) Act 1991*;
 - *Family Violence Act 2016*; and
 - *Working With Vulnerable People (Background Checking) Act 2011*.
- 2.6. The Bill also amends other legislation (consequential amendments) including the following:
 - *Children and Young People Act 2008*;
 - *Crimes (Child Sex Offenders) Act 2005*;
 - *Evidence Act 2011*;
 - *Sex Work Act 1992*; and
 - *Supreme Court Act 1933*.
- 2.7. The amendments were developed in consultation with key justice stakeholders.³

Proposed amendments

- 2.8. The Bill amends various legislation relating to family violence to implement recommendations from the *Final Report of the Review of the Family Violence Act 2016*, which was [published](#) on 23 February 2021.

¹ Explanatory Statement to the Family Violence Legislation Amendment Bill 2022, p 2.

² Explanatory Statement to the Family Violence Legislation Amendment Bill 2022, p 6.

³ Explanatory Statement to the Family Violence Legislation Amendment Bill 2022, p 3.

2.9. According to the Explanatory Statement⁴ to the Bill, the Bill will:

- a) create an aggravated offence scheme to introduce higher maximum penalties for certain offences when committed in the context of family violence;
- b) provide an express legislative basis for the court to grant an adjournment for the preparation of a Victim Impact Statement in sentence proceedings for serious offences;
- c) limit cross-examination on the contents of Victim Impact Statements, including in other proceedings;
- d) extend the existing counselling protections for counselling communications in sexual offence proceedings to family violence offence proceedings;
- e) amend the definition of family violence to include technological abuse;
- f) change the name of the offence of 'sexual relationship with child or young person under special care' to 'persistent sexual abuse of child or young person under special care';
- g) insert certain new aggravated family violence offences into the schedule of disqualifying offences in the *Working with Vulnerable People (Background Checking) Act 2011*; and
- h) create a legislative requirement to review the *Family Violence Act 2016* three years after the commencement of the Bill.

⁴ Explanatory Statement to the Family Violence Legislation Amendment Bill 2022, p 2.

3. Legislative Scrutiny of the Bill

- 3.1. The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) addressed the Family Violence Legislation Amendment Bill 2021 in [Scrutiny Report 13](#), of 15 March 2022. This chapter seeks to highlight its key considerations.
- 3.2. *Scrutiny Report 13* identified that the proposed amendments may limit the right to a fair trial to some extent as they limit the ability of the defence to cross examine the maker of a Victim Impact Statement and limit the examination of certain confidential communications to counsellors of victims of family violence. Further, the report notes that the extending the list of disqualifying offences relevant to Working with Vulnerable People background checks limits equality and the right not to be tried or punished more than once.
- 3.3. The Committee also noted the statement on Consistency with Human Rights⁵ in particular around proportionality in terms of protecting victims. The adjournment requirements would not allow unreasonable delays, and other evidence than confidential communications to counsellors could be used by the defence. Given the amendments are designed to address identified issues that result in limiting the ability for victims of family violence to be treated fairly in criminal proceedings and reduce the risk to vulnerable people, in addition to the requirement for a review in three years, the Committee does not think these matters should stop the Bill proceeding.

Legislative Scrutiny Committee comments

Crimes Act 1900

- 3.4. The Bill will amend the *Crimes Act 1900* to provide for higher maximum penalties for certain offences when committed in the context of family violence.⁶ Family violence is defined through reference to section 8 of the *Family Violence Act 2016* and includes:
 - a) physical violence or abuse;
 - b) sexual violence or abuse;
 - c) emotional or psychological abuse;
 - d) economic abuse;
 - e) threatening behaviour;
 - f) coercion or any other behaviour that—
 - i. controls or dominates the family member; and

⁵ Family Violence Legislation Amendment Bill 2022, Explanatory Statement and Human Rights Compatibility Statement.

⁶ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 7.

- II. causes the family member to feel fear for the safety or wellbeing of the family member or another person.⁷

3.5. By extending possible terms of imprisonment the Bill may limit the right to liberty protected in section 18 of the *Human Rights Act 2004*.

Crimes (Sentencing) Act 2005

3.6. The Bill will also make various amendments to encourage the making and use of Victim Impact Statements.

3.7. The *Crimes (Sentencing) Act 2005* will be amended to require a court to adjourn sentencing proceedings for serious offences to allow for the preparation of a Victim Impact Statement. The adjournment can only be for a reasonable period and can be refused in special circumstances.⁸

3.8. In general, Victim Impact Statements are prepared after a plea of guilty is entered or indicated. Where an unexpected plea is entered, and the accused wishes to proceed to sentence expediently, a victim may need some additional time to have their Victim Impact Statement ready. This amendment was added to ensure that victims are still able to make a Victim Impact Statement unless there are special circumstances for the court not to allow an adjournment.⁹

3.9. However, the Scrutiny Committee notes that an adjournment will delay the finalisation of the sentencing process and may limit the right to a fair trial protected by section 21 of the *Human Rights Act 2004* and rights in criminal proceedings protected in section 22 of the *Human Rights Act 2004*.¹⁰

Evidence (Miscellaneous Provisions) Act 1991

3.10. These rights may also be limited through amendments to the *Evidence (Miscellaneous Provisions) Act 1991* to limit the ability of the defence to cross-examine the maker of a victim impact statement on the contents of the statement.¹¹

3.11. Where a finding of guilt has not been made, the defence will only be able to cross-examine the maker of a victim impact statement where it is justified by the statement's probative value. After a finding of guilt has been made, the court can grant leave to cross-examine the maker of a victim impact statement only if satisfied cross-examination would materially affect the likely sentence to be imposed on an offender.

3.12. A court can allow statements to be used in other proceedings only after a finding of guilt and where satisfied the use is justified by the statement's substantial probative value. The

⁷ Family Violence Act 2016, <https://legislation.act.gov.au/a/2016-42/>, accessed 28 March 2022, p 18.

⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 7.

⁹ Explanatory Statement to the Family Violence Legislation Amendment Bill 2022, p 8.

¹⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 7.

¹¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 7.

Bill will therefore limit the ability of the accused person to cross-examine witness and test their evidence.¹²

- 3.13. The Bill will also amend the *Evidence (Miscellaneous Provisions) Act 1991* to protect the confidentiality of communications to counsellors by victims of family violence.
- 3.14. This Act currently provides protection against the use of counselling communications made by, to, or about a person against whom a sexual offence was or is alleged to have been committed. This will be extended by the Bill to include alleged family violence offences. The communication doesn't have to be about the offences. It just has to be made in circumstances which give rise to a reasonable expectation of confidentiality.
- 3.15. Protected confidences must not be disclosed in preliminary criminal proceedings and can only be disclosed in other proceedings where the court gives leave on the basis of the public interest in a fair proceeding. Limiting the ability to examine relevant communications and adduce them as evidence may limit the right to a fair trial protected by section 21 of the *Human Rights Act 2004* and rights in criminal proceedings protected in section 22 of the *Human Rights Act 2004*.¹³

Working With Vulnerable People (Background Checking) Act 2011

- 3.16. The Bill will also amend the list of disqualifying offences in Schedule 3 of the *Working With Vulnerable People (Background Checking) Act 2011*.
- 3.17. Once included, these offences are relevant to the assessment of whether a person can be given registration to engage in a regulated activity that involves contact with a vulnerable person. Including additional disqualifying offences may therefore limit the right to equality (section 8 of the *Human Rights Act 2004*), the right not to be tried or punished more than once (section 24 of the *Human Rights Act 2004*) and the right to work (section 27B of the *Human Rights Act 2004*).¹⁴

Summary from the Scrutiny Committee

- 3.18. Each of these possible limitations is recognised in the explanatory statement accompanying the Bill and a justification is given for why they should be considered reasonable using the framework set out in section 28 of the *Human Rights Act 2004*.¹⁵
- 3.19. The Scrutiny Committee drew these matters to the attention of the Assembly but did not require a response from the Minister.¹⁶

¹² Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 7.

¹³ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, pp 7-8.

¹⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 8.

¹⁵ Explanatory Statement to the Family Violence Legislation Amendment Bill 2022.

¹⁶ Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), *Scrutiny Report 13*, March 2022, p 8.

4. Key issues considered by Committee

Aggravated offence scheme to introduce higher maximum penalties for certain offences

- 4.1. The Women’s Legal Centre ACT and Domestic Violence Crisis Service told the Committee the value of legislative reforms as an educational tool and categorising family violence offences as aggravated offences recognises the serious long-term impacts of family violence.¹⁷
- 4.2. While they were very supportive of the aggravated offence provisions, they also noted that law reform only works if enforced consistently. While maximum penalties can be seen as a deterrent before the offence occurs, they should be applied when responding to incidents. The combined effect of publicity about sentences of other people and personal experience might prevent reoffending.¹⁸
- 4.3. Both the Women’s Legal Centre ACT and Domestic Violence Crisis Service stated in their opening statement that it is important to enforce new offences:
- Increasing maximum penalties may in part be seen as a mechanism for deterrence before offences occur, but they must be applied when responding to incidents. We continue to be concerned regarding the potential for disproportionate impacts, particularly for Aboriginal and Torres Strait Islander women, and women more generally who are charged with violence offences and wrongly identified as perpetrators.¹⁹
- 4.4. In a submission to the inquiry, ACT Council of Social Service Inc. (ACTCOSS) wrote that simply increasing maximum penalties is not a way to effectively change rates of family violence:
- There is substantial evidence that severity of punishment has negligible effect on possibility of reoffending or rehabilitation.²⁰ Introducing the aggravated offence scheme risks increasing the length of time people spend behind bars with no real therapeutic or rehabilitative value, especially given that rehabilitative programs for family violence offenders in the Alexander Maconochie Centre are currently limited.²¹
- 4.5. ACTCOSS are also concerned that this provision will lead to increased incarceration of Aboriginal and Torres Strait Islander people. Indigenous people are more likely to receive

¹⁷ Ms Claudia McClean and Ms Sue Webeck, Women’s Legal Centre ACT and Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, pp 1-2.

¹⁸ Ms Margie Rowe, Women’s Legal Centre ACT, *Committee Hansard*, 18 March 2022, p 5.

¹⁹ Ms Claudia McClean, Women’s Legal Centre ACT, *Committee Hansard*, 18 March 2022, p 2.

²⁰ Daniel S Nagin, *Deterrence in the Twenty-First Century*, Crime and Justice, Vol 42(1), pp 199-263.

²¹ ACTCOSS, Submission 2, p 2.

harsher sentences and less likely to receive bail and that pattern would likely be repeated here.²²

- 4.6. ACTCOSS believes that additional investment in family violence rehabilitation programs, alongside culturally appropriate and safe restorative justice processes, would be better than the use of expanded sentencing for family violence.

- 4.7. The ACT Law Society, gave evidence that increased penalties may not affect the thinking of a potential offender:

The [ACT] Law Society believes that there may be unintended consequences that flow from that (increasing statutory maxima).

The [ACT] Law Society is also of the opinion that increasing statutory maxima for a number of offences, if the offence involves family violence, as the bill proposes to do, is based on an assumption that the maximum penalty will be a meaningful mode of deterrence and a meaningful way of addressing future behaviour.

Often it is the case that family violence offences arise in the moment and without appropriate pause for thought. It is, in that circumstance, particularly unlikely that a person is going to have regard to what is the maximum penalty and therefore desist from actions that they may otherwise have spontaneously engaged in. In that regard, the [ACT] Law Society is not convinced that simply increasing the maximum penalty is going to lead to what is presumably the aim—a decrease in family violence.²³

- 4.8. The ACT Law Society considered that education programs are more effective ways to reduce family violence. They also raised concerns the penalties would lead to further jail overcrowding, increasing problems in delivery of rehabilitation programs. They were more supportive of more onerous good behaviour orders and potentially compulsory rehabilitation programs.²⁴

- 4.9. The ACT Law Society also considered the bill would create an inappropriate two-tiered sentencing system²⁵ (for example, a lesser penalty for the non- family violence compared to family violence), and unintended consequences could arise for non-stereotypical examples of family violence.²⁶

- 4.10. The Attorney-General told the Committee that the Bill responds to recommendations from the review into the *Family Violence Act 2016* to ensure that the Act was meeting its intended goals and also responds to the court case of *R v UG* which identified that courts did not have specific authority to take into account family violence when making their decisions.²⁷

²² ACTCOSS, Submission 2, p 2.

²³ Mr Michael Kukulies-Smith, ACT Law Society, *Committee Hansard*, 18 March 2022, p 22.

²⁴ Mr Michael Kukulies-Smith, ACT Law Society, *Committee Hansard*, 18 March 2022, p 23-24.

²⁵ Mr Michael Kukulies-Smith, ACT Law Society, *Committee Hansard*, 18 March 2022, p 25.

²⁶ Mr Michael Kukulies-Smith, ACT Law Society, *Committee Hansard*, 18 March 2022, p 27.

²⁷ Mr Shane Rattenbury MLA, Attorney-General, *Committee Hansard*, 18 March 2022, p 29.

- 4.11. The Women's Legal Centre ACT and Domestic Violence Crisis Service also said that legislation needs to be work as intended and applied fairly to ensure that victims are not incorrectly identified as perpetrators.²⁸
- 4.12. They noted that the law should be implemented alongside a support package that includes training of the profession, judiciary and better police responses.²⁹ In addition, a wholistic approach is needed including prevention through cultural change; maximum penalties are part of the strategy.³⁰
- 4.13. They spoke to the existing unpredictability of entering the criminal justice system in the first place, noting that the aggravated offences provisions would not necessarily have an impact on this and there needs to be attention on non-criminal justice responses as well.³¹
- 4.14. The Minister for the Prevention of Domestic and Family Violence told the Committee that the aggravated offence scheme is only one part of a comprehensive approach to family violence.³²
- 4.15. The Community Services Directorate explained how the ACT Government was continuing to make changes to support this Bill, including the Family Violence Safety Action Pilot, the Room4Change program, and the ACT EveryMan program.³³
- 4.16. A submission argued that the policy focus should be on psychological and personal skills programs:

As someone who grew up with a violent father, I appreciate the barriers to accountability, justice and recovery. However, I am also aware that my father experienced significant family violence as a child. Accountability is important, yet introducing harsher criminal penalties will neither change what happened, help repair the harm, nor prevent him (or others) from continuing to communicate in a violent manner... I firmly believe that is essential to move away from the criminal system. Rather, we must move towards mechanisms which focus equally on accountability and connection.

...rather than introducing harsher penalties, I encourage the ACT Government to invest in restorative practices which promote accountability whilst also supporting positive behavioural change. These may include greater investment in:

1. Preventative programs and intervention tools which build relational skills in children, particularly young boys;

²⁸ Ms Claudia McClean, Women's Legal Centre ACT, *Committee Hansard*, 18 March 2022, p 2.

²⁹ Ms Claudia McClean, Women's Legal Centre ACT, *Committee Hansard*, 18 March 2022, p 3.

³⁰ Ms Sue Webeck, Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, p 2-6.

³¹ Ms Margie Rowe and Ms Sue Webeck, Women's Legal Centre ACT and Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, p 4.

³² Ms Yvette Berry MLA, Minister for the Prevention of Domestic and Family Violence, *Committee Hansard*, 18 March 2022, p 12.

³³ Ms Kirsty Windeyer, ACT Community Services Directorate, *Committee Hansard*, 18 March 2022, p 15.

2. Men's behaviour-change programs, which may or may not be enforceable by civil orders; and,
 3. Free psychological support for families and individuals who have or are experiencing family violence.³⁴
- 4.17. The Committee supports the policy intention of the amendment but considers it important that education programs continue to be a significant feature addressing family violence.
- 4.18. The Committee is of the view that given the ACT Government's commitment to reducing the number of Aboriginal and Torres Strait Islander people in the criminal justice system, that there should be more investment in family violence rehabilitation programs, alongside culturally appropriate and safe restorative justice processes.

Recommendation 1

The Committee recommends additional investment in family violence rehabilitation programs, alongside culturally appropriate and safe restorative justice processes.

Recommendation 2

The Committee recommends that the ACT Government, before bringing the Bill forward for debate, review the impacts on an offender's ability to access restorative justice practices and community corrections orders, as a result of longer sentences under the aggravated offence scheme.

Recommendation 3

The Committee recommends that the ACT Government investigate whether sentencing based on breaches of trust, rather than breaches in the context of family relationships, may result in fairer justice outcomes.

An express legislative basis for the court to grant an adjournment for the preparation of a Victim Impact Statement in sentence proceedings for serious offences

- 4.19. The Domestic Violence Crisis Service observed that an adjournment until a Victim Impact Statement is submitted demonstrates to victims of these crimes the importance of their voice being heard in proceedings.³⁵
- 4.20. The Attorney-General told the Committee that an explicit legislative requirement to allow space for a Victim Impact Statement will remove a barrier for victims to engage with the criminal justice system as some victims may have not prepared a Victim Impact Statement in time, for example where a defendant has pleaded guilty at a late stage.³⁶

³⁴ 'Lived Experience Advocate' (confidential submission), Submission 1, p 1.

³⁵ Ms Melissa Gumley, Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, p 7.

³⁶ Mr Shane Rattenbury MLA, Attorney-General, *Committee Hansard*, 18 March 2022, p 33.

Limit cross-examination on the contents of Victim Impact Statements including in other proceedings

4.21. ACTCOSS supported this reform:

Limiting cross-examination on the contents of Victim Impact Statements will have a positive effect and minimise the potential for re-traumatisation of survivors. Similarly, the extension of counselling protections already available in sexual violence cases to family violence offence proceedings is welcome.³⁷

4.22. The Attorney-General told the Committee that it will be an important protection for victims:

There has been strong feedback from victims-survivors that the process of being cross-examined on that victim impact statement can be very retraumatising for them ... Again, it is an important opportunity for people to feel comfortable that they can seek out that professional help and not have some of those most intimate thoughts used against them in the legal proceedings.³⁸

Extend the existing counselling protections for counselling communications in sexual offence proceedings to family violence offence proceedings

4.23. ACTCOSS supported this reform:

...the extension of counselling protections, already available in sexual violence cases, to family violence offence proceedings is welcome.³⁹

4.24. The Attorney-General told the Committee that there has been strong feedback from victim-survivors that barriers to protection of counselling communications in family violence proceedings can be retraumatising.⁴⁰

Amend the definition of family violence to include technological abuse

4.25. The Minister for the Prevention of Domestic and Family Violence told the Committee that the Bill would amend the definition of family violence to include the harmful use of technology, for example using electronic devices or social media to publish intimate images of a family member without consent.⁴¹

4.26. The Community Services Directorate advised that the number of ways that perpetrators can abuse their intimate partners is increasing and that the review will help ensure that the

³⁷ ACTCOSS, Submission 2, p 1.

³⁸ Mr Shane Rattenbury MLA, Attorney-General, *Committee Hansard*, 18 March 2022, p 34.

³⁹ ACTCOSS, Submission 2, p 1.

⁴⁰ Mr Shane Rattenbury MLA, Attorney-General, *Committee Hansard*, 18 March 2022, p 33.

⁴¹ Ms Yvette Berry MLA, Minister for the Prevention of Domestic and Family Violence, *Committee Hansard*, 18 March 2022, p 13.

legislation can stay up to date and spoke to training being delivered on technological facilitated abuse including with schools.⁴²

- 4.27. The Domestic Violence Crisis Service said that technological abuse is generally a feature of family violence. However, they continue to see clients who receive communications that have undertones of threatening behaviour, are coercive, designed to instil fear and intimidation that is not recognised as such by police attending, therefore this needs to be supported by training and resourcing.⁴³ The Women's Legal Centre also noted the significant impact that threats to publish intimate photos can have on a victim.⁴⁴
- 4.28. The Committee acknowledged that technological abuse is a changing area and that it can be difficult to recognise as abuse. Given this, there would be benefits in supporting this amendment with training and resourcing including to police.

Recommendation 4

The Committee recommends that the amendment to include technological abuse in the definition of family violence be supported by training and resourcing, including for police attending family violence matters.

Change the name of the offence of 'sexual relationship with child or young person under special care' to 'persistent sexual abuse of child or young person under special care'

- 4.29. ACTCOSS also welcomed the change of the name of the offence of 'sexual relationship with a child or young person under special care' to 'persistent sexual abuse of child or young person under special care', noting that 'it is important to recognise abuse as a serious misuse of power, rather than a relationship'.⁴⁵
- 4.30. The Minister for the Prevention of Domestic and Family Violence told the Committee that this is part of a move to national consistency and noted that this was based on recommendations in this area from Grace Tame, making it clear that a child cannot offer consent around any kind of sexual relationship.⁴⁶

Insert certain new aggravated family violence offences into the schedule of disqualifying offences in the *Working with Vulnerable People (Background Checking) Act 2011*

- 4.31. The Attorney-General told the Committee that extending the list of disqualifying offences under the *Working with Vulnerable People (Background Checking) Act 2011* to the proposed aggravated family violence offences is important as there is a clear linkage

⁴² Ms Kirsty Windeyer, ACT Community Services Directorate, *Committee Hansard*, 18 March 2022, p 14.

⁴³ Ms Sue Webeck, Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, p 8-10.

⁴⁴ Ms Margie Rowe, Women's Legal Centre ACT, *Committee Hansard*, 18 March 2022, p 9.

⁴⁵ ACTCOSS, Submission 2, p 1.

⁴⁶ Ms Yvette Berry MLA, Minister for the Prevention of Domestic and Family Violence, *Committee Hansard*, 18 March 2022, p 13.

between the incidence of abuse, violence, and exploitation to the risk the vulnerable people.⁴⁷

- 4.32. This amendment was considered appropriate by ACTCOSS.⁴⁸

Create a legislative requirement to review the *Family Violence Act 2016* three years after the commencement of the Bill

- 4.33. The Minister for the Prevention of Domestic and Family Violence said the review period was important particularly in order to check for any disproportionate negative impacts on Aboriginal and Torres Strait Islander people due to their over-representation in the justice system, noting that there had been concerns raised by the community.⁴⁹
- 4.34. The Minister also advised that the intention behind the three-year interval before the review would be that during this time there would be sufficient information to give a considered response.⁵⁰
- 4.35. The Community Services Directorate said the review would help ensure the legislation is up to date with the different and changing ways that perpetrators abuse their victims.⁵¹
- 4.36. In their submission, ACTCOSS supported a review of the legislation every three years, noting that the nature of family violence can shift as cultural norms shift and to ensure that the legislation remains responsive and working as intended.⁵²
- 4.37. The Women's Legal Centre ACT and Domestic Violence Crisis Service said that there must be a robust system to ensure efficacy of the proposed laws.⁵³ They must work as intended and must be evaluated in order to have community confidence that the system is working as it should. There should be monitoring on how the aggravated offences are applied. They also said that the evaluation process should be sufficiently resourced.
- 4.38. The Committee agreed with the three-year review but noted that there should be monitoring of data to support it, particularly noting the concerns in respect of Aboriginal and Torres Strait Islander people.

Recommendation 5

The Committee recommends that in two years from the commencement of the Act, the Attorney-General provide an update to the Assembly on the impact of the legislation.

⁴⁷ Mr Shane Rattenbury MLA, Attorney-General, *Committee Hansard*, 18 March 2022, p 35.

⁴⁸ ACTCOSS, Submission 2, p 1.

⁴⁹ Ms Yvette Berry MLA, Minister for the Prevention of Domestic and Family Violence, *Committee Hansard*, 18 March 2022, p 12.

⁵⁰ Ms Yvette Berry MLA, Minister for the Prevention of Domestic and Family Violence, *Committee Hansard*, 18 March 2022, p 19.

⁵¹ Ms Kirsty Windeyer, ACT Community Services Directorate, *Committee Hansard*, 18 March 2022, p 13.

⁵² ACTCOSS, Submission 2, p 2.

⁵³ Ms Claudia McClean and Ms Sue Webeck, Women's Legal Centre ACT and Domestic Violence Crisis Service, *Committee Hansard*, 18 March 2022, p 2.

Recommendation 6

The Committee recommends that the ACT Government, as part of the review of the legislation after three years, assess the impact on offender rehabilitation of longer sentences under the aggravated offence scheme.

5. Conclusions

- 5.1. The Committee believes that family violence issues are important, serious and complex and there must be effective responses to deter and respond to offences as well as improved access to justice for victim survivors.
- 5.2. This report has made seven recommendations in relation to the Committee's inquiry.
- 5.3. The Committee would like to thank the Women's Legal Centre ACT, Domestic Violence Crisis Service, ACT Law Society, the Minister for the Prevention of Domestic and Family Violence, and the Attorney-General, for their appearances as part of this inquiry. The Committee would also like to thank those who assisted in the provision of Hansard transcription and broadcasting services.

Recommendation 7

The Committee recommends that the Assembly pass the Family Violence Legislation Amendment Bill 2022.

Mr Peter Cain MLA

Chair, Standing Committee on Justice and Community Safety

14 April 2022

Appendix A: Submissions

No.	Submission by	Received	Published
1	Confidential	07/03/2022	16/03/2022
2	ACT Council of Social Service Inc.	11/03/2022	16/03/2022

Appendix B: Witnesses

Friday, 18 March 2022

Women's Legal Centre ACT

- **Ms Claudia Maclean**, Principal Solicitor
- **Ms Margie Rowe**, Special Counsel

Domestic Violence Crisis Service

- **Ms Sue Webeck**, Chief Executive Officer
- **Ms Melissa Gumley**, Program Support Manager, Crisis Intervention & Legal Advocacy

Minister for the Prevention of Domestic and Family Violence

- **Ms Yvette Berry MLA**, Minister for the Prevention of Domestic and Family Violence
- **Ms Kirsty Windeyer**, Coordinator General for Family Safety, Community Services Directorate

ACT Law Society

- **Mr Michael Kukulies-Smith**, Chairperson, Criminal Law Committee

Attorney-General

- **Mr Shane Rattenbury MLA**, Attorney-General
- **Ms Jennifer McNeill**, Deputy Director-General (Justice), Justice and Community Safety Directorate
- **Ms Karen Greenland**, Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

Appendix C: Question taken on notice

Question taken on notice

No.	Date	Asked by	Subject	Response received
1	18/03/22	Dr Marisa Paterson	Penalties in other jurisdictions	07/04/22

Appendix D: Maximum penalties in each jurisdiction for some offences which could be committed in a family violence context⁵⁴

Offence	ACT – simple offence	ACT – aggravated offence	NSW – simple offence	QLD – simple offence	Vic – simple offence	WA – simple offence	WA – aggravated offence	SA – simple offence	SA – aggravated offence	Tas – simple offence	NT – simple offence
Common assault	2 years	3 years	2 years	3 years	5 years	18 months and a fine of \$18,000	3 years and fine of \$36,000	2 years	3 years	12 months or 20 penalty units (summary) 21 years, fine or both (indictable)	1 year
Intentionally inflicting grievous bodily harm	20 years	25 years	25 years	Life	20 years	20 years	No aggravated offence	20 years	25 years	21 years, fine or both	Life
Sexual intercourse without consent	12 years	15 years	14 years	Life	25 years	14 years	20 years	Life	No aggravated offence	21 years, fine or both	Life
Non-consensual distribution of intimate images	300 penalty units, 3 years, or both	400 penalty units, 4 years or both	100 penalty units, 3 years or both	3 years	2 years	18 months and a fine of \$18,000 (summary) 3 years (indictable)	No aggravated offence	\$10,000 or 2 years	No aggravated offence	50 penalty units, 12 months or both	3 years

The table sets out the maximum penalties in each jurisdiction for some offences which could be committed in a family violence context. These offences have been selected as a sample to demonstrate how maximum penalties compare across jurisdictions.

It is noted that only Western Australia and South Australia have aggravated offence schemes that have similarities to the aggravated family violence offence scheme that is proposed to be introduced by the Family Violence Legislation Amendment Bill 2022.

In Western Australia, it is a circumstance of aggravation if the offender is in a family relationship with the victim of the offence (section 221 (1) of the Criminal Code Act Compilation Act 1913 (WA)).

In South Australia, it is an aggravated offence if the offender committed the offence knowing that the victim of the offence was a person with whom the offender was, or was formerly, in a relationship (section 5AA (1) (g) of the Criminal Law Consolidation Act 1935 (SA)).

⁵⁴ Ms Karen Greenland, Justice and Community Safety Directorate, answer to QTON 1: Penalties in other jurisdictions, 18 March 2022 (received 7 April 2022), p 1.