

2022

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

**REPORT NO. 5 OF THE STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
INQUIRY INTO THE FAMILY VIOLENCE LEGISLATION AMENDMENT BILL 2022 -
GOVERNMENT RESPONSE**

**Presented by
Shane Rattenbury MLA
Attorney-General
June 2022**

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

The ACT Government welcomes the Standing Committee on Justice and Community Safety's (the Committee) Report on the inquiry into the Family Violence Legislation Amendment Bill 2022 (the Bill).

The Bill implements a number of recommendations from the Final Report of the Review of the *Family Violence Act 2016*, which was published in February 2021, and also introduces other important law reform aimed at strengthening the legal framework to better respond to family violence.

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.

The Bill was introduced into the Legislative Assembly on 10 February 2022. On 14 February 2022, the Committee resolved to undertake an inquiry into the Bill. The Committee noted that it supported the policy intention of the Bill but that the inquiry would allow for public discussion about how the Bill would operate in practice and provide an opportunity for stakeholders and general members of the public to provide feedback for the Government to consider prior to debate on the Bill.

The ACT Government acknowledges the value of public discussion about family violence and of the amendments proposed by the Bill and has carefully considered each of the Committee's recommendations. The Government has also engaged with key stakeholders to inform the response to the recommendations.

Recommendations and Government Response

Recommendation 1: *The Committee recommends additional investment in family violence programs, alongside culturally appropriate and safe restorative justice processes.*

Government Response: *Agreed in principle.*

The ACT Government is committed to providing a holistic response to family violence including through continued investment in family violence programs and early intervention programs, alongside culturally appropriate and safe restorative justice processes. There is a vital need for responses to domestic and family violence to be inclusive, intersectional and culturally safe.

The ACT Government is delivering and developing a number of policies and programs to improve effective responses to domestic and family violence.

The ACT Government invests in these responses through the Safer Families Levy, which was introduced in 2016 as part of a community-wide contribution to tackle family and domestic violence and to provide an ongoing revenue base to fund long-term system reform and service improvements. The responses that are funded through the Safer Families Levy

include:

- support for frontline domestic violence and rape crisis services to provide crisis responses to victim-survivors most in need;
- the Health Justice Partnership program consisting of legal support from Legal Aid and Women's Legal Centre for pregnant women and new families in community, health and hospital settings;
- the Family Violence Safety Action Pilot, to expand integrated case work capacity, information sharing and coordinated responses, and to meet increased demand for high-risk families;
- the evidence-based Room4Change men's behaviour change program, which holds perpetrators accountable for their actions while supporting them to change their violent behaviour; and
- funding to scope and design domestic and family violence responses for the Aboriginal and Torres Strait Islander community, in response to the We Don't Shoot Our Wounded report.

The 21/22 Budget also delivered expanded programs including funding for more frontline domestic violence and rape crisis services, rental assistance for people experiencing domestic and family violence, and scoping and design for domestic and family violence responses for the Aboriginal and Torres Strait Islander Community.

The Government also delivers programs targeting family violence offenders, run at the Alexander Maconochie Centre (AMC) and in the community following release.

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.

Government Response: Agreed.

During the development of the Bill, the ACT Government considered the impact of the aggravated offence scheme on access to restorative justice. ACT Policing and the Director of Public Prosecutions will be unable to refer some of the new aggravated family violence offences to restorative justice, as offences that are subject to a maximum penalty of 10 years imprisonment or more are considered serious family violence offences under the *Crimes (Restorative Justice) Act 2004*. Data indicates that there have been minimal referrals to restorative justice from ACT Policing and the Director of Public Prosecutions for these types of offences in recent years. In addition, the Magistrates Court and Supreme Court are able to make referrals to restorative justice for both serious and less serious family violence offences after the offender pleads guilty to or is found guilty of the offence. As a result, the courts will be able to refer appropriate aggravated family violence offences to restorative justice. The Government considers that this is an appropriate approach and that any issues arising in relation to access to restorative justice would need to be considered in the context of the policy underpinning the existing thresholds for referrals of serious offences under the *Crimes (Restorative Justice) Act 2004* to ensure consistency.

In addition, the ACT Government has considered the interaction between the new aggravated family violence offences and the ACT sentencing framework. A court is not prevented from imposing an intensive corrections order, a suspended sentence, a drug and alcohol treatment order or a non-custodial sentence for an aggravated family violence offence where it is considered an appropriate sentencing option. The Government acknowledges that a court may only make an intensive correction order if the court imposes a sentence of imprisonment for more than two years but not more than four years, and a court may only make a drug and alcohol treatment order if the court imposes a sentence of imprisonment of at least one year but not more than four years. However, these thresholds relate to the sentence that the court intends to impose rather than the maximum penalty for an offence and, as a result, these sentencing options are not directly impacted by the maximum penalties available for the aggravated family violence offences.

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.*

Government Response: *Agreed.*

The ACT Government considered the existing sentencing approach in the ACT during the development of the Bill. As part of the general sentencing principles, section 33 of the *Crimes (Sentencing) Act 2005* already requires a court to consider whether the offender was in a position of trust or authority when the offence was committed. However, the Court of Appeal found in *R v UG* [2020] ACTCA 8 that there is no basis for taking a special approach to sentencing for family violence offences. The ACT Government resolved to take a two-phase approach to address this decision.

Phase one was to introduce section 34B into the *Crimes (Sentencing) Act 2005* to require the court to consider the nature of family violence and the context of the offending when sentencing a family violence offence.

Phase two is the aggravated offence scheme introduced by this Bill which ensures that higher maximum penalties are available to the courts when warranted for certain offences committed in a family violence context. These aggravated offences are intended to reflect the seriousness of family violence offences and will help to ensure that offenders are adequately held to account. This approach will achieve fair justice outcomes as the courts retain full sentencing discretion in determining the appropriate sentence in each individual case and the maximum penalties for the aggravated offences provide a yardstick by which to assess the case against the worst possible case.

For offences that are not committed in the context of family violence, as noted above, the court is required to consider whether the offender was in a position of trust or authority during the sentencing process. In addition, the existing ‘special care’ offences and ‘vulnerable person’ offences in the *Crimes Act 1900* specifically address circumstances

where a position of trust is abused by an offender in relation to a young person under their special care or against a vulnerable person.

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.*

Government Response: *Agreed in principle.*

The ACT Government acknowledges that technology-facilitated abuse in the context of family violence is a significant concern for stakeholders and the community. The amendment in the Bill clarifies that the definition of family violence includes technology-facilitated abuse, and this will ensure that protections such as family violence orders are available to victims of this type of behaviour. The Government is committed to responding to all types of family violence, including through providing additional training and resourcing to police and other service providers, subject to ACT Government budget processes and priorities.

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.*

Government Response: *Agreed.*

The ACT Government notes that the Bill includes a requirement for a statutory review three years after the commencement of the Bill. This provision has been included to allow for sufficient time to generate, collate and review data and to seek feedback from stakeholders on the operation and effectiveness of the amendments. A report will be tabled in the Assembly following this review. However, the Government will also provide an update to the Assembly, two years after the legislation commences, focussed on any data readily available from criminal justice system agencies.

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.*

Government Response: *Agreed.*

The ACT Government agrees to include an assessment of the impact on offender rehabilitation in the scope of the statutory review. The Government is committed to providing a holistic approach to responding to and preventing family violence and acknowledges that rehabilitation programs that address the causes of offending behaviours are an important aspect of that approach.

Recommendation 7: *The Committee recommends that the Assembly pass the Family Violence Legislation Amendment Bill 2022.*

Government Response: *Noted.*

The ACT Government welcomes the Committee's recommendation that the Legislative Assembly pass the Family Violence Legislation Amendment Bill 2022.