

2025

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

ELEVENTH ASSEMBLY

**FAMILY, PERSONAL AND SEXUAL VIOLENCE LEGISLATION AMENDMENT
BILL 2025**

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

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December 2025**

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Chapter 1 FAMILY, PERSONAL AND SEXUAL VIOLENCE LEGISLATION AMENDMENT BILL 2025

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Family, Personal and Sexual Violence Legislation Amendment Bill 2025 is an omnibus bill encompassing amendments to improve how ACT laws respond to domestic, family and sexual violence (DFSV). The policy objective of this Bill is to ensure persons experiencing or at risk of DFSV can access a trauma-informed justice response, hold persons using violence to account, and improve the clarity of legislation regarding DFSV in the ACT.

The Bill amends several pieces of legislation including the *Evidence (Miscellaneous Provisions) Act 1991* (EMPA), the *Family Violence Act 2016* (FV Act), the *Personal Violence Act 2016* (PV Act) and the *Crimes (Sentencing) Act 2005* (CSA).

The Bill will:

1. Amend the EMPA to:
 - a. Amend the protected confidences immunity to allow the counselled person to consent to the disclosure of protected confidence evidence in civil proceedings, thereby waiving the immunity.
 - b. Clarify that the protected confidences immunity applies in all proceedings where protected confidence evidence is sought to be disclosed, per the original intention of the scheme.
 - c. Clarify that in deciding whether to give leave for the disclosure of a protected confidence, the court needs to consider the impact on victims of family violence offences as well as victims of sexual violence offences.
 - d. Provide that the protections which apply in sexual offence proceedings under Chapter 4 of the EMPA are also to apply to proceedings for intimate image abuse offences under Part 3A of the *Crimes Act 1900* (Crimes Act).
 - e. 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.
2. Amend the CSA to prevent any reduction of the severity of sentences for all sexual offences against children because of an offender's 'good character'.
3. Amend the FV Act to:

- a. Establish the Family Violence Safety Notice Scheme (FVSN) Scheme to enable police officers to issue short-term protection notices where immediately necessary
 - b. Delay the statutory review of the FV Act to align with the statutory review to be undertaken into the operation and effectiveness of the FVSN provisions
4. Amend the FV Act and PV Act to
- a. Simplify and streamline proceedings regarding family violence orders (FVOs) and personal violence orders (PVOs) by:
 - i. Clarifying the status of Interim FVOs and PVOs made by a Registrar where a review of a Registrar's decision is sought.
 - ii. Clarifying that a person does not need to physically attend court to meet any requirement under the Act they are 'present', and that a person may be 'present' if they appear in court via remote technology.
 - b. Resolve inconsistencies and ambiguities regarding the service requirements for FVOs and PVOs by:
 - i. Clarifying that it is an offence for a person to breach an interim and final FVO or PVO served in accordance with the Act, including where served by substituted service.
 - ii. Clarifying that the original applicant must be served with a copy of the amendment application and either a timing notice or a notice of the return date, if the original applicant for a FVO or PVO is not an applicant for the amendment of a protection order.

In certain sections where appropriate, this Explanatory Statement uses the terms "victim" and "victim-survivor", which maintains consistency with the language of the *Listen. Take Action to Prevent, Believe and Heal* Report (the SAPR Report) published in December 2021. This terminology also aligns with the Charter of Rights for Victims of Crime in part 3A of the *Victims of Crime Act 1994*. As per equivalent mechanisms in all Australian states and territories, the ACT Charter conceptualises individuals as victims of crime – and confers rights to individuals on that basis – at each stage of their engagement with justice agencies, including prior to the laying of charges and/or the commencement of criminal proceedings.

The use of the terms "victim" and "victim-survivor" is consistent with the aim of the Bill. 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.

CONSULTATION ON THE PROPOSED APPROACH

The amendments in the Bill were developed in close consultation with key justice and DFSV sector stakeholders including:

- Aboriginal Legal Service ACT/NSW
- Aboriginal Justice Caucus
- A Gender Agenda
- ACT Law Society
- ACT Bar Association
- Canberra Rape Crisis Centre
- Domestic Violence Crisis Service
- Meridian
- Multicultural Hub
- Women's Legal Centre
- YWCA Canberra
- ACT Courts and Tribunal
- ACT Director of Public Prosecutions
- ACT Human Rights Commission
- ACT Policing
- Domestic, Family and Sexual Violence Office (HCSD)
- Human Rights and Social Policy Team (JACS)
- Legal Aid ACT
- Strategic Policy (HCSD)
- Victims of Crime Commission

CLIMATE IMPACT

The Bill does not have any emissions and adaptation impacts.

CONSISTENCY WITH HUMAN RIGHTS

During the development of this Bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act).

Rights engaged

The Bill balances the human rights of a person affected by changes in the law and the public interest in protecting an individual's right to safety within their home and in the community.

Rights Promoted

Broadly, the Bill engages and promotes the following HR Act rights:

- Section 11 - Protection of the family and children
- Section 12 - Right to privacy
- Section 18 - Right to security of person
- Section 21 - Right to a fair trial

The amendments introduce measures to support people experiencing or at risk of DFSV to access a more trauma-informed justice system response. This responds to the growing social and cultural recognition of the severity and harm of DFSV offences, and the importance of the legal system responding. This has wider benefits for the community, recognising DFSV can have significant impacts across communities and families, as improving justice responses will support preventing and reducing DFSV over time.

Right to protection of the family and children – section 11 HR Act

The right to protection of the family and children (s 11 of the HR Act) recognises that the family is entitled to be protected by society and provides that every child has special rights given their particular vulnerabilities as a child, without distinction or discrimination. Government is required to support parents to exercise their responsibility for protecting their children, or to intervene when the parent is unable or unwilling to meet these responsibilities.

The Bill promotes the right to protection of family and children through the establishment of the FVSN scheme. A police officer may issue a FVSN if satisfied there is a risk of family violence to an affected person and a FVSN is immediately necessary to ensure their safety or to prevent substantial damage to their property. A child may be listed as a protected person on a FVSN. In determining conditions to be included in the FVSN, the issuing police officer must give paramount consideration to the safety and protection of the affected person and any child. This will support the safety of children from domestic and family violence by providing immediate short-term legal protection, thereby promoting their rights.

The right to privacy – section 12 HR Act

The right to privacy (s 12 of the HR Act) protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. This right extends to the protection of personal, confidential information, or secure mail, phone and electronic communications, from unlawful or arbitrary interference.

The Bill promotes the right to privacy by clarifying that the protected confidences immunity in the EMPA applies in all civil and criminal proceedings where protected confidence material is sought to be disclosed. This amendment clarifies, rather than alters, the intended scope of the immunity.

Division 4.4.3 provides that a protected confidence cannot be disclosed in a criminal or civil proceeding unless the court gives leave for its disclosure (s 79D of the EMPA). This is referred to in this explanatory statement as ‘protected confidence immunity’. A ‘protected confidence’ is 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’) (s 79A(1) of the EMPA). It can include confidential health records, or records from specialist sexual assault or family violence services.

As highlighted in recent academic literature, there are serious dangers associated with the disclosure and unrestricted use of information that is communicated to a victim-survivor within the context of a therapeutic relationship¹. This can create further psychological harm, threaten the recovery process, deter a person from seeking counselling, and cause the counselled person to fear retribution from the alleged offender. Under the protected confidence immunity, the court may prevent protected confidence evidence from being disclosed if the harm it could cause to a person is greater than the need to use that information as evidence in proceedings. This prevents potential harm to the individual from information being used in court proceedings, ensuring it is only disclosed in accordance with Div 4.4.3.

The Bill also clarifies that in considering whether to grant leave for the disclosure of the protected confidence, the court must consider the impact on victims of family violence offences, as well as sexual offences. Clarifying the intended scope of this immunity promotes the right to privacy by ensuring the protections applying to the counselled persons’ confidential counselling communications are clear.

The Bill also promotes the right to privacy by recognising proceedings related to intimate image abuse offences as ‘sexual offence proceedings’ under s 41 of the EMPA. The amendment will allow certain evidence to be given in a closed court offering witnesses (including victim-survivors) privacy, preventing them from being re-traumatised by the court process and allowing them to present their best evidence. Amongst others, the amendment will also ensure that the victim-survivor’s name is not published and that there is a general immunity for evidence of the victim-survivor’s sexual activities.

The right to a fair trial – section 21 HR Act

The right to a fair trial (s 21 of the HR Act) ensures that everyone has a right to have their criminal or civil rights determined after a fair hearing. The right to a fair hearing is concerned with procedural fairness so that each party has a reasonable opportunity to present their case.

¹ Anne Cossins and Ruth Pilkinton, *Balancing the Scales: The Case for the Inadmissibility of Counselling Records in Sexual Assault Trials*, UNSW Law Journal, Volume 19 (2), 1996, p. 224, accessed on 4 November 2025 via <https://www.austlii.edu.au/au/journals/UNSWLJ/1996/13.pdf>

The Bill promotes this right through amendments to the EMPA which support counselled persons to provide their best evidence in court. The Bill promotes the right to a fair trial by providing that the counselled person (or if the counselled person is under 14 years old, a suitable person determined by the Court) may consent to the disclosure of protected confidences in civil proceedings and thereby waive the protected confidences immunity, in circumstances where the Court would otherwise be required to grant leave for such disclosure to occur. This amendment gives counselled persons more control over the way in which legal processes apply to their confidential counselling material in civil proceedings. This right is also safeguarded by the provision that the protected confidences immunity is only waived by the counselled person's consent if the Court is satisfied the counselled person (or suitable person) is aware of the effect of the division and has been given a reasonably opportunity to seek legal advice. This supports ensuring the counselled person's consent is appropriately informed.

The right to security of a person – section 18 HR Act

The right to security of a person (s 18 of the HR Act) protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained. This includes a requirement for government to respond appropriately to patterns of violence against categories of victims such as those of sexual violence and family violence.

The right to security of a person is promoted by the amendment which recognises intimate image abuse offences as 'sexual offence proceedings' under s 41 of the EMPA, providing special considerations to vulnerable witnesses and reducing the risk of re-traumatisation through participation in the court process.

Lastly, this right is promoted by the amendments to introduce FVSNs. The issuing of a FVSN can impose conditions upon the respondent which prevent them engaging in family violence and support the safety and protection of the protected person. This ensures protected persons have a mechanism for immediate legal protection from harm.

Rights Limited

Broadly, the Bill engages and limits the following HR Act rights:

- Section 11 – Right to protection of the family
- Section 12 – Right to privacy
- Section 13 – Freedom of movement
- Section 16 – Right to freedom of expression
- Section 18 – Right to liberty and security of person
- Section 21 – Right to fair trial
- Section 22 – Right to criminal proceedings

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of protecting victims of sexual assault, domestic and family violence, and the community.

Detailed human rights discussion

Clarify that the protected confidences immunity applies in all proceedings where protected confidence evidence is sought to be disclosed, per the original intention of the scheme ;

Clarify that in deciding whether to give leave for the disclosure of a protected confidence, the court needs to consider the impact on victims of family violence offences as well as victims of sexual violence offences.

The Bill addresses observations in recent case law and clarifies the operation of the protected confidences immunity in Division 4.4.3 of the EMPA. The need for further clarity in how Division 4.4.3 operates was raised in *Rossi v Hardwicke* [2024] FedCFamC1F 335 (Rossi v Hardwicke) and subsequently *Hall (a pseudonym) v Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn* [2025] ACTSC 113 (Hall).

In *Rossi v Hardwicke*, Justice Gill flagged inconsistencies in the heading of Chapter 4 ('Sexual, violent and family violence offence proceedings'), Div 4.4.3 ('Sexual and family violence offence proceedings-protection of counselling communications'), and the scope of s 79D which provides the provisions apply to 'a criminal or civil proceeding.'

In *Hall*, Justice McWilliam similarly observed that 'it is not immediately obvious that (Div 4.4.3 of the EMPA) applies to a civil proceeding. Justice McWilliam noted that the headings of Chapter 4, Part 4.4 and Div 4.4.3 deal with 'offence proceedings' which are not civil proceedings. However, s 79 defines proceedings as 'a civil or criminal proceeding'.

Amendment is required to resolve the issues raised in these cases and make it clear that Division 4.4.3 applies in both civil and criminal proceedings where protected confidence evidence is sought to be disclosed. This is the intended application of the immunity and does not expand the operation of the immunity beyond what is already provided under Div 4.4.3. The Bill also ensures that a court considers how the

disclosure of protected confidence evidence affects not only a victim-survivor of sexual offences but also a victim-survivor of family violence offences.

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Right to a fair trial – section 21 HR Act

The right to fair trial is concerned with procedural fairness and encompasses notions of equality in proceedings.

This right is limited by the amendments in the Bill which clarify that the protected confidences immunity applies in civil and criminal proceedings where protected confidence evidence is sought to be disclosed, and the court must consider the impact of the disclosure of a protected confidence on victims of family violence. This means there are circumstances in which protected confidence evidence may be excluded, which could impact proceedings and the accused's case.

Protected confidence evidence may already be excluded in proceedings through the current operation of Div 4.4.3, meaning this amendment does not further engage or limit the right to fair trial in a different way from the current procedure.

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

The purpose of the amendment is to provide clarity in proceedings for parties regarding the application of the existing protected confidence immunity to ensure it is interpreted as intended.

The Bill moves Div 4.4.3 to a new Chapter 6B to make clear that the protected confidences immunity applies to all proceedings where protected confidence evidence is sought to be disclosed, not only proceedings relating to sexual and family violence offences. This arises from the commentary in *Rossi v Hardwicke* and Hall discussed above.

The Bill also addresses a potential anomaly in s 79H (3) (b) and (c) of the EMPA, which provide that the mandatory considerations under s 79H (3) only apply to victims of sexual offences, although the protected confidences immunity extends to counselling communications regarding a sexual offence or a family violence offence. The protected confidence immunity was extended to family violence offences through the Family Violence Legislation Amendment Bill 2022, which was notified in August 2022. This appears to be an oversight which is corrected by this amendment.

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

There is a rational connection between the possible limitation on the right to a fair trial and the objective of providing clarity in proceedings for parties regarding the protected confidences immunity to ensure it is interpreted as intended.

As discussed above, the disclosure of sensitive counselling information in proceedings can create significant harms for the counselled person. The protected confidences immunity provides vital protection to ensure the disclosure of such information is strictly limited to circumstances where the public interest in ensuring the proceeding is conducted fairly or the accused person is given a fair trial outweighs the public interest in preserving the confidentiality of the protected confidence (s 79H (1) of the EMPA).

Given the potentially significant harm caused through the undue disclosure of protected confidence evidence in a proceeding, it is critical that the EMPA clearly provides when and how the protected confidences immunity is to apply in a proceeding and what the court is to consider when deciding whether to give leave for the disclosure of protected confidence evidence. Clarifying the operation of the protected confidences immunity may limit the right to fair trial by clarifying when evidence should be excluded under the operation of the scheme. However, the limitation on the right to fair trial created through the amendment is rationally connected to the purpose of ensuring the immunity is interpreted and operates as intended.

4. Proportionality - Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The possible limitations on right to a fair trial are proportionate to the aim of clarity in proceedings for parties and to ensure the protected confidence immunity operates as intended, and are the least restrictive means possible in the circumstances.

Both sexual assault and family violence have severe, long-lasting physical and psychological consequences. The legal process for both involves a deep and often re-traumatising interaction with the legal system. Not progressing these clarifying amendments would increase risks of complainants of sexual and family violence offences being re-traumatised by court processes and choosing not to seek justice through the justice system.

Given these amendments clarify the existing intended application of the protected confidences immunity, rather than expanding it, the existing checks and balances applying to the protected confidences immunity continue to apply. The protected confidences immunity is not absolute. Section 79D provides a general immunity for protected confidences in proceedings, but on application the court may grant leave for the disclosure of a protected confidence if it can be satisfied of matters outlined in s 79H of the EMPA. This balances the need for confidentiality against the need for evidence in legal proceedings.

Provide that the protections which apply in sexual offence proceedings under Chapter 4 of the EMPA are also to apply to proceedings for intimate image abuse offences under Part 3A of the Crimes Act.

The Bill introduces a new definition of ‘sexual offence’ in the EMPA to include an intimate image abuse offence against Part 3A of the Crimes Act. This ensures the protections available to witnesses in other sexual offence proceedings, such as allowing certain evidence to be given in a closed court, ensuring the witness’s identity is not published and the inadmissibility of certain evidence, are also available in proceedings for intimate image abuse offences. This responds to a gap in the current scheme at a time where technology based abuse is being increasingly recognised in our community.

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Right to a fair trial – section 21 HR Act

This amendment may limit the right to a fair trial through extending the immunity of certain evidence such as sexual reputation (s 75) and evidence of a complainant’s sexual activities (s 76) to intimate image abuse offences. This is because the exclusion of evidence could impact proceedings and the accused’s case.

The amendment may also limit the right to fair trial if special protections are applied, such as giving evidence in a closed court and preventing the publication of the complainant’s identity, as these may render the court proceedings less open, transparent and accountable to the public.

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

The purpose of this amendment is to extend the protections applying in sexual offence proceedings to also apply in proceedings for offences under Part 3A of the Crimes Act. This recognises intimate image abuse as a form of sexual offence noting it involves behaviour of a sexual nature without consent, often through coercion, and to offer greater procedural protection to complainants in relation to intimate image abuse offences. Technology provides new, powerful, and accessible tools for perpetrators to control, humiliate, and exploit victim-survivors

The immunity of evidence such as sexual reputation and a complainant’s sexual activities recognises the potential harm and re-traumatisation caused by the admission of such evidence in court proceedings, and the additional vulnerability of complainants of intimate image abuse.

The application of special protections such as allowing a complainant to give evidence in a closed court and preventing the publication of the complainant’s identity also prevent potential harm to the individual from information being used in court proceedings. They are important primarily to protect the vulnerable complainants from further trauma and public scrutiny, which ultimately helps in the

effective administration of justice and encourages more persons experiencing intimate image abuse to report such crimes.

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

There is a rational connection between the possible limitation on the right to a fair trial and the need to respond to the rise of intimate image abuse and to offer greater procedural protection to complainants of intimate image abuse offences.

Offence provisions relating to intimate image abuses were inserted by the Crimes (Intimate Image Abuse) Amendment Bill 2017 and commenced on 30 August 2017. The Bill's explanatory statement stated that the Bill was "prompted by community concern on the practice of sharing intimate images of a person...without the person's consent." Intimate image abuse is recognised as a sexual crime that can cause significant harm.²

Intimate image abuse remains prolific. In a 2019 report by the Australian Institute of Criminology, one in five respondents surveyed (23%) reported being a victim of at least one form of image-based sexual abuse.³ Data by the eSafety Commissioner in October 2025 reveal a disturbing surge in intimate image abuse in the form of deepfakes, especially targeting students and women.⁴

4. Proportionality - Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The possible limitations on right to a fair trial are proportionate to the aim of responding to changes in social and cultural norms and offering greater procedural protection to complainants of intimate image abuse offences.

All Australian jurisdictions have special rules of evidence applying to trials of sexual offences. Sexual offences are treated differently in relation to evidence in court due to the sensitive nature of the crimes and the impact they have on victims. The legal system aims to protect the rights and dignity of victims while ensuring that the evidence presented in court is fair and just.

This amendment acknowledges the evolving nature of sexual offences in light of technological advancements and the detrimental effects of intimate image abuse. It aligns with the initial policy intent of Chapter 4 of the EMPA which are intended to

² Victoria State Government, 2020, "Sentencing Image-Based Sexual Abuse Offences in Victoria", accessed on 30 October 2025 via chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-10/Sentencing_Image_Based_Sexual_Abuse_Offences_in_Victoria.pdf

³ The Australian Institute of Criminology, 2019, "Image-based sexual abuse: Victims and perpetrators" accessed on 30 October 2025 via <https://www.aic.gov.au/publications/tandi/tandi572>

⁴ ABC News, 17 October 2025, "Deepfake image-based abuse happening at least once a week in schools, eSafety data shows", accessed on 30 October 2025 via <https://www.abc.net.au/news/2025-10-17/deepfake-image-based-abuse-doubles-across-australia/105905152>

make the experience of these witnesses in the criminal justice system less stressful and traumatic.

The provision in s 76 of the EMPA creates a general immunity for evidence of the complainant's sexual activities. Nevertheless, this immunity does not apply to evidence of the specific sexual activities of the complainant with an accused person in the sexual offence proceeding and the Court may grant leave upon being satisfied that the evidence has substantial relevance to the facts in issue; or is a proper matter for cross-examination about credit.

The provision in s 73 of the EMPA allows the Court to order that the court be closed to the public while a witness gives evidence, or while the witness's recorded evidence is played, in the proceeding. In deciding whether to close the court, the Court needs to consider whether it is in the interests of justice and give paramount consideration to the witness' preference.

A defence is also available to the prosecution of an offence to publish the complainant's identity under s 74 of the EMPA if the person can establish that the complainant consented to the publication before the publication happened.

Clarify the status of Interim Family Violence and Personal Protection Orders made by a Registrar where a review of a Registrar's decision is sought.

The Bill amends the FV Act and PV Act to resolve an issue that has arisen following the introduction of the Sexual, Family and Personal Violence Legislation Amendment Act 2024 (Amendment Act).

This amendment would clarify that any *relevant decision* made by a Registrar is to be stayed pending a Magistrate's review of the Registrar's decision pursuant to s 91B (8) of the FV Act and s 83B of the PV Act, and that any *relevant decision* made by a Registrar stands if an applicant initially requests a review of Registrar's decision but subsequently withdraws it.

Section 91B (8) of the FV Act and s 83B(8) of the PV Act provide that a decision of the registrar is a *relevant decision* if it is a decision to— (a) refuse to make an interim order; or (b) if s 54 (Respondent not present at return of application) applies— adjourn the proceeding; or (c) if the applicant for the protection order asks for a condition to be included in an interim order—refuse to include the condition in the interim order.

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

Right to liberty and security of person – section 18 HR Act

The right to security of a person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained.

The amendment clarifies the status of a relevant decision made by a registrar if the applicant requests a review. Depending on the registrar's decision, the stay of a decision of a day or two (between when a party seeks a review of the application and when the review application is heard by the Magistrate) may limit the right to security of a person by giving rise to safety risks to the applicant.

However, this amendment does not necessarily increase the risks the applicant may have otherwise been subject to or deprive them of protection they would have received had the registrar's decision not been stayed. The relevant decisions of the registrar which this amendment applies to do not include deciding to make an interim order or include a condition in an interim order, meaning the staying of the decision does not mean the applicant is left without protection they would otherwise have had if the decision had not been stayed.

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

The purpose of the amendment is to provide clarity in proceedings for parties and ensure parties are aware of the status of their protection order while a review is being sought.

Section 91B of the FV Act and s 83B of the PV Act were inserted via the Amendment Act to legislatively enshrine Practice Direction 2 of 2018 of the ACT Magistrates Court (now revoked).

Ambiguity has arisen from additional time allowed because of the Amendment Act for (a) an applicant to notify its intention to request a review of the Registrar's decision and (b) a review application to be listed.

Prior to the commencement of the Amendment Act, the application seeking a review of a Registrar's decisions would be listed immediately before the presiding magistrate i.e. the application was transferred to a Magistrate on the same day or listed the following day if there was no capacity the same day. Following the Amendment Act, legislation has provided a timeframe for: (a) notification by an applicant of a review by a Magistrate - by the close of registry, being 4:30pm, on the same date of the interim hearing before a Registrar; and (b) the listing of that review - within 2 days.

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

There is a rational connection between the possible limitation on the right to security of a person and the objective of providing clarity in proceedings for parties.

The ACT Magistrates Court has advised that questions around the status of relevant decisions/interim orders have arisen in proceedings and that the court is unable to draw on legislation for guidance. Given the volume of applications for interim orders

that Magistrates Court receives under the FV Act and PV Act, clarity on the status of interim orders in legislation is necessary.

This amendment provides clarity in proceedings and in turn ensures that parties to the application are not confused about the orders made and that protected persons are safe and can feel safe – for example, it is important to have clarity in relation to whether the conditions of an interim order are current. Alleviating any confusion for the parties would promote the protected person's safety by ensuring that it is clear what conditions a respondent must adhere to until the relevant decision is reviewed by a Magistrate.

4. Proportionality - Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The possible limitations on right to security of a person are proportionate to the aim of clarity in proceedings for parties and in turn promote protected persons' safety, and are the least restrictive means possible in the circumstances.

The amendment strengthens an existing legislative provision which provides for the ability of a decision of a Registrar to be reviewed by a Magistrate. Registrars are esteemed court officials who are entrusted with the responsibility of managing administrative duties such as assisting with procedural and case management tasks. In most cases, it is anticipated that the Registrar would make decisions on an application for a protection order in a cautionary manner with the protected person's safety as a paramount consideration, based on the information presented before them. As such, it is anticipated that any risks to security of a person which may arise from this amendment would be minimal.

Additionally, as noted above, the clarification that the registrar's decision is stayed pending review of the Magistrate does not deprive the applicant of protection they would have otherwise enjoyed should the decision not have been stayed.

Prevent any reduction of the severity of sentences for all sexual offences against children because of an offender's 'good character'.

The Bill would clarify that all child sexual abuse offenders regardless of their relationship status in relation to the victim-survivor, are treated equally by prohibiting any consideration of evidence as to an offender's 'otherwise good character' during the sentencing for all child sexual abuse matters. In doing so, the amendment prevents the minimisation of the seriousness of child sexual offences and prioritises the protection and well-being of victim-survivors.

Currently, under section 34A (b) of the CSA, 'good character' evidence must not mitigate the sentence of a child sexual abuse offender only in circumstances where the offender's 'good character' enabled the offender to commit the offence. This was introduced through the *Royal Commission Criminal Justice Legislation Amendment*

Act 2018 to address child sexual abuse which occurred through institutional settings such as a school, church or sporting club.

The Bill will clarify section 34A (b) to provide that the Court must not reduce the severity of a sentence it would otherwise have imposed because the offender has ‘good character’. This expands the current application of section 34A (b) to apply in sentencing for all child sexual offences, including those that do not occur in institutional settings, for example, for offences committed by family members or family friends. This also ensures that where the offender’s ‘good character’ plainly facilitated their child sexual offending in an institutional setting, any ‘good character’ following the offending should not be considered in mitigation. This clarifies that ‘good character’ evidence is wholly excluded as a mitigating factor for all child sexual offences, irrespective of whether the good character evidence relates to the offender’s circumstances at the time of offending, or at the time of sentence.

1. The nature of the right and the limitation (s 28 (2) (a) and (c))

Rights in criminal proceedings – section 22 HR Act

Rights in criminal proceedings are concerned with ensuring that everyone who is charged and/or convicted of a criminal offence is entitled to some minimal procedural guarantees in criminal trials, equally to everyone else. Rights in criminal proceedings are complementary to the right to a fair trial.

Right to a fair trial – section 21 HR Act

The right to a fair trial is concerned with procedural fairness and encompasses notions of equality in proceedings.

These rights are limited by the amendment which limits the admissibility of ‘good character’ evidence at the sentencing of a child sex abuse matter.

Current law, both in the CSA and at common law, provide the court may consider ‘character’ of the offender at sentencing.⁵ Where an offender can provide evidence which, on the balance of probabilities ‘otherwise’ reflects on them ‘positively’, despite their criminal conduct, the court must take it into account in same way at sentence (although the weight given to this evidence will depend on all the circumstances of the case).⁶ Such evidence is usually provided to demonstrate an offender’s capacity for rehabilitation and reduced risk of reoffending. ‘Good character’ evidence can include evidence of an offender’s personality traits, standing in the community, and community contributions, and may be provided by way of character references from people who know the offender.

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

⁵ See section 33(m) CSA.

⁶ *Ryan v R* [2001] HCA 21, 206 CLR 267.

The purpose of the amendment is to address current discrepancies in sentencing of child sexual abuse matters, acknowledge the seriousness of all child sexual offences and prioritise the protection and well-being of victim-survivors. Recent research and commentary on similar provisions in other jurisdictions has demonstrated that the scope of current s 34A (b) of the CSA is too narrow and arbitrary in its application given the dynamics of child sexual abuse⁷. Grooming is an intrinsic part of child sexual abuse where offenders manipulate and control a child, as well as their family, kin and carers, other support networks, or organisations, in order to perpetrate child sexual abuse. Evidence commonly presented to support an offender's otherwise good character, such as subjective evidence about an offender's personality traits, standing in the community, and/or community contributions, may in child sexual abuse matters be factors that facilitated the offending and/or the concealment of evidence of the offence, and is incongruent with their private actions that caused harm towards victim-survivors. To quote the NSW Sentencing Council's consultation report, released in December 2024, "it has been observed that sexual offences against children cannot be said to be out of character because they are "usually ... committed in a calm and calculated way"⁸.

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

There is a rational connection between the possible limitation on rights in criminal proceedings and the right to a fair trial and the objective of prioritising the protection and well-being of victim-survivors.

Through consultation, victim-survivors from the *Your Reference Ain't Relevant* Campaign and the ACT's Victims of Crime Commissioner have advised that allowing 'good character' evidence (which is often unverified) to be considered during sentencing causes significant distress and trauma to victim-survivors. This sentiment is echoed by the Victims Commissioner of Queensland and other victim advocates in their submissions to the Queensland Sentencing Advisory Council (QSAC) in 2024 in relation to their review of sentencing practices for sexual assault and rape offences (2024 QSAC Review).^{9 10}

Despite submissions from some legal stakeholders advising that common law already provides that the nature and circumstance of the offending will counter-balance the relevance of 'good character' evidence and that 'good character' is

⁷ Queensland Sentencing Advisory Council, December 2024, "Sentencing of Sexual Assault and Rape: The Ripple Effect – Final Report".

⁸ NSW Sentencing Council, December 2024, "Consultation Paper - Good character at sentencing", p. 21.

⁹ Victims' Commissioner Beck O'Connor, 2025, "A position statement from the Victim' Commissioner", accessed on 30 October 2025 via <https://www.victimscscommissioner.qld.gov.au/our-work/news-and-media/A-position-statement-from-the-Victims-Commissioner>

¹⁰ Queensland Sentencing Advisory Council, December 2024, "Sentencing of Sexual Assault and Rape: The Ripple Effect – Final Report".

already given little weight, recent judgements and sentencing remarks across Australia have demonstrated otherwise.

The 2024 QSAC Review highlighted the prevalence of cases where 'good character' evidence has been considered and taken into account in mitigating an offender's sentence. From a review of sentencing remarks of 131 rape cases sentenced from July 2022 to June 2023 in the Queensland District Court, 'good character' appeared to be given 'a lot of weight' in over a quarter of cases (28.2%).

Case law such as *Bhatia v R* [2023] NSWCCA 12, *Wakim v The Queen* [2016] VSCA 301, involving abuse perpetrated by a family friend and family member respectively, have also highlighted that consideration of 'good character' evidence has contributed to a non-insignificant reduction in an offender's sentence.

Sentencing remarks made about an offender's 'good character' in absence of knowing how much weight is attributed to it in reducing the overall sentence can also be extremely distressing to victim-survivors. As identified by victim-survivors and victim advocates, hearing the offender described in glowing terms as a 'good' person a 'great' father, or a 'valuable' community member can minimise the harm and be retraumatising for victim-survivors. Furthermore, it can signal that the offender's prior social standing is more important than the harm they inflicted, leading to feelings of invalidation and a loss of faith in the justice system.

This has been demonstrated locally in *DPP v Van De Zandt (No 3)* [2023] ACTSC 39 where historical abuse was perpetrated by a family member, the sentencing judge accepted that the offences may be regarded as uncharacteristic for the offender and 'good character' was considered as a mitigating factor in sentencing notwithstanding that the actual weight placed against the ultimate sentence is unknown.

Furthermore, in *DPP v Roberts* [2025] ACTSC 53 where historical sexual abuse was perpetrated in an institutional setting by a teacher against a student, the sentencing judge noted that information about the offender's 'otherwise good character' post his offending behaviour – that he had otherwise provided some value to the community, was nevertheless taken into account as a mitigating factor to a limited extent despite section 34A (b) being relevant to the facts of the case.

These outcomes demonstrate the need for further legislative clarity to restrict the use of good character evidence in sentencing for matters involving child sexual abuse.

4. Proportionality - Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The possible limitations on rights in criminal proceedings and the right to a fair trial are proportionate to the aim of addressing current discrepancies in sentencing of child sexual abuse matters, acknowledging the seriousness of all child sexual offences and prioritising the protection and well-being of victim-survivors.

On the face of it, the proposed amendment does not explicitly preclude 'good character' references from being tendered. Notwithstanding this, the amendment is clear that 'good character' evidence is wholly excluded as a mitigating factor for all child sexual offences. In practice, this means that while 'good character' references may be tendered, any reflections on issues traditionally relied up to assess character, (such as person's subjective qualities or an offender's standing in the community), would not be able to be considered by the Court to reduce the offender's sentence.

The amendment would still ensure that the offender is sentenced in accordance with relevant sentencing practices at the time of sentencing and does not prevent the courts' holistic analysis of each individual case and each offender's personal circumstances in accordance with sentencing principles. For example, the Court will maintain its ability to consider objective sentencing factors relevant to issues such as the offender's prospects of rehabilitation and risks of reoffending in balancing other sentencing purposes such as the need to punish, denounce and deter criminal behaviour. This could include evidence from family members or friends, or expert/independent assessments and evaluations that go to matters such as employment, place of residence and engagement with rehabilitation services.

Section 33 of the CSA sets out some objective sentencing considerations that a court may consider, this includes the financial circumstances of the offender, the degree of responsibility of the offender for the commission of the offence, whether the offender is voluntarily seeking treatment for any physical or mental condition and whether the offender has demonstrated remorse. Evidence which go to these sentencing factors may also be drawn from matters included in a pre-sentence report, an intensive correction order report or a drug and alcohol treatment order report.

Establish the FVSN scheme to enable police officers to issue short-term protection notices where immediately necessary.

The Bill introduces Part 2A of the FV Act to establish a police-issued Family Violence Safety Notice (FVSN) Scheme to replace the After-Hours Family Violence Order (AHFVO) Scheme. This allows for police to issue a FVSN, a short-term notice designed to provide immediate protection to persons at risk of family violence. The FVSN is to be issued by a senior police officer of or above the rank of Sergeant. The FVSN may include conditions reasonably necessary for the safety and protection of the protected person, while being the least restrictive of the respondent's rights. A FVSN is in force for 14 days or until it is revoked by the Court or superseded by a FVO made by the Court.

Amendments to introduce the FVSN Scheme are grouped into four themes for the purpose of this human rights analysis: the process of police investigating the matter to determine whether to apply for and issue a FVSN, the conditions which a FVSN

may include, the exercise of a power to detain in relation to a FVSN, and the offence of breaching a condition of a FVSN.

1. The nature of the right and the limitation (s 28 (2) (a) and (c))

Consideration of whether to apply for and issue a FVSN (Right to privacy – section 12 HR Act)

Section 12 of the HR Act provides the right to privacy, which protects individuals from unlawful or arbitrary interference with their privacy, family, home or correspondence. This includes protection of personal autonomy and private life and communication and informational privacy.

The right to privacy may be engaged and limited through the process of police investigating the circumstances to determine if there are grounds to apply for and issue a FVSN, and what conditions should be imposed. To adequately exercise these functions, police are likely to require information from the parties regarding their private life, family, home and communications. This is likely to include, but is not necessarily limited to, information such as where the parties reside, work and are likely to be, the parties' contact details, the history of their relationship and behaviours within the relationship, any previous family violence between the parties, any previous family or personal violence the respondent has inflicted upon other parties, any Court orders previously issued to the parties (including conditions they are currently obliged to comply with), the parties' personal property (owned individually or jointly), and any children or dependents the parties have and their welfare needs.

The applicant police officer and issuing police officer must also keep a written record of a range of issues at different stages of applying for and issuing a FVSN. The issuing police officer must keep a written record of the matters considered when issuing a FVSN and keep the record on police records (new s 13H (3) of the FV Act). This includes matters such as the views of the protected person and respondent in relation to issuing the FVSN, the protected person's views on the nature and seriousness of the respondent's conduct, the welfare of any affected child, any hardship caused to the respondent through the issuance of the FVSN, and any previous family or personal violence by the respondent against anyone. Additionally, if the applicant police officer decides not to apply for a FVSN or the issuing police officer decides not to issue a FVSN upon receiving an application, they must keep a written record of these respective decisions, including the names of the parties, the reasons for their decision and what action, if any, is to be taken in relation to the parties (new s 13F and s 13N of the FV Act). The recording of these matters may also engage and limit the right to privacy, as personal information is likely to be included.

Further, a copy of the FVSN must be given to the Magistrates Court and stored in the police record (new s 13M of the FV Act). The FVSN must include the name of the respondent and protected person and a brief statement of how each ground

regarding the issuance of the FVSN is satisfied. This will include personal information about the protected person and the respondent. The storage of this information is also likely to engage and limit the right to privacy.

Conditions of a FVSN (Right to protection of the family and children – section 11 HR Act; Right to freedom of movement – section 13 HR Act; Right to freedom of expression – section 16 HR Act)

Right to protection of the family and children – section 11 HR Act

Article 23 of the International Covenant on Civil and Political Rights (ICCPR) recognises that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family is also guaranteed, directly or indirectly, by article 17 of the ICCPR, which establishes a prohibition on arbitrary or unlawful interference with the family.¹¹ Section 11 of the HR Act gives express recognition to Article 23 of the ICCPR and provides that the family is the natural and basic group unit of society and is entitled to be protected by society.

The introduction of FVSNs may engage and limit this right through the imposition of conditions upon the respondent through the issuance of a FVSN. Under new Div 2A.4 of the FV Act, the conditions imposed may prohibit the respondent from, or impose conditions upon the respondent:

- Being on premises where a protected person lives, works, or is likely to be. This may limit their contact with their family members, including their children, if they are named as a protected person in the FVSN (new s 13Q (2) (a), (b), (c), of the FV Act).
- Being within a particular distance of the protected person or any other child where the issuing police officer is satisfied there is an unacceptable risk the child may be exposed to family violence (new s 13Q (e), (i) of the FV Act).
- Attempting to locate or locating a protected person or any other child where the issuing police officer is satisfied there is an unacceptable risk the child may be exposed to family violence (new s 13Q (f), (i) of the FV Act).
- Contacting a protected person or any other child where the issuing police officer is satisfied there is an unacceptable risk the child may be exposed to family violence (new s 13Q (g), (i) of the FV Act).

Right to freedom of movement – section 13 HR Act

Section 13 of the HR Act provides that everyone has the right to move freely with the ACT and requires that procedural barriers not be arbitrarily imposed on the free

¹¹ Human Rights Committee, *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 39th Session, 27 July 1990.

movement of people to and from or within public spaces. This also provides that everyone has the freedom to choose where they reside.

The introduction of FVSNs may engage and limit this right through the imposition of conditions upon the respondent through the issuance of a FVSN. Under new Div 2A.4 of the FV Act, the conditions may prohibit the respondent from, or impose conditions upon the respondent:

- Being on premises where a protected person lives, works, or is likely to be. This may include excluding the respondent from residing at a premises they share with the protected person (new s 13Q (2) (a), (b), (c), of the FV Act).
- Being in a particular place (new s 13Q (d) of the FV Act).
- Being within a particular distance of the protected person or any other child where the issuing police officer is satisfied there is an unacceptable risk the child may be exposed to family violence (new s 13Q (e), (i) of the FV Act).

Right to freedom of expression – section 16 HR Act

Section 16 of the HR Act provides the right to freedom of expression. This includes expression of every form and receipt of communications of every form of idea and opinion capable of transmission to others.

The introduction of FVSNs may engage and limit this right through the imposition of conditions upon the respondent through the issuance of a FVSN. Under new Div 2A.4 of the FV Act, the conditions may prohibit the respondent from, or impose conditions upon the respondent:

- Contacting a protected person or any other child where the issuing police officer is satisfied there is an unacceptable risk the child may be exposed to family violence (new s 13Q (g), (i) of the FV Act).
- Causing someone else to attempt to locate, locate or contact the protected person (new s 13Q (j) of the FV Act).

Exercise of power to detain in relation to a FVSN (Right to liberty and security of person – section 18 HR Act)

Section 18 of the HR Act provides everyone has the right to liberty and no one may be arbitrarily arrested or detained. Further, no one may be deprived of liberty, except on grounds and in accordance with procedures established by law. Arrest or detention may be 'arbitrary' if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances, or is not in accordance with due process. Initially lawful detention may also become arbitrary if it continues for an unreasonable time or in unjustified circumstances.

The right to liberty may be engaged and limited through police exercising their power to detain under new s 13C of the FV Act. If a police officer considers the grounds for issuing a FVSN have been satisfied and they intend to or have applied for a FVSN,

they may detain the person in certain circumstances. A person may be detained until the FVSN is issued or, if the application is refused, until the senior police officer notifies the police officer. However, the detention must be for no longer than four hours.

Section 18 of the HR Act also provides everyone has the right to security of the person. This protects individuals against the intentional infliction of bodily or mental injury.

This right to security may also be engaged and limited by the power of police to detain in relation to a FVSN, should this involve the use of force. Relevantly, a police officer must not, in the course of detaining a person, use more force or subject the person to greater indignity than necessary and reasonable to detain them or prevent their escape (new s 13C (4) of the FV Act). This still means force may be used in some circumstances where necessary and reasonable.

Offence for breaching a condition of a FVSN (Right to liberty and security of person – section 18 HR Act)

Section 18 of the HR Act provides everyone has the right to liberty and no one may be arbitrarily arrested or detained. Further, no one may be deprived of liberty, except on grounds and in accordance with procedures established by law. Arrest or detention may be ‘arbitrary’ if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances, or is not in accordance with due process. Initially lawful detention may also become arbitrary if it continues for an unreasonable time or in unjustified circumstances.

The Bill provides that it is an offence for a respondent who has been served with the FVSN to engage in conduct that contravenes a condition of the FVSN (new s 13ZC of the FV Act). The maximum penalty for breaching a condition of a FVSN is 200 penalty units, 2 years imprisonment, or both. The maximum penalty of 2 years imprisonment engages and limits the right to liberty, as a person sentenced to a term of imprisonment will be thus deprived of their liberty. The arrest and detention of a person for this offence will also limit the right to liberty.

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

The purpose of the FVSN Scheme is to provide police with an additional mechanism for immediate protection of persons experiencing or at risk of family violence, by issuing civil notices that impose conditions on a respondent’s behaviour towards an affected person.

Currently, the AHFVO scheme seeks to provide a mechanism for immediate protection to a person at risk of family violence (FV Act Part 7). This provides that a police officer may apply to a judicial officer for an AHFVO outside the business hours of the Magistrates Court. The judicial officer may make an AHFVO if satisfied there is a risk to an affected person of family violence, the AHFVO is immediately necessary to ensure their safety or prevent substantial damage to their property, and it is not

practicable or there are no grounds to arrest the respondent for a family violence offence. An AHFVO remains in force until the close of business on the second business day after the day the AHFVO is made, or until it is revoked or an interim or final family violence order is served against the respondent.

In consultation, stakeholders including ACT Policing raised concerns with the operation of the AHFVO scheme in practice. ACT Policing considered certain elements of the AHFVO scheme had reduced their effectiveness as an immediate response to family violence. This includes the short duration of AHFVOs, the restriction of AHFVOs to outside business hours, the limitation on the issuance of an AHFVO alongside the arrest of the respondent, and the additional barriers and practical limitations imposed by the requirement to apply to a judicial officer, noting the immediacy of the need for intervention. In their submission to JACS, the Domestic Violence Crisis Service also observed that in their experience, AHFVOs were not meeting the needs of people at risk of domestic and family violence, as they had operated in a “piecemeal” way and were “difficult to access and inconsistently utilised.”

To address these concerns, these amendments will revoke the AHFVO scheme and replace it with the FVSN scheme. This establishes an alternative mechanism for police to intervene in circumstances of family violence, which addresses some of the reported obstacles and shortcomings of the AHFVO scheme, to provide protected persons with immediate short-term protection through a civil order. A senior police officer may issue a FVSN upon receiving an application from another police officer, if satisfied there is a risk of family violence and the FVSN is immediately necessary for the affected person’s safety or to prevent substantial damage to their property. In deciding whether to apply for and issue a FVSN, both the applicant and issuing police officers must consider the objects of the FV Act, which are to prevent and reduce family violence, to ensure the safety and protection of people, including children, who fear, experience or witness family violence, and to encourage perpetrators to be accountable for their conduct.

To address some of the gaps identified in the AHFVO scheme, a FVSN may be issued at any time and is not limited to outside Court hours, given the potential urgency for intervention and the additional barriers a person experiencing or at risk of family violence may face in accessing the Court and applying for an FVO. The FVSN may be in force for up to 14 days, to provide time for a protected person to seek and access other support options in safety, including long-term protection through a Court ordered FVO if they should wish. Additionally, a FVSN may be issued even if the grounds for arrest have been met, unlike an AHFVO. This means a FVSN may be issued alongside the arrest of the respondent if the relevant threshold for arrest has been met and this is practicable. This provides immediate protection via a civil notice, which can operate in parallel, though separate to, the criminal process regarding arrest and charge. This is particularly important to provide protection where the respondent may be remanded, and may otherwise still be able to contact the affected person to coerce, control or intimidate them. This does not

alter the ACT's ongoing pro-arrest and pro-charge policy, meaning police will still be required to arrest and charge a respondent if they suspect on reasonable grounds that an offence has been committed.

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

The potential limitation on the rights to the protection of the family and children, freedom of movement, freedom of expression, privacy, and liberty are balanced and rationally connected to the purpose of the FVSN scheme to provide immediate protection to person experiencing or at risk of family violence.

Other than the ACT, all states and territories allow for police officers to issue short-term protection notices or orders where necessary to prevent or respond to family violence risk. Generally, these schemes have been supported by stakeholders as important mechanisms for police to respond to family violence which may not involve a criminal offence.¹² Police-issued notices can provide immediate protection for the protected person and enable police to intervene to prevent and respond to the respondent's use of family violence.¹³ Stakeholders in other jurisdictions also consider that police-issued notices can reduce the administrative burden and practical barriers associated with orders issued by a judicial officer outside court hours, to provide a more immediate response.¹⁴

In consultation on the Bill, key ACT stakeholders expressed full or qualified support for the introduction of FVSNs as a protective civil mechanism to enable police officers to intervene in family violence matters which may or may not involve criminal offending. Stakeholders considered 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, noting they can face significant obstacles in seeking and accessing protection.

There is some evidence that a judicial officer is better placed to issue immediate protection orders in family violence circumstances, including outside of court hours, and that police should only be able to issue protection notices where it is not reasonable or practicable for the matter to be considered by a judicial officer.¹⁵

¹² NSW Standing Committee on Social Issues, 'Domestic violence trends and issues in NSW' Report 46, August 2012, p. 246, [9.107]; Department of the Attorney General (WA), 'A Review of Part 2 Division 3A of the Restraining Orders Act 1997' (2008); Ellen Reeves, 'The potential introduction of police-issued family violence intervention order in Victoria, Australia: Considering the unintended consequences' *Current Issues in Criminal Justice* (2022) 34(2) 207-218, 211.

¹³ Ibid.

¹⁴ NSW Standing Committee on Social Issues, 'Domestic violence trends and issues in NSW' Report 46, August 2012, p. 236, [9.66]; Ellen Reeves, 'The potential introduction of police-issued family violence intervention order in Victoria, Australia: Considering the unintended consequences' *Current Issues in Criminal Justice* (2022) 34(2) 207-218, 211

¹⁵ Australian Law Reform Commission, NSW Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114, NSWLRC Report 128 (October 2010) [9.45].

However, as noted above, stakeholders have raised some concerns with operation of the ACT AHFVO Scheme which aligned with this model.

Consideration of whether to apply for and issue a FVSN (Right to privacy – section 12 HR Act)

To apply for and issue a FVSN, the applying and issuing police officers must be satisfied of a range of grounds set out at new s 13B of the FV Act. The applying and issuing police officers must also consider a range of matters as far as reasonably practicable in the circumstances, per new s 13D (2) and s 13H (2) of the FV Act. For example, police must consider, as far as reasonably practicable in the circumstances, the views of the affected person and respondent in relation to issuing the FVSN, the respondent's views of the respondent's conduct, any hardship that might be caused to the respondent through the issuance of the FVSN, and any previous family violence by the respondent, and any previous FVSN or FVO issued against the respondent. Police need only consider these matters as far as reasonably practicable in the circumstances, as in some cases the level of risk or urgent need for immediate intervention may limit the ability of police to reasonably consider these matters. This list is similar to the matters the Court must consider in making a FVO under s 14 of the FV Act.

To ensure police can be satisfied of these matters, they will ordinarily be required to undertake investigative activities in relation to the parties, their private and family lives, and their communications. As noted above, such activities may engage and limit the right to privacy (s 12 HR Act).

This limitation is necessary and rationally connected to the purpose of the FVSN Scheme, to ensure police are properly informed of the circumstances of risk and family violence, the views of the parties, and the potential impact of the FVSN on the parties, as required to be satisfied it is necessary to issue a FVSN and the conditions included are proportionate and responsive to the particularities of the circumstances. This is critical for the FVSN to be an effective protection mechanism which can adequately respond to the circumstances of family violence.

Ensuring police can access necessary information in relation to these matters is also important to limit the risk of misidentification of the victim-survivor as the primary aggressor or the potential for unnecessary and overly restrictive conditions being imposed upon a respondent, should police not be sufficiently informed of the circumstances and history of the parties, the relationship and the family violence occurring. For example, the requirement to consider the views of both the affected person and the respondent about the FVSN also provides an opportunity to proactively address any risk of misidentification, so police are appropriately engaging with both parties and assessing the nature and extent of family violence risk.

The limitation of the right to privacy created by keeping information in relation to the parties on the police record (including the matters the issuing police officer considered in issuing the FVSN, the FVSN itself, and records if the applicant police

officer or issuing police officer refuse to apply for or issue a FVSN, respectively), as well as sharing a copy of the FVSN with the Magistrates Court, is also rationally connected to the purpose of the FVSN Scheme (new ss 13F, 13H (3), 13M, 13N of the FV Act). It is necessary for the accountability of police and integrity of the FVSN that accurate and appropriately detailed information is kept on the police record. This is also important to inform any further investigation into the circumstances or any response to an alleged breach of the FVSN conditions. Keeping a record of the applicant and issuing police officers' decisions not to apply for or issue a FVSN, respectively, is also important for the accountability of police and to inform any future policing interaction with and response to the parties, should further family violence occur. Sharing a copy of the FVSN with the Magistrates Court is also necessary to ensure that if the protected person applies to the Court for a FVO, the Court is already aware of the existence of the FVSN. Additionally, the Court must be aware of the existence of the FVSN in case one of the parties applies to amend or revoke the FVSN.

Conditions of a FVSN (Right to protection of the family and children – section 11 HR Act; Right to freedom of movement – section 13 HR Act; Right to freedom of expression – section 16 HR Act)

The objects of the FVSN scheme are to provide an immediate response to prevent further family violence by imposing short-term conditions upon a respondent. These conditions are necessary to protect the protected person, prevent further family violence, and enable them to access support and safety options.

The issuing police officer may include the conditions the issuing officer considers necessary, giving paramount consideration to the safety and protection of the affected person while ensuring the conditions are the least restrictive of the respondent's rights and liberties as possible (while still achieving the objects of the FV Act) (new ss 13O, 13P, 13Q (1) of the FV Act).

Prohibiting the respondent from contacting the protected person, being in a particular location or a location where the protected person is or is likely to be (including excluding the respondent from premises), or from locating or attempting to locate the protected person are important measures to achieve this purpose. These restrictions are preventative measures designed to reduce the likelihood of further harm, intimidation, or coercion. This provides an opportunity, as well as physical and psychological space, for the protected person to seek safety and support options.

A condition limiting the respondent's ability to be in a particular location, such as a premises where the protected person lives, works or is likely to be, or within a particular distance of the protected person may engage and limit their right to protection of the family and children (s 11 of the HR Act) and their right to freedom of movement (s 13 of the HR Act). This also applies to conditions prohibiting the respondent from locating or attempting to locate a protected person. However, such conditions are important to provide physical distance between the respondent and

the protected person and mitigate further risk of harm and intimidation. Physical proximity can be a significant factor in escalating or enabling acts of family violence. If the respondent and protected person live together, it may also be necessary to impose an exclusion condition to require the respondent to leave that premises, for the protected person's safety. This is particularly important if the family violence is occurring in the home, to prevent the recurrence of family violence and ensure the home is safe for the protected person.

Similarly, a condition limiting the respondent's ability to contact the protected person may limit their right to protection of the family and children (s 11 of the HR Act) and their right to freedom of expression (s 16 of the HR Act). These conditions are nevertheless necessary to reduce the potential for further intimidation, coercive control, and technology facilitated abuse. This is particularly critical in circumstances where the respondent may seek to intimidate the protected person and coerce them into applying to amend or revoke the FVSN to reduce or remove the conditions upon the respondent.

A condition limiting the respondent's ability to cause someone else to attempt to locate, locate or contact the protected person may also limit their right to protection of the family and children (s 11 of the HR Act) and their right to freedom of expression (s 16 of the HR Act). Respondents may also induce or encourage others to locate or contact the protected person on their behalf to threaten, intimidate or coerce them. This can continue patterns of abuse and coercive control within the relationship, and may further harm the protected person's physical, psychological and emotional safety and wellbeing. It is therefore necessary to provide a condition may be issued to prohibit the respondent causing someone else to do this.

Extending these conditions to apply in relation to a child may limit the respondent's right to protection of the family and children (s 11 of the HR Act). This is necessary to ensure a child affected by family violence can also access similar protections and support without further interference. This recognises the child may need protection from violence in their own right. Recognising this, a child may also be listed separately as a protected person in a FVSN. While this may limit the right to protection of family by potentially limiting communication between a parent and their child, this arguably promotes the rights of the child by providing them with protection from exposure to family violence.

These conditions, and the corresponding limitations they may have for the respondents rights to protection of the family and children, freedom of expression, and freedom of movement are therefore rationally connected to the purpose of the FVSN scheme by enabling protected person to be able to seek safety and support options, and limiting the opportunity for the respondent to engage in further violence. In consultation, the majority of stakeholders, including ACT Policing, Legal Aid ACT, have supported the conditions able to be included in a FVSN aligning with the conditions able to be imposed on an FVO. Other jurisdictions similarly provide the

conditions of a police-issued notice or order may include the conditions a Court is able to make in a family violence order.

Exercise of power to detain in relation to a FVSN (Right to liberty and security of person – section 18 HR Act)

The provision that police may detain a person in certain circumstances where they intend to or have applied for a FVSN, and the corresponding limitation this may create to the right to liberty and security of the person (s 18 of the HR Act), is also rationally connected to the purpose of the FVSN Scheme as elucidated above.

A police officer may detain a person if they consider the grounds to issue a FVSN have been satisfied and it is necessary to detain the person to ensure the FVSN, if issued, may be immediately served upon the person, or for the safety of an affected person or someone else (new s 13C (1), (2) of the FV Act).

This power is critical to ensure a FVSN can be applied for, issued and served and manage risks which may arise prior to the FVSN being effectively served. For example, should the respondent abscond prior to the FVSN being served, police will need to find and serve the respondent separately. The FVSN will not be in force until the respondent is served, a delay which will leave the affected person without protection and potentially at greater risk, noting police intervention can be a circumstance that escalates the risk of violence.¹⁶ This issue has arisen in other jurisdictions, where stakeholders have spoken to the necessity of police being able to detain the respondent to enable service of such notices.¹⁷

Given police intervention can escalate risk of violence, this power is also necessary to ensure police can respond to a heightened risk to the safety of the affected person or another party prior to the FVSN being served. This includes to ensure police can safely investigate the circumstances forming the grounds for the FVSN application and issuance, in circumstances where the respondent is creating a risk to safety.

To ensure police can effectively exercise this power while not being overly restrictive or exercising unnecessary force, a police officer must not use more force or subject the person to greater indignity than is necessary or reasonable to detain the person or prevent their escape (new s 13C (4) of the FV Act). While this recognises that use of force may be required, thereby limiting the person's right to security of the person, this is strictly limited to circumstances where it is reasonable and necessary.

Therefore, providing police with a power to detain the respondent in certain circumstances, and the limitation this imposes on the right to liberty and security, is connected to the purpose of the FVSN Scheme to ensure the FVSN can be served

¹⁶ Commonwealth of Australia, Attorney-General's Department (2024), *National Principles to Address Coercive Control in Family and Domestic Violence* p.30.

¹⁷ NSW Standing Committee on Social Issues, 'Domestic violence trends and issues in NSW' Report 46, August 2012, p. 239-242.

in a timely way and manage risks to the affected person prior to the FVSN coming into force.

Offence for breaching a condition of a FVSN (Right to liberty and security of person – section 18 HR Act)

The offence for engaging in conduct that contravenes a condition of a FVSN and the maximum penalty of 2 years imprisonment, 200 penalty units or both under new s 13ZC of the FV Act may limit the right to liberty (s 18 of the HR Act) as discussed above. This limitation is rationally connected to the purpose of providing immediate protection to the protected person and preventing the occurrence of family violence.

This to ensure the FVSN is enforceable and the consequences for contravening a condition of a FVSN are sufficient to have a deterrent effect on respondents. The maximum penalty must also be of sufficient weight to reflect the gravity and seriousness of the conduct, and the risk it poses to the protected person's safety.

Failure to provide a proportionate penalty may result in respondents readily breaching the conditions of the FVSN and facing no penalty for these actions. This undermines the effectiveness of the FVSN to protect persons experiencing or at risk of family violence and ensure respondents are accountable for family violence. Therefore, the limitation on the right to liberty created by the offence and penalty for breaching a condition of a FVSN is rationally connected to the purpose of the FVSN Scheme.

4. Proportionality - Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

These possible limitations on the identified rights are proportionate to the purpose of protecting persons at risk of family violence and are the least restrictive means to achieve this purpose.

Overarching safeguards in relation to FVSNs

There are limitations to when a FVSN may be applied for and issued, to ensure the restrictions to the respondent's rights to protection of family and children, privacy, freedom of expression, freedom of movement, and liberty and security of the person are balanced and proportionate. This ensures the FVSN Scheme is targeted and framed appropriately to capture circumstances of family violence risk requiring immediate intervention.

A FVSN may only be issued against an adult, meaning a person over the age of 18 years old (new s 13B (c) of the FV Act).¹⁸ This recognises that children and young people are uniquely vulnerable and an intervention such as the issuance of a FVSN is not considered an appropriate mechanism to respond to a young person's use of family violence. This is particularly important given young people using family

¹⁸ *Legislation Act 2001* Dictionary.

violence in the home often have complex unmet needs and may have been exposed to family violence themselves as a victim-survivor.¹⁹ Additionally, recent research indicates that young people commonly do not understand such orders or notices and therefore find it difficult to comply with them.²⁰ Narrowing the application of the FVSN Scheme to exclude children from being named as a respondent safeguards their rights and ensure the FVSN Scheme is proportionate and balanced to the objective of providing immediate protection to victim-survivors without unduly or unjustifiably limiting the rights of others.

The Bill also prohibits the issuance of mutual or cross FVSNs (new s 13B (d) of the FV Act). This reduces the risk of the victim-survivor being issued a FVSN in circumstances where police may be unable to identify the primary aggressor. The issuance of a FVSN in such circumstances would present an unjustified limitation with the victim-survivor's rights to privacy, as well as the rights to protection of the family and children, freedom of movement and freedom of expression subject to the conditions included, as the limitation would not be connected with the purpose of providing immediate protection to the person experiencing or at risk of family violence or preventing family violence. In other jurisdictions, the issuance of mutual FVSNs can be used as a mechanism for systems abuse, imposing obligations upon the person experiencing or at risk of family violence and exposing them to potential criminal charges and penalties should they breach these obligations.²¹ Stakeholders have reported that the primary aggressor can manipulate such conditions to coerce, control or intimidate the victim-survivor into breaching these conditions.²² This prohibition reduces the risks of misidentification for victim-survivors. In circumstances where police cannot identify the primary aggressor or are concerned of mutual violence, it is likely preferable for a Court to consider these matters, given the greater level of oversight for these decisions. This safeguard reduces the risk of unnecessary or unjustified limitations being imposed upon the victim-survivor's rights. This ensures the FVSN Scheme is targeted and of an appropriate scope to restrict unreasonable limitations imposed upon rights.

The Bill also clarifies the relationship between the conditions of a FVSN and the conditions of court orders to ensure the respondent is not subject to multiple, inconsistent conditions, which could impact their right to liberty if they are held to have contravened a condition. This also ensures the respondent and protected

¹⁹ Victoria Legal Aid, 'Feeling support, not stuck: Rethinking intervention orders against children and teenagers' (2025); Kate Fitz-Gibbon, et al [Adolescent family violence in Australia: A national study of prevalence, history of childhood victimisation and impacts](#) (Research report, 15/2022). ANROWS.

²⁰ Ibid.

²¹ Peta Malins and Lauren Caulfield, *Harm in the Name of Safety: Victorian Family Violence Workers' Experiences of Family Violence Policing*, Beyond Survival Project Report, Flat Out Inc (2025) p. 30; Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response: Final Report Volume 1*, ALRC Report 114, NSWLRC Report 128, (2010), p. 877-880.

²² Ellen Reeves, 'Family Violence, Protection Orders and Systems Abuse: Views of Legal Practitioners,' *Current Issues in Criminal Justice* 32(1): 1-20, 4-6.

person have clarity regarding the respondent's obligations and the protection afforded to the protected person.

A FVSN cannot be issued if it would be inconsistent with an existing court order in force in the ACT, except a bail order (new s 13B (e) of the FV Act). If a condition in a FVSN is inconsistent with a court order in force in the ACT (other than a bail order), the FVSN continues in force by the court order prevails to the extent of the inconsistency (new s 13S of the FV Act). This limits the potential that the respondent could be subject to inconsistent obligations under multiple orders, which risks them unintentionally breaching the relevant condition, and therefore incurring the associated penalty. This would unjustifiably limit their right to liberty.

Conditions under bail undertakings are differentiated from conditions under all Court orders given the different sources of the Court's jurisdiction in relation to these matters. The Territory Court's jurisdiction to impose bail conditions solely derives from the *Bail Act 1992*. This means the Bill can alter the nature and scope of these powers, and the relationship of bail conditions granted under these powers to other legally imposed conditions, without interfering with the independence of the Court (as protected under the Kable principle established by the High Court in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51).

If a FVSN is issued against a respondent who is also subject to bail conditions, to the extent of any inconsistency between the bail condition and the FVSN condition, the FVSN condition prevails (new s 26A of the *Bail Act 1992*). The respondent will not be held to have contravened a bail condition where it was inconsistent with a FVSN condition, such that they could not comply with both (new s 26A of the *Bail Act 1992*). A FVSN condition prevails over a bail condition to the extent of any inconsistency to ensure police are empowered to effectively and immediately respond to family violence as they consider necessary without being constrained by an inconsistent condition. There is a risk that without the FVSN prevailing, there may be circumstances where the bail condition may inadvertently heighten the risk the protected person is exposed to, such as a residence condition requiring the respondent reside at their shared address. This therefore promotes the rights of the protected person to security (s 18 HR Act).

However, if a person is subject to a FVSN and the court or authorised officer imposes a bail condition which would be inconsistent with the FVSN, they may state that the bail condition is to displace the FVSN condition to the extent of the inconsistency (new s 26B of the *Bail Act 1992*). In imposing such a condition, the court or authorised officer must be satisfied that the proposed bail condition would better protect the safety or welfare of a protected person. In such circumstances, the respondent's failure to comply with the FVSN will not be taken to be a contravention of the FVSN, if such conduct was necessary to comply with the bail condition (new s 26B (2) (b) of the *Bail Act 1992* and new s 13ZC (2) of the FV Act). This preserves the decision-making authority of the court or authorised officer in imposing bail conditions following the issuance of a FVSN, provides clarity regarding the

respondent's obligations, and ensures any condition imposed will not impair the protected person's safety and wellbeing.

Consideration of whether to apply for and issue a FVSN (Right to privacy – section 12 HR Act)

The consideration of police about whether to apply for and issue a FVSN may limit the respondent's right to privacy (s 12 of the HR Act). There are several safeguards to ensure the limitation to the right to privacy is justified, proportionate and not arbitrary.

A FVSN may only be applied for and issued in limited circumstances. The applying and issuing police officers must be satisfied there is a risk to an affected person of family violence by the respondent, and the FVSN is immediately necessary to ensure the safety of the affected person from the violence, or to prevent substantial damage to the affected person's property (new s 13B (a), (b) of the FV Act). This is a high threshold, which requires there to be both a level of risk as well as a need for immediate intervention. This ensures the right to privacy will only be engaged and limited in these specific circumstances. This ensures the issuance of the FVSN is proportionate to the level of risk and the protection needed.

Additionally, while any police officer may make an application for a FVSN to be issued, only a senior police officer of the rank of Sergeant or above may issue a FVSN (new ss 13D (1), 13H (1) of the FV Act). Both the applying officer and issuing officer must be satisfied these thresholds are made out, providing two levels of decision-making to embed necessary oversight. This provides greater oversight and checks over the issuing of the FVSN, to ensure this decision is made by an experienced officer (new ss 13D and 13H of the FV Act).

These matters must be recorded in the application for the FVSN and the written record of the senior police officer issuing the FVSN, as far as is reasonably practicable in the circumstances (new ss 13E (2), 13H (3) of the FV Act). Additionally, if the applicant police officer or issuing police officer decide not to apply for or issue a FVSN, respectively, they must also keep a written record of certain matters, including the parties' names, in the police record (new ss 13F (2), 13N of the FV Act). The recording of these matters and storage on the police record may engage and limit the respondent's rights to privacy. A copy of the FVSN is also kept on the police record and shared with the Magistrates Court, which may limit the right to privacy (new s 13M of the FV Act). However, there are a range of protections to ensure information collected by ACT Policing and shared with the Magistrates Court is stored securely. ACT Policing stores information in accordance with the Australian Federal Police (AFP) Privacy Policy.²³ This protects against the misuse and loss of personal information, as well as unauthorised access, use and disclosure, and

²³ *Australian Federal Police Privacy Policy* (April 2025) <https://www.afp.gov.au/sites/default/files/2025-04/AFPPrivacyPolicy.pdf>.

ensures personal information collected by ACT Policing is only used and disclosed for authorised purposes. The ACT Magistrates Court stores and manages personal information in accordance with the Justice and Community Safety Directorate Privacy Policy, to ensure information is held safely.²⁴ As a public sector agency, the ACT Magistrates Court must also comply with the Territory Privacy Principles under the *Information Privacy Act 2014*.²⁵ This provides a safeguard to the limitation of the right to privacy and ensures the limitation is reasonable and proportionate.

Conditions of a FVSN (Right to protection of the family and children – section 11 HR Act; Right to freedom of movement – section 13 HR Act; Right to freedom of expression – section 16 HR Act)

The Bill provides further safeguards in relation to the conditions which may be included in a FVSN to ensure the limitations on the respondent's right to protection of the family and children (s 11 HR Act), right to freedom of movement (s 13 HR Act) and right to freedom of expression (s 16 HR Act) are proportionate to the objective of ensuring the protected person can access safety and protection.

The safeguards discussed above in relation to when a FVSN can be applied for and issued also apply here. Given a FVSN can only be applied for and issued in limited circumstances, conditions of a FVSN can also only be imposed in limited circumstances where these thresholds discussed above have been satisfied. The ensures the limitations that these conditions may impose upon the respondent's right to protection of the family and children (s 11 HR Act), right to freedom of movement (s 13 HR Act) and right to freedom of expression (s 16 HR Act) are reasonably justified and proportionate.

Additional safeguards also apply in relation to the inclusion of conditions in a FVSN. In considering the conditions to include in a FVSN, the issuing officer must ensure the conditions are the least restrictive of the respondent's personal rights and liberties as possible, while still giving paramount consideration to the safety and protection of the affected person (new ss 13O, 13P, 13Q of the FV Act). This aligns with the principles the Court must have regard to in deciding conditions to be included in a FVO under s 36 and s 37 of the FV Act.

Additionally, the issuing police officer must consider further matters in deciding whether to include an exclusion condition, similar to the matters the Court must consider when deciding whether to include an exclusion condition in a FVO under s 38 of the FV Act (new s 13R of the FV Act). This includes the needs of the protected person, any disability of the protected person, and the accommodation needs of, and alternative accommodation options available to the respondent, protected person and any child, as well as the length of time for these parties to find alternative

²⁴ ACT Government, *Justice and Community Safety Directorate, Privacy Policy* (30 November 2022), https://www.act.gov.au/__data/assets/pdf_file/0010/2572282/Privacy-policy,-Justice-and-Community-Safety-Directorate.pdf.

²⁵ *Information Privacy Act 2014* s 9(g).

accommodation. This recognises the additional hardship and restriction to the respondent's rights which may be imposed by such a condition, and ensures these matters are appropriately considered and balanced so the inclusion of such a condition is reasonable and justified.

The relatively short duration of a FVSN of up to 14 days from the date of service, or until the FVSN is revoked by a Court, or a final or interim order is made and served on the respondent, also limits the long-term impact such conditions may have on the respondent's rights to protection of family and children, privacy, freedom of expression and freedom of movement (new s 13L of the FV Act). This is to ensure the protected person has time to access supports, and potentially make an application to the Court for a FVO, while limiting the long-term impacts upon the respondent.

Application to the Court to amend or revoke the FVSN

The provision that the respondent, protected person, or a senior police officer may also apply to the Court to amend or revoke the FVSN provides an important safeguard to the limitations that the conditions of a FVSN may impose upon the respondent's rights to the protection of family and children, privacy, freedom of expression and freedom of movement. This provides for judicial oversight of the FVSN, and ensures parties have an avenue to seek review of the FVSN prior to its expiration. This ensures disproportionate or unjustified conditions can be reviewed and amended or revoked if necessary.

The Court may amend the FVSN by adding, amending or removing conditions in the FVSN or reducing the period the FVSN is in force (new s 13W (a) of the FV Act). However, the Court may not extend the FVSN (new s 13W (b) of the FV Act). Rather, protection for a period beyond 14 days is appropriately a matter for the Court to determine through the making of a FVO, given a FVSN is intended to provide short-term protection in response to immediate risk.

This ensures the respondent, protected person and senior police officer can apply to the Court and can be heard as to why the FVSN's conditions should be amended or revoked (new s 13Y of the FV Act). This is particularly important in circumstances where the FVSN may have been issued to a misidentified victim-survivor, to ensure there is a process for the Court to review and amend the conditions imposed, as appropriate. As noted, this provides a process to review and remedy unjustified restrictions to the respondent's rights to the protection of family and children, privacy, freedom of expression and freedom of movement imposed by the FVSN.

This also enables the protected person to apply to seek that the conditions of the FVSN be amended to increase the protection afforded to them if the conditions initially imposed have been sufficient to provide safety. These are appropriate matters for the Court to consider, given the Court has greater oversight and ability to

consider and balance complex evidence. This promotes the protected persons rights to security of the person (s 18 HR Act).

Upon receiving an application, the registrar must set a return date and serve a copy of the application and timing notice upon the other parties, to ensure they are informed and can attend the hearing to make submissions in relation to the application (new s 13Y (3) of the FV Act). If the Court amends the FVSN, the registrar must serve a copy on the respondent and give a copy to listed parties, including the protected person, and if the Court revokes the FVSN the registrar must notify the parties (new ss 13ZA and 13ZB (2) of the FV Act). This ensures parties are informed of the status of the FVSN, to reduce the risk of inadvertent breaches and ensure both parties are aware of the respondent's obligations. In making its decision, the Court must be satisfied that the amendment or revocation of the FVSN would not adversely affect the protected person's safety (new ss 13Z (a) and 13ZB (1) (a) of the FV Act). This aligns with the purpose of the FVSN Scheme to provide immediate protection to the person experiencing or at risk of family violence and is necessary to ensure the amendment or revocation of the FVSN would not inadvertently harm the protected person. As noted, this promotes the protected person's rights to security of the person (s 18 HR Act) and ensures any limitations to the respondent's rights to the protection of family and children, privacy, freedom of expression and freedom of movement are reasonable and proportionate.

Exercise of power to detain in relation to a FVSN (Right to liberty and security of person – section 18 HR Act)

The provision that a police officer may detain a person if they have or intend to apply for a FVSN incorporates a range of safeguards to ensure the limitation on the right to liberty (s 18 HR Act) is proportionate to the objective of providing immediate protection for persons experiencing or at risk of family violence.

A police officer may only detain a person in limited circumstances. They must consider the grounds to issue a FVSN have been satisfied (new s 13C (1) (a) of the FV Act). As discussed above, these grounds are specific to ensuring there is a risk of family violence and the FVSN is immediately necessary (new s 13B of the FV Act). Additionally, the police officer must also be satisfied that detaining the person is necessary to ensure that the FVSN, if issued, may be immediately served on the person, or to ensure the safety of an affected person or someone else. Furthermore, detention must be the least restrictive option reasonably available (new s 13C (1) (c) of the FV Act). This means a police officer may not detain someone merely for the purpose of applying for and serving a FVSN if there is another method reasonably available, there is no risk the respondent will abscond, and detention is not necessary for safety. Additionally, the period of detention is limited and a person must not be detained for more than four hours, which ensures police have enough time to undertake the activities necessary to apply for, issue and serve the FVSN without being overly restrictive of the respondent's right to liberty (new s 13C (3) of the FV Act). These provisions ensure the power to detain is strictly limited, as

necessary to ensure the FVSN can be served effectively and to manage risks to safety.

Furthermore, a police officer must not use more force or subject a person to greater indignity than is necessary and reasonable to detain a person and prevent their escape (new s 13C (4) of the FV Act). This ensures any limitation to the person's right to security incurred through the use of force in the course of detaining them is limited to being reasonable and necessary. This aligns with s 221 (1) of the Crimes Act in relation to the use of force in making arrest.

These safeguards ensure any limitations to the right to liberty and security are proportionate and balanced to the objective of the FVSN Scheme to provide immediate protection to person experiencing or at risk of family violence. This is the least restrictive means reasonably available to achieve the purpose of the FVSN Scheme, as any further restrictions to this power to detain create significant risks to the ability of police to serve the FVSN. As noted above, this may create substantial risks for the affected person, given the FVSN does not enter into force until it has been served.

This does not limit police from using their existing powers to detain or arrest someone under the *Crimes Act 1900* if the relevant thresholds are satisfied, being that police suspect on reasonable grounds that an offence has been committed.

Offence for breaching a condition of a FVSN (Right to liberty and security of person – section 18 HR Act)

The offence for contravening a FVSN, and the maximum penalty of 200 penalty units, 2 years imprisonment, or both under new s 13ZC of the FV Act limits the right to liberty (s 18 HR Act) as discussed above.

This limitation is proportionate and reasonably justified. This penalty aligns with the maximum penalties of similar offences, which align in terms of process and seriousness. This includes the offence of failing to answer bail pursuant to s 49 of the *Bail Act 1992*, which applies to breaches of bail orders made by authorised police officers, and other offences that involve a complainant, such as the non-aggravated offence of common assault at s 26 of the Crimes Act. The penalty also aligns with the first-tier maximum penalty of 2 years imprisonment for breaching a FVO or equivalent order in most other jurisdictions, excepting Tasmania.

This penalty is also lower than the penalty for breaching a condition of a FVO, being 500 penalty units, 5 years imprisonment, or both under s 43 of the FV Act. This is due to the comparatively lower level of oversight and checks and balances provided in relation to a FVSN, and the need for the penalty to reflect this.

There are also safeguards to the limitation upon the respondent's right to liberty created through this offence. For the offence to apply, the respondent must have been served with the FVSN in accordance with the Bill (new s 13ZC (1) (b) of the FV

Act). A FVSN must be served personally upon the respondent (new s 13T (1) of the FV Act). Personal service may be via electronic communication if the respondent consents (new s 13T (2) of the FV Act). Noting that the effecting of electronic service may be more difficult to prove, if a FVSN is served electronically the serving police officer must make a written record of the respondent's agreement to electronic service, the form of electronic communication used, and how the FVSN was served via electronic communication (new s 13T (3) of the FV Act).

A copy of the FVSN must also be given to the protected person and other identified parties (new s 13T (4) of the FV Act). The serving police officer must, as far as reasonably practicable in the circumstances, personally explain a range of matters to the respondent and protected person, in language likely to be readily understood by them (new s 13U of the FV Act). This includes the purpose, conditions, effect and duration of the FVSN, the consequences of contravening the FVSN, and how the parties may apply to the Magistrates Court to have the FVSN amended or revoked (new s 13U of the FV Act). Police must also explain to the protected person how they may apply to the Magistrates Court for a FVO (new s 13U (d) of the FV Act). The requirements for the service and explanation of the FVSN supports the parties to be informed of the effects of the FVSN and the legal obligations of the respondent while the FVSN is in force, including what may constitute a breach. This provides for due process and reduces the risk of unintentional breaches of the FVSN, as a safeguard to the limitation of the right to liberty. This also provides the protected person with greater certainty about their protection over this period.

There are also protections to clarify that the offence provision does not apply, meaning a respondent will not be held to have committed the offence, if the conduct contravening the FVSN was necessary on reasonable grounds to avoid breaching a condition of the person's bail and the bail condition was expressed to prevail over a condition of the FVSN (new s 13ZC (2) of the FV Act). Generally, if a FVSN is issued against a respondent who is also subject to bail conditions, the FVSN condition prevails to the extent of any inconsistency between the bail condition and the FVSN condition (new s 26A of the *Bail Act 1992*). This means the respondent will not be held to have breached their bail condition if their failure to comply with the bail condition is needed to comply with the FVSN condition (new s 26A of the *Bail Act 1992*).

However, if a FVSN is in force against a person and a court or authorised officer imposes an inconsistent bail condition upon the respondent, the court or authorised officer may state that the bail condition is intended to displace the condition in the FVSN to the extent of any inconsistency (new s 26B of the *Bail Act 1992* and new s 13ZC(2) of the FV Act). They must be satisfied this condition would better protect the safety and welfare of the protected person (new s 26B (1) (c) of the *Bail Act 1992*). If the court or authorised officer has made such a statement, the respondent's failure to comply with the FVSN to the extent needed to comply with the bail condition is not taken to be a contravention of the FVSN (new s 26B (2) of the *Bail Act 1992* and new

s 13ZC (2) of the FV Act). This ensures the respondent will not be held to have breached a condition of a FVSN or their bail in circumstances where the conditions are inconsistent and it is not possible to comply with both. This also provide clarity for the respondent and other parties about the respondent's obligations and conditions imposed upon them. This is important to safeguard the right to liberty and ensure limitations to the right to liberty are not arbitrary or unjust.

FAMILY, PERSONAL AND SEXUAL VIOLENCE LEGISLATION AMENDMENT BILL
2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Family, Personal and Sexual Violence Legislation Amendment Bill 2025**. 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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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Chapter 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of this Act is the Family, Personal and Sexual Violence Legislation Amendment Bill 2025.

Clause 2 Commencement

This clause provides that the Act will largely commence on the 7th day after its notification day.

This clause provides that provisions relating to the establishment of the Family Violence Safety Notices scheme (being provisions in Chapter 3) will commence 6 months after the Act's notification day.

Clause 3 Legislation amended

This clause lists the legislation amended by this Bill. This Bill will amend the

- *Crimes (Sentencing) Act 2005* (CSA)
- *Evidence (Miscellaneous Provisions) Act 1991* (EMPA)
- *Family Violence Act 2016* (FV Act)
- *Personal Violence Act 2016* (PV Act)
- *Bail Act 1992*
- *Children and Young People Act 2008*
- *Crimes Act 1900*
- *Crimes (Restorative Justice) Act 2004*
- *Criminal Code 2002*
- *Dangerous Substances Act 2004*
- *Firearms Act 1996*
- *Prohibited Weapons Regulation 1997*
- *Residential Tenancies Act 1997*
- *Victims of Crime (Financial Assistance) Act 2016*
- *Working with Vulnerable People (Background Checking) Act 2011*
- *Court Procedures Act 2004*
- *Evidence Act 2011*

Chapter 2 General amendments

Part 2.1 Crimes (Sentencing) Act 2005

Clause 4 Sentencing – sexual offences against children **Section 34A (b)**

This clause omits the words “to the extent that the offender’s good character enabled the offender to commit the offence” from current section 34A (b).

Currently, ‘good character’ evidence must not mitigate the sentence of a child sexual abuse offender only in circumstances where the offender’s ‘good character’ enabled the offender to commit the offence. This was introduced to address child sexual abuse which occurred through institutional settings such as a school, church or sporting club.

This amendment clarifies that all child sexual abuse offenders regardless of their relationship status in relation to the victim-survivor, are treated equally by prohibiting any consideration of ‘good character’ during the sentencing for all child sexual abuse matters. This will mean that the current provision at section 34A(b) will be applied more broadly to all other types of relationships, for example, for offences committed by family members or family friends.

Furthermore, the amendment will clarify that ‘good character’ evidence is wholly excluded as a mitigating factor for all child sexual offences, responding to recent ACT Supreme Court sentencing remarks in relation to *DPP v Rigo* [2025] ACTSC 220 and *DPP v Roberts* [2025] ACTSC 53 to the contrary.

On the face of it, the proposed amendment does not explicitly preclude ‘good character’ references from being tendered. Notwithstanding this, the amendment is clear that ‘good character’ evidence is wholly excluded as a mitigating factor for all child sexual offences. In practice, this means that while ‘good character’ references may be tendered, any reflections on a person’s subjective qualities and character (e.g. statements such as ‘he is a good bloke’), or an offender’s standing in the community, would not be able to be considered by the Court to reduce the offender’s sentence.

The amendment would still ensure that the offender is sentenced in accordance with relevant sentencing practices at the time of sentencing and is not attempting to prevent the courts’ holistic analysis of each individual case and each offender’s personal circumstances in accordance with sentencing principles. For example, the Court will maintain its ability to consider objective sentencing factors relevant to issues such as the offender’s prospects of rehabilitation and risks of reoffending in balancing other sentencing purposes such as the need to punish, denounce and deter criminal behaviour. This could include evidence from family members or friends, or expert/independent assessments and evaluations that go to matters such as employment, place of residence and engagement with rehabilitation services.

The amendment is further discussed earlier in this Explanatory Statement in justifying the limitations on the right to a fair trial (s 21, HR Act) and rights in criminal proceedings (s 22, HR Act).

Clause 5 Section 34A (b), examples, except note

This clause omits the examples in section 34A (b) as they are no longer relevant.

The examples previously provided to assist in explaining when the offender's 'good character' may have "enabled [them] to commit the [child sex offences]".

Part 2.2 Evidence (Miscellaneous Provisions) Act 1991

Clause 6 Section 37 heading

This clause substitutes the heading of section 37 with 'Meaning of *proceeding* for an offence—pt 4.1' as a technical amendment to reflect that the meaning of *proceeding* in this part only relates to a proceeding for an offence.

**Clause 7 Meaning of *family violence offence*—ch 4
Section 38A**

This clause omits section 38A as a technical amendment. Section 38A previously referred to the dictionary for a meaning of *family violence offence* in Chapter 4 only.

It is consequential to the amendment to clause 22 which inserts a new definition of family violence offence in the dictionary to provide that the meaning of *family violence offence* for the Act is contained in the dictionary of the [Family Violence Act 2016](#).

**Clause 8 Meaning of *sexual offence proceeding*—ch 4
Section 41, definition of *sexual offence proceeding*, paragraph (a)**

This clause substitutes paragraph (a) of section 41 so that sexual offence proceeding in chapter 4 means a proceeding for a sexual offence.

It is consequential to the amendment to clause 23 which inserts a new definition of 'sexual offence' in the dictionary. It provides that the meaning of *sexual offence* for the Act means an offence against any of the following provisions of the Crimes Act: (a) part 3 (Sexual offences); (b) part 3A (Intimate image abuse); (c) part 4 (Female genital mutilation); (d) part 5 (Sexual servitude).

**Clause 9 Family violence offence proceeding
Table 43.1, item 1, column 3, 4th dot point**

This clause omits Table 43.1, item 1, column 3, 4th dot point. This is consequential to the amendment in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 out of Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B to clarify that the immunity applies to all proceedings.

Clause 10 Part 4.4 heading

This clause substitutes the heading of Part 4.4 to remove the term ‘family violence offence proceedings’. This is consequential to the amendment in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 out of Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B to clarify that the immunity applies to all proceedings. Upon the relocation of Division 4.4.3, the provisions in Chapter 4 only apply to sexual offence proceedings, meaning the reference to ‘family violence offence proceedings’ is redundant and misleading.

Clause 11 Division 4.4.3 heading

This clause substitutes the heading of Division 4.4.3 with ‘Chapter 6B Protection of counselling communications about sexual and family violence’.

This amendment relocates Division 4.4.3 to a new Chapter 6B and removes the reference to sexual and family violence offence proceedings. The purpose is to clarify the intended scope and application of the protected confidences immunity.

The EMPA provides a range of protections for complainants in sexual offence and family violence offence proceedings to reduce the potential re-traumatisation they may experience during proceedings. This includes the protected confidences immunity under Division 4.4.3. This amendment clarifies this immunity applies to all proceedings, not only to those relating to sexual and family violence offences.

The intended application of the immunity is clear at section 79D(2) which provides a protected confidence must not be disclosed in, or for the purposes of, the proceeding unless the court...gives leave for the disclosure. Per section 79, a proceeding means a civil or criminal proceeding. However, the heading of Division 4.4.3 which refers to ‘sexual and family violence offence proceedings’ and its location in Part 4.4 which refers to ‘sexual offence and family violence offence proceedings’ created confusion as to whether the immunity applied to all proceedings or only sexual offence and family violence offence proceedings. This clause rectifies this to clarify the protection applies in all proceedings.

Clause 12 Meaning of *protected confidence*—div 4.4.3 Section 79A (1), new note

This clause inserts a note to reflect the relocated and amended definitions of ‘family violence offence’ and ‘sexual offence’ in the dictionary. This is a consequential amendment upon clauses 22 and 23.

Clause 13 Section 79A (5), new note

This clause inserts a note to reflect the relocated and amended definitions of ‘family violence offence’ and ‘sexual offence’ in the dictionary. This is a consequential amendment upon clauses 22 and 23.

Clause 14 General immunity for protected confidences
Section 79D (2)

This clause substitutes section 79D (2) to provide that a protected confidence must not be disclosed in, or for the purposes of, the proceeding unless (a) leave is granted by the court or (b) for a civil proceeding, the disclosure is made in accordance with section 79J.

This amendment is consequential to the amendments which permits the counselled person to consent to the disclosure of the protected confidence per section 79J in clause 16.

Clause 15 Giving of leave to disclose protected confidence
Section 79H (3) (b) and (c)

This clause inserts ‘and victims of family violence offences’ to sections 79H(3)(b) and (c) to clarify that these sections apply to both family violence offences as well as sexual offences. This better aligns section 79H(3)(b) and (c) with the definition and scope of a protected confidence under section 79A(1), which relates to a person against whom a sexual offence or family violence offence was or is alleged to have been committed.

Clause 16 Sections 79J

This clause substitutes section 79J which previously provides that the protected confidence immunity cannot be waived.

The amendment provides that in a civil proceeding, a counselled person (being the person against whom a sexual offence or family violence offence was, or is alleged to have been, committed) who is at least 14 years old may consent to the production, inspection, and/or use of protected confidence evidence provided that certain criteria are met.

If the counselled person is under 14 years old, a suitable person as determined by the Court may consent to the production, inspection and/or use of the protected confidence evidence. This recognises the unique vulnerability of a child in a proceeding and the need for additional protection.

In either circumstance, the consent must be in writing and expressly relate to the production, inspection and/or use of the evidence and the court must be satisfied the counselled person or suitable person is aware of the effect of division and has been given a reasonable opportunity to seek legal advice in relation to the matter.

This amendment responds to comments of the ACT Supreme Court in relation to Division 4.4.3, including *BJT v Australian Capital Territory* [2025] ACTSC 69 [13] and *DPP v Sheridan (a pseudonym)* (No 4) [2025] ACTSC 61 [41].

This clause also introduces new section 79JA to clarify that the protected confidence immunity cannot be waived in criminal proceedings.

Clause 17 Sections 79 to 79M (as amended)

This clause renumbers sections 79 to 79M to sections 98 to 98P as a consequence of the amendments in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 out of Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B to clarify that the immunity applies to all proceedings.

Clause 18 Division 4.4.3 (as amended)

This clause relocates Division 4.4.3 to a new Chapter 6B to relocate the protected confidences immunity in Division 4.4.3 out of Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B to clarify that the immunity applies to all proceedings.

Clause 19 Recorded statement—unrepresented accused person to be given access

Section 81F (2)

This clause substitutes section 81F (2) with a new section to require that an unrepresented accused person who is given an audio copy of a recorded statement made in relation to a family violence offence must return the copy of the recorded statement to a police station not later than 16 weeks after the proceeding is finalised.

This section aligns section 81F (2) with section 81E (3) of the EMPA, which requires a lawyer representing an accused person to return the copy of the recorded statement received by giving it to the prosecutor not later than 16 weeks after the proceeding is finalised.

This amendment recognises the personal and sensitive nature of the information contained in recorded statements made in relation to a family violence offence, and ensures that this information is handled and tracked appropriately. Failure to comply with this requirement is not an offence.

Clause 20 Recorded statement—accused person to be given audio copy

Section 81H (2)

This clause substitutes section 81H (2) with a new section to require that where an unrepresented accused person is given an audio copy of a recorded statement under this section, the accused person must return the copy of the recorded statement to a police station not later than 16 weeks after the proceeding is finalised.

This amendment recognises the personal and sensitive nature of the information contained in recorded statements made in relation to a family violence offence, and ensures that this information is handled and tracked appropriately. Failure to comply with this requirement is not an offence.

Clause 21 Section 95 heading

This clause substitutes the current heading of section 95. This is a technical amendment which substitutes the heading ‘Definitions—ch 6’ to ‘Definitions—ch 6A’ so that the correct chapter applies.

Clause 22 Dictionary, definition of *family violence offence*

This clause substitutes the definition of *family violence offence*.

It is consequential to the amendment to the dictionary which now provides that the meaning of *family violence offence* previously contained in Chapter 4 (Sexual, violent and family violence offence proceedings) now applies to the entirety of the Act.

The definition of *family violence offence* is contained in the dictionary of the [Family Violence Act 2016](#).

Clause 23 Dictionary, new definition of *sexual offence*

This clause inserts a new definition of ‘sexual offence’ in the dictionary. Currently a ‘sexual offence’ is defined within the context of a ‘sexual offence proceeding’ at section 41(a). This insertion of the term within the dictionary provides that the definition of ‘sexual offence’ applies to the entirety of the Act.

This clause also expands the definition to include an intimate image abuse offence against Part 3A of the *Crimes Act 1900* (Crimes Act). The purpose of this amendment is to ensure the protections available to complainants in a sexual offence proceeding are also available in proceedings for intimate image abuse offences under Part 3A of the Crimes Act, recognising the offences have similar characteristics and are likely to create similar potential needs for protection in proceedings.

Intimate image abuse covers a range of behaviours that are typically categorised as the capture, distribution, or threatened capture or distribution of nude or sexual images. In the ACT, Part 3A of the Crimes Act sets out three offences relating to intimate image abuse: non-consensual distribution of intimate images – s 72C; distribution of intimate images of a person under 16 years – s 72D; and threatening to capture or distribute intimate images – s 72E.

The current offence provisions would also target deepfake images that are edited or created based on existing images. A deepfake is a photo, video or sound file that has been edited or created using artificial intelligence software to create an extremely realistic but false depiction of a real person doing or saying something that they did not actually do or say.

Clause 24 Further amendments, mentions of division 4.4.3 heading

This clause omits previous references to ‘division 4.4.3 (Sexual and family violence offence proceedings—protection of counselling communications)’ and substitutes it with ‘chapter 6B (Protection of counselling communications about sexual and family violence)’ in several definitions of the dictionary.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 25 Further amendments, mentions of *div 4.4.3*

This clause omits previous references to ‘div 4.4.3’ and substitutes it with ‘ch 6B’ in several headings in the Act.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 26 Further amendments, mentions of *division*

This clause omits previous references to ‘division’ and substitutes it with ‘chapter’ in several provisions in the Act which were located in Division 4.4.3.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 27 Further amendments, mentions of *section 79*

This clause omits previous reference to ‘section 79’ and substitutes it with ‘section 98’ in several definitions of the dictionary.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 28 Further amendments, mentions of *section 79A*

This clause omits previous reference to ‘section 79A’ and substitutes it with ‘section 98A’ in several provisions in the Act.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 29 Further amendments, mentions of *section 79E*

This clause omits previous reference to section 79E and substitutes it with section 98E in section 79F.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 30 Further amendments, mentions of *section 79F*

This clause omits previous reference to ‘section 79F’ and substitutes it with ‘section 98F’ in section 79E.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 31 Further amendments, mentions of *section 79G*

This clause omits previous reference to ‘section 79G’ and substitutes it with ‘section 98G’ in sections 79F and 79H.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 32 Further amendments, mentions of *section 79IA*

This clause omits previous reference to ‘section 79IA’ and substitutes it with ‘section 98J’ in sections 79E and 79IB.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Clause 33 Further amendments, mentions of *section 79J*

This clause omits previous reference to ‘section 79J’ and substitutes it with ‘section 98L’ in section 79D.

This is a consequential amendment to clauses 11 and 18 to reflect the relocation of Division 4.4.3 to Chapter 6B.

Part 2.3 Family Violence Act 2016

Clause 34 Offence—contravention of family violence order Section 43 (1) (b)

This clause substitutes section 43 (1) (b) to clarify that a person commits an offence for breaching a family violence order if they have been served with a copy of the order in accordance with the Act, such as via a substituted service order.

This amendment ensures that it is an offence for a person to breach an interim or final family violence order even if the order is served via substituted service (rather than personal service).

Clause 35 New division 4.1A

This clause inserts new division 4.1A and new section 44B before division 4.1 under Part 4 (Procedural matters).

The amendment provides guidance on the interpretation of the words ‘present’ and ‘present in court’ which are referenced throughout the Act.

The amendment reflects the judgment in *Police v Tricolos* [2024] ACTMC 22 to clarify that a person may be ‘present’ in court via *audiovisual link* or telephone with the court’s leave, in acknowledgment that the practice of parties appearing by remote technology has become commonplace.

New section 44B (3) clarifies that the meaning of *audiovisual link* is derived from the definition of audiovisual link per the EMPA. Section 6 of the EMPA currently provides that to *give evidence*, in a proceeding by audiovisual link, means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

Clause 36 New section 82A (6)

This clause inserts a new section 84A (6) to provide that if the protected person applied for an amendment to the protection order, but they were not the original applicant for the protection order, the original applicant must be served with a copy of the amendment application and either a timing notice or a notice of the return date. For example, this would ensure service on ACT Policing where the original application is made by police, but the amendment application is made by a protected person.

Clause 37 Magistrate review of registrar decisions New section 91B (6A)

This clause inserts a new section 91B (6A) ‘Magistrate review of registrar decisions’ into the Act.

This amendment would clarify that any *relevant decision* made by a Registrar is to be stayed pending a Magistrate’s review of the Registrar’s decision pursuant to s 91B (8) of the FV Act, and that any *relevant decision* made by a Registrar stands if an applicant initially requests a review of Registrar’s decision but subsequently withdraws it.

Section 91B (8) of the FV Act provides that a decision of the registrar is a *relevant decision* if it is a decision to— (a) refuse to make an interim order; or (b) if section 54 (Respondent not present at return of application) applies—adjourn the proceeding; or (c) if the applicant for the protection order asks for a condition to be included in an interim order—refuse to include the condition in the interim order.

Clause 38 Service of after-hours orders
Section 108 (2)

This clause aligns the provision that a judicial officer may make an order for substituted service of an AHFVO.

Upon the commencement of clause 47, which omits Part 7 of the FV Act, section 108 will also be omitted.

Clause 39 Interim court-initiated protected order taken to be special interim order
Section 113 (e)

This clause substitutes the cross-reference to section 47 (1) (b) in section 113 (e) with a cross-reference to section 47 (2) to (5). This is a consequential amendment arising from changes to section 47 by the *Sexual, Family and Personal Violence Legislation Amendment Act 2024*, which replaced section 47 (1) (b) with a new section 47 but did not update the reference to section 47 (1) (b) in section 113 (e). This clause updates section 113 (e) to refer to section 47 (2) to (5), which provides for the discretion of the court to list a preliminary conference after the hearing of an interim order, and the subsequent steps to be taken by the registrar if a preliminary conference is listed.

Clause 40 Section 156

This clause substitutes the current provision requiring the Minister to review the operation and effectiveness of the FV Act to delay the required commencement of the review.

The clause requires the Minister to review the FV Act, including the FVSN provisions, as soon as practicable after the end of two years after the day Part 2A (Family violence safety notices) commences and present a report of the review to the Legislative Assembly within 12 months of the commencement of the review.

This clause provides an opportunity to assess the effectiveness and broader impact of the amendments to the FV Act introduced in this Bill (including the FVSN provisions) as part of a statutory review of the FV Act as a whole.

Part 2.4 Personal Violence Act 2016

Clause 41 Offence—contravention of protection order
Section 35 (1) (b)

This clause substitutes section 35 (1) (b) to clarify that a person commits an offence for breaching a personal protection order if they have been served with a copy of the order in accordance with the Act, such as via a substituted service order.

This amendment ensures that it is an offence for a person to breach an interim or final personal violence order even if the order is served via substituted service (rather than personal service).

Clause 42 New division 4.1A

This clause inserts new division 4.1A and new section 38B before division 4.1 under Part 4 (Procedural matters).

The amendment provides guidance on the interpretation of the words ‘present’ and ‘present in court’ which are referenced throughout the Act.

The amendment reflects the judgment in *Police v Tricolos* [2024] ACTMC 22 to clarify that a person may be ‘present’ in court via *audiovisual link* or telephone with the court’s leave, in acknowledgment that the practice of parties appearing by remote technology has become common place.

New section 38B (3) clarifies that the meaning of *audiovisual link* is derived from the definition of audiovisual link per the EMPA. Section 6 of the EMPA currently provides that to *give evidence*, in a proceeding by audiovisual link, means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

Clause 43 New section 76A (6)

This clause inserts a new section 76A (6) to provide that if the protected person applied for an amendment to the protection order, but they were not the original applicant for the protection order, the original applicant must be served with a copy of the amendment application and either a timing notice or a notice of the return date. For example, this would ensure service on ACT Policing where the original application is made by police, but the amendment application is made by a protected person.

Clause 44 Magistrate review of registrar decisions New section 83B (6A)

This clause inserts a new section 83B (6A) ‘Magistrate review of registrar decisions’ into the Act.

This amendment would clarify that any *relevant decision* made by a Registrar is to be stayed pending a Magistrate’s review of the Registrar’s decision pursuant to section 83 of the PV Act, and that any *relevant decision* made by a Registrar stands if an applicant initially requests a review of Registrar’s decision but subsequently withdraws it.

Section 83B (8) of the PV Act provides that a decision of the registrar is a *relevant decision* if it is a decision to— (a) refuse to make an interim order; or (b) if section 54 (Respondent not present at return of application) applies—adjourn the proceeding;

or (c) if the applicant for the protection order asks for a condition to be included in an interim order—refuse to include the condition in the interim order.

Clause 45 Dictionary, definition of *protection order*, paragraph (a)

This clause substitutes paragraph (a) of the definition of protection order to update the language and ensure it is clear that each listed order is distinct. This does not substantively change the meaning of the definition.

Chapter 3 Family violence safety notices amendments

Part 3.1 Family Violence Act 2016

Division 3.1.1 Family violence safety notices amendments

Clause 46 New part 2A

This clause inserts the new part 2A in the FV Act to establish the FVSN scheme, which replaces the existing AHFVO scheme under part 7 of the FV Act.

Part 2A Family violence safety notices

Division 2A.1 Grounds for issuing a family violence safety notice

Section 13B Grounds for issuing family violence safety notice

This section identifies the grounds for which a FVSN may be issued against a person (the respondent). A FVSN may only be issued if there is a risk to an affected person of family violence by the respondent, and a FVSN is immediately necessary to ensure the safety of the affected person from the violence or to prevent substantial damage to the property of the affected person.

Unlike an AHFVO, a FVSN may be issued even if it is practicable or there are grounds to arrest the respondent for a family violence offence. This provides protection through a civil notice, separate to potential protection which may arise through the arrest of a respondent in relation to a criminal matter.

A FVSN may only be issued against an adult.

A FVSN cannot be issued if there is a FVSN already in force between the respondent and the affected person. This reduces the risk of multiple, potentially inconsistent conditions being applied. If a FVSN is already in force, the current FVSN should be enforced or if circumstances have changed, an application should be made to the Court to amend or revoke the current FVSN. This also prohibits the issuance of mutual simultaneous FVSNs between the same parties.

The FVSN must not be inconsistent with any other court orders in force in the ACT, including a family violence order, with the exception of a bail order made under the *Bail Act 1992*. Under section 26A of the *Bail Act 1992* (clause 91) in circumstances where a condition of the FVSN is inconsistent with a condition under an existing bail

order, the condition of the FVSN will prevail to the extent of any inconsistency. If the FVSN is inconsistent with a bail order, the respondent's failure to comply with the bail order, to the extent needed to comply with the FVSN, is not considered a breach of the bail order.

Division 2A.2 Application for family violence safety notice

Section 13C Police officer may detain person during application period

This section provides that if a police officer considers the grounds for issuing a FVSN at section 13B are satisfied and they propose to apply, or have applied for a FVSN against a person, they may remove and detain the person in certain circumstances.

A police officer may only remove and detain the person if they believe on reasonable grounds that this is necessary to ensure the safety of the affected person or someone else, or to ensure that the FVSN, if issued, may be immediately served, and that this is the least restrictive option reasonably available. This means a police officer cannot remove and detain a person merely for the purpose of serving a FVSN if there are other reasonably available ways to ensure the FVSN, if issued, may be immediately served on the person.

A person may be detained until the FVSN is served on the person, or if the application for the FVSN is refused, the senior police officer notifies the police officer of the refusal. However, a person may not be detained for longer than 4 hours.

Additionally, in the course of detaining a person, a police officer must not use more force, or subject the person to greater indignity, than is necessary and reasonable to detain the person and prevent their escape. This enables a police officer to use force in detaining a person, but this is strictly limited to only where necessary and reasonable. This aligns with the provision at section 221 (1) of the *Crimes Act 1900* in relation to use of force when arresting a person of an offence.

This does not limit police from using their existing powers to detain or arrest someone under the *Crimes Act 1900* if the relevant thresholds are satisfied, being that police suspect on reasonable grounds that an offence has been committed.

Section 13D Police officer may apply for family violence safety notice

This section provides that a police officer (the applicant police officer) may apply to a senior police officer for a FVSN if they consider that the grounds for issuing a FVSN are satisfied. A senior police officer is defined in the dictionary as a police officer of the rank of Sergeant or above, per clause 86. The FVSN application may be made at any time, not only outside the business hours of the Magistrates Court.

In deciding whether to make an application, the applicant police officer is required to consider, as far as reasonably practicable in the circumstances, the range of matters listed at section 13D (2). Consideration of these matters ensures that the applicant police officer is informed of the circumstances and history of family violence

occurring between the parties. This is designed to reduce the risk of misidentification of the victim-survivor as the primary aggressor. This also helps ensure the FVSN respond to the particularities of the circumstances, including the risk of future violence. While the applicant police officer is to consider the affected person's views about the proposed FVSN and their perception of the nature and seriousness of the respondent's alleged conduct as far as reasonably practicable in the circumstances, the affected person's consent is not required to apply for the FVSN.

The matters to be considered by the applicant police officer replicate some of the matters to be considered by the Court in deciding whether to make a FVO, being the matters provided at section 14 (1) (b)-(c), (e)-(h) of the FV Act. This ensures the police officer is directed to consider matters which are relevant to the assessment of whether a FVSN is required and should be applied for, while streamlining the FVSN scheme with the existing FVO process.

Under section 13D (3), the applicant police officer must also enquire whether a court order (other than a bail order) is already in force in the ACT in relation to the parties, and whether a Family Law Act order applies to any child of the affected person or respondent or any other child that is an affected person. This ensures the applicant police officer has taken active steps to consider if any court orders are in place to inform their consideration of whether the ground under section 13B (e), that the proposed FVSN is not inconsistent with another court order in force in the ACT (other than a bail order), is satisfied. The applicant police officer is not required to enquire whether a bail order is in force, given section 13B (e) does not extend to a bail order. Under proposed section 26A of the *Bail Act 1992*, if the FVSN is inconsistent with a bail order, the respondent's failure to comply with the bail order is not taken to be a breach of the bail order.

Section 13E Police officer's application requirements

This section provides for the requirements for making an application for a FVSN. The application must be made in writing or orally if a written application is impracticable in the circumstances. The application must include a description of the conduct on which the application is based, the grounds for issuing the FVSN, the considerations for the application per section 13D (2) (as far as reasonably practicable in the circumstances), a statement about whether there is a court order already in force or a Family Law Act order applies in relation to the parties, the proposed conditions for the FVSN, and any other information required by the senior police officer to whom the application is made.

Section 13F Police officer's decision to not apply to be recorded in police records

This section requires a police officer to make a written record of the reasons for not applying for a FVSN, if the grounds for issuing a FVSN are satisfied but the police officer decides not to make an application. The record must include information about the police officer's identity, the names of the parties, the reasons for deciding

not to apply for a FVSN, and any action to be taken in relation to the parties. This ensures there is a record of circumstances where a FVSN has not been applied for, despite the police officer considering the grounds to be satisfied, which may inform potential future policing responses to the respondent or affected person should family violence continue to be perpetrated between the parties.

Section 13G Senior police officer must decide application

This section requires a senior police officer who receives an application for a FVSN to decide the application as soon as practicable. The senior police officer may decide the application by either issuing the FVSN or refusing the application. The senior police officer may request further information from the applicant police officer.

Division 2A.3 Issuing a family violence safety notice

Section 13H Senior police officer may issue family violence safety notice

This section provides that a senior police officer (the issuing police officer) may issue a FVSN if they receive an application for a FVSN and believe on reasonable grounds that the grounds for issuing a FVSN are satisfied. In deciding whether to issue a FVSN, the issuing police officer must consider, as far as reasonably practicable in the circumstances, the views of affected person and respondent about the FVSN, the perception of the affected person to the alleged conduct, the welfare of any child that is an affected person, any hardship that may be caused to the respondent, and any previous family or personal violence by the respondent. This aligns with the matters considered for the application at section 13D and included in the FVSN application under section 13E. As noted above, while the issuing police officer is to consider the affected person's views about the proposed FVSN and their perception of the nature and seriousness of the respondent's alleged conduct as far as reasonably practicable in the circumstances, the affected person's consent is not required to issue the FVSN.

The issuing police officer must also make a written record of those matters. By requiring the issuing police officer to separately consider the matters considered by the applicant police officer, two levels of decision-making are embedded into the FVSN scheme to provide greater oversight and checks over when a FVSN may be issued.

Section 13I Form of family violence safety notice

This section sets out the form of the FVSN and the information to be included. The FVSN must be in writing and include information about the identity of the applicant and issuing police officers, the names of the parties, a brief statement about how the grounds for issuing the FVSN under section 13B have been satisfied, the conditions of the FVSN, the date on which the FVSN is made, and the duration of the FVSN.

The Note clarifies that a written FVSN may be issued using electronic communication.

Section 13J Who may be included in a family violence safety notice

This section provides that a FVSN may be issued against only one respondent. A FVSN may be made in relation to only one affected person and one or more children of the affected person. This means that an adult who is an affected person and one of more of their children may be named on the same FVSN. However, adults who are affected persons may not be named in the same FVSN and a separate FVSN should be issued in such circumstances.

Section 13K Family violence safety notice generally not to include protected person's address

This section provides that the protected person's addresses must not be included in the FVSN without their agreement, unless it is necessary for compliance or the address is already known to the respondent. This is to protect the protected person's safety and minimise the risk that the respondent makes contact, approaches, or locates the protected person.

Section 13L Duration of family violence safety notice

This section provides for the duration of a FVSN. A FVSN comes into force when it is served on the respondent and remains in force for 14 days after the day of service. However, the FVSN may be revoked earlier by the Magistrates Court and is automatically revoked if a FVO is made and served against the respondent in relation to the protected person. A FVSN cannot be renewed or extended.

The 14-day period of a FVSN is intended to minimise the risk of potential gaps in protection for a protected person and provide time for a protected person to file an application for a FVO if they choose to, while also ensuring that any limitation on the human rights of respondents is reasonably justified to achieving its purpose.

Section 13M Family violence safety notice to be given to Magistrates Court

This section provides that the issuing police officer must give a copy of the FVSN to the registrar of the Magistrates Court and keep a copy in police records. This ensures the Magistrates Court is appropriately informed of the issuance of the FVSN, which is particularly necessary in circumstances where a party applies to the Court to amend or revoke the FVSN or the protected person subsequently applies to the Court for a FVO.

Section 13N Senior police officer's refusal to be recorded in police records

This section requires a senior police officer who refuses an application for a FVSN to make a written record of the refusal. The record must include information about the identities of the senior police officer and applicant police officer, the names of the

parties, the reasons for refusing to issue a FVSN, and any action to be taken in relation to the parties. This ensures there is a contemporaneous record of when and why a FVSN has been applied for but not issued, which may inform potential future policing responses to the respondent or affected person should family violence continue to be perpetrated between the parties.

Division 2A.4 Conditions of family violence safety notices

Section 13O Paramount consideration—safety of affected person and children

This section provides that the issuing police officer must give paramount consideration to the safety and protection of the affected person and any child directly or indirectly affected by the respondent's conduct when deciding the conditions to be included in a FVSN. This section aligns with the paramount consideration for the Court in deciding the conditions to be included in a FVO under section 36 of the FV Act, and reinforces the objects and principles of the FV Act.

Section 13P Consideration—least restrictive principle

This section provides that the issuing police officer must ensure that the conditions included in a FVSN are the least restrictive of the personal rights and liberties of the respondent as possible to achieve the objects of the FV Act and give effect to section 13O.

This section aligns with the least restrictive principle the Court must apply in deciding the conditions to be included in a FVO under section 37 of the FV Act. This section ensures that any limitation on the human rights of respondents is reasonably justified to achieving the objects of the FV Act and reinforces the objects and principles of the FV Act.

Section 13Q Conditions—generally

This section provides that a FVSN may include the conditions the issuing police officer considers necessary, taking account of the need to give paramount consideration to the safety of the affected person, while ensuring the conditions are the least restrictive of the respondent's personal rights and liberties as possible.

The section sets out a non-exhaustive list of the conditions the issuing police officer may include in a FVSN. This aligns with the conditions a Court may include in a FVO under section 38 (2) (a)-(k) and (m). Section 13Q (2) (l) differs from section 38 (2) (l) of the FV Act in providing the condition may require the respondent to give the protected person stated person property owned by the protected person or their child which is in the respondent's possession. This ensures the respondent would not be unduly divested or deprived of their personal property, particularly in circumstances where police are responding to an immediate or urgent circumstance. In circumstances regarding personal property rights, the Court is better placed to assess the needs and property rights of the parties when determining whether to

include a condition under section 38 (2) (l). Additionally, when considering such a condition the Court must consider the income, assets, rights and liabilities of the parties per section 40 of the FV Act to provide a safeguard for the inclusion of such a condition. In circumstances when a FVSN is applied for and issued, the issuing police officer likely does not have sufficient evidence available to appropriately consider these matters or undertake such an assessment, meaning such a safeguard is unavailable.

This section also does not include the condition under section 38 (1) (n) as it would not be appropriate or practicable for a short-term FVSN to require the respondent take part in a program of counselling, training, mediation, rehabilitation or assessment. This aligns the FVSN scheme with the existing FVO process as far as appropriate and practicable and reinforces the objects and principles of the FV Act.

The note refers to section 26A of the *Bail Act 1992* (clause 91) which provides that to the extent of any inconsistency, a condition of a FVSN prevail over a condition of bail order.

Section 13R Conditions—exclusion conditions

This section sets out the considerations the issuing police officer must take into account in deciding whether to include a condition excluding a respondent from being on premises where they live. This section recognises the needs of the protected person as the primary factors to be considered, and the accommodation needs to the parties and the length of time required for them to find alternative accommodation as the secondary factors to be considered. This ensures that any limitation on a respondent's rights is only made where necessary for the protected person's safety and that the impact of an exclusion condition is carefully considered before being included by the issuing police officer. This aligns with the matters the Court must consider when deciding whether to issue an exclusion condition in a FVO under section 39(1) of the FV Act.

Section 13S Conditions—conflict with court order

This section clarifies that if a condition in a FVSN is inconsistent with a court order in force in the ACT, the FVSN continues in force but the court order prevails to the extent of the inconsistency. However, this does not apply to a bail condition in a bail order. Per section 26B of the *Bail Act 1992* (clause 91) in circumstances where a respondent is subject to a FVSN and the court or authorised officer imposes an inconsistent bail condition, the court or authorised officer may state that the bail condition is to displace the FVSN condition to the extent of the inconsistency. The respondent's failure to comply with the FVSN to the extent needed to comply with the bail condition is not taken to be a breach of the FVSN.

This relates to section 13B (e) that a proposed FVSN may be issued only if it would not be inconsistent with any court order already in force in the ACT, other than a bail order. This section provides clarity in circumstances where a court order is

subsequently issued after the issuance of a FVSN, to provide that the conditions of the court order prevail to the extent of any inconsistency. However, the remaining conditions of the FVSN which are not inconsistent continue in force.

Division 2A.5 Service and explanation of family violence safety notice

Section 13T Police officer must serve family violence safety notice

This section provides for service of FVSNs. A FVSN must be personally served on the respondent, and this service may be achieved through electronic communication with the respondent's consent. Electronic service may include emailing the FVSN to the respondent. By providing for service through electronic communication, the FVSN may be served on the respondent in circumstances where personal service may be impractical and ensure that the FVSN is appropriately brought to the respondent's attention.

This section also provides further requirements if the FVSN is served using electronic communication, to ensure there are accurate contemporaneous records that service has been effected. In these circumstances, the serving police officer must keep a written record of the form of electronic communication used to serve the FVSN, how the FVSN was served, and the respondent's agreement to electronic service.

This section also requires copies of the FVSNs to be given to persons with a relevant interest in the matter, including the protected person. The Note clarifies a FVSN may also be given to these parties using electronic communication. A failure to comply with this requirement does not affect the validity of the FVSN.

The Note refers to section 70F of the FV Act, which has provisions about giving a document to a child or their parent or guardian.

Section 13U Police officer must explain family violence safety notice

This section requires that as far as reasonably practicable in the circumstances, a police officer must personally explain the FVSN to the respondent when it is served, and to the protected person when a copy of the FVSN is given to them. The FVSN must be explained to the respondent and to the protected person in language likely to be readily understood by them.

In addition to explaining the purpose, conditions and effect of the FVSN, the police officer must also explain the consequences of contravening the FVSN and the process of applying for amendment or revocation. The police officer must also explain to the protected person how they may apply to the Magistrates Court for a family violence order, so they are aware of the options for longer-term protection, should they wish to seek this. This provision ensures that the respondent is aware of their obligations under the FVSN and is in a position to comply with the conditions.

This also ensures that the protected person understands their rights and protections under the FVSN and their options to seek longer-term legal protection.

A failure to comply with this requirement does not affect the validity of the FVSN.

Section 13V Giving family violence safety notice to child

This section requires that, in circumstances where a FVSN is to be given to a child, it must not be given at or near the child's school unless there is no other place where the FVSN may be reasonably given to the child. This section also provides for exceptions in circumstances where a FVSN is required to be given to a child's parent or guardian. This includes where the FVSN does not need to be given if the parent or guardian are also a party to the FVSN, if the police officer is satisfied that giving the FVSN is not reasonably practicable or if there are circumstances that justify the FVSN not being given. The Examples provided include circumstances where there would be an unacceptable risk to the safety of the child to give a copy of the FVSN to their parent or guardian.

Division 2A.6 Amendment and revocation of family violence safety notices

Section 13W Meaning of amend a family violence safety notice— pt 2A

This section provides the definition for "amend" in relation to a FVSN under Part 2A. "Amend" includes adding, amending or removing conditions, prohibitions or restrictions to the FVSN or reducing the period the FVSN remains in force but does not include extending the period the FVSN remains in force.

Section 13X Police officer cannot amend or revoke family violence safety notice

This section provides that a police officer cannot amend or revoke a FVSN after it has been served on the respondent.

Section 13Y Application to Magistrates Court to amend or revoke family violence safety notice

This section provides for the process of a protected person, respondent or senior police officer applying to the Magistrates Court for amendment or revocation of a FVSN, the setting of a return date for the application and service of the relevant documents for the application to parties. This also provides that if a return date for the application is not available before the FVSN expires, the registrar or the court must dismiss the application.

Section 13Z Decision by Magistrates Court to amend family violence safety notice

This section provides for the considerations the Magistrates Court must be satisfied of before it may amend the FVSN. This is similar to the considerations the Magistrates Court must be satisfied of before it amends a FVO under section 83 (1) of the FV Act, but is limited to amendments that could be made by a senior police

officer issuing an FVSN under Pt 2A. This ensures that amending the FVSN will not create further harm or reduce the safety of the protected person.

Section 13ZA Service of amended family violence safety notice

This section provides that where a court amends a FVSN, the registrar must serve a copy of the amended FVSN on the respondent and give a copy of the amended FVSN to persons with a relevant interest in the matter, including the protected person. The service of the amended FVSN must be personal service unless the respondent is present when the FVSN is amended or, if personal service is not reasonably practicable, the court makes an order for service that is likely to bring the amended FVSN to the attention of the respondent.

Section 13ZB Decision by Magistrates Court to revoke family violence safety notice

This section provides for the considerations the Magistrates Court must be satisfied of before it may revoke the FVSN. This is similar to the considerations the Magistrates Court must be satisfied of before it amends a FVO under section 83 (1) of the FV Act. This ensures that revoking the FVSN will not create further harm or reduce the safety of the protected person.

This also provides that if the Magistrates Court revoke a FVSN, the registrar must notify the respondent, protected persons and other listed parties, to ensure they are appropriately informed. However, the failure of the registrar to notify the parties does not affect the revocation of the FVSN.

Division 5.7 Division 2A.7 Effects of family violence safety notices

Section 13ZC Offence—contravene family violence safety notice

This section introduces an offence for a person to contravene a FVSN. A person commits an offence if they are a respondent to the FVSN, have been served with the FVSN, and engages in conduct that contravenes the FVSN. The maximum penalty for this offence is 200 penalty units, imprisonment for 2 years or both. The maximum penalty for the offence reflects the seriousness of breaching a police-issued notice while ensuring the FVSN scheme is balanced and does not disproportionately limit human rights.

If the person was subject to a bail condition which was expressed to prevail over a condition of the FVSN under section 26B of the *Bail Act 1992* (clause 91), and the conduct contravening the FVSN was necessary on reasonable grounds to avoid breaching a condition of the person's bail, this offence provision does not apply.

This section also provides that a protected person does not commit an offence under the Criminal Code, section 45 if the person is complicit in the commission of conduct that contravenes the FVSN, which aligns with the abolition of the offence of aiding and abetting breaches of Family Violence Orders in the *Sexual, Family and Personal Violence Legislation Amendment Act 2024*.

Section 13ZD Firearms licence suspended if family violence safety notice issued

This section provides that if a FVSN is in force against a respondent who is the holder of a firearms licence, the licence is suspended until the end of the FVSN and a police officer may seize the licence and any firearms or ammunition in the respondent's possession.

Section 13ZE Family violence safety notice continues in force when protected person becomes adult

This section provides that a FVSN continues to remain in force even after a protected person who is a child becomes an adult within the duration of the FVSN. This section applies where a FVSN is made and a protected person listed on the FVSN is a child when the notice is issued, but attains the age of 18 within the duration of the FVSN.

Clause 47 After-hours orders

Part 7

This clause omits Part 7 of the FV Act which provides processes and procedures for the AHFVO Scheme. The FVSN Scheme will replace the AHFVO Scheme. Per clause 2, this clause will commence six months after the Bill's notification day, to align with the commencement of the relevant provisions for the FVSN Scheme under clause 46.

Clause 48 New Part 25

This clause inserts Part 25 of the FV Act to provide transitional provisions in relation to AHFVOs and protection orders upon the commencement of the FVSN Scheme under clause 46. This provides that if an AHFVO is in force against a person immediately before clause 46 commences and it would end on or after this day, the AHFVO continues in force until it is revoked or expires. The relevant provisions in the FV Act continue to apply in relation to the AHFVO over this period.

This also provides that if a protection order is in force against a person immediately before clause 46 commences and it would end on or before this day, the protection order is, on this day, taken to be a FVO made under the FV Act. This is a consequential amendment upon the amendment to the definition of 'family violence order' under clause 78 to replace the term 'protection order'.

Per clause 2, this clause will commence six months after the Bill's notification day, to align with the commencement of the relevant provisions for the FVSN Scheme under clause 46. This clause expires one year after it commences.

Division 3.1.2 Consequential amendments

Clause 49 How objects are to be achieved New section 7 (aa)

This clause introduces an additional subsection to how the FV Act aims to achieve its objects to include giving police power to issue FVSNs. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 50 Section 7 (b)

This clause amends the subsection regarding how the FV Act aims to achieve its objects to include creating offences to enforce FVSNs as well as FVOs. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 51 Matters to be considered—family violence orders Section 14 (1) (g) and (h)

This clause amends the matters to be considered by a court in deciding whether to make a FVO, to include any previous FVSN, FVO, protection order under the PV Act or family violence related order in force against the respondent, or any previous contravention of those orders. This expands the current scope of matters to be considered by the court beyond a FVO to include other types of relevant orders and contraventions of those orders.

Clause 52 Section 14 (3)

This clause is a technical amendment to update the language of this section for clarity and consistency across other Acts and remove possible ambiguity.

Clause 53 Section 14 (4)

This clause substitutes the definition of a ‘family violence order’ with a ‘family violence related order’ for the purposes of section 14. This is a consequential amendment upon the insertion of ‘family violence related order’ in section 14 (1) (g) and (h) under clause 51. This improves the clarity of the FV Act to avoid potential confusion between the term ‘family violence order’ for section 14 and the term ‘family violence order’ for the rest of the FV Act, as amended through clause 47.

This maintains the reference to an AHFVO and protection order, although Part 7 and the definition of a protection order are to be omitted through clause 47 and clause 84, to include previous orders that deal with family violence that are not called family violence orders.

Clause 54 Family Law Act order
Section 15 (1), note 1

This clause omits Note 1 which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 55 Who may apply for protection orders?
Section 16 (1), note 1

This clause omits Note 1 which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 56 What if application is made for the wrong order?
Section 18 (1) (a)

This clause substitutes ‘protection order under this Act’ with ‘family violence order’. This is a consequential amendment to the amendment to the definition of ‘family violence order’ under clause 78 to replace the term ‘protection order’ with ‘family violence order’.

Clause 57 Section 18 (1) (b) (ii)

This clause substitutes ‘an order’ with ‘a protection order’ for clarity and to better align with the terminology of the PV Act.

Clause 58 What if application for the wrong order is decided?
Section 19 (1), example

This clause omits the example which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 59 Sections 27 and 38

This clause is a technical amendment to update the language of these sections for clarity and consistency with other Acts.

Clause 60 Offence – contravention of family violence order
Section 43 (1) (b), new note

This clause omits the new note added to section 43 (1) (b) through clause 34, which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 61 Section 44 heading

This clause is a technical amendment to update the heading of this section to better reflect its contents.

Clause 62 Section 44 (1) and note

This clause substitutes existing subsection 44 (1), which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 63 Giving evidence by affidavit for interim order Section 62A (2) (b), except note

This clause is a technical amendment to substitute the term ‘a police officer of, or above, the rank of sergeant’ with the term ‘senior police officer’. This is a consequential amendment to reflect the introduction of the term ‘senior police officer’ in the dictionary under clause 86.

Clause 64 Service of protection orders Section 70C (1), note 1

This clause omits note 1 which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 65 Affidavit of service of documents by police Section 70G

This clause is a technical amendment to substitute the term ‘another police officer of, or above, the rank of sergeant’ with the term ‘senior police officer’. This is a consequential amendment to reflect the introduction of the term ‘senior police officer’ in the dictionary under clause 86.

Clause 66 Representation – party with impaired decision-making ability Section 76 (3), except note

This clause substitutes existing subsection 76 (3), which refers to an AHFVO. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 67 Definitions – pt 9 Section 115, definition of family violence order

This clause omits the definition of ‘family violence order’ from section 115 for the purposes of Part 9. The current definition of ‘family violence order’ at section 115 refers to the definition of ‘FVO’, meaning the terms can be used interchangeably throughout Part 9. However, ‘family violence order’ is not used within Part 9 with the exception of the definition and the note at section 127 (1). However, given this note refers to the cancellation of a firearms notice under section 44, this note appears to refer to a local family violence order, not a FVO per the definition at section 115. This means this additional term is redundant. Omitting the term ‘family violence order’ also improves the clarity of the FV Act to avoid potential confusion between the term ‘family violence order’ for Part 9 and the term ‘family violence order’ for the rest of the FV Act.

Clause 68 Section 115, definition of FVO

This clause omits the term ‘family violence order’ from the definition of ‘FVO’ in section 115 for the purposes of Part 9. The reference to ‘family violence order’ in this definition is redundant, as Part 9 only refers to a FVO, with the exception of the definition and the note at section 127 (1). However, given this note refers to the cancellation of a firearms notice under section 44, this note appears to refer to a local family violence order, not a FVO per the definition at section 115.

Omitting the term ‘family violence order’ also improves the clarity of the FV Act to avoid potential confusion between the term ‘family violence order’ for Part 9 and the term ‘family violence order’ for the rest of the FV Act.

Clause 69 Section 115, definition of *interim FVO*, paragraph (a) and note

This clause substitutes the term ‘an FVO made by a police officer’ with the term ‘family violence safety notice’ within the definition of ‘interim FVO’. This is a consequential amendment to reflect the establishment of FVSNs per clause 46. This also omits the note which refers to an AHFVO, as this reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 70 Section 115, definition of *local FVO*, paragraph (a)

This clause substitutes subsection (a) of the definition of a ‘local FVO’ to align with other amendments in the Bill. The clause substitutes the term ‘protection order’ with the term ‘family violence order’ per clause 78 and substitutes an AHFVO with a FVSN, as the reference to an AHFVO is redundant upon the omission of Part 7 of the FV Act under clause 47. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 71 Certificate evidence – notification

Section 139 (5), definition of authorised officer, paragraph (b), subparagraph (ii)

This clause is a technical amendment to substitute the term ‘a police officer for the ACT of or above the rank of sergeant’ with the term ‘senior police officer for the ACT’. This is a consequential amendment to reflect the introduction of the term ‘senior police officer’ in the dictionary under clause 86.

Clause 72 Division 9.6, heading

This clause substitutes the term ‘existing protection orders’ with the term ‘existing FVOs’ in the heading of Division 9.6. This aligns with the terms defined at section 115 for the purpose of Part 9, noting ‘protection orders’ is not under section 115.

Clause 73 Dictionary, definition of *after-hours order*

This clause omits the definition of an ‘after-hours order’. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 74 Dictionary, definition of *amend*

This clause substitutes the definition of ‘amend’ to refer to the meaning of amend in relation to a FVSN, per section 13W. This is a consequential amendment to reflect the establishment of FVSNs per clause 46. This clause also updates the language used in this definition for clarity.

Clause 75 Dictionary, new definition of *applicant police officer*

This clause creates a new definition of ‘applicant police officer’ for Part 2A in relation to FVSNs. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 76 Dictionary, definition of *business hours*

This clause omits the definition of ‘business hours’, which refers to Part 7. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 77 Dictionary, definition of *commencement day*

This clause substitutes the term ‘protection orders’ with the term ‘FVOs’ in the definition of ‘commencement day’. This is a consequential amendment upon the amendment to the heading of Division 9.6 per clause 72.

Clause 78 Dictionary, definition of *family violence order*

This clause substitutes the definition of ‘family violence order’. Given a family violence order is currently defined to mean a protection order or AHFVO, and Part 7 is to be omitted to remove references to AHFVOs, the current definition of a family violence order is redundant.

To differentiate an interim or final family violence order from another type of protection order (such as a workplace protection order or personal protection order), this clause therefore substitutes the definition of family violence order to provide a family violence order is to have the same meaning as the current definition of a protection order. A family violence order therefore means an interim order or final order and includes an order about the seizure of a firearms licence, firearm or ammunition and an order amending a family violence order. A family violence order does not include a family violence safety notice.

Per clause 84, the definition of protection order is therefore omitted as it is now redundant. Consequential amendments are also made throughout the FV Act and

other impacted legislation to substitute the term ‘protection order’ with ‘family violence order’, as appropriate.

Per clauses 68 and 69 the definition of the term ‘family violence order’ is omitted from section 115 for the purposes of Part 9, as this definition is redundant.

Clause 79 Dictionary, new definition of *family violence safety notice*

This clause creates a new definition of ‘family violence safety notice’, by reference to section 13B. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 80 Dictionary, definition of *final order*

This clause substitutes the term ‘protection order’ with the term ‘family violence order’ in the definition of ‘final order’. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’.

Clause 81 Dictionary, new definition of *issuing police officer*

This clause creates a new definition of ‘issuing police officer’ for Part 2A in relation to FVSNs. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 82 Dictionary, definition of *proceeding*

This clause substitutes the definition of ‘proceeding’ to align with other amendments in the Bill. The clause substitutes the term ‘protection order’ with the term ‘family violence order’ per clause 78 and omits the reference to an AHFVO as this is redundant upon the omission of Part 7 of the FV Act under clause 47. This clause also includes a proceeding for the amendment of revocation of a FVSN within the definition of a proceeding, which is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 83 Dictionary, definition of *protected person*

This clause substitutes the definition of ‘protected person’ to include a person protected under a FVO or a FVSN. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 84 Dictionary, definition of *protection order*

This clause omits the definition of ‘protection order’. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’.

Clause 85 Dictionary, definition of *respondent*

This clause substitutes the definition of ‘respondent’ to include the meaning of ‘respondent’ for Part 2A in relation to FVSNs. This is a consequential amendment to reflect the establishment of FVSNs per clause 46.

Clause 86 Dictionary, new definition of *senior police officer*

This clause introduces a new definition of ‘senior police officer’ to mean a police officer of, or above, the rank of sergeant. This term is used throughout the FV Act and is therefore appropriate to define in the dictionary.

Clause 87 Further amendments, mentions of *protection order*

This clause substitutes the term ‘protection order’ with the term ‘family violence order’ throughout the FV Act. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’.

Clause 88 Further amendments, mentions of *protection orders*

This clause substitutes the term ‘protection orders’ with the term ‘family violence orders’ throughout the FV Act. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’.

Part 3.2 Other legislation

Division 3.2.1 Bail Act 1992

Clause 89 Bail for serious offence committed while charge for another pending or outstanding Section 9D (4) and (5) (b)

This clause substitutes ‘authorised person’ for ‘authorised officer’ to be consistent with the terminology of the Act.

Clause 90 Conditions on which bail may be granted to adults Section 25 (4) (f) (i)

This clause corrects a technical error regarding the reference of the definition of family violence under section 8 of the FV Act. The original reference only mentioned behaviour under section 8 (1) (a), though the definition of family violence in the FV Act includes other subsections. This clause rectifies this to refer to the definition at section 8 and is not limited to subsection (1) (a).

Clause 91 New section 26A and 26B

This clause inserts new sections 26A and 26B to the *Bail Act 1992*. These sections clarify the relationship between the conditions of a bail order and FVSNs in circumstances where they are inconsistent, to ensure the respondent and other parties have clarity as to which obligations apply at which point, and when the respondent may be taken to have breached a condition of their FVSN or bail.

Section 26A provides that if a FVSN condition and a bail condition are in force against a person and they are inconsistent, the person's failure to comply with the bail condition, to the extent needed to comply with the FVSN, is not taken to be a breach of bail. This means that to the extent of the inconsistency, the FVSN is to prevail and the respondent is required to comply with the condition of the FVSN or risk committing an offence per new section 13ZC of the FV Act. This only applies if the court or authorised officer imposing the bail condition has not stated section 26B (2) applies.

Section 26B provides that if a FVSN is in force and a court or authorised officer imposes a bail condition that would be inconsistent with a condition of the FVSN, when imposing the condition, the court or authorised officer may state that the bail condition is intended to displace the FVSN condition to the extent of the inconsistency. To make such a statement, the court or authorised officer must be satisfied the proposed bail condition would better protect the safety or welfare of the protected person. In these circumstances, the respondent's failure to comply with the FVSN condition to the extent needed to comply with the bail condition is not taken to be a contravention of the FVSN. Per new section 13ZC (2) of the FV Act, the offence of contravening a condition of a FVSN will not apply if the conduct was necessary on reasonable grounds to avoid breaching the bail condition which was expressed to prevail over the FVSN condition under section 26B of the *Bail Act 1992*.

The Territory Court's jurisdiction to impose bail conditions solely derives from the *Bail Act 1992*. This means this Bill can alter the nature and scope of these powers, and the relationship of bail conditions granted under these powers to other legally imposed conditions, without interfering with the independence of the Court (as protected under the Kable principle established by the High Court in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51).

Division 3.2.2 Children and Young People Act 2008

Clause 92 What is *significant harm* Section 344 (4)

This clause omits the definition of 'family violence' for the purpose of section 344. This is a consequential amendment upon clause 108 which inserts the definition of family violence into the dictionary.

Clause 93 Interim matters – Court action before adjournment
Section 431 (2) (d)

This clause inserts the term ‘interim family violence order’ to provide that the Childrens Court may make an interim protection order or interim family violence order under section 459.

This is a consequential amendment upon the addition of ‘a family violence order’ before ‘protection order’ in section 459 (2) per clause 97, to ensure the reference to section 459 within section 431 (2) (d) aligns with the powers of the Childrens Court provided in that section.

This does not alter the existing power of the Childrens Court, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 94 Division 14.3.5 heading

This clause substitutes the heading of Division 14.3.5 to include ‘family violence orders’. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

This does not alter the meaning of the heading, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 95 Section 458

This section substitutes section 458. Section 458 (1) previously defined a ‘protection order’ to mean a FVO or a PVO. Under section 458 (2) a ‘FVO’ meant a protection order under the FV Act and a PVO meant a protection order the PVO.

The definition of ‘protection order’ at section 458 (1) and FVO and PVO under section 458(2) are removed, as ‘family violence order’ and ‘protection order’ have been inserted into the dictionary per clause 108 and clause 109 respectively.

This also omits references to a protection order under the FV Act and substitutes this with references to a family violence order. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, which replaces the term ‘protection order’ in the FV Act.

This does not alter the meaning of the section, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 96 Section 459 heading

This clause inserts ‘family violence orders’ into the heading of section 459. This is a consequential amendment upon the omission of ‘protection order’ in the definition of section 458 (1) (clause 95), and the insertion of a definition of ‘family violence order’

and amendment to the definition of 'protection order' in the dictionary per clauses 108 and 109.

This does not alter the meaning of the heading, as the original definition of 'protection order' at section 458 (1) means a FVO or a PVO.

Clause 97 Section 459 (2), except notes

This clause inserts 'family violence order' into section 459 (2). This is a consequential amendment upon the omission of 'protection order' in the definition of section 458 (1) (clause 95) and the insertion of a definition of 'family violence order' and amendment to the definition of 'protection order' in the dictionary per clauses 108 and 109.

This does not alter the existing power of the Childrens Court, as the original definition of 'protection order' at section 458 (1) means a FVO or a PVO.

Clause 98 Section 459 (2), note 1

This is a consequential amendment to correct the reference to section 75 of the FV Act and section 69 of the PV Act. Upon the raising of the minimum age of criminal responsibility in the ACT to 14 years old, a child under 14 years old cannot be a respondent to an application for a FVO under section 75 of the FV Act section 75 or PVO under section 69 of the PV Act. This commenced on 1 July 2025 under the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

This clause inserts 'family violence order' into note 1 of section 459 (2). This is a consequential amendment upon the omission of 'protection order' in the definition of section 458 (1) (clause 95) and the insertion of a definition of 'family violence order' and amendment to the definition of 'protection order' in the dictionary per clauses 108 and 109.

This does not alter the existing power of the Childrens Court, as the original definition of 'protection order' at section 458 (1) means a FVO or a PVO.

Clause 99 Section 459 (2), note 2

This clause inserts 'interim family violence order' into note 2 of section 459 (2). This is a consequential amendment upon the omission of 'protection order' in the definition of section 458 (1) (clause 95) and the insertion of a definition of 'family violence order' and amendment to the definition of 'protection order' in the dictionary per clauses 108 and 109.

This does not alter the existing power of the Childrens Court, as the original definition of 'protection order' at section 458 (1) means a FVO or a PVO.

Clause 100 Section 459 (3)

This clause substitutes section 459 (3) to include references to a ‘family violence order’. This is a consequential amendment upon the omission of ‘protection order’ in the definition of section 458 (1) (clause 95) and the insertion of a definition of ‘family violence order’ and amendment to the definition of ‘protection order’ in the dictionary per clauses 108 and 109.

This does not alter the existing power of the Childrens Court, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 101 Section 459 (3) note

This clause inserts ‘family violence order’ into the note of section 459 (3). This is a consequential amendment upon the omission of ‘protection order’ in the definition of section 458 (1) (clause 95) and the insertion of a definition of ‘family violence order’ and amendment to the definition of ‘protection order’ in the dictionary per clauses 108 and 109.

This does not alter the existing power of the Childrens Court, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 102 Section 459 (4), definition of *family violence*

This clause omits the definition of ‘family violence’ for the purpose of section 459. This is a consequential amendment upon clause 108 which inserts the definition of ‘family violence’ in the dictionary.

Clause 103 Section 460 heading

This clause inserts ‘family violence order’ into the heading of section 460. This is a consequential amendment upon the amendment to section 459 (2) under clause 97 which provides the Childrens Court may make a family violence order or protection order.

This does not alter the meaning of the heading, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 104 Section 460

This clause inserts ‘family violence order’ into section 460. This is a consequential amendment upon the amendment to section 459 (2) under clause 97 which provides the Childrens Court may make a family violence order or protection order.

This does not alter the existing power of the Childrens Court, as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 105 Police assistance

Section 679 (1) (h) and note

This clause inserts ‘family violence order’ into section 679 (1) (h) and the note. This is a consequential amendment upon the amendment to section 459 (2) under clause 97 which provides the Childrens Court may make a family violence order or protection order.

This does not alter when the Director-General may ask the Chief Police Officer for assistance, as the original note provides that a ‘protection order’ is an order under the FV Act or the PV Act made by the Childrens Court under section 459.

Clause 106 Safe custody warrant – criteria

Section 686 (1) (a) (v) and note

This clause inserts ‘family violence order’ into section 686 (1) (a) (v) and the note. This is a consequential amendment upon the amendment to section 459 (2) under clause 97 which provides the Childrens Court may make a family violence order or protection order.

This does not alter the factors the Magistrate must be satisfied of when issuing a safe custody warrant for a child or young person for stated premises, as the original note provides that a ‘protection order’ is an order under the FV Act or the PV Act made by the Childrens Court under section 459.

Clause 107 Appeals to Supreme Court – generally

Section 835 (1) note

This clause substitutes the note at section 835 (1) to refer to a ‘family violence order under the *Family Violence Act 2016*’. This is a consequential amendment upon the amendment to section 459 (2) under clause 97 which provides the Childrens Court may make a family violence order or protection order.

This does not alter the current process regarding an appeal in relation to a protection order under the FV Act or the PV Act made by the Childrens Court as the original definition of ‘protection order’ at section 458 (1) means a FVO or a PVO.

Clause 108 Dictionary, new definitions

This clause inserts ‘family violence’ and ‘family violence order’ into the dictionary as the terms are used more than once in the Act.

The definition of ‘family violence order’ refers to the dictionary of the FV Act. This is a consequential amendment upon the amendment of the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 109 Dictionary, definition of *protection order*

This clause amends the definition of ‘protection order’ in the dictionary to refer to the dictionary of the PV Act. This is a consequential amendment upon the amendment to section 458 (1) under clause 95 which omits the definition of ‘protection order’.

Clause 110 Dictionary, definition of *relevant Act*

This clause substitutes the definition of ‘relevant Act’ for Division 14.3.5 to align with the substituted heading of Division 14.3.5 per clause 94.

Division 3.2.3 Crimes Act 1900

Clause 111 Seizure of firearms – warrants and emergencies Section 191 (4) (b)

This clause substitutes the term ‘protection order under the *Family Violence Act 2016*’ with ‘family violence order’. This is a consequential amendment upon the insertion of the term family violence offence in the dictionary, per clause 123. This does not alter the current application of section 191 (4) (b).

Clause 112 Section 192 heading

This clause substitutes the heading of section 192 to substitute ‘protection orders’ with ‘family violence safety notices, family violence orders and protection orders’. This updates the heading to reflect the amended scope and language of the provision through new section 192 (1A), per clause 113.

Clause 113 New section 192 (1A)

This clause inserts new section 192 (1A) which provides when a firearms service provision is in operation against a licensee for the purposes of section 192. The term ‘firearms service provision’ replaces the term ‘protection order provision’ currently defined at section 192 (8).

This expands section 192 to also apply to a FVSN, given under new section 13ZC of the FV Act, a police officer may seize a firearms licence and any firearm or ammunition in the licensee’s possession. This is necessary for police to exercise their powers to seize a firearm under section 192 as necessary to enforce a relevant condition of a FVSN.

This amendment does not otherwise amend the current scope of section 192 in relation to its application to a protection order or family violence order. A ‘protection order provision’ currently means section 44 of the FV Act or sections 36 or 37 of the PV Act. New section 192 (1A) includes a family violence order and protection order made against a licensee. Paragraph (b) refers to a family violence order, upon the insertion of the definition of ‘family violence order’ in the dictionary per clause 123.

The reference to the PV Act section at the note to new section 192 (1A) (c) has been corrected to section 38, rather than sections 36 and 37, as section 38 deals with firearm licences, not sections 36 and 37.

Clause 114 Section 192 (1)

This clause substitutes ‘an order under a protection order provision’ with ‘a firearms seizure provision in operation against a licensee’. This is a consequential amendment upon the insertion of new section 192 (1A) which provides when a firearms seizure provision is in operation against a licensee.

Clause 115 Section 192 (1) (a)

This clause substitutes ‘a respondent named in the order’ with ‘a licensee’. This is a consequential amendment upon the insertion of new section 192 (1A) which provides when a firearms seizure provision is in operation against a licensee. This uses the term licensee, rather than respondent to an order.

Clause 116 Section 192 (5) (a)

This clause omits ‘for the purpose of enforcing an order mentioned in that subsection’ with ‘but’ for clarity and conciseness.

Clause 117 Section 192 (5) (b)

This clause substitutes ‘an order under a protection order provision’ with ‘a firearms seizure provision in operation against a licensee’. This is a consequential amendment upon the insertion of new section 192 (1A) which provides when a firearms seizure provision is in operation against a licensee.

Clause 118 Section 192 (5) (c)

This clause substitutes ‘court orders in force’ with ‘a firearms seizure provision in operation against a licensee’. This is a consequential amendment upon the insertion of new section 192 (1A) which provides when a firearms seizure provision is in operation against a licensee and lists relevant court orders.

Clause 119 Section 192 (5) (d)

This clause substitutes ‘the order’ with ‘the firearms seizure provision’. This is a consequential amendment upon the insertion of new section 192 (1A) which provides when a firearms seizure provision is in operation against a licensee and lists relevant court orders.

Clause 120 Section 192 (8)

This clause omits the definition of ‘protection order provision’ applying to section 192. This is because the term ‘protection order provision’ has been substituted throughout

section 192 with the term ‘firearms seizure provision’ (per clause 113, clause 114, and clause 117), meaning the definition is redundant.

Clause 121 Definitions – div 10.4A

Section 210A, definition of serious offence, paragraph (c)

This clause omits ‘within the meaning of the *Family Violence Act 2016*’ from the definition of family violence offence in section 210A, as this reference is redundant upon the insertion of the term family violence offence in the dictionary, per clause 123.

Clause 122 Power of arrest without warrant by police officers

Section 212 (5)

This clause omits the definition of a ‘family violence offence’ for the purpose of section 212. This is a consequential amendment upon the insertion of the term ‘family violence offence’ in the dictionary, per clause 123. This does not alter the meaning of ‘family violence offence’, as both the current definition to be omitted and the new definition inserted in the dictionary refer to the dictionary of the FV Act.

Clause 123 Dictionary, new definitions

This clause inserts a new definition of ‘family violence offence’, to refer to the dictionary of the FV Act. This provides clarity and consistency across the *Crimes Act 1900* as the term ‘family violence offence’ is used multiple times. This does not alter how the term has been used within the current provisions of the *Crimes Act 1900*.

This clause also inserts a new definition of ‘family violence order’ into the dictionary, and refers to the definition of ‘family violence order’ in the dictionary of the FV Act. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Division 3.2.4 Crimes (Restorative Justice) Act 2004

Clause 124 Definitions – offences and offenders

Section 12 (1), definition of less serious family violence offence, paragraph (b)

This clause substitutes the definition of ‘less serious family violence offence’ paragraph (b) to include the offence of contravening a FVSN under new section 13ZB of the FV Act. This means the offence of contravening a FVSN may be referred to restorative justice.

The offence of contravening a FVSN is of a similar character to the other offences included in the current definition of less serious family violence offence, being a contravention of a protection order under the FV Act and an offence where the conduct is family violence and is punishable by a term of imprisonment of 14 years or less (if the offence relates to money or property) or 10 years or less. It is therefore

appropriate to expand the definition to include the new offence of contravening a FVSN introduced under new section 13ZB of the FV Act (clause 46).

This clause also substitutes the term ‘protection order under the *Family Violence Act 2016*’ with ‘family violence order under the *Family Violence Act 2016*’ in the definition of ‘less serious family violence offence’. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Division 3.2.5 Crimes (Sentencing) Act 2005

Clause 125 Sentencing – family violence offences Section 34B (2) (b)

This clause substitutes section 34 (2) (b) to include a FVSN. This means a court must not reduce the severity of a sentence it would otherwise have imposed because a FVSN is in force against the offence in relation to the family violence offence.

A FVSN is of a similar character to the other orders included in the current subsection, being a FVO under the FV Act and a protection order under the *Domestic Violence and Protection Orders Act 2008*. It is therefore appropriate to expand the subsection to include a FVSN introduced per clause 46.

Clause 126 Section 34B (3), definition of *family violence*

This clause substitutes the definition of ‘family violence’ for the purpose of section 34B to refer to the definition of ‘family violence’ at section 8 of the FV Act. This does not amend the definition that is to apply to section 34B, as the definition of ‘family violence’ in the dictionary of the FV Act refers to section 8 of the FV Act. This is a technical amendment to provide greater clarity of the definition for the purpose of section 34B.

Clause 127 Section 34B (3), new definitions

This clause inserts the definitions of ‘family violence order’ and ‘family violence safety notice’ for the purpose of section 34B, with reference to the dictionary of the FV Act and new section 13ZB of the FV Act, respectively. This clarifies the meaning of the terms used in section 34B.

Division 3.2.6 Criminal Code 2002

Clause 128 Publishing identifying information about childrens proceedings Section 712A (5), definition of children’s proceeding, paragraphs (b) and (c) (i)

This clause substitutes the term ‘that Act’ with ‘the *Children and Young People Act 2008*’ to clarify the relevant Act that paragraphs (b) and (c) (i) refer to. This does not alter the current application of these subsections.

Clause 129 Section 712A (5), definition of children’s proceeding, paragraph (d) and note

This clause substitutes the reference to Division 14.3.5 of the *Children and Young People Act 2008* in paragraph (d) and the note to align with the substituted heading of Division 14.3.5 per clause 94.

Division 3.2.7 Dangerous Substances Act 2004

**Clause 130 Working out whether person is a suitable person
Section 49 (1) (h)**

This clause substitutes section 49 (1) (h) to refer to a family violence order or corresponding family violence order.

This is a consequential amendment upon the amendment to the definitions of ‘protection order’ and ‘corresponding protection order’ at section 49 (2), per clause 131. This does not alter the current scope of section 49 (1) (h), given a ‘protection order’ is currently defined under section 49 (2) to mean a final order under the FV Act or the PV Act.

Clause 131 Section 49 (2)

This clause substitutes the definition of ‘corresponding protection order’ and ‘protection order’ with section 49 (2) to insert definitions of ‘corresponding family violence order’ and ‘family violence order’.

This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act. This does not alter the current scope of the definitions at section 49 (2), given a ‘protection order’ is defined to mean a final order under the FV Act or the PV Act.

Division 3.2.8 Evidence (Miscellaneous Provisions) Act 1991

**Clause 132 Meaning of sexual offence proceeding – ch 4
Section 41, definition of *sexual offence proceeding*, paragraphs (b) and (c)**

This clause substitutes paragraph (b) and (c) in the definition of a ‘sexual offence proceeding’ to include a proceeding for the offence of contravening a FVSN under new section 13ZB of the FV Act, if the FVSN was made because of a sexual offence or an alleged sexual offence against the protected person. This means the relevant protections under Chapter 4 of the EMPA which apply in sexual offence proceedings may apply in a proceeding for the offence of contravening a FVSN.

The offence of contravening a FVSN is of a similar character to the other offences included in the current definition of a ‘sexual offence proceeding’, including the offence of contravening a FVO. Similar vulnerabilities and sensitivities may apply in relation to these proceedings. It is therefore appropriate to expand the definition to

include a proceeding for the new offence of contravening a FVSN introduced under new section 13ZB of the FV Act (clause 46).

Clause 133 Recorded statement – offence to publish
Section 81J (2) (c)

This clause substitutes the term ‘protection order under the FV Act’ with ‘family violence order’. This is a consequential amendment upon the insertion of the new definition of ‘family violence order’ in the dictionary of the EMPA under clause 138.

Clause 134 Section 81J (2) (c) (i) and (ii)

This clause substitutes the term ‘protection order’ with ‘family violence order’. This is a consequential amendment upon the insertion of the new definition of ‘family violence order’ in the dictionary of the EMPA under clause 138.

Clause 135 Division 4.5.3 and section 81K headings

This clause substitutes the headings of Division 4.5.3 and section 81K to substitute the terms ‘protection order’ and ‘family violence protection order’ with ‘family violence order’. This is a consequential amendment upon the insertion of the new definition of ‘family violence order’ in the dictionary of the EMPA under clause 138.

Clause 136 Section 81K (2)

This clause substitutes the term ‘protection order under the FV Act’ with ‘family violence order’. This is a consequential amendment upon the insertion of the new definition of ‘family violence order’ in the dictionary of the EMPA under clause 138.

Clause 137 Section 81K (2) (a) and (b)

This clause substitutes the term ‘protection order’ with ‘family violence order’. This is a consequential amendment upon the insertion of the new definition of ‘family violence order’ in the Dictionary of the EMPA under clause 138.

Clause 138 Dictionary, new definition of *family violence order*

This clause inserts a new definition of ‘family violence order’ into the dictionary by reference to the definition of ‘family violence order’ in the dictionary of the FV Act. This provides clarity as to the meaning of ‘family violence order’, as the term is used multiple times throughout the EMPA.

This clause uses the term ‘family violence order’ rather than ‘protection order’ due to the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Division 3.2.9 Firearms Act 1996

Clause 139 Assessing suitability of individuals – discretionary criteria Section 18 (1) (b) (ii)

This clause inserts ‘final family violence order’ into section 18 (1) (b) (ii). This is a consequential amendment upon the insertion of the new definition of ‘final family violence order’ in the dictionary of the *Firearms Act 1996* under clause 148.

This does not amend the current scope of section 18 (1) (b) (ii) as the current definition of ‘final protection order’ in the dictionary means a final order under the FV Act or the PV Act under paragraph (a).

Clause 140 Section 18 (1) (b) (iii)

This clause inserts ‘interim family violence order’ within section 18 (1) (b) (iii). This is a consequential amendment upon the insertion of the new definition of ‘interim family violence order’ in the dictionary of the *Firearms Act 1996* under clause 150.

This does not amend the current scope of section 18 (1) (b) (iii) as the current definition of ‘interim protection order’ in the dictionary means an interim order under the FV Act or the PV Act under paragraph (a).

Clause 141 Assessing suitability of individuals – mandatory criteria Section 19 (1) (b) (i)

This clause inserts ‘final family violence order’ within section 19 (1) (b) (i). This is a consequential amendment upon the insertion of the new definition of ‘final family violence order’ in the dictionary of the *Firearms Act 1996* under clause 148.

This does not amend the current scope of section 19 (1) (b) (i) as the current definition of ‘final protection order’ in the dictionary means a final order under the FV Act or the PV Act under paragraph (a).

Clause 142 Adult firearms licences – mandatory suspensions for family violence offence Section 80 (1), notes

This clause substitutes the notes at section 80 (1) to insert a reference to the automatic suspension of a person’s licence under new section 13ZC if a FVSN is issued against them. This is a consequential amendment upon the introduction of the FVSN scheme under clause 46.

This also removes the reference to an after-hours order at note 1. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 143 Section 81A heading

This clause substitutes the heading of section 81A to substitute the term ‘certain protection orders’ with ‘protection order’ in accordance with the amendment to the definitions of ‘final protection order’ and ‘interim protection order’ in the dictionary under clause 149 and clause 151 respectively.

Clause 144 Section 81A (1) (a)

This clause substitutes section 81A (1) (a) to provide that the section applies if a licensee is subject to a final or interim protection order and omits the reference to ‘under the *Personal Violence Act 2016*’.

This is a consequential amendment to the amendment to the definitions of ‘final protection order’ and ‘interim protection order’ in the dictionary under clause 149 and clause 151 respectively. These amended definitions provide that a final or interim protection order means a protection order under the PV Act. It is therefore no longer necessary to specify that section 81A (1) (a) applies if the licensee is subject to a final or interim protection order under the PV Act.

Clause 145 Minors firearms licences – mandatory suspension if family violence offence

Section 97 (1), notes

This clause substitutes note 1 at section 97 (1) to insert a reference to the automatic suspension of a person’s licence under new section 13ZC if a FVSN is issued against them. This is a consequential amendment upon the introduction of the FVSN scheme under clause 46.

This also removes the reference to an after-hours order at Note 1. This reference is redundant upon the omission of Part 7 of the FV Act under clause 47.

Clause 146 Section 98A heading

This clause substitutes the heading of section 98A to substitute the term ‘certain protection orders’ with ‘protection order’ in accordance with the amendment to the definitions of ‘final protection order’ and ‘interim protection order’ in the dictionary under clause 149 and clause 151 respectively.

Clause 147 Section 98A (1) (a)

This clause substitutes section 98A (1) (a) to provide that the section applies if a licensee is subject to a final or interim protection order and omits the reference to ‘under the *Personal Violence Act 2016*’.

This is a consequential amendment to the amendment to the definitions of ‘final protection order’ and ‘interim protection order’ in the dictionary under clause 149 and clause 151 respectively. These amended definitions provide that a final or interim protection order means a protection order under the PV Act. It is therefore no longer

necessary to specify that section 98A (1) (a) applies if the licensee is subject to a final or interim protection order under the PV Act.

Clause 148 Dictionary, new definition of *final family violence order*

This clause inserts a new definition of ‘final family violence order’ into the dictionary to mean a final order under the FV Act and include specified other following orders. Currently, a final order under the FV Act is captured under the definition of a ‘final protection order’ in the dictionary. This clause is a consequential amendment to the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

This clause also omits paragraphs (b) (i), (ii) and (iv) from the current definition of a ‘final protection order’, meaning a protection order made under the *Domestic Violence Agencies Act 1986*, *Domestic Violence and Protection Orders Act 2001* or restraining order under the *Magistrates Court Act 1930* are not included in the definition of a ‘final family violence order’. This is because sections 18(b) and 19(b) of the *Firearms Act 1996* refer to orders in force in the previous 10 years. However, these Acts have not been in operation in the previous 10 years, meaning no relevant orders would be in force. These paragraphs are therefore redundant.

Clause 149 Dictionary, new definition of *final protection order*

This clause amends the definition of the term ‘final protection order’ to remove the reference to a final order under the FV Act. A final order under the FV Act is now captured under the new definition of a ‘final family violence order’ in the dictionary per clause 148. This is a consequential amendment to the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

This clause also omits paragraphs (b) (i), (ii), (iii), (iv) and (v) from the current definition of a ‘final protection order’.

Paragraphs (b) (iii) and (v) have been incorporated into the definition of a ‘final family violence order’ per clause 148, as a protection order under the *Domestic Violence and Protection Orders Act 2008* and a recognised FVO are family violence orders, not protection orders.

Paragraphs (b) (i), (ii) and (iv) refer to a protection order made under the *Domestic Violence Agencies Act 1986*, *Domestic Violence and Protection Orders Act 2001* or restraining order under the *Magistrates Court Act 1930*. These paragraphs are omitted as sections 18 (b) and 19 (b) of the *Firearms Act 1996* refer to orders in force in the previous 10 years. However, these Acts have not been in operation in the previous 10 years, meaning no relevant orders would be in force. These paragraphs are therefore redundant.

Clause 150 Dictionary, new definition of *interim family violence order*

This clause inserts a new definition of ‘interim family violence order’ into the dictionary. Currently, an interim order under the FV Act is captured under the definition of an ‘interim protection order’ in the dictionary. This is a consequential amendment to the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

This clause also omits paragraphs (b) (i), (ii) and (iv) from the current definition of an ‘interim protection order’, meaning a protection order made under the *Domestic Violence Agencies Act 1986*, *Domestic Violence and Protection Orders Act 2001* or restraining order under the *Magistrates Court Act 1930* are not included in the definition of an ‘interim family violence order’. This is because sections 18 (b) and 19 (b) of the *Firearms Act 1996* refer to orders in force in the previous 10 years. However, these Acts have not been in operation in the previous 10 years, meaning no relevant orders would be in force. These paragraphs are therefore redundant.

Clause 151 Dictionary, definition of *interim protection order*

This clause amends the definition of the term ‘interim protection order’ to remove the reference to an interim order under the FV Act. An interim order under the FV Act is now captured under the new definition of an ‘interim family violence order’ in the dictionary per clause 150. This is a consequential amendment to the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

This clause also omits paragraphs (a) (ii) and (b) (i), (ii), (iii) and (iv) from the current definition of an ‘interim protection order’.

Paragraphs (a) (ii) and (b) (iii) have been incorporated into the definition of an ‘interim family violence order’ per clause 150, as a protection order under the *Domestic Violence and Protection Orders Act 2008* and a recognised interim FVO are family violence orders, not protection orders.

Paragraphs (b) (i), (ii) and (iv) refer to a protection order made under the *Domestic Violence Agencies Act 1986*, *Domestic Violence and Protection Orders Act 2001* or restraining order under the *Magistrates Court Act 1930*. These paragraphs are omitted as sections 18 (b) and 19 (b) of the *Firearms Act 1996* refer to orders in force in the previous 10 years. However, these Acts have not been in operation in the previous 10 years, meaning no relevant orders would be in force. These paragraphs are therefore redundant.

Division 3.2.10 Personal Violence Act 2016

Clause 152 Objects of Act Section 6, note

This clause substitutes the term ‘protection orders’ for ‘family violence orders’ in relation to orders made under the FV Act. This is a consequential amendment upon

the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 153 Meaning of personal violence

Section 8 (3), note

This clause substitutes the term ‘protection orders’ for ‘family violence orders’ in relation to orders made under the FV Act. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 154 Matters to be considered – protection orders

Section 11 (1) (d) and (e)

This clause amends the matters to be considered by a court in deciding whether to make a protection order, to include any previous protection order, FVSN, FVO, or protection related order in force against the respondent, or any previous contravention of these orders. This expands the current scope of matters to be considered by the court beyond a protection order to include other types of relevant orders and contraventions of those orders.

This clause aligns with the amendments to section 14 (1) (g) and (h) of the FV Act at clause 51 to align the matters the Magistrates Court must consider in deciding to make a FVO or protection order.

Clause 155 Section 11 (3)

This clause is a technical amendment to update the language of this section for clarity and consistency across other Acts and remove possible ambiguity.

Clause 156 Section 11 (4)

This clause substitutes the definition of a ‘protection order’ with a ‘protection related order’ for the purposes of section 11. This is a consequential amendment upon the insertion of ‘protection related order’ in section 11 (1) (d) and (e) under clause 154. This improves the clarity of the PV Act to avoid potential confusion between the term ‘protection order’ for section 11 and the term ‘protection order’ for the rest of the PV Act.

This maintains the reference to an AHFVO and a protection order under the FV Act as in force at any time, despite the omission of Part 7 and the definition of ‘protection order’ under clause 47 and clause 84 respectively. This clause also omits ‘a family violence order under the *Family Violence Act 2016*’ currently at section 11 (4) (b) (i) as this has been inserted in section 11 (1) (d) and (e) under clause 154.

Clause 157 What if application is made for the wrong order?

Section 15 (1) (a)

This clause omits the term ‘under this Act’ as it is redundant. The omission of the definition of ‘protection order’ in the FV Act under clause 84 means that the term ‘protection order’ is no longer used to refer to an order made under the FV Act, so it is therefore clear that ‘protection order’ refers to an order made under the PV Act.

Clause 158 Section 15 (1) (b) (ii)

This clause substitutes the term ‘an order under the *Family Violence Act 2016*’ with ‘a family violence order’. This is a consequential amendment upon the insertion of the definition of ‘family violence order’ in the dictionary of the PV Act per clause 165.

Clause 159 Section 15 (2)

This clause substitutes the terms ‘protection order’ for ‘family violence order’ in relation to orders made under the FV Act. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 160 Section 15 (2) (b)

This clause substitutes the terms ‘protection order’ for ‘family violence order’ in relation to orders made under the FV Act. This is a consequential amendment upon the insertion of the definition of ‘family violence order’ in the dictionary of the PV Act per clause 165 and the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 161 What if application for the wrong order is decided?

Section 16 (1) (e)

This clause substitutes the term ‘protection order’ for ‘family violence order’ in relation to orders made under the FV Act. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 162 Section 16 (2)

This clause substitutes the term ‘an order’ for ‘a family violence order’ to clarify the type of order referred to. This is a consequential amendment upon the insertion of the definition of ‘family violence order’ in the dictionary of the PV Act per clause 165.

Clause 163 General interim orders – further orders

Section 24, 30 and 32

This clause is a technical amendment to update the language of this section for clarity and consistency with other Acts.

Clause 164 Dictionary, definition of *amend*, paragraph (a)

This clause is a technical amendment to update the language of this definition for clarity and consistency with other Acts.

Clause 165 Dictionary, new definitions

This clause inserts a new definition of ‘family violence order’ into the dictionary, and refers to the definition of ‘family violence order’ under the dictionary of the FV Act. This provides clarity as to the meaning of ‘family violence order’, as the term is used multiple times throughout the PV Act.

This clause also inserts a new definition of ‘family violence safety notice’ into the dictionary, upon the introduction of the FVSN scheme per clause 46.

Division 3.2.11 Prohibited Weapons Regulation 1997

Clause 166 General grounds for refusal to issue permits Sections 5 (3) (a)

This clause omits the term ‘relevant period in the ACT’ for ‘the 10 years before the day the application was made’ to adopt the definition of ‘relevant period’ under section 5 (6). This is a technical amendment for clarity. This does not alter the current application of the provision.

Clause 167 Section 5 (3) (b) and (c)

This clause inserts the terms ‘family violence order’, ‘corresponding family violence order’, ‘interim family violence order’ and ‘corresponding interim family violence order’ in section 5 (3) (b) and (c). This is a consequential amendment upon the insertion and amendment of the definitions of ‘corresponding order’, ‘interim protection order’, and ‘protection order’ for the purpose of section 5 under clause 169, clause 170 and clause 171.

This does not amend the current application of the sections, as section 5 (6) currently defines an ‘interim protection order’ to mean an interim order under the FV Act or PV Act and a ‘protection order’ to mean a final order under the FV Act or PV Act.

Clause 168 Section 5 (4)

This clause omits section 5 (4) as the amendment to section 5 (3) (b) under clause 167 now provides that an order that has been revoked is not included within the scope of the section. Section 5 (4) is therefore redundant.

Clause 169 Section 5 (6), definition of *corresponding order*

This clause substitutes the definition of ‘corresponding order’ to separate a corresponding family violence order, corresponding interim family violence order,

corresponding interim protection order, and corresponding protection order. This is a consequential amendment upon the amendment of the definitions of ‘interim protection order’ and ‘protection order’ for the purpose of section 5 under clauses 170 and 171, respectively.

This does not amend the current meaning of the definition, as section 5 (6) currently defines an ‘interim protection order’ to mean an interim order under the FV Act or PV Act and a ‘protection order’ to mean a final order under the FV Act or PV Act.

Clause 170 Section 5 (6), definition of *interim protection order*

This clause amends the definition of interim protection order at section 5(6) to insert a new definition of interim family violence order and remove the reference to an interim order under the FV Act from the definition of interim protection order. This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 171 Section 5 (6), definition of *protection order*

This clause amends the definition of protection order at section 5 (6) to remove the reference of a final order under the FV Act at paragraph (a). This is a consequential amendment upon the amendment to the definition of the term ‘family violence order’ at clause 78, to replace the term ‘protection order’ in the FV Act.

Clause 172 Section 5 (6), definition of *relevant period*

This clause omits the definition of ‘relevant period’ as the amendment to section 5 (3) (a) under clause 166 now uses the term ‘the 10 years before the day the application was made’. Section 5 (6) is therefore redundant.

Division 3.2.12 Residential Tenancies Act 1997

**Clause 173 Threats, harassment, intimidation or abuse by lessor etc
Section 45A (6) (e)**

This clause substitutes ‘any family violence order or protection order made against the lessor by the Magistrates Court’ with a FVSN, FVO or personal protection order made at any time against the lessor.

A FVSN is of a similar character to a FVO and personal protection order, being a civil notice or order made for the protection of a person. A FVSN may also include exclusion conditions, which may impact the rental premises. In deciding whether it is appropriate to terminate a residential tenancy agreement, the ACT Civil and Administrative Tribunal (ACAT) must take into account any FVSN, FVO or personal protection order made against the lessor.

This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 174 Definitions – div 4.3A

Section 46C, definition of *family violence order*

This clause omits the definition of ‘family violence order’ for the purpose of Division 4.3A, as this term is only used in section 46D. The definition is therefore relocated to section 46D per clause 176.

Clause 175 Termination for family violence

Section 46D (3) (b) (i)

This clause inserts ‘a family violence safety notice’ as one of the supporting documents that may accompany a family violence termination notice. As a FVSN is a legal protection notice issued by a senior police officer, it is appropriate this be included as a possible supporting document for a family violence termination notice.

Clause 176 New section 46D (6)

This clause inserts a definition of ‘family violence order’ for the purpose of section 46D. This relocates the current definition from section 46C and the dictionary definition in relation to Division 4.3A.

The current definition specifies that ‘family violence order’ means the definition under section 115 of the FV Act. Section 115 defines a ‘family violence order’ as an FVO, which means a local FVO, an interstate FVO or a foreign order. New section 46D (6) updates this language to provide that a ‘family violence order’ includes an order under the law of a State, Territory, or New Zealand that has the same or substantially the same effect as a family violence order. This has the same meaning as the definition of a ‘FVO’ at section 115 of the FV Act. Therefore, this amendment clarifies the meaning of ‘family violence order’ for the relevant section and does not change the current application or scope of Div 4.3A.

Clause 177 Threats, harassment, intimidation or abuse by tenant

Section 51A (7) (e)

This clause substitutes ‘any family violence order or protection order made against the tenant or another person living at the premises by the Magistrates Court’ with a FVSN, FVO or personal protection order made against the tenant or another person living at the premises.

A FVSN is of a similar character to a FVO and personal protection order, being a civil notice or order made for the protection of a person. A FVSN may also include exclusion conditions, which may impact the rental premises. In deciding whether it is appropriate to make a termination and possession order, the ACAT must take into account any FVSN, FVO or personal protection order made against the tenant or another person living at the premises.

This is also consequential upon the omission of the definition of ‘protection order’ per clause 212.

Clause 178 Division 6.5A heading and section 85

This clause substitutes the heading for Division 6.5A to substitute ‘protection orders’ with ‘family violence safety notices, family violence orders and personal protection orders’. This aligns with the broadened scope of section 85A and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

This clause also substitutes the definitions of ‘protected person’ and ‘respondent’ for the purpose of Division 6.5A. This aligns the definitions with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 179 Section 85A heading

This clause substitutes the heading for section 85A with ‘New tenancy agreement – family violence safety notices, family violence orders and personal protection orders’. This aligns with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 180 Section 85A (1) (a)

This clause substitutes ‘the Magistrates Court has made a protection order’ with ‘any of the following is made against the respondent’, which include a FVSN, FVO or personal protection order.

A FVSN is of a similar character to a FVO and personal protection order, being a civil notice or order made for the protection of a person. A FVSN may also include exclusion conditions, which may impact the rental premises. It is therefore appropriate that the protected person may apply to the ACAT for any of the orders listed at section 85A (2) if a FVSN is made against the respondent.

This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 181 Section 85A (1) (c)

This clause substitutes ‘under the order’ with ‘for the family violence safety notice, family violence order or personal protection order’. This aligns with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180.

Clause 182 Section 85A (1) (d) (i)

This clause inserts ‘notice’ after ‘order’. This aligns with the broadened scope of when section 85A applies per the amendment to section 85A (1) (a) to include if a FVSN has been issued against a respondent, under clause 180.

Clause 183 Section 85A (4)

This clause substitutes the definition of ‘exclusion condition’ under section 85A (4) to include an exclusion condition for a FVSN (introduced per clause 46) and amend the references to a ‘protection order’. This aligns with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 184 Applications under s 85A – ACAT orders Section 85B (1)

This clause substitutes ‘protected person under a protection order’ to refer to a protected person under a FVSN, FVO or personal protection order. This aligns with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 185 Section 85B (2) (a)

This clause substitutes the term ‘protection order’ with ‘family violence safety notice, family violence order or personal protection order’. This aligns with the broadened scope of when section 85A applies and the terminology regarding FVSNs, FVOs and personal protection orders, per the amendment to section 85A (1) (a) under clause 180. This is also consequential upon the omission of the definition of ‘protection order’ per clause 188.

Clause 186 Dictionary, definition of *family violence order*

This clause substitutes the definition of ‘family violence order’ to omit the specific meaning of ‘family violence order’ for Division 4.3A.

The current definition specifies that ‘family violence order’ for Division 4.3A means the definition under section 115 of the FV Act. Section 115 defines a ‘family violence order’ as a ‘FVO’, which means a local FVO, an interstate FVO or a foreign order. In Division 4.3A, the term ‘family violence order’ is only used at section 46D. Therefore, it is more appropriate to provide a specific definition in that section. The insertion of new section 46D (6) per clause 176 specifies that for the purpose of section 46D, a ‘family violence order’ includes an order under the law of a State, Territory, or New Zealand that has the same or substantially the same effect as a family violence

order. This has the same meaning as the definition of a 'FVO' at section 115 of the FV Act.

The reference to section 115 in the dictionary definition of 'family violence order' under this Act is therefore redundant.

Clause 187 Dictionary, definition of *protected person*

This clause amends the definition of 'protected person' to update the reference to the heading of Division 6.5A per clause 178.

Clause 188 Dictionary, definition of *protection order*

This clause omits the term 'protection order' from the dictionary. The definition of 'protection order' currently refers to a protection order under the FV Act or a personal protection order under the PV Act, which is separately defined in the dictionary. Upon the substitution of the separate definition of a 'family violence order' per clause 186, this definition of 'protection order' is redundant.

Consequential amendments have also been made throughout the Act to substitute the reference to 'protection order' with 'family violence, safety notice, family violence order or personal protection order' as appropriate to provide greater clarity as to the order or notice referred to.

Clause 189 Dictionary, definition of *respondent*

This clause amends the definition of 'respondent' to update the reference to the heading of Division 6.5A per clause 178.

Division 3.2.13 Victims of Crime (Financial Assistance) Act 2016

Clause 190 Offences – act of violence Schedule 1, division 1.2.2, new item 18A

This clause inserts the offence of contravening a FVSN under new section 13ZB of the FV Act within the table of family violence offences at Sch 1, Div 1.2.2 of the *Victims of Crime (Financial Assistance) Act 2016*. This extends the Victims of Crimes Financial Assistance Scheme to include the offence of contravening a FVSN.

The offence of contravening a FVSN is of a similar character to the other offences included in the current table of family violence offences, such as the offence of contravening a FVO under section 43 of the FV Act. It is therefore appropriate to include the new offence of contravening a FVSN introduced under new section 13ZB of the FV Act (clause 46).

Division 3.12.14 Working with Vulnerable People (Background Checking) Act 2011

Clause 191 Application for registration for NDIS activity – additional contents Section 18A (1) (b) (iii)

This clause inserts whether a person has had a FVSN (or notice under a law of another jurisdiction with substantially the same effect) made against them as one of the matters which must be included in the written statement by the applicant in their application when registering to engage in a National Disability Insurance Scheme (NDIS) activity. A FVSN is of a similar character to a FVO and protection order, being a civil notice or order made for the protection of a person. It is therefore appropriate to include information about whether a person has had a FVSN made against them in an application for registration to engage in a NDIS activity under section 18A.

This also amends the reference to a family violence order and protection order under section 18A (1) (b) (ii) for clarity and to align with the new definitions of ‘family violence order’ and ‘protection order’ introduced under clause 192.

Clause 192 Section 18A (2), new definitions

This clause inserts new definitions of ‘family violence order’, ‘family violence safety notice’ and ‘protection order’ for the purpose of section 18A, with reference to the FV Act and PV Act, respectively. This provides clarity as to the meaning of the terms for section 18A.

Clause 193 Risk assessment guidelines – content Section 28 (2) (e), example 1

This clause substitutes example 1 at section 28 (2) (e) to refer to a family violence safety notice and amends the current reference to a family violence order and protection order. A FVSN is of a similar character to a FVO and protection order, being a civil notice or order made for the protection of a person. It is therefore appropriate that a FVSN made against the person be listed as an example under section 28 (2) (e).

Schedule 1 Consequential amendments

Part 1.1 Children and Young People Act 2008

[1.1] Section 246, definition of *privileged*, paragraph (b)

This is consequential to the amendments in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 of the EMPA from Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B, to clarify that the immunity applies to all proceedings.

Part 1.2 Court Procedures Act 2004

[1.2] Section 41 (2) (d) (vi)

This is consequential to the amendments in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 of the EMPA from Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B, to clarify that the immunity applies to all proceedings.

[1.3] Section 41 (2) (d) (vii)

This is consequential to the amendments in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 of the EMPA from Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B, to clarify that the immunity applies to all proceedings.

Part 1.3 Evidence Act 2011

[1.4] Section 126F (3)

This is consequential to the amendments in clauses 11 and 18 to relocate the protected confidences immunity in Division 4.4.3 of the EMPA from Chapter 4 (which is specific to sexual offence proceedings) to Chapter 6B, to clarify that the immunity applies to all proceedings.