

**2022**

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

**DOMESTIC VIOLENCE AGENCIES AMENDMENT BILL 2022**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
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MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY  
VIOLENCE**

## Domestic Violence Agencies Amendment Bill 2022

This Bill is **not** a Significant Bill. It has been assessed as unlikely to have significant engagement of human rights and does not require detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *Domestic Violence Agencies Amendment Bill 2022* (the Bill). It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### OVERVIEW OF THE BILL

The *Domestic Violence Agencies Act 1986* (the Act) commenced on 1 October 1986. The Domestic Violence Prevention Council (DVPC) was established in 1998 as an independent statutory body under the Act, with the objective to reduce the incidence of domestic and family violence offences. The DVPC advises the Minister in relation to domestic and family violence responses in the ACT.

Since the initial introduction of the DVPC, there have been a range of changes in the domestic and family violence sector. This Bill will bring the DVPC's objectives and functions in line with the contemporary domestic and family violence policy and service landscape.

Consultation with government and community sector partners between 2019 and 2021 has demonstrated that there is significant scope to enhance the DVPC's ability to drive collaboration between government and community sector partners to deliver strategic policy and program advice which informs the ACT's response to domestic and family violence. While the DVPC has undertaken significant projects to inform the ACT's domestic and family violence response, current provisions of the Act have inadvertently impeded its capacity to adapt to the increasingly complex contemporary domestic and family violence landscape. This is particularly due to overly broad objectives and functions and constraints around membership. The Bill amends these limitations through:

- revising the objective and functions of the DVPC and refreshing its remit, purpose and focus;
- introducing a new membership structure to bring together specialist expertise and diverse experience across the community and government and non-government organisations to guide the DVPC's work. Importantly, the DVPC's membership will include representatives from a broad range of specialist and generalist community-based organisations providing responses to domestic

and family violence. This will bring together diverse local knowledge of domestic and family violence in a strategic forum to drive whole-of-Territory responses;

- enabling the DVPC to establish and convene Reference Groups to support the DVPC in considering particular topics and to ensure the experiences of diverse groups are reflected in responses to domestic and family violence;
- establishing that the role of Committee Chair is filled by a member who is appointed through agreement of the majority of members;
- allowing the DVPC the flexibility to set its meeting schedule and frequency, replacing the current requirement that the DVPC hold a meeting at least once in any period of 3 months; and
- abolishing the obsolete role of Domestic Violence Project Coordinator, which has been effectively replaced by the Office of the Coordinator-General for Family Safety.

These amendments will enhance the DVPC's capacity to serve as a leadership and governance body that drives collaboration between government and the community sector. It will support a forward-focused body which provides strategic guidance and systemic identification of gaps in the ACT's response to domestic and family violence. This will enable the reformed DVPC to advise the Minister on ways to continually improve the ACT's response to domestic and family violence.

The ACT Government is committed to developing and implementing effective, evidence-based policies and programs that respond to domestic and family violence, enhance prevention and early responses, and support victim-survivors. An integrated approach to domestic and family violence is essential to deliver these effective responses for victim-survivors, perpetrators, children and young people and families. By enabling these changes, this Bill forms a vital part of the ACT Government's broader work to prevent and respond to domestic and family violence and build a Canberra community that is safe for all.

## **CONSULTATION ON THE PROPOSED APPROACH**

Extensive consultations with former and current members of the DVPC as well as key sector stakeholders took place to inform the recommendations for a revised statutory body. Consultation has also taken place with government and non-government stakeholders about the proposed changes to the DVPC, with no formal feedback received on the draft bill. There is broad support for amending the Act to enable a strong statutory body with appropriate powers to provide strategic identification and oversight of domestic and family violence prevention and response in the ACT.

All directorates provided their support for the Bill following exposure draft circulation.

## **CONSISTENCY WITH HUMAN RIGHTS**

The Bill amends the *Domestic Violence Agencies Act 1986*. At each stage of the development of this Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

### **Rights engaged**

The Bill engages the following rights under the HRA:

- right to equality and non-discrimination (section 8)
- right to life (section 9)
- right to liberty and security of the person (section 18)
- right to protection of the family and children (section 11)
- right to participation in public life (section 17).

The Bill removes the role of the Domestic Violence Project Coordinator. This will not result in any limitations to human rights as the powers and functions of the Domestic Violence Project Coordinator and its related Office have been taken on by a range of other bodies, particularly the Office of the Coordinator-General for Family Safety.

### **Rights Promoted**

It is considered this Bill engages and promotes human rights by improving mechanisms to contribute to improved system governance and leadership of domestic and family violence responses.

Domestic and family violence threatens human rights, particularly the right to life (section 9), right to liberty and security of the person (section 18), and the right to protection of the family and children (section 11). The Bill promotes these rights by enhancing the capacity of the DVPC to support and guide the ACT's responses to domestic and family violence.

The Bill enhances the capacity of the DVPC to support the ACT Government to identify and respond to emerging needs and priorities to prevent and reduce domestic and family violence. The DVPC's advice will help to inform positive measures, policies, programs and practices the ACT Government develops and implements to respond to domestic and family violence and support prevention activities.

Additionally, ensuring members of Aboriginal and Torres Strait Islander communities (section 7(1)(b) of the Bill) and culturally and linguistically diverse communities (section 7(1)(c) of the Bill) are represented in the membership of the DVPC promotes the right to equality and is a special measure that recognises the disproportionate and unique impacts of domestic and family violence for diverse communities and will

seek to ensure their experiences and perspectives are reflected in policy and programs.

The process for the appointment of the Chair has been replaced by section 10(1) to allow members to elect a member as Chair. This will support the DVPC to function more democratically and give members a stronger voice in the election of the Chair. All members will have the choice to nominate themselves or another member for the position of Chair and all members will be able to vote for the Chair, so this measure will support a broader range of citizens to have the opportunity to participate as part of the DVPC, and this in turn promotes the right to participate in public life equally.

## **Rights Limited**

### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

The Bill proposes some amendments which may limit the right to participate in public life under section 17 of the HRA. The right to participate in public life in section 17 of the HRA gives citizens a right to, and the right to have the opportunity to, have access to appointment to public office on general terms of equality. 'Public office', refers to all positions within the executive, judiciary or legislature, as well as statutory office holders. Membership of the DVPC would likely constitute 'public office'.

The right to take part in public affairs may be limited by section 5(2)(a) of the Bill, which stipulates that a non-member of the DVPC may only participate for the purpose of providing expert information or opinion to members.

The right to access public office may be limited by:

- sections 6, 7(1) and 7(2), which specify the positions, expertise, or experience of members who constitute the council, and that a chairperson be appointed;
- section 7(3), which requires that member appointments be for a term not longer than three years;
- section 8, which requires that the Minister must end a member's term for certain reasons.

### ***2. Legitimate purpose (s 28(2)(b))***

Section 5(2)(a) seeks to ensure non-members participating in meetings of the DVPC have the required knowledge, professional, personal experience, or position in the community to meaningfully contribute to the DVPC as a public body. This is a legitimate criteria necessary to ensure the DVPC can effectively fulfill its objectives and contribute to the reduction and prevention of domestic and family violence. Given members may require support and expertise from external parties, it is

important to provide a process for such external non-members to participate in DVPC meetings. This provision ensures that such non-members can participate in DVPC meetings in ways that support the DVPC's operations.

Sections 6, 7(1) and 7(2) establish a membership model to ensure the DVPC has the necessary expertise, experience, skills, and intersectional perspectives among its membership to successfully achieve its objectives. Section 6 specifies the statutory office holder, public servant, and police officer positions to be appointed to the DVPC. This aims to provide for the inclusion of the most senior positions with expertise and experience fundamentally related to domestic and family violence, as is necessary for the DVPC's effective functioning. Section 7(1)(a) establishes the membership of the DVPC must include representatives from a broad range of community-based organisations providing varied responses to domestic and family violence, so the DVPC is informed by contemporary, local expertise and experience from the community-based sector. This is vital to enable the DVPC to promote collaboration and partnership between government and the community sector to improve responses to domestic and family violence. Under section 7(2), the Minister may also appoint additional members who have relevant skills and expertise to contribute to the DVPC's objectives. This ensures individuals with specialist knowledge and experience can contribute to the DVPC's functioning as members, notwithstanding they may not hold a specific position in government or community-based organisations. These measures provide greater clarity about the DVPC's membership and will effectively ensure members will have the expertise necessary to support the DVPC. In the past, the lack of specification in the membership has led to gaps in the DVPC's knowledge base, demonstrating the need for these sections.

The membership of the DVPC must also include members to represent the interests of the Aboriginal and Torres Strait Islander community (section 7(1)(b)), and at least one member to represent the interests of the culturally and linguistically diverse community (section 7(1)(c)), to ensure the DVPC is informed by and can respond to diverse experiences of domestic and family violence in inclusive and culturally appropriate ways.

Section 7(3) imposes a time limit on the membership of positions outlined in sections 7(1)-(2), which is considered necessary and reasonable to allow new candidates to apply for the DVPC, ensuring the DVPC's membership remains composed of the most suitable and appropriate appointees with contemporary knowledge. It also ensures an opportunity for new members to join, and is considered necessary and reasonable.

The objective of section 8 is for members of the DVPC to have the suitable capabilities, and commitment to fulfill their obligations as members of a public body and contribute to the DVPC's objective of supporting the Government to respond to domestic and family violence. Without a process to end the appointment of members who are unwilling or unable to uphold their obligations as members of a public body,

the DVPC is likely to be hindered in advising the government on the most effective responses to domestic and family violence

### **3. Rational connection between the limitation and the purpose (s 28(2)(d))**

The approach taken in section 5(2)(a) seeks to ensure that non-member participants have the expertise to contribute to the functions and priority areas of the DVPC. Without this, the unrestricted participation of non-members risks undermining the effective functioning of the DVPC. There is therefore a rational connection between the objective and this limitation.

In establishing the membership composition of the DVPC and identifying certain positions, expertise, skills, or experience members must hold, Sections 6, 7(1) and 7(2), similarly aim to ensure the membership of the DVPC is diverse and includes the necessary knowledge, skills, and community connections to support the DVPC to achieve its objectives and improve responses to domestic and family violence in the ACT. This appropriately restricts the membership of the DVPC to ensure the DVPC is informed by diverse specialist expertise and can function in a streamlined and efficient manner. There is therefore a rational connection between the objective and this limitation.

Section 7(3) seeks to allow for a diversity of candidates to be considered as appointments under section 7 over time. Setting a limit to member's terms will allow new candidates to apply for the DVPC, ensuring the DVPC's membership remains composed of the most suitable and appropriate appointees with contemporary knowledge. The length of the term also means members will be able to effectively contribute to the DVPC during their term.

Without a process to end the appointment of members who are unwilling or unable to uphold their obligations as members of a public body as outlined in Section 8, the DVPC is likely to be hindered in advising the government on the most effective responses to domestic and family violence. The process of ending member appointments will be objectively and equitably applied and assessed to ensure members' participation in the DVPC is not arbitrarily ended.

### **4. Proportionality (s 28(2)(e))**

Section 5(2)(a) is a proportional response, allowing for the participation of non-members in a reasonable and objective manner with limited restrictions, while ensuring those participating in meetings of the DVPC have the adequate knowledge to effectively contribute to the DVPC's activities. Other options to participation would not achieve the same balance between a functional core membership, and additional expertise.

The membership provisions outlined in Sections 6 and 7 provide the least restrictive approach, and reflect the expertise needed on the DVPC as identified through the consultation process. For appointed members, the appointment process will also ensure members are appointed equitably, objectively and without discrimination to support individuals to participate in public life.

Section 7(3) is proportionate in allowing a broader range of individuals the opportunity to be appointed to the DVPC and participate in public life, while still ensuring appointed members can meaningfully participate during their term.

The approach outlined in Section 8 is a proportionate response to maintain public and government confidence in the DVPC in the event a member is unable or unwilling to fulfill their duties. This measure is therefore necessary to achieve its legitimate objective. The limitation is proportionate, as the circumstances justifying an end to the appointment are restricted to circumstances where the member is disrupting the functioning of the DVPC or is no longer capable of contributing to that functioning.



# Domestic Violence Agencies Amendment Bill 2022

## *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Domestic Violence Agencies Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Clause 1 Name of Act

This is a technical clause that sets out the name of the Act as the *Domestic Violence Agencies Amendment Act 2022*.

### Clause 2 Commencement

This clause states that the Act will commence on the day fixed by the Minister through written notification.

### Clause 3 Legislation amended

This clause provides that the Act amends the *Domestic Violence Agencies Act 1986* as well as the *Crimes (Sentencing) Regulation 2006*, *Human Rights Commission Act 2005*, *Magistrates Court Act 1930* and *Territory Records Regulation 2009*.

### Clause 4 Sections 5 to 10

This clause provides that sections 5 to 10 of the Act are to be substituted with the following.

#### *Section 5 Functions of the council*

This section sets out the revised functions of the DVPC, namely to advise the Minister on the Territory's response to domestic and family violence, identify gaps and opportunities for the Territory to continually improve these responses, and facilitate the exchange of information and collaboration and integration among agencies providing services in relation to domestic or family violence.

This section also allows the DVPC to establish expert reference groups or allow non-members to participate in a meeting to assist the DVPC in the exercise of its functions. In practice, this will ensure the DVPC is better positioned to respond to and engage directly with different population groups, undertake focused work on identified themes, and provide advice that responds to the intersectional needs of the Canberra community, including continued engagement with the Aboriginal and Torres Strait Islander Reference Group.

#### *Section 6 Membership of council*

This section introduces a new membership composition for the DVPC focused on positions and standing members who have extensive experience in, knowledge of, and connection to domestic and family violence policy, research, and service delivery. This brings together the expertise across government and non government

services required to guide the DVPC's work, who have on-the-ground knowledge of the impacts of domestic and family violence; or are in positions to support the delivery of positive outcomes.

The membership of the DVPC is to include the Victims of Crime Commissioner, the public servant in charge of the business unit responsible for coordinating the Territory's response to domestic and family violence (currently the Coordinator-General for Family Safety), the chief executive officer of the Domestic Violence Crisis Service, the police officer who has command of operations relating to domestic and family violence, the public servant responsible for administering corrective services (currently the ACT Corrective Services Commissioner), and the members appointed by the Minister.

### *Section 7 Appointment of council members*

This section sets out the requirement for the Minister to appoint additional members to the DVPC. The Minister must appoint 4 members to the DVPC who are the chief executive officer or equivalent of a community-based organisation providing support services or undertaking research, advocacy or policy development in relation to domestic and family violence. It is intended that this provision will have a broad application and apply to any organisation providing a domestic or family violence response and is not limited to specialist providers. Additionally, the Minister must also appoint at least 2 people who, in the Minister's opinion, represent the interests of an Aboriginal or Torres Strait Islander community and at least one person who, in the Minister's opinion, represents the interests of people from culturally and linguistically diverse backgrounds. This provides for representation of the interests and experiences of diverse communities among the membership of the DVPC, which is critical to support intersectional and inclusive responses to domestic and family violence in the ACT.

This section also gives the Minister a discretionary power to appoint one or more members to the DVPC who, in the Minister's opinion, have relevant experience or skills to contribute to achieving the functions of the council. This allows individuals who do not hold a specific position in the community sector but nevertheless have specialist expertise, skills or experience which would support the DVPC's aims to be included in the membership.

Appointments under this section will be for a term of no more than three years

### *Section 8 Ending of appointed member appointments*

This section sets out the circumstances in which the Minister must end the appointment of a member appointed under section 7. It is noted that the provisions around 8(a) and 8(b) regarding misbehaviour and physical or mental incapacity align with the approach taken in other ACT legislation. There is an expectation that a member must disclose to the Minister if the circumstances of 8(e) and 8(f) occur.

The provision is consistent with existing statutory convention in the ACT regarding conduct of statutory appointees, and any limitation on the right to privacy of members who are required to disclose a condition is justified as it is directed at the legitimate purpose of ensuring members can discharge their duties in a competent and professional manner in accordance with the objectives of the legislation.

#### *Section 9 Meetings of council*

This section sets out the requirements for when the DVPC must hold a meeting to ensure the DVPC has flexibility in determining its meeting schedule and meets as necessary for the effective exercise of their functions. Under this section, the Minister may also request a meeting of the DVPC.

#### *Section 10 Procedure at meetings*

This section provides for the technical procedures to be followed at meetings of the DVPC. This includes a provision that members elect a member as chair who presides at meetings of the DVPC.

### **Clause 5 Omit Office of the Domestic Violence Project Coordinator Part 3**

This clause omits Part 3 of the Act which instituted the Office of the Domestic Violence Project Coordinator and established the Victims of Crime Commissioner as the Coordinator. This Part was introduced prior to the establishment of the role of Coordinator-General for Family Safety and the Office of the Coordinator-General for Family Safety. The Coordinator-General's role takes up much of the functions and authorities that the Domestic Violence Project Coordinator was initially envisioned to have. The role of the Domestic Violence Project Coordinator is therefore largely unnecessary and duplicates the functions of the Coordinator-General for Family Safety.

### **Clause 6 Dictionary, definition of *appointed member***

This clause omits the definition of appointed member given the relevant section has been substituted.

### **Clause 7 Dictionary, definition of *coordinator* and note**

This clause omits the definition of coordinator given Part 3 has been omitted.

### **Schedule 1 Consequential amendments**

Schedule 1 amends the *Crimes (Sentencing) Regulation 2006*, *Human Rights Commission Act 2005*, *Magistrates Court Act 1930* and *Territory Records Regulation 2009* to omit references to the Domestic Violence Project Coordinator in line with the amendments above. Where the Victims of Crime Commissioner is not already included in these sections, the Domestic Violence Project Coordinator is substituted

with the Victims of Crime Commissioner to ensure the Commissioner retains their authority under the Acts.