



# Submission cover sheet

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

Submission number: 011

Submitter: Victims of Crime Commissioner

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VICTIMS OF CRIME  
COMMISSIONER

ACT Human Rights Commission

Standing Committee on Legal Affairs  
Office of the Legislative Assembly  
Via [lacommitteelegal@act.gov.au](mailto:lacommitteelegal@act.gov.au)

6 February 2026

Dear Standing Committee on Legal Affairs

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

Thank you for the opportunity to make a submission in relation to the Standing Committee's Inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025 (the 'Inquiry').

Please find **enclosed** my submission to the Inquiry. In relation to the proposed Family Violence Safety Notice Scheme, this submission incorporates additional observations from the President and Human Rights Commissioner, the Discrimination, Health Services, Disability and Community Services Commissioner, and the Public Advocate and Children and Young People Commissioner.

I request that this submission be published in full.

Yours sincerely

Margie Rowe  
A/G Victims of Crime Commissioner  
Victim Support ACT

## **About Victim Support ACT**

1. This submission primarily presents the views of the Victims of Crime Commissioner ('VOCC'). The VOCC is an independent statutory advocate and the head of Victim Support ACT ('VSACT'). VSACT is situated within the ACT Human Rights Commission. The VOCC's functions are set out in the *Victims of Crime Act 1994*, the *Victims of Crime (Financial Assistance) Act 2016* and the *Victims of Crime Regulation 2000*.
2. The function of the VOCC is to advocate for the interests of victims of crime in the ACT. Particularly relevant to the subject of this Inquiry, the VOCC's responsibilities include:
  - a. advocating for the interests of victims;
  - b. monitoring and promoting compliance with victims' rights;
  - c. consulting on and promoting reforms to meet the interests of victims; and
  - d. delivering frontline support services to victims via the Victim Services Scheme ('VSS') and the Financial Assistance Scheme ('FAS'), which operate under the umbrella of 'Victim Support ACT'.
3. The terms of reference of this Inquiry directly relate to the core functions of the VOCC in consulting and promoting reforms to meet the interests of victims.

## **About the ACT Human Rights Commission**

4. The ACT Human Rights Commission is an independent statutory agency established by the *Human Rights Commission Act 2005*. Its main object is to promote the human rights and welfare of people in the ACT.
5. The Commission includes:
  - a. the President and Human Rights Commissioner, Dr Penelope Mathew;
  - b. the Discrimination, Health Services, Disability and Community Services Commissioner, Karen Toohey;
  - c. the Public Advocate and Children and Young People Commissioner, Jodie Griffiths-Cook; and
  - d. the VOCC.
6. The President and Human Rights Commissioner, the Discrimination, Health Services, Disability and Community Services Commissioner, and the Public Advocate and Children and Young People Commissioner provide observations below in relation to one aspect of this Inquiry, namely the proposed provisions of the Bill on a Family Violence Safety Notice ('FVSN') Scheme.

## **Family Violence Safety Notice Scheme**

7. The VOCC is committed to supporting reform that is evidence-based; promotes the rights and interests of victim-survivors and improves community safety. The VOCC strongly supports evidence-based measures aimed at improving the safety of victim-survivors who fear or are experiencing domestic and family violence ('DFV') and strengthening responses that hold people using violence to account.

8. The VOCC holds concerns that the Bill's proposal to establish a police-issued FVSN Scheme to replace the existing After-Hours Family Violence Order ('AHFVO') Scheme is not supported by the available evidence. The VOCC acknowledges that the proposed Scheme does not empower police to administratively issue long-term protection orders without filing an application before a court, similar to Queensland's PPD Scheme or Tasmania's PFVO. The VOCC notes that significant concerns in relation to frameworks akin to Queensland's PPDs and the Tasmania's PFVOs have been raised by victim services and advocates as outlined further below.
9. The VOCC considers that improving the current scheme does not require the removal of two key safeguards, namely, the judicial oversight of decisions, and the legislative requirement that an appropriate criminal justice response to DFV must be considered and used prior to or in addition to, a civil response. These safeguards are directed at reducing the risk of diminishing appropriate criminal justice responses to DFV and misidentification of the primary person most in need of protection.

#### *Evidence-based reform*

10. The VOCC considers it fundamental that the *Family Violence Act 2016* (ACT) ('FV Act') and the current framework of protection orders are properly evaluated to ensure that any proposed reforms to the Act are evidence based. The VOCC notes that no such evaluation has occurred, and unlike in other jurisdictions introducing similar schemes, there is limited evidence to support the proposed FVSN Scheme.
11. The VOCC acknowledges the genuine concerns of ACT Policing and other stakeholders about the operation of the current AHFVO Scheme as outlined in the Bill's Explanatory Statement.<sup>1</sup> However, at present, there is no publicly available administrative data in relation to FVOs and AHFVOs to inform analysis or law reform. For example, how many AHFVOs ACT Policing apply for and how many are refused and for what reasons. .<sup>2</sup>
12. The dearth of both administrative data and qualitative research significantly limits the Standing Committee's ability to assess whether there are gaps in protection for victim-survivors and if so, where the gaps are. Unlike other jurisdictions, there is also no publicly available data about the demographics of respondents to AHFVOs.
13. The VOCC therefore recommends the collection of data in relation to AHFVOs, including how many AHFVO's are granted/refused as well as reasons for granting/refusing AHFVOs. The VOCC considers that enhanced collection of data would allow for an evaluation of AHFVO/FVO decisions and an evaluation of the issues relating to AHFVOs/FVOs which would ensure that reforms are evidenced based.

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<sup>1</sup> Explanatory Statement, Family, Personal and Sexual Violence Legislation Amendment Bill 2025, 23.

<sup>2</sup> Section 103 of the *Family Violence Act 2016* (ACT) provides that if an application for an AHO is refused, the judicial officer must record, among other things, the reasons for refusing to make the order.

*Existing provisions allow for protection*

14. The Bill's Explanatory Statement notes that '[o]ther than the ACT, all states and territories allow for police officers to issue short-term protection notices or orders where necessary to prevent or respond to family violence risk.' However, there are number of existing provisions that already provide protections that can be used to prevent or respond to family violence. These protections include:
- a. A police officer's powers to arrest and charge.
  - b. The presumptions against police bail for DFV related offences.<sup>3</sup>
  - c. Bail conditions that can be imposed if the defendant is not remanded in custody including, but not limited to, conditions prohibiting contact or approaching the victim survivor and conditions prohibiting entering of areas where the victim survivor lives;
  - d. Police applying for FVOs.
  - e. Outside the business hours of the Magistrates Court where there is a risk of family violence and the threshold for arrest has not been met, application by a police officer to a judicial officer for an AHFVO.
  - f. If a police officer proposes to apply for an AHFVO, the police officer may remove a person to another place and detain the person for up to four hours.<sup>4</sup>

*Pro-arrest policy*

15. Under the current AHFVO Scheme, a judicial officer may only issue an AHFVO if satisfied that it is not practicable or there are no grounds to arrest the respondent for a family violence offence.<sup>5</sup> The justification for the judicial oversight and the intention of the limitation of this power is underscored in the Explanatory Statement to the Family Violence Bill 2016 as follows:

This provision updates the language used in section 69 of the DVPO Act and reflects the original intention of the legislation, which was that ACT Policing officers, 'when attending a scene where violence has occurred will need to give consideration to the appropriateness of a criminal response prior to considering a civil application. In circumstances where a criminal offence has occurred, the appropriate response is for the alleged offender to be arrested and charged'.

This provision clarifies that an after-hours order can only be used as a tool by police where their pro-arrest powers are not engaged. This allows a responsive tool for ACT Policing to use only when immediately necessary to keep an affected person safe until an application can be prepared and heard in the usual way. A "family violence offence" is defined as an offence if the conduct making up the offence is family violence. It is intended that for the matter to be a family violence offence there would need to be reasonable grounds to believe than an offence has occurred. It is not intended in any way that this provision should be used as an alternative to the proper process of arresting and charging a person with a family violence offence if that would ordinarily have occurred.<sup>6</sup>

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<sup>3</sup> *Bail Act 1992 (ACT)* s 9F.

<sup>4</sup> *Family Violence Act 2016 (ACT)* s 105.

<sup>5</sup> *Ibid* s 100(c).

<sup>6</sup> Explanatory Statement, Family Violence Bill 2016, 28.

16. While the Bill's Explanatory Statement states that the Bill 'does not alter the ACT's ongoing pro-arrest and pro-charge policy...'<sup>7</sup>; the VOCC's concern is that this could occur. The VOCC has recommended collection of baseline and ongoing data about DFV arrests so if the Police Notice provisions are introduced, they can at least be monitored for their impact on arrests; however, it seems this data is not readily available. The VOCC strongly supports the current legislative safeguard that any short-term protection order should not be used as an alternative to the appropriate process of arresting and charging a person with a family violence offence. Once charged, the police can refuse police bail or place protective conditions on it, as can the Courts, where a 'Special' FVO can also be issued.

#### *Protection from remandees*

17. The Bill's Explanatory Statement also notes that immediate protection via a FVSN is 'particularly important to provide protection where the respondent may be remanded and may otherwise still be able to contact the affected person to coerce, control or intimidate them.'

18. The VOCC queries whether the proposed FVSN Scheme would, in any event, address this issue. This is particularly given that the proposed threshold for issuing a FVSN is that the FVSN is immediately necessary to ensure the affected person's safety. The VOCC therefore considers that it is arguable that this threshold would be challenging to meet in circumstances where a defendant is remanded in custody. In those cases, among other protections, ACT Policing currently have the power to apply for an interim FVO which would become a Special Interim FVO and provide for longer and more appropriate protection.

19. The VOCC is also aware that Magistrates are not infrequently making Interim FVOs at the bail hearing either on the request of the DPP or on their own initiative. Further, the VOCC understands that ACT Policing are able to provide victim-survivors with a level of protection during the period that the defendant is under arrest and held in the cells.

20. The VOCC considers that the issue of remandees using telecommunication services to coerce, control or intimidate victim-survivors is better addressed by re-visiting ACT Corrective Services operational policies for contact between detainees and victims of the offences for which they are detained.

#### *Misidentification of the person who is most in need of protection*

21. The VOCC holds concerns that the FVSN Scheme's removal of direct judicial oversight could also elevate the risks and impacts of misidentification of the person who is most in need of protection. The VOCC was also concerned about the risk of notices being issued to both or all people involved in an FDV incident but understands that the scheme will operate on the basis of one notice only to be issued.

22. Across Australia, police misidentification is an ongoing and significant concern, and one raised in the recent ACT Domestic and Family Violence Review Biennial Report 2025 as a key theme.<sup>8</sup>

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<sup>7</sup> Explanatory Statement, Family, Personal and Sexual Violence Legislation Amendment Bill 2025, 23-24.

<sup>8</sup> Domestic and Family Violence Review Coordinator (ACT), *ACT Domestic and Family Violence Review Biennial Report 2025* (2025), 35-36.

Further, it has been raised by Aboriginal and Torres Strait Islander advocates in a number of contexts, including in the recent Jumbunna ACT Review – Final Report.<sup>9</sup>

23. Ultimately, misidentification absolves the perpetrator of responsibility and can have long lasting consequences for victim-survivors which include criminal charges being laid, the removal of children, a denial of employment or education opportunities and lost trust in the criminal justice system and police. The concerns in relation to misidentification were bluntly underscored in the Explanatory Notes for the bill outlining the Queensland equivalent of the FVSN Scheme which appropriately recognised:

The consequences of misidentification can be severe and potentially fatal. A wrongly issued PPD may leave a person without protection, subject to criminalisation and systems abuse from the perpetrator, restrict freedom of movement or association, damage reputation and create long-lasting stigma which may persist even after the PPD ends.<sup>10</sup>

24. The Queensland Domestic and Family Violence Death Review and Advisory Board found 44.4% of women murdered in DFV-related incidents were identified by police as a respondent at least once in their lifetime. The Queensland Board found several of the DFV-related deaths included evidence of men calling the police ‘as a pre-emptive strike against their aggrieved partner particularly where cross protection orders are in place ... including the perpetrator threatening to report false allegations against the victim to police in an attempt to get her in trouble’.
25. Research underscores that the consequences of misidentification are often amplified for Aboriginal and Torres Strait Islander women. There is a disproportionate rate of violence against Aboriginal and Torres Strait Islander women who are 11 times more likely to die as a result of DFV, and 34 times more likely to be hospitalised due to violence.<sup>11</sup> Aboriginal and Torres Strait Islander women are additionally more likely to be misidentified by police as the person who is the aggressor at a DFV incident, rather than the person most in need of protection, along with victim-survivors from a CALD and LGBTQIA+ backgrounds, people with disability, and those with a mental health or substance misuse issues.<sup>12</sup>
26. The VOCC notes that the Bill’s Explanatory Statement does not indicate whether the Jumbunna Review has been considered in relation to transferring this quasi-judicial power to police and the extent to which relevant Aboriginal Community-Controlled Organisations have been consulted. The VOCC views such consultation particularly relevant given the Review’s identification of the ACT Aboriginal community’s lack of trust in police.<sup>13</sup> The VOCC is concerned that the possibility of police issued notices is another factor that deters Aboriginal and Torres Strait Islander victims of DFV from contacting police.

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<sup>9</sup> Cunneen, C., Allison, F., Beaufils, J., Corrales, T. and Selcuk, A. (2025) Independent Review into the Overrepresentation of First Nations People in the ACT Criminal Justice System: Strategies and Recommendations for Reducing Aboriginal and Torres Strait Islander Over-Representation in the ACT Criminal Justice System. Sydney: Jumbunna Institute for Indigenous Education and Research, University of Technology, Sydney, 239.

<sup>10</sup> Explanatory Notes, Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (Qld), 6.

<sup>11</sup> Department of Social Service (Cth), The National Plan to End Violence Against Women and Children 2022-2032 (2022).

<sup>12</sup> Ibid.

<sup>13</sup> Cunneen et al, Jumbunna ACT Review – Final Report, 216.

27. While the VOCC appreciates that some jurisdictions have attempted to legislatively address these significant concerns in relation to misidentification, particularly in relation to long-term police-issued orders, the VOCC does not consider that they are as adequate as judicial oversight. For example, the NT model and the Queensland model presume police are capable of reliably identifying the person most in need of protection,<sup>14</sup> which evidence demonstrates is not the case in a significant number of matters across Australia.<sup>15</sup> In the absence of a compelling justification to remove judicial oversight, the risk of misidentification necessitates continued oversight of short-term orders by the courts.

### *Conclusion*

28. The VOCC holds concerns that by removing judicial oversight and the requirement that an AHO only be granted when there are no grounds to arrest the respondent for a family violence offence, the proposed framework has the potential to diminish the criminal justice system response to DFV and to exacerbate and compound risks of misidentification of victim-survivors.
29. While the VOCC accepts that the current AHO process may not be working in practice, the VOCC is not persuaded that there is a sufficient evidence base for departing from judicial consideration of protective orders or notices, particularly given that the grounds for applying for and issuing an FVSN are a replication of the grounds for applying for and issuing an FVO which police can currently apply for.
30. The VOCC does not consider there is sufficient justification for the significant shift in conferring quasi-judicial power on police, in the absence of any evidence that the practical difficulties police face in obtaining AHOs have sought to be addressed. The VOCC's view is also influenced by the protection available to victim-survivors from the ability to arrest and charge, the presumption against police bail, bail conditions that can be imposed, the capacity to use the special interim order process and/or for victim-survivors to make urgent applications for interim orders.

### *Alternatives to the proposed FVSN Scheme*

31. The VOCC accepts that it could be beneficial for both victim survivors and police to be able to more easily apply for AHFVOs. As an alternative to the proposed FVSN Scheme, the VOCC recommends the exploration of amendments to the after-hours scheme that address the current barriers to its operation and accessibility to police.

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<sup>14</sup> *Domestic and Family Violence Act 2007 (NT)* s 19(4)-(5); Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (Qld) s 100C(i).

<sup>15</sup> In December 2022, Engender Equality released a report 'Misidentification of the Predominant Aggressor in Tasmania', citing research from the Women's Legal Service in Victoria which found that one in ten women who were victim-survivors had been misidentified as predominant aggressors. Misidentification in Tasmania was attributed to numerous factors including a lack of police training, systems abuse, and assessing self-defence or retaliation as DFV. Queensland Council of Social Service ('QCOSS') consulted with DFV and other community services in Queensland and also strongly opposed PPDs, noting that the 'feedback from the DFV sector is that misidentification in Queensland is already at concerning levels and PPDs are likely to significantly increase the risk of misidentification occurring, placing some victim-survivors at greater risk and without protection.' Similar to the Queensland Victims Commissioner, DFV services were concerned that the PPDs will see a return by police to incident-based policing. The Queensland Sexual Assault Network was also not supportive of PPDs on the basis that they held concerns they would reduce victim-survivors' safety, increase complexity and confusion in the system and increase.

32. If, contrary to the above opposition, the FVSN Scheme were to be passed into law, the VOCC recommends that the Scheme should be amended to preserve the legislative protection of the pro-arrest policy provided in current FV Act's s 100(c). In effect, this amendment to the Bill would mean that the Senior Police Officer issuing an FVSN must be satisfied that, in relation to the circumstances creating the risk of family violence for the affected person, it is not practicable to arrest the respondent for a family violence offence or there are no grounds to arrest the respondent for a family violence offence.
33. Further, the VOCC recommends that the Bill be amended to provide that the applying police officer should indicate on their application whether it is intended to continue to investigate the matter with a view to obtaining further evidence that might lead to charge(s).
34. The VOCC also recommends that there be a consequential amendment of the *Crimes Act 1900* (ACT) to expand the circumstances for increasing the maximum penalty for the aggravated and non-aggravated forms of the offence of stalking, to include where the offence involves the contravention of an FVSN.
35. In addition, the VOCC considers that there needs to be mandatory and comprehensive DFV training for all police and particularly issuing officers with a focus on misidentification of the perpetrator, coercive controlling behaviours, and children as victims in their own right.
36. The VOCC considers it critical that there is baseline data to enable an evaluation of whether FVSNs are impacting on decisions to arrest and charge with a snapshot check in each 6 months to monitor this. As a starting point for identifying key data types, the VOCC suggests reviewing the demographic and system data produced by the Victorian Crime Statistics Agency<sup>16</sup> and used in the monitoring reports of the Victorian Sentencing Council.<sup>17</sup> To that end, the VOCC recommends a legislative amendment providing that data comparisons and collection should be reported each six months during the period prior to the review of the operation and effectiveness Act. The VOCC suggests that these reports should include:
- i. Arrest and charge rates for identified DFV related offences before the introduction of FVSNs and comparative reports each six months;
  - ii. The number of FVSNs applied for and number issued, reasons for non-issue, gender breakdown, relationship between the parties and like data; and
  - iii. The number of situations in which FVSNs applied for in relation to more than one person in the same police attendance (ie to test and monitor issuing of 'mutual notices').

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<sup>16</sup> Crime Statistics Agency Victoria, *Family Violence Dashboard* <<https://www.crimestatistics.vic.gov.au/family-violence-data/family-violence-dashboard>>.

<sup>17</sup> Victorian Sentencing Council, *Sentencing Breaches of Family Violence Intervention Orders and Safety Notices: Third Monitoring Report* (May 2022).

*Additional Observations of the President and Human Rights Commissioner, Discrimination, Health Services, Disability and Community Services Commissioner, and Public Advocate and Children and Young People Commissioner*

37. The President and Human Rights Commissioner, the Discrimination, Health Services, Disability and Community Services Commissioner, and Public Advocate and Children and Young People Commissioner agree in substance with the views and recommendations of the VOCC set out above concerning the proposed FVSN scheme.<sup>18</sup> All Commissioners share the VOCC's concern that the available evidence does not support the introduction of this scheme, noting in particular the removal of key safeguards, including judicial oversight, that this would entail.
38. These Commissioners wish to highlight the following additional concerns about this proposed scheme.
39. Judicial oversight in general is a very important safeguard against breaches of human rights – in other words, limitations of human rights that are not permitted by the *Human Rights Act 2004* ('HRA'). This includes breaches of the human rights of respondents to family violence-related notices or orders. Such oversight, including the power of a court to overturn or alter a decision or other action that breaches human rights, is also an important means of redress should such breaches occur.
40. Being subjected to a FVSN is likely to significantly limit the human rights of respondents. Without listing them exhaustively, the rights that may be significantly limited include those concerning freedom of movement (s 13 HRA), interference with privacy, home and family (s 12), liberty (s 18(1)), work (27B) and, once s 27D of the HRA commences in 2027, adequate housing. The Commissioners note in this regard that the proposed FVSN provisions would permit the imposition of sweeping and onerous conditions on respondents. For example, those conditions could include prohibiting the respondent from being anywhere a protected person is "likely to be" (proposed s 13Q(c) FV Act) and at any "particular place" (proposed s 13Q(d)). The Commissioners also notes that related powers of police under the proposed scheme would include a power to detain a person, and thus deprive them of their liberty, for up to 4 hours (proposed s 13C).
41. Moreover, in the Commissioners' view, there is a significant inherent risk that respondents to FVSNs will breach those notices. This risk arises in part because the notice conditions may be sweeping and onerous, as already stated, making them inherently difficult to comply with. The Commissioners also consider that some respondents may have especial difficulty in absorbing information when it is provided by police. The Commissioners reiterate that the Jumbunna Review has found that the ACT Aboriginal community lacks trust in the police, as the VOCC has mentioned.
42. Once a respondent breaches a FVSN, this is liable to give rise to further, significant limitations of their human rights, including being imprisoned for up to two years (proposed s 13ZC FV Act).

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<sup>18</sup> This should not be understood to indicate any change in the Commissioners' position on the compatibility with human rights of presumptions against bail, as set out in previous submissions, including the ACT Human Rights Commission 20 June 2025 submission to the public consultation on modernisation and reform of the *Bail Act 1992*, paras. 105-111.

43. Besides these human rights implications, and in any event, being subjected to a FVSN and breaching an FVSN will potentially have other significant, negative effects on respondents. In addition to imprisonment or other penalties for breach, those potential effects include inability to work, for example where notice conditions impede or prevent a person from accessing their place of employment or means of transport to that place. They also include homelessness. This is a real prospect especially since the proposed FVSN provisions expressly make considerations regarding a respondent's accommodation secondary to the safety/protection of the affected person (proposed s 13R FV Act in conjunction with proposed s 13O).
44. The Commissioners are not convinced that the proposed FVSNs scheme incorporates appropriate safeguards against the unreasonable limitation (that is, the breach) of human rights, as the Explanatory Statement claims. Noting in particular, in addition to the matters that the VOCC has raised regarding the removal of judicial oversight, that:
- a. There is no doubt that the safety of victim-survivors is a legitimate and important aim. All Commissioners strongly support this aim and accept that, as well as limiting the human rights of respondents, the imposition of family violence-related orders or notices has the potential to promote the human rights of victim-survivors, such as the right to security of person (s 18(1) HRA) and, depending on the circumstances, the right to life (s 9(1)) and the right of children to special protection (s 11(2)).
  - b. Nonetheless, to be consistent with the HRA, every limitation on human rights must be lawful and reasonable in all of the circumstances: s 28(2). Those circumstances include not just whether the limitation has an important aim, such as safety (s 28(2)(b)), but also, inter alia, whether the limitation is the least restrictive means reasonably available to achieve that aim (s 28(2)(e)).
  - c. The proposed FVSNs scheme would instead make all other considerations subsidiary to safety and expressly preclude a Magistrate from amending or revoking a FVSN – i.e. in effect restrain judicial power to remedy a human rights breach or other defect in that FVSN – if doing so would have any effect on safety.<sup>19</sup>
  - d. Furthermore, the HRA requires every limitation on human rights to be “demonstrably justified in a free and democratic society”: s 28(1). For the reasons that the VOCC has outlined, at present there is a lack of evidence that this scheme is necessary. Therefore, even leaving aside more specific human rights concerns, it is questionable whether the human rights limitations that the scheme will entail meet the HRA's threshold requirement of being demonstrably justified.
45. Should the ACT Government decide to proceed with this reform, the President and Human Rights Commissioner, Discrimination, Health Services, Disability and Community Services Commissioner, and Public Advocate and Children and Young People Commissioner recommend at a minimum reviewing the aspects of the Bill mentioned in paragraphs 39-44 above and amending them to address the issues raised there. However, for the avoidance of doubt, the Commissioners emphasise that in their view those issues are not discrete or minor; that to address them would require changing fundamentally the nature of this proposed reform; and that they do not support proceeding with the FVSN scheme at all at this time.

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<sup>19</sup> See especially proposed s 13O, 13P, 13Z, 13ZB FV Act.

## Exclusion of the use good character evidence for all child sexual offences

46. In general, the VOCC considers that the concept of good character is vague and lacks a settled definition or empirical foundation. The broad scope and paradoxical nature of ‘good character’ and the ambiguity about its impact on sentencing risks undermining community confidence in sentencing processes and the administration of justice. The VOCC also notes with interest the NSW Government’s intention to abolish ‘good character’ as a mitigating factor for all offences.<sup>20</sup>
47. The VOCC is therefore strongly supportive of the amendment to s 34A(b) of the *Crimes Sentencing Act 2005* (ACT) to clarify that ‘good character’ evidence is wholly excluded as a mitigating factor for all child sexual offences.
48. At present, there is an underlying assumption that ‘good character’ evidence such as ‘worthwhile, pro social activities’ is capable of informing a prediction of the likelihood that an offender will reoffend. However, the proposition that an offender’s good character is relevant to their prospects of rehabilitation fails to acknowledge the complexity inherent in any risk assessment, particularly in relation to sexual offending which is often characterised by grooming behaviours. For example, as outlined in the 2025 NSW Sentencing Council’s Consultation Paper, ‘Good Character at Sentencing’, there are some identified common characteristics in “high risk” offenders that may increase their likelihood of sexual reoffending.<sup>21</sup> However, it did not appear to the NSW Sentencing Council ‘that a person of “good character” would be less likely to possess such characteristics and be less likely to reoffend.’<sup>22</sup>
49. The VOCC acknowledges that an offender’s prospects of rehabilitation are relevant to the sentencing exercise. However, the VOCC notes that courts have considered objective factors that are not ‘good character’ evidence to assist their understanding of the offender’s prospects of rehabilitation and risk of re-offending such as the offenders age, criminal history, employment status and completion of rehabilitation programs even in circumstances where the offender's good character was given no weight.
50. The VOCC notes that there have been recent ACT cases which have illustrated that even in matters where s 34A(b) applied, courts are taking into account ‘otherwise’ good character that arguably enabled the offender to commit the offence in the first place.
51. For example, in *DPP v Roberts* [2025] ACTSC 53, the offender was sentenced for three historical sexual offences against a child occurring between 1982 and 1983 while he was employed at Saint Edmunds College as a teacher and the victim was a student. It was accepted by Christensen AJ that the offences were persistent, predatory and premeditated in nature. Further, the offender had been sentenced for child sexual abuse offences in 1994 relating to offending conduct against another student in 1976 and was sentenced in 2016 for 11 other child sexual offences against another student which occurred in 1989.
52. However, Christensen AJ concluded that even where there was limited information concerning the offender’s ‘good character’ which plainly facilitated his repeated child sexual offending in an

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<sup>20</sup> Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing) Bill 2026 (NSW).

<sup>21</sup> NSW Sentencing Council, *Good Character at Sentencing* (Consultation Paper, 2024) 64.

<sup>22</sup> *Ibid.*

institutional setting, the very same ‘good character’ following the offending was considered in mitigation, even to a limited extent.

### **Waiver of protected confidence immunity in civil proceedings**

53. The VOCC is supportive of the proposed amendments to s 79J of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) and is supportive of the Act being amended such that leave is not required to produce a document, inspect a document, or use a document that contains protected confidences if the counselled person consents to production, inspection and/or use of that document in a civil proceeding. The VOCC notes that in the overwhelming majority of civil matters litigated in the ACT Supreme Court, the plaintiff and defendant are legally represented. In those circumstances, the counselled person can make an informed decision with the assistance of a lawyer.
54. As has been raised in numerous ACT Supreme Court cases, the VOCC appreciates that as soon as personal injury litigation commences, the parties must approach the court for leave to disclose the very information that could have been requested and provided as part of the pre-trial disclosures required by the law.
55. The VOCC also supports the observation made by McWilliam J in *Hall (a pseudonym) v Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn* [2025] ACTSC 113 that ‘it is difficult to see how the requirement for a plaintiff who consents to disclosure of her own records in civil proceedings to nevertheless be put through the formalities and expense of a court-supervised process furthers those objectives. It need hardly be said that such a requirement does not further the efficient use of the judicial and administrative resources available (s 5A(2)(b) of the [*Court Procedures Act 2004* (ACT)]).’
56. The VOCC also supports the proposed s 79JA’s express exclusion of consent provision from criminal proceedings. This is because in the ACT, not all victim-survivors in criminal proceedings who are counselled people have access to publicly funded legal representation to ensure that they are in a position to make an informed decision to consent. Further, the VOCC considers that there is no strong policy reason to do so, particularly given the well reported risks to victim-survivors associated with circumventing the regime.<sup>23</sup>

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<sup>23</sup> Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (Final Report No 143, January 2025) 378.