



**Legislative Assembly for the
Australian Capital Territory**
Standing Committee on Legal Affairs

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

Legislative Assembly for the Australian Capital Territory
Standing Committee on Legal Affairs

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Legal Affairs on 3 December 2024.

The Committee is responsible for the following areas:

- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- 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](#).

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Mr Taimus Werner-Gibbings MLA, Deputy Chair

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About this inquiry

The Family, Personal and Sexual Violence Legislation Amendment Bill 2025 was presented in the Assembly on 3 December 2025 and referred to the Standing Committee on Legal Affairs. Standing order 174 refers all bills presented to the Assembly to the relevant standing committee for inquiry. A Committee has three weeks from the date of presentation, or one week after the tabling of the relevant scrutiny report, whichever is later, to advise the Speaker on whether it will undertake an inquiry.

If the Committee does decide to undertake an inquiry, it must report within three months from the date of presentation of the bill, with the exception of bills presented in the last sitting period of a calendar year, in which case the Committee has four months to inquire and report.

The Committee decided to inquire into the bill on 10 December 2025. The reporting date was originally 1 April 2026, with the Assembly agreeing to a motion for an extension until 24 April 2026.¹

¹ Legislative Assembly for the Australian Capital Territory, *Minutes of Proceedings, No. 51*, 18 March 2026, p 897.

Contents

About the committee	i
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
About this inquiry	ii
Acronyms & Abbreviations	v
Recommendations	vi
1. Introduction	1
Conduct of the inquiry	1
Bill summary	1
General amendments	2
Language in the bill	3
Scrutiny report	3
2. Issues raised in evidence	5
Amendments to the Crimes (Sentencing) Act 2005	5
Good character references	5
Amendments to the <i>Evidence (Miscellaneous Provisions) Act 1991</i>	6
Return of audio copies	9
Amendments to the Family Violence Act 2016 and Personal Violence Act 2016	10
Family violence safety notices	10
3. Conclusion	23
Appendix A: Submissions	24
Appendix B: Witnesses	25
Friday, 20 March 2026	25
Appendix C: Questions on Notice and Questions Taken on Notice	27
Questions on Notice	27
Questions Taken on Notice	27
Appendix D: Gender distribution of witnesses	28
Appendix E: Dissenting report by Ms Chiaka Barry MLA	29
Introduction	29
What is the problem requiring legislative change?	30

The Distinct Roles of Police and the Courts	30
Concerns raised in evidence	31
Impacts of this Bill for victims	32
Risk of Police Overreach	32
Significance of Protection Orders	33
Procedural Fairness and Natural Justice	34
Impact on Human Rights	34
Impact on Public Confidence	35
Other jurisdictions	35
Alternative Approaches	36
Conclusion	37
I recommend that:	37

Acronyms & Abbreviations

Acronym or Abbreviation	Long form
ACT	Australian Capital Territory
AFPA	Australian Federal Police Association
AHO	After-hours orders
Bail Act	<i>Bail Act 1992</i>
The bill	Family, Personal and Sexual Violence Legislation Amendment Bill 2025
CALD	Cultural and Linguistically Diverse
CRCC	Canberra Rape Crisis Centre
CSA	<i>Crimes (Sentencing) Act 2005</i>
DVCS	Domestic Violence Crisis Service
EMPA	<i>Evidence (Miscellaneous Provisions) Act 1991</i>
FV Act	<i>Family Violence Act 2016</i>
FVO	Family Violence Order
FVSN	Family violence safety notice
LGBTIQIA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning and Asexual or people otherwise diverse in gender, sexual orientation and/or innate variations of sex characteristics
MLA	Member of the Legislative Assembly
NSW	New South Wales
PV Act	<i>Personal Violence Act 2016</i>
QON	Question on notice
QTON	Question taken on notice
SAMSN	Survivors & Mates Support Network
Scrutiny Committee	Standing Committee on Legal Affairs (Legislative Scrutiny Role)
VOCC	Victims of Crime Commissioner
WLC	Women's Legal Centre
YWCA	Young Women's Christian Association

Recommendations

Recommendation 1

The Committee recommends that the ACT Government consider, as part of future reform, amendments to the *Crimes (Sentencing) Act 2005* that would expand the exclusion of good character references to all sexual violence offences.

Recommendation 2

The Committee recommends that the ACT Government, in relation to future reform and the *Evidence (Miscellaneous Provisions) Act 1991*, consider the following:

- extending consent to waive protected confidence immunity in criminal proceedings;
- independent representation for victim-survivors;
- extending protected confidence to non-counselling services;
- providing a counselled person with right to access following a court's grant of leave; and
- safeguards for the return of audio copies of recorded statements.

Recommendation 3

The Committee recommends that the ACT Government amend the bill to allow police to correct administrative or clerical errors in a family violence safety notice and make other non-substantive amendments.

Recommendation 4

The Committee recommends that the ACT Government clarify the provisions of the bill relating to the interaction of family violence safety notices with bail conditions and other court orders.

Recommendation 5

The Committee recommends that the ACT Government amend the bill to ensure that, when applying for a family violence safety notice, police are required to make reasonably practicable enquiries about whether a court order is already in force.

Recommendation 6

The Committee recommends that the ACT Government, as part of implementation arrangements, consider the following matters:

- the provision of culturally safe, comprehensive training and guidance to support police on the risks of misidentification, and assessing patterns of coercive controlling behaviours, when deciding whether to issue a family violence safety notice; and
- the ability of police to access historical information and to engage with specialist services in order when deciding whether to issue a family violence safety notice.

Recommendation 7

The Committee recommends that the ACT Government seek further information on this proposal from the VOCC and other stakeholders for consideration as part of future law reform.

Recommendation 8

The Committee recommends that the ACT Government ensure information materials are provided to support respondents to understand and comply with obligations under a family violence safety notice.

Recommendation 9

The Committee recommends that the ACT Government consider the use of body-worn cameras for recording consent to substituted service of family violence safety notices.

Recommendation 10

The Committee recommends that the ACT Government ensure collection of appropriate data on the use of the family violence safety notice scheme in order to inform the statutory review to be conducted after two years of operation.

Recommendation 11

The Committee recommends that the Assembly pass the bill, subject to the amendments proposed in this report.

1. Introduction

Conduct of the inquiry

- 1.1. The Committee called for submissions from 11 December 2025, with a closing date of 6 February 2026. The Committee received 17 submissions, including two confidential submissions, which are listed at **Appendix A**.
- 1.2. The Committee held a public hearing on Friday 20 March 2026 and heard from witnesses representing advocacy and domestic violence support groups, legal groups, the ACT Human Rights Commission, the Minister for Police, Fire and Emergency Services and the Attorney-General. Witnesses are listed in **Appendix B**.
- 1.3. During the hearing, there was one question taken on notice (QTON) and three questions on notice (QON). These are listed in **Appendix C**.
- 1.4. Committees began collecting information on the gender of witnesses in April 2023, in response to an audit by the Commonwealth Parliamentary Association. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation, of a range of genders in the community. Participation is voluntary and there are no set responses. A table showing responses is available in **Appendix D**.

Bill summary

- 1.5. The Family, Personal and Sexual Violence Legislation Amendment Bill 2025 (the bill) seeks to make general amendments to the following Acts:
 - *Crimes (Sentencing) Act 2005*;
 - *Evidence (Miscellaneous Provisions) Act 1991*;
 - *Family Violence Act 2016*; and
 - *Personal Violence Act 2016*.
- 1.6. The bill also seeks to make amendments to the following legislation in relation to family violence safety notices:
 - *Family Violence Act 2016*;
 - *Bail Act 1992*;
 - *Children and Young People Act 2008*;
 - *Crimes Act 1900*;
 - *Crimes (Restorative Justice) Act 2004*;
 - *Crimes (Sentencing) Act 2005*;
 - *Criminal Code 2002*;
 - *Dangerous Substances Act 2004*;

- *Evidence (Miscellaneous Provisions) Act 1991*;
- *Firearms Act 1996*;
- *Personal Violence Act 2016*;
- *Prohibited Weapons Regulation 1997*;
- *Residential Tenancies Act 1997*;
- *Victims of Crime (Financial Assistance) Act 2016*; and
- *Working with Vulnerable People (Background Checking) Act 2011*.

General amendments

- 1.7. Proposed amendments to the *Crimes (Sentencing) Act 2005* (CSA) would prevent any reduction of the severity of sentences for all sexual offences against children because of an offender's 'good character'.²
- 1.8. Proposed amendments to the *Evidence (Miscellaneous Provisions) Act 1991* (EMPA) include provisions relating to protected confidences. Section 79A of the EMPA defines a protected confidence as 'a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed (the **counselled person**)'. Sections 79C and 79D of the EMPA provide immunity from disclosure in court proceedings for protected confidences.
- 1.9. The bill would amend the EMPA to allow the counselled person to consent to the disclosure of protected confidence evidence in civil proceedings, thereby waiving the immunity. It would also clarify the application of protected confidences immunity, and that in deciding whether to give leave for disclosure of a protected confidence, the court must consider the impact on victims of family violence as well as victims of sexual violence offences.³
- 1.10. Further amendments would extend the protections applicable in sexual offence proceedings under Chapter 4 of the EMPA to proceedings for intimate image abuse offences under Part 3 of the *Crimes Act 1900*, and facilitate the return of audio copies of recorded statements made in relation to a family violence offence proceeding where they are provided to a self-represented accused person.⁴
- 1.11. The bill would amend the *Family Violence Act 2016* (FV Act) to establish the Family Violence Safety Notice (FVSN) Scheme, to enable police officers to issue short-term protection notices when immediately necessary.⁵
- 1.12. The bill would also delay the statutory review of the FV Act—currently due to begin 'as soon as practicable' after 17 August 2025, with a report to be presented to the Assembly

² Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 1.

³ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 1.

⁴ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 1.

⁵ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, pp 1–2.

before 17 August 2026⁶—to align with a statutory review to be undertaken into the operation and effectiveness of the proposed FVSN provisions.⁷

- 1.13. Proposed amendments to the FV Act and the *Personal Violence Act 2016* (PV Act) would ‘simplify and streamline’ proceedings for family violence orders (FVOs) and personal violence orders (PVOs), including by clarifying that a person may be present for a court proceeding without physical attendance if they appear via remote technology, and resolve inconsistencies and ambiguities relating to the serving of violence orders.⁸

Language in the bill

- 1.14. The Explanatory Statement to the bill notes that in places, ‘where appropriate’, the bill and the statement use the terms ‘victim’ and ‘victim-survivor’. These terms are used consistently with the language of the December 2021 *Listen. Take Action to Prevent, Believe and Heal* Report, and to align with the Charter of Rights for Victims of Crime in part 3A of the *Victims of Crime Act 1994*.⁹
- 1.15. The Explanatory Statement explains that the use of these terms within the bill and the Explanatory Statement does not displace the presumption of innocence or reverse the onus of proof.¹⁰

Scrutiny report

- 1.16. The Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the Scrutiny Committee) examined the bill in *Scrutiny Report 14*.
- 1.17. The Scrutiny Committee noted that rights in criminal proceedings and the right to a fair trial may be limited by the amendment to the CSA to wholly exclude ‘good character’ references as a mitigating factor for all child sexual offences. It referred the ‘detailed discussion’ of the purpose and proportionality of the amendment in the Explanatory Statement to the Assembly without requiring a response from the Minister.¹¹
- 1.18. Similarly, the Scrutiny Committee noted that amendments to the EMPA could limit the right to a fair trial: the provisions on protected confidences could mean that such evidence was excluded, which could affect the accused’s case; and the extension of special requirements for sexual offence proceedings to include intimate image abuse could also impact proceedings and the accused’s case. The Scrutiny Committee referred the discussion in the Explanatory Statement to the Assembly without requiring a response to the Minister.¹²
- 1.19. Regarding the amendments to the FV Act and PV Act relating to decisions made by a registrar, the Scrutiny Committee considered that these could impact the right to liberty

⁶ *Family Violence Act 2016*, s 156 and Endnotes—Amendment history—Review of Act.

⁷ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 2.

⁸ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 2.

⁹ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 2.

¹⁰ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 2.

¹¹ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, pp 10–11.

¹² Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, pp 11–12.

and security of a person because the stay of a ‘relevant decision’ while a review was sought could give rise to safety risks to the applicant. The Scrutiny Committee referred the discussion of this matter in the Explanatory Statement to the Assembly without requiring a response from the Minister.¹³

- 1.20. The Scrutiny Committee noted the discussion in the Explanatory Statement regarding the potential limitations on several human rights by proposed amendments to the FV Act in establishing the FVSN, including the right to protection of family, the right to privacy and the right to liberty and security. In particular, the Scrutiny Committee noted proposed new section 13P which would provide that a police officer issuing a FVSN must ensure that the conditions included in the FVSN are the ‘least restrictive of the personal rights and liberties of the respondent as possible that still achieve the objects of this Act and give effect to section 13O’, with proposed new section 13O providing that the paramount consideration in deciding FVSN conditions is the safety and protection of the affected person and any child affected.¹⁴
- 1.21. The Victims of Crime Commissioner raised concerns in a written submission that the proposed FVSN scheme did not incorporate appropriate safeguards against the unreasonable limitation of human rights as indicated in the Explanatory Statement.¹⁵
- 1.22. The Scrutiny Committee referred the discussion on the limitation of the identified human rights in the Explanatory Statement to the Assembly without requiring a response from the Minister.¹⁶
- 1.23. However, the Scrutiny Committee sought a response from the Minister on a number of other amendments proposed by the bill. The Scrutiny Committee listed proposed amendments to the *Bail Act 1992*, the *Crimes Act 1900*, the *Crimes (Restorative Justice) Act 2004*, the *Crimes (Sentencing) Act 2004*, the EMPA, the *Residential Tenancies Act 1997* and the *Victims of Crime (Financial Assistance) Act 2016*, which it did not consider to be consequential, clarifying, or technical drafting amendments and which for which it considered that the Explanatory Statement should be amended to identify any potential human rights limitations. The Minister was asked to respond prior to the bill being debated.¹⁷
- 1.24. *Scrutiny Report 17* noted that the Attorney-General had responded to issues raised in *Scrutiny Report 14*, advising that the Justice and Community Safety Directorate was considering the Scrutiny Committee’s comments and that the bill was the subject of this inquiry of the Standing Committee on Legal Affairs. The Attorney-General advised that comments by the Scrutiny Committee and recommendations of the Standing Committee on Legal Affairs would be addressed in a revised Explanatory Statement at a later stage prior to the debate of the bill.¹⁸

¹³ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, pp 12–13.

¹⁴ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, pp 13–15.

¹⁵ Victims of Crime Commissioner, *Submission 11*, p 9.

¹⁶ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, p 15.

¹⁷ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 14*, January 2026, pp 15–16.

¹⁸ Standing Committee on Legal Affairs (Legislative Scrutiny Role), *Scrutiny Report 17*, March 2026, p 2.

2. Issues raised in evidence

Amendments to the Crimes (Sentencing) Act 2005

Good character references

- 2.1. The bill proposes amending the *Crimes (Sentencing) Act 2005* (CSA) to prevent sentences being reduced for all sexual offences against children based on an offenders 'good character'.¹⁹
- 2.2. The ACT Government told the Committee that the proposed change stemmed from a petition (E-PET-027-23) from Mr Andrew Braddock MLA, which called for legislative changes to remove the use of character references for paedophiles to reduce sentences in child sexual abuse cases, and noted that sentencing practices involving the use of character references were a feature in the CSA and common law and were to be weighed up by the courts with other evidence.²⁰
- 2.3. This proposed change was supported by ACT Policing,²¹ the Australian Federal Police Association,²² Bravehearts,²³ the YWCA,²⁴ the Survivors & Mates Support Network (SAMSN)²⁵ and the Victims of Crime Commissioner (VOCC).²⁶
- 2.4. The Women's Legal Centre (WLC) supported broadening this proposed change for all age groups, not just children, noting that such character references could be traumatising for any age group.²⁷ This position was also supported by the Domestic Violence Crisis Service (DVCS), which noted that the New South Wales (NSW) Government had recently announced it would be abolishing 'good character' references at sentencing,²⁸ and the Canberra Rape Crisis Centre (CRCC), at least for identified vulnerable population groups. CRCC observed that 'Offenders use their charisma and reputation to groom and abuse children'.²⁹
- 2.5. DVCS, drawing on its own submission and that of With You We Can, supported examining comparative approaches such as the NSW model where good character references were excluded at sentencing. DVCS highlighted that good character references could create a perception of social permissibility by framing offenders as fundamentally good people which could create a barrier to victim-survivors reporting sexual offences, noting that such offences occurred within the 'context of power and control'.³⁰

¹⁹ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 53.

²⁰ ACT Government, *Submission 12*, p 5.

²¹ ACT Policing, *Submission 18*, p 4.

²² Australian Federal Police Association, *Submission 10*, p 3.

²³ Bravehearts, *Submission 9*, p 4.

²⁴ YWCA Canberra, *Submission 6*, p 4.

²⁵ Survivors & Mates Support Network, *Submission 2*, pp 3–4.

²⁶ Victim of Crime Commissioner, *Submission 11*, page 10.

²⁷ Women's Legal Centre, *Submission 16*, p 4.

²⁸ Domestic Violence Crisis Centre, *Submission 7*, p 4.

²⁹ Canberra Rape Crisis Centre, *Submission 14*, pp 1-2.

³⁰ Ms Sue Webeck, Chief Executive Officer, Domestic Violence Crisis Centre, *Proof Committee Hansard*, 20 March 2026, p 4.

- 2.6. CRCC stated that limiting the exclusion of good character evidence to some sexual offences reinforced rape culture and victim-blaming by failing to recognise how sexual violence occurred across all settings and contexts. It emphasised that sexual violence was widespread and perpetrated by a diverse range of people, and that allowing good character evidence at sentencing was deeply distressing and retraumatising for victim-survivors. For these reasons, CRCC supported extending the exclusion of good character evidence to all sexual offences.³¹
- 2.7. The Attorney-General noted that the proposal to exclude good character references at sentencing had come up in the context of child sex abuse. She acknowledged that good character references could be damaging and traumatic for the victim even when the offence had been proven. She noted that the perception of the offender's good character had placed the child in a position to be exposed to that person. The Attorney-General was open to examining expanding the restriction against use of good character references in sentencing, acknowledging that it had been in consideration in other jurisdictions (NSW, Victoria and Queensland). However, she noted that this raised different policy issues to those addressed in the bill.³²

Committee comment

- 2.8. The Committee supports the inclusion of amendments in the bill excluding good character references for all sexual offences against children, and considers there is merit for it to be expanded to all sexual violence offences as part of future reforms.

Recommendation 1

The Committee recommends that the ACT Government consider, as part of future reform, amendments to the *Crimes (Sentencing) Act 2005* that would expand the exclusion of good character references to all sexual violence offences.

Amendments to the *Evidence (Miscellaneous Provisions) Act 1991*

Waivers of protected confidence immunity in criminal proceedings

- 2.9. Section 79A of the *Evidence (Miscellaneous Provisions) Act 1991* (EMPA) defines a protected confidence as 'a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed (the *counselled person*)'.³³

³¹ Ms Tiffany Karlsson, Chief Executive Officer, Canberra Rape Crisis Centre, *Proof Committee Hansard*, 20 March 2026, p 4.

³² Ms Tara Cheyne MLA, Attorney-General, *Proof Committee Hansard*, 20 March 2026, p 47.

³³ *Evidence (Miscellaneous Provisions) Act 1991*, s 79A (1).

- 2.10. The bill proposes changes to the EMPA that would allow a counselled person to waive their protected confidence immunity, allowing them to consent to the production, inspection or use of protected confidence evidence.³⁴
- 2.11. The ACT Government explained that these changes would only apply to civil proceedings, noting that parties in civil cases were usually legally represented. Complainants in criminal proceedings might not have the opportunity to receive independent legal advice to give an informed decision about consent. The Government’s submission referred to a recent court judgement³⁵ where the judge had observed that the disclosure of protected confidences might be appropriate in civil cases, where a party consented.³⁶
- 2.12. Proposed section 79JA of the EMPA specifically states that the protected confidence immunity would not be waived in criminal proceedings.
- 2.13. The VOCC noted in its support of the waiver that, in the ‘overwhelming majority’ of civil cases litigated in the Supreme court, both the plaintiff and the defendant had legal representation. The VOCC supported excluding the waiver for criminal cases, noting that victim-survivors might not have access to publicly funded representation, and raised concerns about risks associated with ‘circumventing the regime’.³⁷
- 2.14. This was disputed by SAMSN which submitted that it had advocated for many years for protected immunity to be available to both criminal and civil proceedings.³⁸
- 2.15. Legal Aid ACT also supported extending waivers allowing consent to share protected confidences to criminal cases as well as civil proceedings, noting comments made in *DPP v Sheridan (a pseudonym) (No. 4)* that had prompted the amendment were ‘made directly in a criminal context’.³⁹
- 2.16. Proposed section 79J of the EMPA specifies that the court must be satisfied that the counselled person—or a suitable person, if the counselled person is under 14 years old—‘has been given a reasonable opportunity to seek legal advice in relation to consenting to the production, inspection or use of the evidence’.⁴⁰
- 2.17. With You We Can called for complainants to have independent legal representation, which it said would provide continuity and legal clarity, as well as improving the quality of victim testimony and the overall conduct of trials. It said that giving complainants and their lawyers express standing in proceedings relating to disclosure of protected confidences was ‘essential to procedural fairness’. Such standing would ensure the court was properly informed about the nature of the material under consideration and the potential harm of disclosure.⁴¹

³⁴ ACT Government, *Submission 12*, p 13.

³⁵ *BJT v Australian Capital Territory* [2025] ACTSC 69 at [13].

³⁶ ACT Government, *Submission 12*, pp 13–15.

³⁷ Victims of Crime Commission, *Submission 11*, p 11.

³⁸ Survivors and Mates Support Network, *Submission 2*, p 5.

³⁹ Legal Aid ACT, *Submission 1*, p 3.

⁴⁰ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 16.

⁴¹ With You We Can, *Submission 17*, p 6.

Committee Comment

- 2.18. The Committee supports these proposed changes which would enable the waiving of protected confidence immunity with informed consent.
- 2.19. The Committee notes that much of the reasoning behind restricting the waiver enabling the sharing of protected confidences to civil cases only has been based on concerns that the person giving the consent to waiver may not have access to legal representation. The Committee considers that extending the waiver to criminal proceedings, and how appropriate legal representation may be provided, should be considered further.

Extending protected confidence to non-counselling services

- 2.20. DVCS supported amendments to the protected confidence immunity, noting that this would help remove barriers for victims seeking support to access its services. DVCS called for additional changes to proposed section 79D of the EMPA to ensure that communications from support agencies be included in the scope of protected confidences. It considered that it was not clear whether, as drafted, the immunity would apply to communications with DVCS, which is not a counselling service. It noted that there had been recent Commonwealth law changes (to the *Family Law Act 1974*) to provide protection where a person sought treatment from a specialist family violence service.⁴²
- 2.21. DVCS pointed to a ‘clear’ risk to the public interest in allowing respondents in family violence orders to access specialist domestic and family violence records, as this could be a deterrent to victims using support services and result in a continued perpetration of abuse.⁴³
- 2.22. YWCA Canberra supported extending protected confidences to include domestic and family violence services and crisis services, noting that there was insufficient clarity in this regard, but that it appeared unlikely to be included.⁴⁴
- 2.23. With You We Can noted that, as well as counselling notes, many other forms of personal information were ‘routinely’ requested by defence lawyers, including medical and therapeutic records beyond counselling, social media, text messages and phone data, and employment, education and school records. It warned that this could be harmful to victims as such information could be used ‘to distress, intimidate, discredit or humiliate complainants, often by invoking rape myths and stereotypes’. With You We Can therefore recommended that protections not be limited to a ‘narrow category of “counselling communications”’.⁴⁵

Right of access for a counselled person following a grant of leave

- 2.24. CRCC recommended that the bill also include a further provision to provide a counselled person with a right of access to any document produced following a grant of leave to produce documents. It noted that, in a judgement, the ACT Supreme Court had made

⁴² Domestic Violence Crisis Service, *Submission 7*, pp 1–2.

⁴³ Domestic Violence Crisis Service, *Submission 7*, p 1.

⁴⁴ YWCA, *Submission 6*, pp 6–7.

⁴⁵ With You We Can, *Submission 17*, pp 3-4.

several recommendations to the Attorney-General for amendments to the EMPA relevant to this bill:

- (i) expressly confer power on the Court to grant leave for the production of documents which may contain protected confidences;
- (ii) expressly confer power on the Court to grant leave to use documents that have been found to contain protected confidences;
- (iii) states that leave is not required to produce a document, inspect a document, or use a document that contain protected confidences if the counselled person consents to production, inspection and/or use of that document in the proceedings; and
- (iv) provide a counselled person with a right of first access to any document produced following a grant of leave to produce documents.⁴⁶

2.25. In that judgement the court noted that extending a right of first access to documents would allow the preliminary examination to be limited to resolving the claim on behalf of the counselled person.⁴⁷ CRCC recommended amending section 79J to ‘ensure the counselled person understands precisely what protected information is in question before waiving immunity’.⁴⁸

Return of audio copies

2.26. The ACT Government explained that the bill included a requirement for an unrepresented accused person who had been given a copy of a recorded statement in a family violence proceeding to return the statement after the proceeding was finalised, to ‘limit any potential misuse of sensitive information disclosed’. The Government noted that it is an offence under section 81J of the EMPA to publish a recorded statement without authority.⁴⁹

2.27. Proposed new subsections 81F (2) and 81H (2) would implement this requirement, and the unrepresented accused person would have to return the copy within 16 weeks after the proceeding was finalised. This provision aligns with section 81E of the EMPA which requires a lawyer to return such documents in the same period. However, the Explanatory Statement notes that failure to return the statement is not an offence.⁵⁰

2.28. Legal Aid ACT supported these amendments but raised concerns about how to comply with this rule in relation to lost audio copies, as this ‘often occurs’. It proposed a change to the provisions to address this situation. Legal Aid noted that no criminal sanctions would apply in relation to audio copies that were not returned and supported this position.⁵¹

⁴⁶ *Director of Public Prosecutions v Sheridan (a pseudonym) (No 4) [2025]*, para 41.

⁴⁷ *Director of Public Prosecutions v Sheridan (a pseudonym) (No 4) [2025]*, para 40.

⁴⁸ Canberra Rape Crisis Centre, *Submission 14*, p 5.

⁴⁹ ACT Government, *Submission 12*, p 15.

⁵⁰ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 45.

⁵¹ Legal Aid ACT, *Submission 1*, p 2.

- 2.29. At the hearing, Legal Aid ACT explained that audio copies were often given to an accused prior to them having legal representation, or when they had no legal representation, increasing the risk of audio copies being lost.⁵² In such cases, there was ‘no fallback position’ for people. Legal Aid ACT added that it would be beneficial if it could be ensured that the accused person had the implications of not returning the audio evidence explained very clearly.⁵³
- 2.30. Bravehearts proposed that the return of audio copies be facilitated to provide further safeguards. It raised concerns about victim safety and privacy needing to be balanced against procedural fairness for the defendant, noting that sensitive material could be used to ‘intimidate or retraumatise’ victims. Bravehearts suggested safeguards to prevent this including supervised access, redaction of identifying information, and the non-retention of materials.⁵⁴

Recommendation 2

The Committee recommends that the ACT Government, in relation to future reform and the *Evidence (Miscellaneous Provisions) Act 1991*, consider the following:

- extending consent to waive protected confidence immunity in criminal proceedings;
- independent representation for victim-survivors;
- extending protected confidence to non-counselling services;
- providing a counselled person with right to access following a court's grant of leave; and
- safeguards for the return of audio copies of recorded statements.

Amendments to the Family Violence Act 2016 and Personal Violence Act 2016

Family violence safety notices

- 2.31. The bill would introduce a new Part 2A to the *Family Violence Act 2016* to establish the Family Violence Safety Notice (FVSN) Scheme. The ACT Government advised that this scheme was intended to replace the current after-hours order (AHO) scheme. FVSNs would be issued by police, and would be short-term notices ‘designed to provide immediate protection’ to people at risk of family violence.⁵⁵
- 2.32. The ACT Government noted that the ACT was the only jurisdiction in Australia without a scheme for police-issued short-term safety notices or protection orders. People in the ACT

⁵² Mrs Brigid Harders, Special Counsel, Executive, Legal Aid ACT, *Proof Committee Hansard*, 20 March 2026, p 27.

⁵³ Mrs Brigid Harders, Special Counsel, Executive, Legal Aid ACT, *Proof Committee Hansard*, 20 March 2026, p 28.

⁵⁴ Bravehearts, *Submission 9*, p 3.

⁵⁵ ACT Government, *Submission 12*, 7.

affected by, or at risk of, family violence, may currently apply to the court for a family violence order (FVO). However, this is only available during Magistrates Court business hours, and attending court and applying for a FVO can be difficult, ‘particularly immediately after a family violence incident or where urgent protection is required’.⁵⁶

- 2.33. When police are called to a family violence incident outside of business hours, they may currently apply to a judicial officer for an AHO, if arresting the respondent is not an available option.⁵⁷
- 2.34. ACT Policing told the Committee that it had data that the existing after-hours scheme was ‘underutilised’, and attributed this to it being ‘procedurally cumbersome’.⁵⁸
- 2.35. The ACT Government submitted that the proposed scheme would provide immediate protection for victim-survivors and give them time to seek long-term safety measures, while addressing limitations of the current AHO scheme. While AHOs were available only out of business hours and in force for up to two business days, FVSNs would be available at any time and could remain in force for up to 14 days. Furthermore, FVSNs could be issued alongside an arrest, as an additional protective mechanism.⁵⁹
- 2.36. The Australian Federal Police Association (AFPA) supported the establishment of the FVSN scheme, saying that the current scheme was ‘operationally restrictive’ due to its reliance on availability of judicial officers, limited duration and ‘inability to operate alongside arrest powers’. Acknowledging that ACT Policing had ‘seldom’ been unable to obtain an after-hours order when required, the AFPA considered that nonetheless the proposed scheme would ‘significantly enhance’ ACT Policing’s ability to provide effective and immediate protection to vulnerable community members.⁶⁰
- 2.37. A number of submitters and witnesses expressed concern over the introduction of the proposed family violence safety notice (FVSN) scheme, on grounds including the following:
- Lack of supporting evidence for a new scheme;⁶¹
 - Increased police powers and limited judicial oversight;⁶²
 - Interaction of FVSNs with court orders;⁶³
 - Concerns over the proposed electronic service of notices;⁶⁴
 - Fourteen-day period of FVSN validity;⁶⁵ and

⁵⁶ ACT Government, *Submission 12*, p 7.

⁵⁷ ACT Government, *Submission 12*, p 7.

⁵⁸ Mr Scott Lee, Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 34.

⁵⁹ ACT Government, *Submission 12*, pp 8–9.

⁶⁰ Australian Federal Police Association, *Submission 10*, p 3.

⁶¹ See, for example: ACT Victims of Crime Commissioner, *Submission 11*, p 2; ACT Bar Association, *Submission 3*, p 3.

⁶² See, for example: ACT Bar Association, *Submission 3*, pp 4–5, 9; Women’s Legal Centre ACT and Region, *Submission 16*, pp 1, 3–4; ACT Victims of Crime Commissioner, *Submission 11*, pp 2, 5–6.

⁶³ See, for example: Legal Aid ACT, *Submission 1*, pp 3, 8; Mrs Brigit Harders, Special Counsel, Executive, Legal Aid ACT, *Proof Committee Hansard*, 20 March 2026, p 29.

⁶⁴ See, for example: YWCA Canberra, *Submission 6*, pp 5, 7; Carers ACT, *Submission 13*, p 9.

⁶⁵ See, for example: Ms Leah Dwyer, Director Policy and Advocacy, YWCA Canberra, *Proof Committee Hansard*, 20 March 2026, p 3; Ms Tiffany Karlsson, Chief Executive Officer, Canberra Rape Crisis Centre, *Proof Committee Hansard*, 20 March 2026, p 3.

- The potential for misidentification of the primary aggressor in a violence incident.⁶⁶
- 2.38. The VOCC considered that the proposed FVSN scheme was ‘not supported by the available evidence’. The VOCC expressed concern that the scheme would remove the ‘key’ safeguards of judicial oversight of decisions and the legislative requirement that a criminal justice response to domestic and family violence must be considered and used prior to, or in addition to, a civil response.⁶⁷
- 2.39. The VOCC did not consider that there was sufficient justification for giving ‘quasi-judicial power’ to police, and said that the proposed scheme had the potential to ‘diminish the criminal justice system response’ to domestic and family violence.⁶⁸
- 2.40. The ACT Government argued that ‘a degree of judicial oversight’ was provided by retaining the court’s role in hearing applications to amend or revoke a FVSN. The combination of this provision, the requirement for a senior issuing officer to review a FVSN, and the limited duration of such notices, was considered appropriate to ‘the ACT’s unique context’ given that the ACT did not have police prosecutors to progress FVSNs as police-initiated applications for family violence orders (FVOs).⁶⁹
- 2.41. The Canberra Rape Crisis Centre (CRCC) advised the Committee that the proposed 14-day validity ‘would be better’ than the 48 hours allowed under the current scheme, but called for discretion and flexibility in setting an appropriate validity period, noting that funding for emergency accommodation would quickly run out if every order was for 14 days.⁷⁰
- 2.42. The ACT Government submitted that the proposed 14-day validity period would allow victim-survivors time to access further support and protection, and struck a balance between this priority and the purpose of immediate temporary protection without unduly restricting the respondent’s rights and liberty.⁷¹
- 2.43. The Attorney-General also advised the Committee that the respondent could ‘go to the court the next working day’ to seek to have a FVSN amended, including the validity period.⁷²

Committee comment

- 2.44. The Committee supports the introduction of the FVSN scheme, subject to amendments as set out below.

Amending or revoking notices

- 2.45. Proposed new section 13X of the *Family Violence Act 2016* would not permit a police officer to revoke or amend a family violence safety notice (FVSN) once it had been served

⁶⁶ See, for example: Carers ACT, *Submission 13*, pp 4–6; Women’s Legal Centre ACT and Region, *Submission 16*, pp 1–3.

⁶⁷ ACT Victims of Crime Commissioner, *Submission 11*, p 2.

⁶⁸ ACT Victims of Crime Commissioner, *Submission 11*, p 6.

⁶⁹ ACT Government, *Submission 12*, pp 8, 10.

⁷⁰ Ms Tiffany Karlsson, Chief Executive Officer, Canberra Rape Crisis Centre, *Proof Committee Hansard*, 20 March 2026, p 3.

⁷¹ ACT Government, *Submission 12*, p 11.

⁷² Ms Tara Cheyne MLA, Attorney-General, *Proof Committee Hansard*, 20 March 2026, p 39.

on a recipient. Instead, an application to amend or revoke a FVSN would be decided by the Magistrates Court.⁷³

- 2.46. The ACT Bar Association described this as ‘absurd’ and inconsistent with section 180 of the *Legislation Act 2001*, which provides that the power to make a decision includes the power to reverse or change the decision. The ACT Bar Association pointed out that requiring a magistrate to revoke or amend a FVSN would result in delays even when ‘the very person who made the order or condition agrees it should no longer stand’.⁷⁴
- 2.47. The ACT Government submitted that the requirement for a court application for amendment or revocation of a FVSN was a procedural safeguard and ensured that judicial oversight was preserved.⁷⁵
- 2.48. ACT Policing supported the proposed provision, noting that all parties would be able to request an amendment or revocation, including police:
- Police may consider seeking an amendment/revocation in situations where new information comes to light that could not be managed by the application of a court issued FVO.⁷⁶
- 2.49. ACT Policing also observed that it might not always be achievable or practical to serve an amended FVSN in person before the original FVSN expired.⁷⁷
- 2.50. The Women’s Legal Centre was concerned that police’s inability to revoke or amend a FVSN could create practical or safety issues, particularly where the affected person urgently wished the notice to be revoked, or where the notice contained a clear administrative or clerical error. It called for police to be given limited authority to revoke a FVSN at the request of an affected person, with appropriate safeguards, and authority to correct any administrative or clerical errors in a FVSN.⁷⁸

Recommendation 3

The Committee recommends that the ACT Government amend the bill to allow police to correct administrative or clerical errors in a family violence safety notice and make other non-substantive amendments.

Interaction with bail and court orders

- 2.51. Proposed new section 13B of the *Family Violence Act 2016* would provide that a FVSN could only be issued if it were not inconsistent with any court order already in force in the ACT, other than a bail order.⁷⁹

⁷³ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46 (proposed new part 2A, ss 13X–13ZB).

⁷⁴ ACT Bar Association, *Submission 3*, p 9.

⁷⁵ ACT Government, *Submission 12*, p 10.

⁷⁶ ACT Policing, *Submission 18*, p 12.

⁷⁷ ACT Policing, *Submission 18*, p 12.

⁷⁸ Women’s Legal Centre, *Submission 16*, pp 3–4.

⁷⁹ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46, proposed new part 2A, s 13B.

- 2.52. Proposed new section 13S of the Family Violence Act would provide that, if a condition in a FVSN were inconsistent with a court order, the FVSN would remain in force but the court order would prevail to the extent of the inconsistency. However, inconsistency of a FVSN with a bail condition would be excepted in certain circumstances covered by proposed amendments to the *Bail Act 1992*.⁸⁰
- 2.53. Proposed new sections 26A and 26B to the Bail Act outline that, unless otherwise specified by a court or authorised officer, where a bail condition is inconsistent with a FVSN, the conditions of the FVSN prevail. In particular, a person’s failure to comply with the bail condition, to the extent needed to comply with the FVSN, ‘is taken not to be a breach of the bail condition’.⁸¹
- 2.54. ACT Policing expressed some uncertainty over interpretation of the proposed provisions, outlining its belief that the bill proposed that ‘the most recent FVSN or bail condition may prevail where there is any inconsistency’. Assuming this to be the case, ACT Policing supported the proposed provisions. It observed that police were likely to have ‘new and significant information’ from attending an incident, which the court would not have known when setting initial bail conditions and which could require a FVSN to address immediate safety risks. ACT Policing said that it expected that, where a FVSN conflicted with an existing bail condition, the person would ‘self-report’ the change in circumstances to the court and might seek a bail amendment.⁸²

Committee comment

- 2.55. The Committee is concerned that ACT Policing appears uncertain over the interpretation of parts of the bill relating to the interaction of FVSNs with bail conditions.

Recommendation 4

The Committee recommends that the ACT Government clarify the provisions of the bill relating to the interaction of family violence safety notices with bail conditions and other court orders.

- 2.56. During the public hearing, Legal Aid ACT raised concern that not all court orders in force would be accessible to the police when considering a FVSN, and that this could lead to inconsistencies in conditions:

... they will not have access to a parenting plan between two parties, because that is generally a private document, and they will not have access to any orders from the Family Court, and they may not have access to care and protection orders, which are also relevant in this space.⁸³

- 2.57. Legal Aid ACT submitted the opinion that all court orders, including bail orders, should prevail over FVSNs, because court orders were issued by judicial officers while FVSNs

⁸⁰ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46, proposed new part 2A, s 13S.

⁸¹ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 91, proposed new sections 26A and 26B.

⁸² ACT Policing, *Submission 18*, pp 7–8.

⁸³ Mrs Brigit Harders, Special Counsel, Executive, Legal Aid ACT, *Proof Committee Hansard*, 20 March 2026, p 29.

would be issued by police. Furthermore, Legal Aid ACT considered that the proposed new provisions of the Bail Act could be confusing and place an 'unfair' burden on a respondent to be aware of two sets of conditions on their liberty and how they were to be applied. Legal Aid ACT called for a formal written notice of a judicial officer's specification to be provided to respondents to allow a clear understanding of the applicable conditions.⁸⁴

- 2.58. Proposed new section 13D of the Family Violence Act would require a police officer making an application for a FVSN to enquire whether a court order (other than a bail order) was already in force in the ACT in relation to the relevant person.⁸⁵ ACT Policing submitted that this requirement may be impractical or unreasonable in certain circumstances, such as the order not being in the police records system, lack of internet connectivity, incidents out of court hours, or intoxication of the person concerned. It therefore recommended that the provision be amended to require the police inquiry to be made 'as far as practicable'.⁸⁶

Recommendation 5

The Committee recommends that the ACT Government amend the bill to ensure that, when applying for a family violence safety notice, police are required to make reasonably practicable enquiries about whether a court order is already in force.

Identification of primary aggressor and police training

- 2.59. The VOCC considered that the removal of direct judicial oversight could increase the risks and impacts of misidentification of the person most in need of protection. The VOCC observed that misidentification was 'an ongoing and significant concern' across Australia, with research showing that Aboriginal and Torres Strait Islander women, people with disability, and those with mental health or substance misuse issues were among those more likely to be misidentified by police as the aggressor, rather than the person in need of protection.⁸⁷
- 2.60. These groups, as well as those from cultural and linguistically diverse (CALD) and LGBTQIA+ communities, were also identified by DVCS, CRCC, Legal Aid ACT and the ACT Government as more likely to be misidentified by police as the primary aggressor.⁸⁸
- 2.61. The VOCC said that misidentification posed a risk because it '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 VOCC suggested that all police, but particularly those issuing notices, should receive comprehensive

⁸⁴ Legal Aid ACT, *Submission 1*, pp 3, 8.

⁸⁵ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46, proposed new part 2A, s 13D.

⁸⁶ ACT Policing, *Submission 18*, p 9.

⁸⁷ ACT Victims of Crime Commissioner, *Submission 11*, pp 4–5.

⁸⁸ Domestic Violence Crisis Service, *Submission 7*, p 3; Canberra Rape Crisis Centre, *Submission 14*, p 4; Legal Aid ACT, *Submission 1*, pp 7–8; ACT Government, *Submission 12*, p 11.

domestic and family violence training, focusing on identification of the perpetrator, coercive controlling behaviours, and children as victims in their own right.⁸⁹

- 2.62. CRCC cautioned that misidentification of the primary aggressor was ‘one of the most pressing issues’ when considering systemic barriers faced by victim-survivors of sexual violence. It advised that misidentification could occur for many reasons, including misunderstanding of trauma responses, language barriers, or lack of culturally safe practices. CRCC expressed concern that there was ‘a real danger’ that FVSNs could replicate or exacerbate existing issues, unless there was adequate training and oversight for police.⁹⁰
- 2.63. Bravehearts considered that FVSNs could provide immediate safeguarding for children at risk, but cautioned that such notices required ‘clear protocols to identify the aggressor and avoid misapplication of notices against victim-survivors’. It called for mandatory, ongoing training on child sexual abuse, trauma informed practice, and working with both child victims and adult survivors for judicial officer, legal practitioners and frontline responders.⁹¹
- 2.64. Carers ACT called for stronger statutory safeguards against misidentification, saying that carers could be incorrectly identified as perpetrators, especially in high-stress or behaviour-driven incidents. It said that carer relationships were complex and currently not recognised in the Family Violence Act or the bill. Carers ACT also expressed concern that responders could incorrectly assume that an older person or someone with cognitive impairment was incapable of causing harm, and default to viewing the carer as the aggressor.⁹²
- 2.65. Carers ACT called for specialised training for police and other frontline workers to identify, assess and respond to domestic and family violence situations involving carers, noting that violence and risk might present differently in that context. It considered that the existing five-day ACT Policing training program for domestic and family violence was ‘insufficient’ for the complexity of such matters, especially those with ‘nuanced carer dynamics’, and that the program should be reviewed.⁹³
- 2.66. DVCS stated that ideally police should be well-trained to hear the victim-survivor assessment, while also understanding the context in which these views are provided as it may impact how information is communicated to police. As such, DVCS argued for police to receive training in identifying coercive control and the dynamics of domestic and family violence in order to undertake this assessment in a way that would improve safety and manage risk.⁹⁴

⁸⁹ Victims of Crime Commissioner, *Submission 11*, pp 5, 7.

⁹⁰ Canberra Rape Crisis Centre, *Submission 14*, p 4.

⁹¹ Bravehearts, *Submission 9*, pp 4–5, 8.

⁹² Carers ACT, *Submission 13*, pp 4–6.

⁹³ Carers ACT, *Submission 13*, p 11.

⁹⁴ Domestic Violence Crisis Service, *Submission 7*, p 3.

- 2.67. DVCS also suggested that police be required to refer to historical information about past behaviours and patterns of violence, and to contact services like DVCS to obtain that information if necessary.⁹⁵
- 2.68. The AFPA observed that the proposed introduction of the FVSN scheme would ‘materially change the responsibilities’ of police officers, requiring them to make legally significant decisions in challenging circumstances. It called for clear guidance and policy, and ‘robust’ training for officers. Expressing concern that police officers may be exposed to malicious or vexatious complaints, the AFPA also called for protections against liability or disciplinary action where officers had acted reasonably and within the scope of their authority.⁹⁶
- 2.69. The ACT Government argued that the bill contained ‘a range of safeguards’ to mitigate the risk of misidentification, including requirements that police consider: the views of both the affected person and respondent ‘as far as practicable in the circumstances’; any previous family violence between the parties; and the affected person’s ‘perception of the nature and seriousness of the respondent’s conduct’.⁹⁷
- 2.70. The ACT Government advised that it would continue to work with key agencies to reduce the risk of misidentification when issuing FVSNs.⁹⁸
- 2.71. ACT Policing acknowledged the risk of victim-survivor and perpetrator misidentification and argued that the most effective means to mitigate this was through continued capability uplift in family violence training for police. ACT Policing advised that officers currently received family violence training, including on misidentification, both as part of recruit training and after commencing in ACT Policing.⁹⁹
- 2.72. ACT Policing added that it was looking to roll out additional family violence training to its workforce to improve police understanding of the ‘risks and nuances’ of misidentification, and methods to assist officers in identifying the primary person in need of protection.¹⁰⁰
- 2.73. ACT Policing said that, to complement the FVSN framework’s implementation, it was designing and delivering enhanced domestic and family violence training for officers’ knowledge and understanding of coercive control and trauma-informed best practice.¹⁰¹ ACT Policing indicated that it would welcome additional funding from the ACT Government to further improve this capacity.¹⁰²

⁹⁵ Domestic Violence Crisis Service, *Submission 7*, p 3.

⁹⁶ Australian Federal Police Association, *Submission 10*, p 4.

⁹⁷ ACT Government, *Submission 12*, pp 11–12.

⁹⁸ ACT Government, *Submission 12*, p 12.

⁹⁹ ACT Policing, *Submission 18*, p 15.

¹⁰⁰ ACT Policing, *Submission 18*, p 15.

¹⁰¹ ACT Policing, *Submission 18*, p 14

¹⁰² ACT Policing, *Submission 18*, p 15.

Recommendation 6

The Committee recommends that the ACT Government, as part of implementation arrangements, consider the following matters:

- the provision of culturally safe, comprehensive training and guidance to support police on the risks of misidentification, and assessing patterns of coercive controlling behaviours, when deciding whether to issue a family violence safety notice; and
- the ability of police to access historical information and to engage with specialist services in order when deciding whether to issue a family violence safety notice.

Stalking

- 2.74. The VOCC recommended ‘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 a FVSN’.¹⁰³
- 2.75. The Committee did not receive any further evidence on this matter, but notes that the issue was raised, and the importance of addressing stalking conduct.

Recommendation 7

The Committee recommends that the ACT Government seek further information on this proposal from the VOCC and other stakeholders for consideration as part of future law reform.

Development of information materials to support respondents

- 2.76. The ACT Human Rights Commission submitted that there was a ‘significant inherent risk’ that respondents would breach FVSN notices, partly due to the notice conditions being sweeping and onerous, and therefore difficult to comply with, but also because some respondents might have difficulty in absorbing information presented by police.¹⁰⁴
- 2.77. ACT Policing advised that, similar to existing frameworks, it could make referrals to support services for assistance, with all parties able to access these at any time. ACT Policing added that it ‘may also provide an explanatory pamphlet’ to assist the respondent in complying with the order, and explaining terminology and process.¹⁰⁵

¹⁰³ Victim of Crimes Commissioner, *Submission 11*, p 7.

¹⁰⁴ Victims of Crime Commissioner, *Submission 11*, p 8.

¹⁰⁵ ACT Policing, *Submission 18*, p 11.

Recommendation 8

The Committee recommends that the ACT Government ensure information materials are provided to support respondents to understand and comply with obligations under a family violence safety notice.

Electronic service of notices

- 2.78. Proposed section 13T of the *Family Violence Act 2016* states that a FVSN issued against a respondent must be personally served on the respondent as soon as practicable by a police officer, and that if the respondent agrees, the police officer may personally serve the FVSN using electronic communication.¹⁰⁶
- 2.79. Proposed subsection 13T (3) states that if the FVSN is served electronically, the police officer serving the notice must make a written record of the form of electronic communication, how the notice was served using that form of electronic communication, and the respondents agreement to the notice being served electronically.¹⁰⁷
- 2.80. YWCA Canberra expressed concern over the proposal to issue FVSNs electronically. It considered that there was potential for the entire FVSN issuance process to become wholly electronic, and that some respondents might deliberately try to avoid being served. YWCA Canberra urged that electronic service of FVSNs be considered as a last resort.¹⁰⁸
- 2.81. Carers ACT also had concerns that electronic notices might not be accessible to carers or the people they cared for.¹⁰⁹
- 2.82. Raising concerns about proposed section 13T, Legal Aid ACT proposed it be amended to require that consent to substituted service should be recorded on body-worn cameras. Legal Aid submitted that this ‘would serve to ensure that adequate provision has been made for interpreters, interview friends, and other measures to ensure the respondent has understood what has been asked of them.’¹¹⁰
- 2.83. The ACT Government advised that the bill would allow a FVSN to be served electronically with the consent of the respondent, and said that this would ensure police could serve the FVSN in a timely and efficient manner. As the police officer would be physically present with the respondent, and would be required to personally explain a range of matters to them, this would effectively be ‘a hybrid model of electronic and personal service’.¹¹¹

¹⁰⁶ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46 (new section 13T).

¹⁰⁷ Family, Personal and Sexual Violence Legislation Amendment Bill 2025, cl 46 (new section 13T).

¹⁰⁸ YWCA Canberra, *Submission 6*, pp 5, 7.

¹⁰⁹ Carers ACT, *Submission 13*, p 9.

¹¹⁰ Legal Aid ACT, *Submission 1*, p 6.

¹¹¹ ACT Government, *Submission 12*, p 13.

Recommendation 9

The Committee recommends that the ACT Government consider the use of body-worn cameras for recording consent to substituted service of family violence safety notices.

Data collection

- 2.84. Clause 40 of the bill would amend section 156 of the *Family Violence Act 2016* to require the Minister to review the Act, including the FVSN scheme, as soon as practicable after the end of two years after the commencement of the part of the Act implementing the FVSN scheme. The Explanatory Statement states that this ‘provides an opportunity to assess the effectiveness and broader impact of the amendments to the FV Act introduced in this Bill’.¹¹²
- 2.85. The VOCC noted that there was ‘no publicly available administrative data’ available on the current after-hours family violence order scheme—such as how many orders were applied for by police, for what reasons, and how many were refused—to inform analysis or law reform.¹¹³
- 2.86. The VOCC told the Committee that it was unclear whether the necessary data was being collected, although at least some was required by legislation:
- Under the Family Violence Act, there is a requirement that, if a judicial officer refuses to make an order, there should be a note in relation to that. I am unaware of whether that data exists. I am unaware as to whether there is any data held by ACT Policing in relation to the number of applications they have made after hours, when they have been made, when they have not been made, and what the grounds have been for that decision.¹¹⁴
- 2.87. The VOCC submitted that it was important to have baseline data from which to conduct an evaluation of whether FVSNs were having an impact on decisions to arrest and charge. The VOCC proposed an amendment to the bill to provide that data comparisons and collection should be reported each six months during the period prior to the review of the operation and effectiveness of the Act.¹¹⁵
- 2.88. The VOCC suggested that these reports should include:
- a) arrest and charge rates for identified domestic and family violence offences before the introduction of the FVSN scheme and comparative reports each six months;
 - b) the number of FVSNs applied for, the number issued, reasons for non-issue, gender breakdown, and the nature of the relationship between the parties; and

¹¹² Family, Personal and Sexual Violence Legislation Amendment Bill 2025, *Explanatory Statement*, p 50.

¹¹³ ACT Victims of Crime Commissioner, *Submission 11*, p 2.

¹¹⁴ Ms Juliette Ford, ACT Victims of Crime Commissioner, *Proof Committee Hansard*, 20 March 2026, p 22.

¹¹⁵ Victims of Crime Commissioner, *Submission 11*, p 7.

- c) the number of situations in which FVSNs applied for in relation more than one person in the same police attendance.¹¹⁶
- 2.89. The VOCC voiced concern that the lack of appropriate data could result in the risk of unintended consequences. In particular, the Commissioner noted the risk to Aboriginal and Torres Strait Islander, CALD communities, people living with disabilities, people with mental health concerns and LGBTIQ+ persons in which a mistake could have significant unintended consequences, and argued that ‘It is difficult for this Committee to make recommendations in relation to this scheme when that data is not available to draw upon to make recommendations as to how the scheme should operate’.¹¹⁷
- 2.90. Carers ACT submitted that that risk assessment frameworks and procedures should incorporate structured data collection measures on carer-related domestic violence.¹¹⁸
- 2.91. When concerns around lack of available data were raised, the ACT Government indicated that the bill’s genesis arose from feedback received during the previous review of the *Family Violence Act* in 2020, and its recommendation that the Government consider opportunities to improve the Act with the introduction of a Family Violence safety Notice Scheme.¹¹⁹
- 2.92. The ACT Government advised that, for the 2024–25 financial year, its data reflected that there had been 45 out-of-hours orders granted.¹²⁰
- 2.93. ACT Policing indicated that it considered that the data available showed that the after-hours scheme was underutilised and attributed this to ‘some of the challenges that we have with it’. It argued that the changes proposed in the bill would provide ACT Policing with a ‘much better mechanism to ensure victim-survivor safety’.¹²¹
- 2.94. Asked how many AHOs had been applied for but not issued, the ACT Government indicated that it did not have that data immediately available, and later suggested that it was unsure it had that data at all.¹²²
- 2.95. The ACT Government was also asked by the Committee whether it had data on how many times there had been an unsuccessful attempt to reach the after-hours magistrate, but did not have this information readily available.¹²³ The Minister later advised that, although police records included instances where an on-duty magistrate had been ‘unable to answer or immediately answer the phone’, ACT Policing did not have ‘extractable records’ of the number of attempts to contact a judicial officer to apply for an after-hours order.¹²⁴

¹¹⁶ Victims of Crime Commissioner, *Submission 11*, p 4.

¹¹⁷ Ms Juliette Ford, Victims of Crime Commissioner, ACT Human Rights Commission, *Proof Committee Hansard*, 20 March 2026, p 18.

¹¹⁸ Carers ACT, *Submission 13*, p 7.

¹¹⁹ Mr Daniel Ng, Acting Deputy Director-General, Justice, Justice and Community Safety Directorate, *Proof Committee Hansard*, 20 March 2026, p 33.

¹²⁰ Mr Daniel Ng, Acting Deputy Director-General, Justice, Justice and Community Safety Directorate, *Proof Committee Hansard*, 20 March 2026, pp 33–34.

¹²¹ Mr Scott Lee, ACT Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 34.

¹²² Mr Daniel Ng, Acting Deputy Director-General, Justice, Justice and Community Safety Directorate, *Proof Committee Hansard*, 20 March 2026, pp 35, 37.

¹²³ Mr Scott Lee, Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 36.

¹²⁴ Dr Marisa Paterson MLA, Minister for Police, Fire and Emergency Services, *Answer to QTON 001*, 14 April 2026.

- 2.96. ACT Policing was, however, able to provide some data in relation to domestic and family violence incidence and the use of orders, stating that in the 2024–25 financial year, there had been 4,495 domestic and family violence incidents responded to, which was a five percent increase on the 2023–24 financial year.¹²⁵
- 2.97. The Chief Police Office further stated that ACT Policing had seen a 33 percent increase over the last five years in domestic and family violence incidents responded to, of which over 1,400 involved violence and resulted in assault charges.¹²⁶
- 2.98. The Chief Police Officer also told the Committee that there had been over 1,700 family violence orders issued in 2023–24 and 1,400 in 2024–25.¹²⁷

Recommendation 10

The Committee recommends that the ACT Government ensure collection of appropriate data on the use of the family violence safety notice scheme in order to inform the statutory review to be conducted after two years of operation.

¹²⁵ Mr Scott Lee, Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 37.

¹²⁶ Mr Scott Lee, Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 37.

¹²⁷ Mr Scott Lee, Chief Police Officer, ACT Policing, *Proof Committee Hansard*, 20 March 2026, p 37.

3. Conclusion

3.1. The Committee makes 11 recommendations, including the recommendation below:

Recommendation 11

The Committee recommends that the Assembly pass the bill, subject to the amendments proposed in this report.

3.2. The Committee would like to thank all those who submitted to this inquiry and appeared at the public hearing.

Ms Chiaka Barry
Chair
22 April 2026

Appendix A: Submissions

No.	Submission by	Received	Published
1	Legal Aid ACT	28/01/2026	11/02/2026
2	Survivors & Mates Support Network	29/01/2026	11/02/2026
3	ACT Bar Association	2/02/2026	11/02/2026
4	CONFIDENTIAL	4/02/2026	11/02/2026
5	Suicide Prevention Australia	5/02/2026	11/02/2026
6	YWCA Canberra	5/02/2026	11/02/2026
7	Domestic Violence Crisis Services	6/02/2026	11/02/2026
8	CONFIDENTIAL	6/02/2026	11/02/2026
9	Bravehearts	6/02/2026	11/02/2026
10	Australian Federal Police Association	6/02/2026	11/02/2026
11	Victims of Crime Commissioner	6/02/2026	11/02/2026
12	ACT Government	6/02/2026	11/02/2026
13	Carers ACT	6/02/2026	11/02/2026
14	Canberra Rape Crisis Centre	6/02/2026	11/02/2026
15	Mental Health Carers Voice	6/02/2026	11/02/2026
16	Women's Legal Centre	6/02/2026	11/02/2026
17	With You We Can	6/02/2026	11/02/2026
18	ACT Policing	16/02/2026	17/02/2026

Appendix B: Witnesses

Friday, 20 March 2026

YWCA Canberra

- **Ms Frances Crimmins**, Chief Executive Officer
- **Ms Leah Dwyer**, Director Policy and Advocacy

Domestic Violence Crisis Service

- **Ms Sue Webeck**, Chief Executive Officer

Canberra Rape Crisis Centre

- **Ms Tiffany Karlsson**, Chief Executive Officer

ACT Bar Association

- **Mr Timothy Kapustin**, Chief Executive Officer
- **Mr Anthony Williamson SC**, Chairperson, Criminal Law Committee and Council Member

ACT Human Rights Commission

- **Dr Penelope Mathew**, President and Human Rights Commissioner
- **Ms Juliette Ford**, Victims of Crime Commissioner

Legal Aid ACT

- **Mrs Brigid Harders**, Special Council, Executive

ACT Government

- **Ms Tara Cheyne MLA**, Attorney-General
- **Dr Marisa Paterson MLA**, Minister for Police, Fire and Emergency Services

Justice and Community Safety Directorate

- **Mr Daniel Ng**, Acting Deputy Director-General
- **Ms Claire Buxton**, Acting Executive Branch Manager, Criminal Law Branch, Legislation, Policy and Programs

ACT Policing

- **Mr Scott Lee**, Chief Police Officer for the ACT
- **Mr Richard Chin**, Deputy Chief Police Officer for the ACT
- **Ms Kylie Lawson**, Detective Superintendent, Family Violence and Sexual Violence
- **Ms Emma Guo**, Senior Team Leader, Legislation and Governance

Appendix C: Questions on Notice and Questions Taken on Notice

Questions on Notice

No.	Date	Asked of	Subject	Response received
1	20/03/2026	DVCS	Impactful aspects of bill	02/04/2026
2	20/03/2026	CRCC	Early interactions with the justice system	30/03/2026
3	20/03/2026	YWCA	Parts of FVSN framework requiring strengthening	23/03/2026

Questions Taken on Notice

No.	Date	Asked of	Subject	Response received
1	20/03/2026	Minister for Police, Fire and Emergency Services	Number of calls to after-hours Magistrate not answered	14/04/2026

Appendix D: Gender distribution of witnesses

Beginning in April 2023, in response to an audit by the Commonwealth Parliamentary Association, Committees are collecting information on the gender of witnesses. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation of, a range of genders in the community. Participation is voluntary and there are no set responses.

Gender indication	Total
Female	6
Male	3
No data	8

Appendix E: Dissenting report by Ms Chiaka Barry MLA

Introduction

I do not support the proposed amendments in the *Crimes (Domestic and Family Violence) Bill* that would empower police officers to issue Family Violence Safety Notices (FVSN) without prior judicial oversight. In my view, no significant evidence was presented to the Committee to show that the current after-hours process fails to adequately protect victims. The Bill is not drafted delicately to address the risk of **misidentifying victim-survivors, nor does it** provide adequate **justification** for significant breaches to **fundamental human rights, where there has been an error at the time of issuance of an FVSN.**

Having worked for much of my career responding to the challenges of domestic and family violence, I understand the advocates for the current proposal are motivated by a strong and appropriate desire to improve the protection of victims of family and domestic violence. I commend the advocates for victim protection for their passion and commitment in support of legislative reform. Those who know me, know this is an issue that is close to my heart, and one I will always advocate strongly on.

I agree that the current system too often fails to protect vulnerable victims through misidentification of victim-survivor, by decisions not being made in a timely manner and inconsistent outcomes where decisions are made without regard to the full history and facts of a matter. To that end, I support the language in the majority report to the extent that it identifies the problems and the importance of doing something significant to improve victim protection.

To be clear, I support changes that make meaningful improvements in these areas. As this is a dissenting report, I have necessarily focussed on the issues on which I would have a different approach. I consider it regrettable that the Committee could not come to a consensus on these matters.

However, as someone versed in the legal system, I am not satisfied that in practice the proposed FVSN approach, which confers quasi-judicial powers on police, is an appropriate or proportionate reform. The errors in both the policy and proposed implementation of the FVSN scheme, are a direct consequence of **inadequate and suboptimal consultation.** Indeed, the substance of any scheme would be better informed by any findings from the review into the *Family Violence Act 2016* (ACT) which was due in November 2026 but is now not expected until 2028.

As the Victims of Crime Commissioner (VOCC) articulated, *"...what was really required was the timely review of the Family Violence Act, because the issues I am bringing to you in relation to the current system, and what are the appropriate initiatives that are targeted to reform and improve the current system, looking at the question of whether this scheme or something like it fits within our current scheme, could have been explored in the contextual piece of some of the overall issues that are confronting the current scheme, service being one of them."*

I consider that based on the evidence presented to the committee, there are real risks that an FVSN approach, operating outside judicial oversight, could result in **serious and inappropriate** consequences for **victims**. The Bill risks **undermining fundamental legal principles, blurring institutional roles**, and **eroding public confidence in the justice system**.

I consider that the objectives set for this legislative reform could be achieved in different ways that do not undermine **fundamental legal principals**. I have made some suggestions below including expanding the scope of the existing family violence After-Hours Order scheme (AHOs), **properly resourcing of the Magistrates Court** to ensure timely decision-making, and supporting the **capability uplift of ACT Police** to address family and domestic violence.

What is the problem requiring legislative change?

Police respond to the 4,478 domestic and family violence incidents each year (12 per day). For each response, they are confronted by confusing, emotionally charged circumstances. Their immediate priorities are de-escalation and public safety. The use of orders to support de-escalation is widely regarded as an appropriate tool in these circumstances.

During the day, under section 49(1) of the *Family Violence Act 2016* victims, police or any other person can apply to the Court for a Family Violence Order. Outside business hours, Police may apply to the courts for an AHO. This requires Police to contact an after-hours Magistrate and present reasons for why the order is being sought. Once an order is issued, it triggers follow-up action before the court.

The Explanatory Memorandum asserted that FVSNs “*could improve the safety of victim-survivors and provide necessary time and space for them to engage with support service to consider options for safety planning and management. Providing FVSNs are to be issued by police also reduces the burden on the person experiencing or at risk of family violence to be responsible for their own safety and crisis management*”. ACT Policing raised concerns that the impacts of coercive control on the protected person may be a disincentive to the victim applying for an FVO.

The proposal in this Bill is to allow police to issue a FVSN **without judicial oversight**, including the capacity to amend or substitute the terms of existing court orders. This could be done at any time and would not require an application by a victim. The evidence from ACT Police, in the case studies provided with their submission, is that they would likely be prepared to issue an FVSN regardless of the views of the victim or a Court Order.

ACT Police supports the proposed changes based on assertions that there are occasional problems getting access to a magistrate to issue orders and assert that the protection of victims is served by Police making such decisions quickly.

The Distinct Roles of Police and the Courts

A central concern I have with the Bill is that it conflates the distinct and carefully balanced roles of police and the judiciary.

Police officers play a critical role in responding to incidents, ensuring immediate safety, gathering evidence, and initiating proceedings. However, the determination of rights and the imposition of legal restraints—particularly those that can significantly affect a person’s liberty, movement, and reputation—have traditionally and appropriately been the domain of independent courts.

Where police have been granted powers to issue offence notices, these have generally been restricted to ‘strict liability’ offences such as road traffic offences, as those offences are based on **objective facts**. Determining the rights and wrongs in a domestic or family violence scenario is far more challenging a task and are currently the role of specialist Family Courts.

This complexity is particularly relevant given the ACT Government’s own submission, which notes that “ACT Policing has a pro-arrest, pro-charge approach to family violence, and follows a pro-intervention policy where there is insufficient evidence to commence judicial proceedings.”

Courts provide procedural safeguards that are fundamental to the rule of law, including:

- Independence and impartiality
- The ability to assess evidence in a structured and transparent manner
- The provision of reasons for decisions
- Access to review and appeal mechanisms.

By contrast, police are operational actors, often required to make rapid decisions in high-pressure environments. While this is entirely appropriate for frontline policing, it is not a suitable context for making determinations that carry the legal weight and consequences of a protection order. As ACT Policing notes in its submission, getting information on existing Court Orders “may not always be reasonable or possible due to the circumstances, for example, it is not on our records system, police are remote and there is no internet connection to connect to the police records system, it is 3am at night and the courts aren’t open to make enquiries, or the parties are intoxicated so police aren’t able to reasonably ask them. Further, the information sharing of relevant orders may not always being consistent or readily available.”

By implication, the Police will be making decisions based on very limited information. This risks serious consequences, including the misidentification of victims and perpetrators, a concern highlighted by multiple stakeholders. In addition, the Bill risks **eroding** this **institutional separation**, effectively **placing police** in the position of **both applicant** and **decision-maker**. This is a significant departure from established legal norms.

Concerns raised in evidence

The VOCC and the Bar Association submissions in both written and evidence presented at the hearing prioritised improving the AHO scheme. They emphasised its purpose, and the indisputable importance of protecting victims, while warning against delegating excessive, untethered, and arbitrary power to police.

The VOCC's also flagged that that this is not a data-driven proposal backed by any evidence. It is not drafted delicately to **address concerns over the risk of victim-survivor misidentification** and could have devastatingly counterintuitive repercussions if implemented.

Impacts of this Bill for victims

There was **no significant evidence** presented to the Committee to **suggest that the current AHFPO process was resulting in victims not being appropriately protected**. ACT Police asserted (without evidence) that after-hours Magistrates are hard to contact and presented three case studies identifying the following:

- That a victim declined to apply for a FVO that ACT Police thought might be appropriate
- That ACT Police had a different view to the Magistrate about the appropriateness of an FVO, and
- That a parent was 'considering' an FVO against their child, that ACT Police thought was appropriate.

In these cases, ACT Police is asserting that if it had the powers to issue a FVSN, it would have done so against the stated preference of the partner or parent, and that it would be comfortable issuing FVSN's in circumstances that would not be supported by the judiciary. In light of the misidentification issue (discussed below), there is a real risk that police issued FVSN may be detrimental to victims.

I note that Bravehearts, while supportive of the scheme expressed some concerns including that "the scheme should explicitly recognise the intersections of domestic and child sexual abuse, ensuring that short-term notices trigger rapid connection with specialised support services and longer-term protections where sexual harm is alleged or suspected" concluding that "Without these trauma-informed safeguards, on-the-spot notices alone risk providing a false sense of security and could inadvertently extend children's exposure to harm." **These concerns are not substantively addressed by the Bill.**

The proposed FVSN approach creates a two-track system of police and court orders, which may be contradictory. Importantly the current Bill does not provide for automatic referral to the court, which places the onus on the victim to initiate any further proceedings in a court. There is a risk that this disconnect could result in victims not getting the long-term support they need.

Risk of Police Overreach

The conferral of order-making powers on police raises legitimate concerns about overreach and the potential for unintended consequences.

Given the police priority of de-escalation, and in the absence of judicial oversight, it is entirely plausible that operational police could decide to use FVSN's (or the threat of their application) more liberally.

I note that the Women's Legal Centre has "serious concerns about the implementation and potential impacts of the proposed FVSN framework. The scheme confers extensive and immediate powers on

police which, without adequate safeguards, training, and resourcing, may inadvertently place victim-survivors at increased risk. We are concerned that in some circumstances, FVSNs may compromise rather than enhance the safety of affected persons.”

The ACT Director of Public Prosecutions, Victoria Engel SC, in a presentation to the CLANT Conference 2024¹²⁸, has identified the ‘*misidentification of the victim or perpetrator*’, or the ‘*misidentification of the person most in need of protection*’ (by police) and the ramifications it has for the criminal justice system are serious. The DPP noted that these issues commonly arose by police not having context and misinterpreting the emotions of victims and perpetrators.

As noted by the Bar Council, the former ACT Chief Police Officer, Deputy Commissioner Neil Gaughan APM, recently observed that: ...The junior nature of his rank-and-file officers was “*leading to non-optimal outcomes*” with “*matters dismissed at court*” and “*costs against police ... at an all-time high*” ... “Our general duties police officer, those most likely to provide the immediate response to crime, are the most inexperienced in the country.”

In its submission, ACT Policing recognises the ongoing risk and significant harm caused by victim-survivor and perpetrator misidentification and believes that the most effective mitigation is the **continued capability** uplift in family violence training for Police. While I agree that is important, I consider there are **significant risks in introducing the proposed powers to a police force, which by its own admission requires a ‘capability uplift’ in responding to family violence.**

I am concerned that asking Police to make judgements about ‘**coercive control**’ as part of the process of consideration of an FVSN is fraught with the same **issues of misidentification acknowledged by the DPP.**

It is right I think to question whether it is appropriate for our ‘first responders’ to be judge, jury and executioner to deliberate on the most complex and emotional situations they have to deal with, particularly as they are unlikely to have access to detailed case histories or judicial directions already in place.

Significance of Protection Orders

Protection Orders can impose serious restrictions, including exclusion from a residence, limitations on contact with family members, and **impacts on employment and housing.** These are not trivial administrative measures; they are **coercive legal interventions.**

Without prior judicial scrutiny, there is an increased risk that such orders may be:

- Issued on incomplete or contested information
- Influenced by unconscious bias or situational pressures
- Applied inconsistently across different communities or cohorts.

Legal Aid ACT has expressed concern that a police-issued FVSN could trump the orders of a court, including Family Orders and Parenting Plans. It notes this is not appropriate, especially in

¹²⁸ https://www.dpp.act.gov.au/_data/assets/pdf_file/0006/2554872/Misidentification-and-its-impact-on-Justice-speech-2024-ACT-DPP.pdf

circumstances where police may not even be aware of the orders or their purposes, when they are amending conditions.

The absence of an independent decision-maker at the point of issuance heightens the risk of error, with potentially significant consequences for respondents and affected families. **Where a FVSN is issued in error, the consequence is difficult to unwind.**

Given the considerable weight these notices could carry in subsequent family law and court proceedings, I am concerned that once a person is subject to a notice, it can continue to shape how they are treated in court, regardless of the circumstances in which it was made.

While the Bill may provide for subsequent court review, the practical reality is that an order—once issued—can have immediate and enduring effects. Post hoc review does little to undo **the reputational, legal, and personal consequences** that flow from an order made in error, **nor does it fully mitigate the initial deprivation of rights.**

Procedural Fairness and Natural Justice

The proposed scheme raises concerns regarding procedural fairness.

Court-issued orders are typically made with reference to established evidentiary standards and, where possible, with both parties having an opportunity to be heard. Even in urgent ex-parte situations, judicial officers are trained to weigh competing considerations and to apply legal thresholds.

Police-issued orders, by contrast, may be made without the same level of scrutiny or opportunity for affected individuals to present their case. This raises the risk that decisions may not meet the standards of natural justice expected in the exercise of coercive state power.

I note that the Bar Association is concerned that the proposed FVSN scheme is simply directed at suiting the convenience of police at the expense of ensuring adequate safeguards against breaches of a respondent's fundamental rights.

Impact on Human Rights

As was identified in the Explanatory Statement, the proposed scheme breaches the *Human Rights Act 2004* (HRA) including the right:

- against arbitrary interference with privacy (s 12(a) of the HRA)
- against arbitrary interference with one's home (s 12(a) of the HRA)
- against arbitrary interference with liberty (s 18(1) of the HRA)
- to freedom of movement (s 13 of the HRA) and
- to a fair trial (s 21 of the HRA).

Most of these rights are also protected by the common law, and any unlawful interference with them may lead to tortious remedies including damages. I note that the Bar Council has set out

caselaw around the concept of ‘arbitrariness’, which would place Police and the ACT significantly at risk should this legislation pass.

Legal Aid ACT have expressed concerns about the unnecessary and arbitrary increase in police detention powers implicit in 13C.

Impact on Public Confidence

Public confidence in the justice system depends on clear institutional roles and the perception of fairness and independence.

Expanding police powers into areas traditionally reserved for courts may:

- Undermine perceptions of impartiality
- Create confusion about accountability
- Expose police to criticism for decisions that are, in substance, judicial in nature.

As noted by the Bar Association it “should be a matter of grave concern, that an agency falling within the executive branch of government would seek that such sweeping powers, such as those involved in the FVSN scheme, be stripped from the judiciary and given to itself”.

This may ultimately weaken, rather than strengthen, community trust—particularly in communities that already experience strained relationships with law enforcement.

Other jurisdictions

I note that while other jurisdictions have passed Bills empowering Police to issue protection notices, such arrangements are relatively new and are not without criticism.

The Women’s Legal Service in Victoria¹²⁹ refer to Police being unfamiliar with the Code of Practice for the Investigation of Family Violence and misidentification of victims and perpetrators noting the comments of a victim “Police scare me now ... I needed to be protected [but] I don’t feel like they protected me”.

The Australian Law reform Commission (ALRC)¹³⁰ opposes police issued protection orders “9.38 In the Commissions’ view, family violence protection orders should, wherever possible, be made or authorised by a judicial officer. The ALRC is required to ensure that the laws it reviews do not make the rights and liberties of citizens unduly dependent on administrative rather than judicial decisions.[74] If a person’s rights and liberty need to be curtailed by a protection order, the decision should ideally be made by a judicial officer.”

The Victims of Crime Commissioner’s submission identifies evidence of police over-reach and inappropriate use of police issued FVSN’s, and notes that the risks of inappropriate orders being issued by police is one of the reasons that Aboriginal and Torres Strait Islanders are reluctant to seek

¹²⁹ <https://www.womenslegal.org.au/wp-content/uploads/2025/02/Police-misidentification-of-the-%E2%80%98primary-aggressor-in-family-violence-incidents-in-Victoria-Updated-5-October-2018.pdf>

¹³⁰ <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/9-police-and-family-violence-2/police-issued-protection-orders/>

police assistance in dealing with domestic violence. This is a particular concern in light of issues raised in the **Jumbunna Report into over-representation**.

I do not consider that the fact that other jurisdictions have adopted similar scheme means that the ACT should automatically follow suit. It is important that we consider the experience of other jurisdictions and only adopt new approaches that make sense for our jurisdiction. Laws should stand on their own merits in the jurisdiction they are applied.

Alternative Approaches

I consider that there are more appropriate ways to achieve the objective of timely protection for victim-survivors, which preserve the critical role of the judiciary while addressing the need for timely intervention including:

- a) To address the concerns raised by ACT Police that a Magistrate may not always be available in a timely manner, government could increase the number and rotation of approved personnel who are on call. This could be done by expanding the delegation of authority to judicial registrars to make such orders. It could also be done by increasing resources of specialist domestic and family violence courts.
- b) The current timeframes for ACT Police to seek an AHO should be expanded to allow for overlap with the opening and closing business hours of courts, to address concerns around the “gaps” in the operation of this scheme. Noting the concerns around accessing Magistrates during business hours, I support expanding the AHO scheme to a 24/7 arrangement by introducing an equivalent scheme that operates during business hours, such as, for example, an “Urgent Safety Order” (USO) or “Emergency Safety Order” (ESO) scheme. If approved by a judicial officer, (e.g., a Judicial Registrar or Magistrate), this would be both quicker and retain proper judicial oversight.
- c) To address the cumbersome nature of decision-making and record-keeping, Government should provide appropriate resources to streamline decision-making. Without limiting options, these could include dedicated phone lines; access to court records for on-call judicial officers; better coordination arrangements between police and the courts; and automation of record-keeping, so that decisions can be made and recorded in real time and appropriately processed.
- d) Noting that ACT Police have a lack of clarity about the process for applying for AHO’s, government could request the Chief Magistrate update *Practice Direction 1/2026 - Practice Direction – Family and Personal Violence Matters* to include specific reference to the process for consideration of these Orders.
- e) Noting concerns about ACT Policing having a ‘capability gap’ requiring uplift and investment, the ACT Government should develop and implement more extensive mandatory training for all police officers, but particularly to after-hours ‘first responders’ to:
 - i) understand how to effectively utilise the AHO

- ii) provide specific communication lines
 - iii) provide clear guidance to inform police of circumstances in which seeking an AHO is appropriate, and
 - iv) understand the issues and risks associated with misidentification of perpetrator and victim.
- f) Noting the lack of evidence presented by government in support of this legislative change, there clearly needs to be an investment and focus on record keeping and data around the operation of the AHO scheme. This is necessary to conduct routine reviews of its functionality, including a review of the number of applications made, and the number rejected. As it stands, there will be no way for government to understand the effect of its current proposals, other than concerns being raised by advocacy organisations (as is already happening in jurisdictions where similar provisions have already been implemented).

Conclusion

The **protection of individuals** from domestic and family violence is of the **utmost importance**. However, it must be pursued in a manner that upholds the rule of law, does not put victim-survivors at further risk, maintains clear institutional boundaries, and protects against the misuse of coercive powers.

The proposed Bill, in granting police the authority to issue FVSNs, represents a significant and, in my view, unjustified departure from these principles.

I recommend that:

The Bill **not** be passed in its current form.

The Government should instead ameliorate barriers and inefficiencies in the operation of pre-existing emergency and interim order regimes. This should include:

- a) increasing the number and rotation of approved personnel who are on call by expanding the delegation of authority to judicial registrars to make such orders,
- b) providing appropriate resources including dedicated phone lines and access to court records to on-call judicial officers, so they can make appropriate decisions.

Request the Chief Magistrate to update Practice Direction¹³¹ **1/2026 - Practice Direction – Family and Personal Violence Matters** to include specific reference to the process for consideration of AHO.

That the ACT Government implement mandatory training for police officers to:

- a) understand how to effectively utilise the AHO scheme,

¹³¹ https://www.courts.act.gov.au/_data/assets/pdf_file/0003/3031752/Practice-Direction-1-of-2026-Family-and-Personal-Violence-Matters.pdf

- b) provide specific communication lines, and
- c) provide clear guidance to inform police of circumstances in which seeking an AHO is appropriate.

That there been an investment in the capability uplift of ACT Police who may be called to attend Family violence incidents.

Expand the timeframe that AHO operate and can be applied for, to enable some overlap with the opening and closing business hours of courts, to address concerns around the 'gaps' in the operation of this scheme. Similarly, consider implementing an equivalent scheme that operates during business hours.

The Government record all data around the operation of the AHO scheme to conduct routine reviews of its functionality, including a review of the number of applications made, and the number rejected.

Ms Chiaka Barry MLA

24 April 2026