

2023

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

TENTH ASSEMBLY

**REPORT NO. 11 OF THE STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
INQUIRY INTO THE JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
2022 (NO. 2) - GOVERNMENT RESPONSE**

**Presented by
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Attorney-General
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Introduction

The ACT Government welcomes the Standing Committee on Justice and Community Safety's (the Committee) Report on the inquiry into the Justice and Community Safety Legislation Amendment Bill 2022 (No. 2) (the Inquiry). The Inquiry was limited to the proposed amendments to the *Evidence (Miscellaneous Provisions) Act 1991* (the EMP Act).

The Bill will, so far as it relates to the amendments proposed to be made to the EMP Act, help ensure that vulnerable witnesses who give evidence in court are not re-traumatised in subsequent proceedings by providing them with the opportunity to have their evidence recorded and used in a related proceeding such as a re-trial. This opportunity is already available to witnesses who give their evidence via audio-visual link under section 69 of the EMP Act. The Bill extends this opportunity to witnesses who provide their evidence in the courtroom.

The Bill was introduced into the Legislative Assembly on 24 November 2022. On 28 November 2022, the Committee resolved to undertake an inquiry into the Bill, limiting the enquiry to the amendments proposed to the EMP Act. Public submissions closed on 12 December 2022 with six submissions received. A public hearing was not conducted for this Inquiry. The Committee published its report on 22 December 2022.

The ACT Government acknowledges the value of public discussion about the amendments proposed by the Bill and has carefully considered each of the Committee's recommendations.

Recommendations and Government Response

Recommendation 1: *The Committee recommends that the ACT Legislative Assembly support the Bill.*

Government Response: *Noted*

The ACT Government welcomes the Committee's recommendation that the Legislative Assembly pass the Justice and Community Safety Legislation Amendment Bill 2022 (No. 2).

Recommendation 2: *The Committee recommends that the ACT Government include the pre-condition of consent in the proposed new subsections 69(2) and (2B) and examine an 'opt out' approach.*

Government Response: *Agreed*

The ACT Government acknowledges the Committee's recommendation has two parts: the first part is for the amendment to include the pre-condition of consent, and the second part is to examine an 'opt out' approach.

As currently drafted, the Bill includes the pre-condition of consent, as found in proposed section 69(2A) and (2B). The provision outlines that the witness must give consent prior to their evidence given in the courtroom being recorded audio-visually. The court must also consider the wishes of the witnesses. The *Listen. Take Action to Prevent, Believe and Heal* Report (the SAPR Report), published December 2021, outlined the experiences of victim-survivors within the ACT criminal justice system. A common theme was that the ACT criminal justice system continues to re-traumatise victim-survivors of sexual violence. The ACT Government is committed to responding to the needs of victim-survivors and reducing the re-traumatisation of vulnerable witnesses.

The ACT Government recognises the importance of informed consent, particularly for vulnerable witnesses choosing whether to be recorded during criminal proceedings.

The ACT Government also acknowledges the second part of the Committee's recommendation is to examine an 'opt out' approach. Having considered the submissions to the Inquiry as well as the recommendation by the Committee, the ACT Government proposes, the first instance, to examine this possible approach through consultation with stakeholders.

Following consultation, the ACT Government may include an 'opt out' approach amendment in the Sexual Assault and Family Violence Bill 2023, which it expects introduce towards the end of 2023.

The proposed consultations will also canvas any concerns or issues that arise during the early operation of these provision of the Bill.

The essential principle is agency for a victim-survivor while also ensuring the legislation provides a robust system to prevent re-traumatisation of witnesses in related proceedings, appeals, or retrials.

Recommendation 3: *The Committee strongly recommends that the ACT Government work with stakeholders on the implementation of the Bill in relation to the concerns raised in the inquiry.*

Government Response: *Agreed*

The ACT Government acknowledges the diverse issues and viewpoints raised by stakeholders in relation to the proposed amendments to the EMP Act.

The ACT Government recognises that the proposed reforms to the EMP Act may have an impact on other areas and is committed to working with stakeholders in relation to the concerns raised during the inquiry.

The ACT Government's commitment to consider further amendments as part of the Sexual Assault and Family Violence Bill 2023 will support a considered and open dialogue with key stakeholders on the implementation and operation of these provisions of the Bill.