**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

# STANDING COMMITTEE ON LEGAL AFFAIRS

**(Reference: Inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025)**

**Members:**

**MS C BARRY (Chair)**
**MR T WERNER-GIBBINGS (Deputy Chair)**
**MR S RATTENBURY**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 20 MARCH 2026**

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**Secretary to the committee:**
**Ms K de Kleuver (Ph: 6207 0524)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

## WITNESSES

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*Amended 20 May 2013*

## The committee met at 1.15 pm

**CRIMMINS, MS FRANCES,** Chief Executive Officer, YWCA Canberra
**DWYER, MS LEAH,** Director Policy and Advocacy, YWCA Canberra
**KARLSSON, MS TIFFANY,** Chief Executive Officer, Canberra Rape Crisis Centre
**WEBECK, MS SUE,** Chief Executive Officer, Domestic Violence Crisis Service

**THE CHAIR**: Good afternoon and welcome to this public hearing of the Standing Committee on Legal Affairs for its inquiry into the Family, Personal and Sexual Violence Legislation Amendment Bill 2025. The committee will today hear from the ACT Bar Association, the Victims of Crime Commissioner, Legal Aid ACT, the Attorney-General, and the Minister for Police, Fire and Emergency Services. We will also be hearing from YWCA, the Domestic Violence Crisis Service and the Canberra Rape Crisis Centre.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contributions they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. As such, the giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web-streamed live. When taking a question on notice, it would be useful if witnesses use these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome witnesses from YWCA Canberra, the Domestic Violence Crisis Service and the Canberra Rape Crisis Centre. As we are not inviting opening statements, we will now proceed to questions. My first question is around the level of consultation that has gone into the drafting of this legislation. I want to understand the level of involvement that you all have had. I want to understand: what consultation was undertaken; what was your response; and how was the response incorporated into the bill? I have other questions as well.

**Ms Dwyer**: I am happy to respond from the Y. We participated in earlier consultations to each individual act that was being amended. That was hosted through the Justice and Community Safety Directorate. We took part in those, I guess, in-camera consultations. With regard to the omnibus bill itself, the bill came through around, I believe, December last year. It came through around the time we took the break for the holiday period. The submission was due early in the new year, from memory. In our submission we say that, for such an enormous bill, the opportunity for us to seek clarification on a number of points was not necessarily outside of the JACS process.

**THE CHAIR**: Thank you.

**Ms Webeck**: Similarly, from the perspective of the Domestic Violence Crisis Service,

we had consultation with the Justice and Community Safety Directorate on the individual components of this. We enjoy a quite collaborative relationship with the team through JACS, so we had line of sight to the impending submission requirements. With any sort of government consultation process, there is consideration around the workforce that we engage and expertise, around having a generally highly female-orientated workforce over the back end of the year—school holidays—but also the increase in demand for operational service delivery as a frontline service that does not receive resources for policy or engagement activity. However, I would like to note that our relationship is quite collaborative with JACS. Certainly our feedback, consultation and engagement have been factored into components of the drafting of this.

**THE CHAIR**: Thank you very much.

**Ms Karlsson**: From our perspective, we had not been aware of the earlier consultation, so we found our first engagement was around the omnibus bill. We were keen to be involved in that and we provided a written submission. I am not sure why we had not been included in earlier consultations, but we are always keen to comment on things involving sexual violence, from our perspective.

**THE CHAIR**: Thank you very much. I understand that each of you have raised concerns over systemic barriers that victim-survivors face when seeking protection, taking issue with the current practical inefficiency in earlier stages of intervention. Can you tell me what the barriers are with the current AHO and some of the issues that you are seeing with that?

**Ms Webeck**: We have to remember the legislative opportunity to intervene, particularly for victim-survivors of domestic, family and sexual violence. We are responding to risk and working to increase safety, and it requires an operational skill and capacity to work in that interpersonal environment. There is an inconsistency in the utilisation of the current after-hours order system—the ability to actually access after-hours orders and utilise pathways, potentially through Policing.

At times, we see the utilisation of 24-hour keep-the-peace orders, which have a requirement on both a victim-survivor and somebody who is using violence. It neutralises the violence, in a sense, by not actually engaging with where the violence is being used, and both people have a responsibility for police not having to come back to a disturbance. So there is a gap around increasing safety in response to imminency of risk in the ACT. That also falls into some of the concerns that we have articulated about this process, which is that the allowance of the FVSNs is not the be-all and end-all; there actually has to be a skill and capability uplift and an engagement with frontline services. Any family violence order, in any of its forms, is a high-risk indicator and point of escalation, with an impact on the safety of many victim-survivors. So there are gaps in the utilisation.

There is a kind of inadequacy in the utilisation of 24-hours keep-the-peace orders that the FVSNs helped to navigate, but we really need to talk about implementation and the utilisation of safety planning and risk assessment to ensure that these pieces of paper are not being "done to people" and leave them at further risk of harm.

**Ms Dwyer**: If we just speak to the after-hour orders, what Sue has said is correct in

terms of implementation with an uplift of skills, but I note that some of the other submissions talk about how there is no issue with the after-hours orders and that is why an amendment towards an FVSN scheme is not necessarily needed. That is not what we hear. Our frontline service hears from clients that the after-hours orders can be difficult to access. There can be a long-term delay, even in the immediacy of attempting to get an after-hours magistrate hearing, and then the outcomes are relatively inconsistent. The magistrate might not have the contextual information at that time to make a determination about the reality of the harm that is present. We do not necessarily agree with what has been argued in other submissions, that there is nothing wrong with the existing after-hours orders.

**Ms Karlsson**: In relation to our submission, we noted that the two-day limit was probably not adequate, from what we are seeing in terms of our frontline support. Fourteen days would be better. Also, we consider there should be adequate flexibility to determine an appropriate time—that it should not automatically be 14 days, for example, because there might be situations where you do not want to leave it that long, with the requirement for police to consider safety during that time. For example, someone may not get into accommodation for two weeks, and I am looking at a very small bucket of funding that we can use to put people in emergency accommodation. That would be very quickly used up if every single one was for 14 days. Giving the police some discretion around what is actually going to be appropriate for a particular person in the circumstances might be a better outcome. I support the comments around adequate training and oversight to inform police decisions in this space.

**Ms Dwyer**: Regarding Tiffany's comments, because I think it is relevant, there is the fact that the FVSN scheme is a 14-day time-bound window and there is no automatic trigger towards a court outcome—towards an actual hearing in the Magistrates Court. The 14-day window will ultimately become the default. The onus is essentially on the person in need of protection to respond to the FVSN or ask for it to be amended or extended to an FVO.

The reality is that the 14 days is going to become the default. Our position would be that it is probably too long, because some of the things that the police are required to consider—accommodation needs, employment needs, and all of those things—are considerations when you are thinking about it for 14 days: where will this person live for 14 days; will they be able to go to work for 14 days? Those are significant considerations that may influence a police officer to say, "Actually, that is a huge impost," and we will not have an FVSN in place. Whereas, for example, if the FVSN were active for a shorter period of time and it triggered an actual magistrate outcome or the requirement to go to the court to enforce it, decision-making on behalf of the police would be more streamlined and probably more efficient as well.

**Ms Webeck**: To add to that, we need to be very clear about the views and wishes of victim-survivors and their understanding of their risk and the assessment of their safety needing to be taken into consideration. We only ever increase people's safety if we are working alongside them, not doing something to them. The risk of displacement and the risk of utilisation of FVSNs in systems control and abuse, particularly in contexts where statutory child protection may be involved as well and an FVSN is put in place, and that not being the wishes of a victim-survivor, could create significantly detrimental outcomes.

We know that interventions by police at times are unhelpful in increasing people's safety, but also in centring their autonomy and their understanding of their own risk and how to increase their safety. If that is not being considered in the decision-making about an FVSN, the burden of that will be borne by victim-survivors.

**THE CHAIR**: Thank you.

**MR WERNER-GIBBINGS**: Thank you very much. I have one interesting question for each organisation, but, time-wise, I will put that on notice. If you can come back to me on that, that would be great. I have a more thematic question about the removal of good character evidence as a mitigating factor. I understand that has general support, but there are some calls to remove good character evidence as a mitigating factor for all sexual offences, as opposed to just child sexual offences. I am really keen for the rationale for that when, as I understand it, good character evidence does not enable all sexual offending, but it does enable all child sexual offending. I am wondering about the rationale behind expanding it across all offending.

**Ms Webeck**: From the perspective of DVCS, we would reference the With You We Can submission with regard to that. We would certainly be in favour of looking at examples, particularly from New South Wales, where good character references have been excluded for all sentencing. One of the issues that we have is the social context we operate in. It means that, even if good character references are not the piece that enable offending in areas outside of child sexual assault, it creates a social permissibility of this really great person. They did something not great, but they are a really great person. That really makes it difficult for victim-survivors to come forward and creates a complicit systems response that puts further harm on victim-survivors. It makes it a more difficult environment for people to come forward and report, because of the social weight that people put in place, noting that sexual assault happens in a context of power and control, regardless of who the victim is and who the offender is.

**MR WERNER-GIBBINGS**: That was very well-explained. Thank you very much. Are there any other views?

**Ms Karlsson**: Yes. From our perspective, I agree with everything Sue said in that space. Not including it for all sexual offences buys into rape culture, victim blaming and all the things that we are trying to educate against in terms of sexual violence. Not including it for all sexual violence offences does not understand the dynamics in sexual violence and how it occurs in a whole range of environments: workplaces and community groups, and pretty much anywhere there are people. Including it for all sexual violence will go to the fact that sexual violence is everywhere and perpetrated by a range of people against a whole range of victim-survivors.

The use of good character evidence during sentencing is also really distressing. It is highly distressing for all victim-survivors who are sitting there listening to that. It is really retraumatising as well. So, for a number of reasons, we would want it extended to all sexual offences.

**Ms Dwyer**: We agree. In the interest of time, we agree.

**MR RATTENBURY**: We appreciate the succinctness.

**MR WERNER-GIBBINGS**: I will ask some more questions on notice, about some different issues—one for each. Thank you.

**MR RATTENBURY**: I want to come back to the issue of the FVSNs. From the chair's earlier questioning and from reading your submissions, my sense is—perhaps I am just clarifying this—that 14 days will probably be needed in some circumstances, but you want more flexibility. Somebody proposed we have five to 14 days.

**MS KARLSSON**: Yes.

**MR RATTENBURY**: I think that speaks to the point you are making around recognising different circumstances. I am checking there is comfort with that proposition. From reading all the submissions, that is probably the right place to land to create flexibility.

**Ms Karlsson**: We included in our submission a suggestion of five to 14 days to allow that flexibility, depending on the circumstances of the victim-survivor. That is something we would be keen to see.

**Ms Dwyer**: Our submission was essentially that it needed to be resolved with urgency and that it should not just linger for 14 days.

**MR RATTENBURY**: You made the point around wanting it to perhaps automatically trigger a court process so that there is a point of intervention before you get to the last day.

**Ms Dwyer**: That is right. That is the expectation in other jurisdictions that have similar arrangements—that it does end up in a court.

**MR RATTENBURY**: That would also go to some of the concerns. The Bar, amongst others, expressed concern that there is no judicial oversight. Your suggestion of going to court within a certain amount of time brings that judicial oversight back as well, which picks up some of those other concerns.

**Ms Dwyer**: Yes; precisely.

**Ms Webeck**: That is also in the context of the restriction of extensions to FVSNs. We have to remember that, in some instances, FVSNs may be taken out and that may be an okay choice for a victim-survivor, but then moving through to a family violence order or something else might not be something that they want to do. We do not want to get in a loop where we have police putting on extensions that may not be in line. The length of utilisation of the FVSNs is also about mitigation around some of the concerns about the skill of assessment—about when one is appropriate and when one is in the context of what a victim-survivor may be looking for—but also the deep concerns around the utilisation of them and the potential misidentification and then weaponisation of that in other court related processes.

If an FVSN is taken out but the primary aggressor is misidentified, having to engage in

a 14-day process and the interlinking of things thereafter could restrict access to children, work, resources, accommodation et cetera. And we hold concerns around the misidentification of the primary aggressor and particularly the impact on Aboriginal and Torres Strait Islander communities, LGBTIQA+ relationships, as well as culturally and racially marginalised communities, and people with disability.

**MR RATTENBURY**: In that vein, the Women's Legal Centre speak about the need to have an ability for the police to revoke or amend an FVSN. They observe that currently that cannot happen. I cannot recall if any of your submissions talk about that. Do you have a view on that ability? Given that the police are able to issue it, the argument is that it does not make any sense for them not to be able to revoke it or change it based on new information or the like. Do any of you have a view on that?

**Ms Webeck**: I think the view that we at DVCS would hold is around the threshold for ranks of police who can actually make determinations about the issuing, amending or revoking an FVSN—that a number of the concerns may be mitigated if there is an implementation framework that means that there is good training and engagement for those who have the decision-making authority. Also, not only can it be swiftly responded to and swiftly managed and, if misidentification has occurred, potentially swiftly revoked and remediated; it also comes down to the training and the implementation of the on-the-job decision-making in the framework—what is being used to make that decision. That would mean we would feel either comfortable or not. A difficult tale we tell a lot about legislative reform is that the words on the page are one thing, but implementation could mean something incredibly different.

**MR RATTENBURY**: Yes. Thank you.

**THE CHAIR**: What conversations have you had around training on implementation during consultation about the bill? Was there any conversation around the training?

**Ms Webeck**: We have certainly spoken to that. It is often about legislating, and implementation sits elsewhere. In some ways, implementation would probably sit squarely with ACT Policing. Obviously, we have the least amount of power in the system. Institutional capability cannot be changed simply from within; it needs external factors. We would be very willing to collaboratively participate in that. Certainly, there has not been any detailed discussion or conversation around the implementation of this.

**Ms Karlsson**: From our perspective, we included training and implementation in our written submission, and I am sure others have as well. I am sure many of us would see that as an issue that needs to be well discussed.

**THE CHAIR**: Thank you.

**MR RATTENBURY**: I want to come to a quite different point that has been raised by With You We Can. You all probably have some views on this as well. They talk in their submission about the missed opportunity of implementing ALRC recommendation 10, which is the one that covers the right to independent legal representation. This goes to the discussion about the omission of counselling records and the like. Their argument is that, essentially, in most matters the DPP and the defence are there, but the victim is not represented expressly on these matters. They are keen to see that. I am interested in

your views on the importance of this, and then why it was not brought into this bill. Was that part of the consultation process at all?

**Ms Karlsson**: I am aware of the independent legal representation recommendations in the ALRC report. We have always supported access to ILRs in the court system, particularly for people who are going through sexual violence offending. I note that the omnibus bill does not touch on that at all. Recommendation 10 also talks about the claimant in a case needing to be made aware if their information is being subpoenaed by a third party, which might be an employer or a social media company or something like that. The role of the ILR would ultimately be to make them aware, because at the moment that information can be subpoenaed without the individual being made aware.

We support ILRs. Obviously, they need to be funded. Everything that you said is accurate—that people are peripheralized in their own cases and that a case can progress and they may not even be aware of what might be happening on any day. I cannot really speak to why it was not included. I do not remember it coming up through the earlier JACS process, but it is obviously being discussed at the commonwealth level, because of the ALRC reforms.

**Ms Karlsson**: We were not involved in earlier conversations, but in our submission our key point is around getting that information to the victim-survivor. They need to be aware before they are waiving anything. They need to be able to see the information that is the subject of that immunity. We have not discussed legal representation separately. We are aware that it is a live issue.

**Ms Webeck**: It is an incredibly complex area, not just for victim-survivors but also for victim-survivor response agencies. The independent legal advice is best practice engagement around being able to provide people with information about processes regarding something that has occurred to them, in a trauma-informed and timely way so that they can interpret legal processes as well. We absolutely support With You We Can's submission and also the ALRC's recommendation 10.

The Evidence (Miscellaneous Provisions) Act, around protected confidence, is a really interesting intersect on the basis that it is applied in varying ways in different courts. We have seen Family Law Court remediation around some of those areas, but, for self-represented respondents and being able to subpoena records in processes, the impost sitting with victim-survivor agencies to fight the subpoena or restrict the information is costly and incredibly time-consuming. It is also about navigating and brokering the relationship with the victim-survivor so that they are aware of what has to take place and how they are being supported and protected in that. It changes the way that organisations have to seek consent and provide information to victim-survivors at the start of any engagement as well.

Dealing with the Evidence (Miscellaneous Provisions) Act and protected confidence is a really important part of legal reform in the ACT that would mean consistency, aligning with everybody having a responsibility to end domestic, family and sexual violence. But, with programs being funded in non-specialist areas broadly across the sector, we are setting up a system where there will be lots of organisations that do not know the parameters with which they can contest a subpoena for somebody's file or the provisions for how they can protect somebody's information in the production of

information required in a subpoena, which may further harm victim-survivors if that is not remediated as a matter of urgency.

**MR RATTENBURY**: Thank you.

**Ms Karlsson**: We would support the point Legal Aid ACT made in their submission around this. It needs to be designed in a way that gets to the intent of this and does not create any unintended consequences. For example, this could give rise to instances where clients give consent to share the protected confidences, but they do not actually understand the ramifications. You could say that they can have the opportunity to seek legal advice, but not everyone is going to do that, thinking that they understand what the ramifications are.

It should be stronger—"legal advice should be provided" or something stronger so that people actually get legal advice. There are so many instances that we are aware of. We all have subpoenas coming in all the time and a client might think they understand where that information will then go, but we are very strong on the fact that they need the legal support to talk them through what is going to happen. Sometimes people say, "What do you mean? The perpetrator will read my clinical notes?" "Yes." We really need people to get to the point where they understand that the information will then be out there. There are a few things to consider in terms of how you would draft this.

**THE CHAIR**: Thank you very much. Leah, I think you raised some concerns you have with the current scheme—that it is difficult to access and that the outcomes are sometimes inconsistent. I want to get clarity on that. What difficulties do you face in accessing the scheme? My question goes to whether the current scheme, on balance, mitigates some of the risk that has been raised in the submissions about the scheme.

**Ms Dwyer**: The concerns that we have are related to feedback that we have from our domestic violence team about the after-hour scheme, noting that, regarding the FVSN scheme, the proposal would replace the after-hours scheme. The feedback that we get is that there can often be hours of delay between police approaching a situation and then determining that the threshold has been met for an after-hours order to be placed, and then being able to retrieve that from the after-hours duty magistrate.

There were a couple of examples in the ACT Policing submission. They said that a determination had been made at a scene by police officers that the harm threshold for the after-hours scheme had been met. In the context of all the violence that had been reported and noted, they were able to access the after-hours scheme, and then eventually the magistrate determined that the threshold had not been met. The harm threshold is different here. I think they even reported a situation where it took a number of days before the evidence had been accumulated in order to have a family violence order put in place. I am sure that the others have feedback from their frontline workers as well, but our understanding is that the responses from the magistrate can be inconsistent and there is no time pressure.

**Ms Webeck**: Family violence orders in the ACT take a period of time to be served. If somebody attends the Magistrates Court to apply for a family violence order and it is granted, it can take anywhere from three days to three weeks to serve, depending on the context and the nature of police being able to undertake that activity. The limitations

for an after-hours order mean that they often expire or, when people go to get family violence orders out, they may have to return to everyday activities, in the context of the perpetrator, until the notice is served in order to maximise their opportunity for safety.

This alleviates some of the delay considerations and potentially provides a timeline for when an FVSN would come to its end, but an FVO has time to be taken into consideration and served. However, again, that has to be really clearly articulated in the decisions around making and executing a family violence safety notice—the timeline it is executed for and the follow-up process for a victim-survivor. If an FVSN is taken out and somebody does not want to take out an FVO following that, it could dramatically increase risk. Again, that needs to be part of the implementation considerations.

**Ms Dwyer**: To reflect on some of the stuff that we have spoken about in the office, sometimes a client may talk to our staff and say, "I just want the violence to stop and I want him to have two days to calm down." That is not really something that can be responded to in the immediate moment. I am sure that Fran can talk about it, but what we say is that, if you can move people on from having a bar brawl outside, why can't a similar immediate effect happen when there is violence in a home setting? I know that Fran has examples.

**Ms Webeck**: We have an inconsistency in breaches to FVOs and breaches to orders being made by police. Again, there has to be considered enforcement of the notices and any reports of breaches to that notice have to be responded to effectively and applied. Otherwise, they are not worth the piece of paper they are written on.

**MR RATTENBURY**: Can you illustrate what you mean by those inconsistencies?

**Ms Webeck**: At times, victim-survivors make contact with ACT Policing to say that somebody has breached an order in place, and there may be inconsistency in the evidence police may want before they would actually attend or investigate. Indeed, they may say, "That does sound like a breach, but it is not that bad." A breach is a breach, and they should be responded to effectively. We do not currently operate in a system where that is consistent between police member to police member, station to station, and the responses to victim-survivors are disparate.

**MR RATTENBURY**: Thanks.

**THE CHAIR**: I am very conscious that we are five minutes over time, so I will wrap it up there. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you very much. I will put a few questions on notice.

## Short suspension

**KAPUSTIN, MR TIMOTHY,** Chief Executive Officer, ACT Bar Association
**WILLIAMSON SC, MR ANTHONY,** Chairperson, Criminal Law Committee, ACT Bar Association

**THE CHAIR**: We welcome witnesses from the ACT Bar Association. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we are not inviting opening statements, we will now proceed to questions. My first question is around concerns you raised in your submissions around judicial oversight and the arbitrariness of the FVSN application scheme. One thing I found particularly interesting was your concern around the risk of over-reaching police powers. I want you to expand on that. What would the practical implications be?

**Mr Williamson**: It needs to be appreciated that, in practical terms on the ground, an FVO can have profound implications in terms of someone's fundamental rights and liberties. It can cause someone to be kicked out of their house for a period of time and effectively rendered homeless. Going further, it can cause someone's contact with their children to be severed and prevented, and that, of course, can be devastating for both the respondent and the children. It can prevent a person from attending their place of employment, which can have a profound financial implication, and it can severely curtail a person's common law right to freedom of movement, which is a right also protected under section 13 of the Human Rights Act.

To impose these restraints and to encroach upon one's liberty in such a way often would be tantamount to tortious or criminal conduct, but it is legal because it is authorised under the colour of a legal instrument, currently in interim or emergency family violence orders and, under the proposed bill, a family violence safety notice. In that respect, something of an analogy can be drawn between, say, a warrant and an FVO, in that they are both legal instruments which authorise what would otherwise be tortious conduct. So, in light of the profound implications that such an order can have, our legal tradition, and certainly international human rights judice prudence, requires, where practicable, that such a decision is made by a genuinely independent and impartial decision-maker. In real terms, that is usually a magistrate or sometimes a deputy registrar who is acting in a quasi-judicial capacity.

We would respectfully suggest that police officers who have an interaction with a complainant or a witness and are exposed to the emotion, the upset and turmoil of that situation are not in the best position to make an objective, calm and detached decision, and they are not experienced decision-makers in relation to legal questions which have such profound implications, whereas, of course, magistrates and deputy registrars are. It is for that reason that we say the decision must rest with either a magistrate or, sometimes, a deputy registrar.

We also have to bear in mind that the ACT police force is one of, if not the most, junior and inexperienced police forces in the country. That is readily acknowledged by ACT Policing itself. The former Chief Police Officer publicly said that. Do we really want the power to be vested in members of the executive branch of government, who are not independent and are not objective to wielding such power and making such far-reaching

decisions? We would suggest the answer should be no.

**THE CHAIR**: Thank you for that. On the question of objectivity, we have heard evidence this morning from victims, advocates and service providers around the inconsistency, often times, between what the police officer sees and when after-hours orders are made. The evidence was that police officers are on the ground, they have assessed and they have come to a conclusion about the level of violence, and, after an after-hours order is made, the magistrate may come back with: "There isn't sufficient evidence to indicate that an after-hours order is required." Can you talk a bit about objectivity? There are the first responders who are looking at and addressing the issues. Can you talk about that and whether there is a misalignment, in terms of objectivity?

**Mr Williamson**: To take one step back, respectfully, there seems to be a bit of a misconception in that question—a misunderstanding as to who the decision-maker would be under the proposed regime. It is not the constable on the ground having the interaction. The scheme would vest the decision-making power with a different police officer, described as, I think, an authorised officer or a senior officer, which in real terms would be a sergeant or above. That often will not be a police officer on the ground dealing with the incident. The constable who is on the ground dealing with the incident is going to go to another decision-maker who is not there. So the question beckons: if they are going to go to another decision-maker who is not there, why should it not be a magistrate, as it currently is and is practicable, given a magistrate is available 24 hours a day, seven days a week, by phone and electronic means? Why should it not be a magistrate instead of a sergeant or above who is detached from what is unfolding in the premises or the environment of whatever has given rise to the basis for the application?

**THE CHAIR**: Thank you very much. That was really useful. I have a question around some of the issues that you, Legal Aid and other submitters have raised around section 13C. I think your comments were around whether it would unnecessarily and literally expand policing detention powers. Can you please explain that?

**Mr Williamson**: This is about the power to detain for up to four hours?

**THE CHAIR**: Yes.

**Mr Williamson**: That power already exists under the current regime. A person can be detained for up to four hours whilst a magistrate makes a determination. Our concern is in relation to the precise metes and bounds of that detention. It must be appreciated that someone has been detained in this context, not as punishment and not because there is sufficient evidence to arrest for criminal offending; they are being detained for the fulfilment of an administrative procedure. That is extraordinary. We accept that, in some circumstances, that might be necessary, but, in circumstances where it is non-punitive and there has been no judicial oversight, our concern is around the parameters of that detention and the conditions of that detention. We say that a person should not ordinarily be put in a police cell or a caged vehicle for the purposes of administrative non-criminal and non-punitive purposes.

**MR RATTENBURY**: I take your point that there is an administrative process being worked out, but there is also an element of immediate response or cooling off—however you might describe it—where there is a removal from the scene. That is another part of

that motivation.

**Mr Williamson**: We accept that, in some circumstances, that may be necessary, but that cooling off can be achieved with the person being detained, not just in a cell.

**MR RATTENBURY**: Sure. You make some important points towards the end of your submission—that, if this scheme is to proceed, there is the importance of putting some of those provisions in: still having access to their phone, not being in a paddy wagon, and those kinds of things.

**Mr Williamson**: Yes; precisely.

**MR RATTENBURY**: Thanks.

**MR WERNER-GIBBINGS**: I have a similar question about the process as it stands versus what this legislation envisions. Paragraph 40 says that the emergency order from a magistrate can be easily obtained. That is contra to the Australian Federal Police Association's submission—that it is not easily done and nor is it fast. According to them, a person who is subject to the orders can be detained for many hours whilst the paperwork is prepared and a magistrate becomes available.

**Mr Williamson**: Which would continue under the new scheme.

**MR WERNER-GIBBINGS**: What is the definition of "easy"? How long does it take at present? Does the Bar Association have any information?

**Mr Williamson**: At present and under the proposed scheme it is four hours, and under both schemes an application has to be prepared. There would really be no difference in substance, other than: who is the final decision-maker? We have not seen any evidence which suggests that it has to be a police officer. The police assert they have concerns. It is put at a very vague and nebulous level. They have not provided a single concrete example. Assertions are not evidence. Until a cogent evidence base is brought forward, there is simply no rational basis upon which to determine the changes necessary.

**MR WERNER-GIBBINGS**: Thanks.

**THE CHAIR**: Your submission was strong on significant concerns around the current scheme. There are human rights concerns as well. What level of consultation did you have on the drafting of the bill and post-drafting? What was the consultation?

**Mr Williamson**: With government?

**THE CHAIR**: With government.

**Mr Williamson**: Almost none. The chief executive might be able to correct me, but I think that the first we were consulted was after a draft had been sent to us. There was a working group in the Magistrate's Court where the idea had been floated, but we did not see the granular detail of what was being proposed until we had a draft bill. I should be cautious, though, in saying that. I assumed my current position only about 12 months ago, so there may have been some consultation with my predecessors, but I am not

aware of it.

**Mr Kapustin**: Not as far as I know, in relation to this matter. There were in relation to the good character reference element, but not this. As Anthony said, this was put to us, and Anthony and the Criminal Law Committee put together a response.

**MR WERNER-GIBBINGS**: There are similar schemes available to police in other jurisdictions—this sort of mechanism. Do you have advice for the government—if it were to proceed; if it were looking at modifying it—regarding best-case systems where this sort of thing is working reasonably well or, contra, where it is not and there are real problems to avoid with human rights breaches?

**Mr Williamson**: Whilst other jurisdictions provide a mechanism for police to issue an order, as far as I am aware this would go the furthest. In other jurisdictions where police issue an order, there is usually a very quick return date set before the court, at which point judicial involvement begins and the order of police will be scrutinised at a much earlier junction. Here it can—

**MR WERNER-GIBBINGS**: Is very quick two days?

**Mr Williamson**: It is usually two days in New South Wales. I could not speak to other jurisdictions. Here it could be up to 14 days, and there is no mandatory intervention or trigger point injecting the court into the process and injecting judicial oversight into the process for those 14 days. One might say 14 days does not sound that long, but 14 days without seeing your children or being homeless because you have had what is, in effect, a kick-out order, that is appreciable. We have to realise and allow the balance to weigh in that these orders are often made on good bases and are necessary. If one is made with onerous conditions and it should not have been, that is a profound miscarriage of justice. It also has to be recognised that, whilst the overwhelming majority of applications are made for genuine reasons and in good faith, there is a degree of abuse of the system.

Any criminal lawyer or family lawyer practising on the coalface will tell you that there is a small but appreciable percentage of applications made in order for the applicant to get a tactical and strategic advantage or position in the Federal Circuit and Family Court in relation to the litigation that is about to commence there. You will often see a child custody dispute and a property dispute commenced with this and then a filing is made in the Federal Circuit and Family Court within days. It does happen, and, from time to time, the process is abused. That is another reason police should not be the gatekeepers, or, if they are, it should be limited to the smallest possible extent. Judicial officers are better equipped to filter out those unmeritorious cases or cases which are, frankly, an abuse of the process.

**MR RATTENBURY**: I want to ask about your submission, at paragraph 26. The heading is "The proposed scheme breaches the Human Rights Act", and you have laid out a series of sections of the act. The nature of the Human Rights Act is that it is a balancing of the various rights. On the other side of this, the driver for this legislation is the issues of the right to safety and those sorts of matters, which also sit in the Human Rights Act. You were quite definitive in describing it as a breach as opposed to "it runs the risk of breaching". I am not meaning to nitpick; I am interested in why that is such a firm position.

**Mr Williamson**: What I should be clear about is that it is not about the availability of a family violence order per se, or an interim family violence order or an emergency family violence order, that we say is a breach. We would say having the police as the decision-makers would be a breach. You would recall that, moments ago, I spoke about the analogy between one of these orders and a warrant. They are both legal instruments authorising large egress into one's rights. You will see that, in paragraph 35, we refer to a seminal case from the Canadian Supreme Court, which is certainly respected for its human rights jurisprudence. They say that, in Canada, in order to be compatible with the Charter of Rights and Freedoms, which is their commensurate instrument, there should be judicial oversight, where practicable, from the beginning to prevent unjustified breaches of rights occurring before they happen—not identifying them when it is too late after the fact. I would make that observation.

I would also make the observation that section 28 of the Human Rights Act has the provisions that deal with the balancing of rights. The provisions of that section are often read in conjunction with a number of cases on proportionality. R v Oakes, from Canada again, is a lead case. One of the key considerations is whether there is a pressing and compelling social problem that needs to be addressed. If there is not, it is going to fail any proportionality test from the outset. We accept there should be a scheme for protection, but there is no reason it has to be the police. What is the pressing and compelling social problem in having magistrates make the orders? There isn't one. The police say they have concerns, but that falls well short of the mark.

**MR RATTENBURY**: Thank you. Just before you came in, we heard evidence from a number of service provider groups. You have also expressed concern about the 14-day period and a matter not going to court before then—not going before a judicial officer. Would your concern about powers given to police to issue these orders be ameliorated by the requirement for it to return to court in a reasonably short time?

**Mr Williamson**: It would be; yes. Our concerns would be ameliorated but not removed. We still say there is just no need for the police to do it when the magistrates can do it. The sergeant is contactable. Under the proposed scheme, the constable has to prepare a written application for the sergeant or above, and they have four hours to do it. Under the current scheme, you have four hours to prepare a written application. In fact, it does not even have to be written under this scheme, but, instead of ringing the sergeant, you ring the magistrate. Why do we have to change that?

**MR RATTENBURY**: Regarding that, Legal Aid make the point in their submission that they are concerned about not needing a written record. They talk about the need to at least have a requirement that the body-worn camera be turned on if there is going to be an oral application. It goes to some of your concerns as well about the lack of detail in the process and the recording of the rationale for the decision.

**Mr Williamson**: Yes. I would make the passing observation that, as a general although not absolute rule, judicial officers are better equipped at making good records of their decisions. That is what they do every day. Less so do the police.

**MR RATTENBURY**: Thanks.

**THE CHAIR**: You have raised concerns around 13X. You say: "Proposed new section 13X provides that a police officer cannot revoke or amend a FVSN after it has been served." I want to understand what the implication of that would be.

**Mr Williamson**: I suggest we have set our concern out well with some examples. If the police officer that made the order realises they have made a mistake or it was predicated upon false or incorrect information and the true and correct information has been brought to their attention, why should they not be able to revoke it? If they have the power and they are trusted to make the decision, surely they should also be trusted to revoke it. It is an absurd provision.

**MR RATTENBURY**: Do you have any sense of why it is there?

**THE CHAIR**: That is the question I had.

**Mr Williamson**: I do not know. That would be my answer.

**MR RATTENBURY**: We will ask the government later, but I was not sure whether you had been involved in any discussions about the rationale for it.

**Mr Williamson**: No.

**THE CHAIR**: Especially around the question of misidentification of witnesses, victims and respondents, do you think the current FVSN scheme strikes the right balance?

**Mr Williamson**: The current scheme?

**MR RATTENBURY**: Do you mean the proposed one?

**THE CHAIR**: The current and the proposed scheme.

**Mr Williamson**: We say that the proposed scheme certainly does not. It is a solution looking for a non-existent problem. There are problems with the current scheme. I spoke a moment ago about the abuses of process that regrettably do happen from time to time, but the reality is that we are never going to get a perfect system, whatever we adopt. Legal decisions are made by humans and humans are fallible, so it is not going to be perfect, but we would certainly be forceful in our view that the current system, whilst not perfect, would be infinitely better than what has been proposed.

**THE CHAIR**: Going back to an earlier question I had and then forgot, one of the concerns that was raised by advocates and service providers is the time it takes to access the current after-hours orders. They have indicated that it takes a while for them to get access to that. Is that due to resourcing? Do you have any insight into why?

**Mr Williamson**: First, I would be slow to accept that as an accurate premise. They say there are these concerns. Has any evidence or concrete examples been advanced? I do not know; I have not seen it. If there is some failing in the current system, whereby there is delay in getting hold of the on-call magistrate, who is available 24 hours a day, seven days a week, by phone and electronically, then the solution is to deal with whatever problem is causing delay in accessing the magistrate, as opposed to creating

wholesale change of who the decision-maker should be.

**THE CHAIR**: Thank you very much. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you very much.

## Short suspension

**FORD, MS JULIETTE,** Victims of Crime Commissioner, Victim Support ACT, ACT Human Rights Commission
**MATHEW, DR PENELOPE,** President and Human Rights Commissioner, ACT Human Rights Commission

**THE CHAIR**: We welcome Ms Juliette Ford, ACT Victims of Crime Commissioner, and Dr Penelope Mathew, Human Rights Commissioner and President of the ACT Human Rights Commission. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

As we will not be taking opening statements, I will go to questions. My first question is around the concerns that you raised in your submission around the lack of data. Also, on page 2 you noted concerns in in relation to the framework akin to Queensland's PPDs and Tasmania's PFVOs. I want to get a bit more information around those concerns that you hold, particularly noting that this scheme is technically designed using the Queensland scheme as a reference. I want to understand what your concerns are with the Queensland scheme and with the current proposed FVSN scheme.

**Ms Ford**: Thank you for the opportunity, Ms Barry. The first question you asked was in relation to the concerns regarding data. Our submission goes to the proposition that, with a significant reform such as this, with a significant change to the current way in which the system operates, in those circumstances any reform should be evidence based.

An evidence-based reform such as this would mean that we need to be able to rely upon consistent, obvious data that is available to understand exactly what the problems are with the current system so that we can understand exactly what the gaps are, what the appropriate targeted responses to those gaps are, and the way in which we can reform and address those gaps in a way that protects the safety of victim-survivors. At the moment there is no clear data available for us to be able to draw the sorts of conclusions necessary to introduce schemes of such breadth in circumstances where there has not been an opportunity to address what may be the problems in the current scheme.

One of the submissions that has been made says that the ACT is the only jurisdiction that does not have a safety notice scheme and that we are behind the eight ball in relation to ways and means to address the need to protect the safety of individuals. The assumption in relation to that proposition is that the schemes that have been introduced in other states and territories have been introduced without any problems in relation to implementation or any unanticipated consequences arising from the issuing of a family safety notice.

The explanatory statement that went with the introduction of the Queensland scheme made it clear that there were clear concerns in relation to such orders being issued at short notice without any overview where there was a clear risk of misidentification of the primary perpetrator of violence. In that explanatory statement, statistics were provided that gave evidence in support of the level of misidentification that occurs in circumstances where there is a domestic and family violence situation. That is not to criticise the skill of first responders. That is to understand and appreciate the complexity

of the circumstances that first responders confront when they are called upon to respond to a domestic family situation.

In particular, I can provide you with the statistics which have not only been drawn upon in relation to the Queensland scheme, by way of a risk in relation to police misidentification, but issues in relation to misidentification. Issues in relation to the trust between the police and our most vulnerable members of our community were raised in the Jumbunna report—starting at page 237 and proceeding from there—which are concerns that cannot be dismissed in circumstances where this scheme is intended to be introduced to protect the safety of victim-survivors.

When good intentions inform a reform which, on the face of it, can address these concerns, there is a risk when there is not the appropriate data and the appropriate consultation to ensure that there are no unintended consequences in relation to the introduction of a new scheme.

With respect to Aboriginal and Torres Strait Islander members of our community, culturally and linguistically diverse members of our community, people living with disabilities, people living with mental health concerns, and members of the LGBTIQA+ community, their concern, in seeking the support of police in circumstances where such a notice could issue, where a mistake could be made which could have unintended consequences and cause the risk of lethality to the victim-survivor to be increased, is something which the committee cannot ignore. It is difficult for this committee to make recommendations in relation to this scheme when that data is not available to draw upon to make recommendations as to how the scheme should operate.

If I may take it one point further, as members of the sector raised earlier today, in other states and territories this scheme sits consistent with the operation of the legislative scheme in which it sits; that is, in most other states and territories, where an application is made for a family safety notice, it starts a process in relation to seeking a family violence order. The scheme makes sense in the context where you consider New South Wales, where the primary applicant in applications for family violence orders is police. This is a systems piece that has a sense of continuity in relation to it.

What we are trying to do here in the ACT is place one scheme on top of a current process which is quite different. We have a process where the applicant commences most applications for family violence orders. This scheme is intended to sit side by side, but no consideration is made as to how these two approaches to keeping victims safe will be integrated. When one looks at the bill, there is nothing in the bill that addresses matters in relation to how the two schemes will interrelate.

I will give a practical example. Police are called out. A family violence safety notice is issued. It extends for 14 days. During that 14-day period, it is then incumbent upon the applicant to make an application for a family violence order. She is successful in having it heard within the 14-day period, and the order is issued. Meanwhile, the timeframe for the family violence safety notice has expired.

There is an assumption that that interim order will have been served immediately. That is not how the system operates. Due to matters of capacity, there are delays in the service of orders issued from the court. Those delays can mean that there is a cohort of

applicants who have orders made that are not yet enforceable because they have not been served. There will be a period of time when there is nothing in place because the timeframe for service can be, in some cases, two, three or four weeks.

Remember that this is an ex parte application, so urgency has been identified. An order has been made, so findings have been made that it is necessary for the safety of that individual. And we then have a gap—a gap in circumstances where the respondent is aware that maybe an application has been made and has been the subject of a family violence safety notice.

The unintended consequence of that is untold. Leave aside whether there are any consequences; it is an example of the system and the two processes not talking to each other. In other jurisdictions, the process is different, and you do not have that gap. When we are considering this new scheme, we have to understand where this scheme sits, respectfully, in the context of the current service and the current manner in which, in the ACT, applications for family violence orders are dealt with.

**MR RATTENBURY**: How common is it, or do you have any data on how often it takes two, three or four weeks to serve a family violence order? Putting aside the current proposal, surely, that is a point of significant risk, anyway, because if someone is subject to family violence and they have to wait four weeks for service, that is a lot of time.

**Ms Ford**: Correct; absolutely. It is a problem in the system as we speak today, and it is not unusual. The timeframe in relation to service of interim FVOs is a problem that service providers are confronting right now.

**MR RATTENBURY**: I am not meaning to diminish your other point; I am just exploring that one.

**Ms Ford**: No, absolutely. If I have an opportunity to speak to the proposed family violence safety notice, it might go to answering your question, Mr Rattenbury. It goes to the point about how we ensure and address the issues that ACT Policing have raised in relation to the shortcomings in the current system, which I acknowledge. The question then is: what is the appropriate solution, and is the establishment of this scheme, in its current form, the appropriate solution?

There may be other ways and means that address this issue of service, which is one of the issues ACT Policing has raised, as curing one of the problems we have currently in our system, by way of proposing that personal service with a family violence safety notice is achieved by way of email, if the respondent consents, at the point at which they are seeking that notice to be issued. There may be an opportunity to review the current system so that those gaps that are identified in trying to layer one system across another can be addressed, but we achieve an outcome that addresses some of the practical operational issues that first responders are identifying.

I would invite the committee to consider a proposition where, after hours, rather than going down the path of a serious quasi-delegation of judicial power to police, that instead of a magistrate being available after hours, a registrar is available after hours. A registrar has the delegated powers to make family violence orders on an interim basis.

They deal with those applications every day. They have the expertise, the knowledge and the understanding.

It protects and preserves one of the safeguards we have in the system: in relation to an intervention by the system to protect the safety of a victim-survivor, it is the most targeted and appropriate outcome. That is why we have these safeguards, because we understand the complexity of the issues confronted by first responders. It then may be —and I heard my friend Mr Williamson talk through what the process looks like—that that process is identical for a family violence safety notice to what it is for an interim family violence order.

Already, the police have to submit their proposal to a person of seniority. We would submit that, if we go down the path of a family violence safety notice scheme, it should be at the level of inspector or acting inspector. However, if it is contemplated that the judicial powers remain where they should remain, the registrar can make that order, and the matter could then automatically be adjourned to a return conference. We achieve what other states and territories already have, by way of a system which is systemised. There is transparency. Impact upon resourcing is managed, and the safety of the victim-survivor is preserved. That would achieve some of the issues that have been raised so far.

**THE CHAIR**: I want to go to one of the issues that you raised around the schemes sitting separate from each other—the proposed scheme and the current family violence scheme sitting separate from each other. We have heard from service providers that sometimes victims of domestic and family violence do not want to go on to apply for an FVO. They just want what is called a cooling-off period—getting out of the house or something like that. In the current scheme, interim after-hours orders automatically trigger a court process. But we have heard that some victims do not want that process to be triggered. What would you suggest as a solution to that?

**Ms Ford**: The process in withdrawing an application before the court is a simple one. If a person chose not to proceed, it is simply a matter of advising the court that they do not wish to proceed and the application gets removed from the list.

**THE CHAIR**: You are saying that the current scheme does not mitigate the concerns around triggering the new process of—

**Ms Ford**: With respect to the current scheme, the current scheme does not have the other safeguard that we currently have under our legislative frame, which is that police are required to, at first instance, consider whether a criminal justice response is appropriate. We already have a number of safeguards in place which police can call upon to address an issue or a question of safety at that point. There is a pro-arrest policy in the ACT. If there is a consideration that charges should be laid, charges should be laid. That will mean that we have an assumption against bail in relation to family violence offences. If they are considering going down the path, as well as laying charges, of an after-hours family violence order, they are able to detain the respondent for a period of time while that process continues. All the things we have now address the proposition that you are referring to, apart from the keeping the peace approach that is taken.

I question, too: when you consider what type of family violence safety notice will be issued, will it actually address the safety of the applicant in circumstances where it may be that they need to be removed from the property? Will police be prepared to issue a family violence safety notice which causes the respondent to leave the property at 2 o'clock or 3 o'clock in the morning? If the incident is such that that is required, I submit, it is most likely that there is a criminal justice response that should be called upon.

If the intention of the family violence safety notice scheme is to keep the victim safe, we have many levers available, and that is not dismissing police concerns about this option. My submission is that we can achieve and address the concerns that police are raising through changes to and modifications of the current system, rather than creating a whole new system that does not sit neatly within the legal landscape in which we operate.

**THE CHAIR**: That is very useful; thank you.

**MR WERNER-GIBBINGS**: Your submission raises the issue of misidentification of the person most in need of protection; it was around pages 4 to 5.

**Ms Ford**: Yes.

**MR WERNER-GIBBINGS**: Can you please amplify for us why you believe that judicial oversight reduces the problem of misidentification?

**Ms Ford**: It is the role of the judiciary and, in this case, as one of our safeguards, to have two sets of professional eyes considering the case that is before them, in circumstances where we have a multitude of reports and evidence from other jurisdictions, as well as within this jurisdiction, in relation to misidentification of the first respondent by police. The Queensland review referred to this issue. Noting that the Tasmanian scheme is different, concerns in relation to misidentification were also raised in relation to its current scheme.

The value of having judicial oversight of the decision to issue a family violence safety notice or an after-hours family violence order means that you are bringing two sets of professional eyes to the issue, it allows the questions to be asked on the evidence that has been provided, and it brings a level of understanding in relation to the complexities of domestic and family violence incidents, noting that domestic and family violence, and incidents that happen within, is a course of conduct.

There is a risk that family violence safety notices could cause us to fall back to adopting an incident-based approach, whereas there has been much learning and a commitment from ACT Policing and all first responders to understand the dynamics of domestic and family violence, understanding it as a course of conduct, and therefore what is appropriate as an intervention to keep the victim safe.

I refer to case study 1 that is in ACT Policing's submission. It is the most complex of the scenarios that have been provided in support of family violence safety notices. It is an incident that has occurred during daylight hours, and it is an incident where the respondent is extremely complimentary and is welcoming of the police as they arrive, and the person at risk of violence is saying, "There's nothing to see here," because she

is very concerned for her own safety. Police have submitted that that is an appropriate example of where a family violence safety notice should be issued. I submit to you that that is an example of where there is a risk of one agency forming a view that this is the most appropriate step in circumstances where a multi-agency response is required.

This goes to your question as another example of why it is of value to have as many eyes as possible understanding the problem, bringing different skill sets to avoid circumstances of misidentification or avoiding making an action which causes more risk and more harm than not.

Agency is a matter that my sector colleagues referred to earlier. That case study is an example of who has the lived experience expertise of what needs to be done or not done to keep her safe, because she understands what has happened before and what was likely to happen now.

In that case a direct referral to the Family Violence Safety Action Program, which deals with high-risk cases, was the opportunity there, and was the answer in that case as to what needed to happen next, because then someone sits down with her in a safe place and unpacks, "What is the nuanced approach to keep you safe? What are the concerns you have? How can that be addressed?" Anyone that has worked closely in the system would sit down with their client and have a much more nuanced conversation. The same applies in relation to the question of misidentification.

The Jumbunna report refers to concerns within this community. They cannot be ignored, and it does not appear that this report has been considered, when one reads the explanatory statement to this proposed legislative reform. It is unclear as to what consultation has occurred with ACCOs in the ACT or otherwise in relation to what could be the unintended consequences of this scheme in not protecting members of our community.

**MR RATTENBURY**: Firstly, Ms Ford, this is my first chance: congratulations on your appointment to the role.

**Ms Ford**: Thank you, Mr Rattenbury.

**MR RATTENBURY**: I want to ask a couple of things. In your submission, you talk quite a bit in the early paragraphs about the need for evidence-based reform and a lack of data that has been brought forward in this matter. Do you know whether the data exists or is it simply that the ACT does not have the data?

**Ms Ford**: It is a mix of both. Under the Family Violence Act, there is a requirement that, if a judicial officer refuses to make an order, there should be a note in relation to that. I am unaware of whether that data exists. I am unaware as to whether there is any data held by ACT Policing in relation to the number of applications they have made after hours, when they have been made, when they have not been made, and what the grounds have been for that decision.

One of their case studies refers to a circumstance where an order was not made. When I read that scenario, the decision to charge was the appropriate decision. The pathway they took was the appropriate path. It may be that they withdrew those charges, but at

the time that that incident occurred there was more than sufficient evidence for them to form a suspicion, a reasonable suspicion, in relation to charging, so proceeding with charging was the appropriate step.

Unfortunately, the review of the Family Violence Act, which was due, and was due to be tabled in November this year, was delayed, and it is anticipated to be delayed until 2028, to allow for this scheme to be in place for two years. My respectful submission is that that is a little bit of cart before the horse, in the sense that, yes, there has been consultation, and my office has worked closely with JACS, there have been one-on-one conversations, and we have had a meeting with ACT Policing, which JACS kindly organised, to try and understand what is the evidence base that sits behind this initiative.

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

Unfortunately, this proposal has been dealt with over here, and not in the contextual piece of everything that is going on over here. I listened to my sector colleagues this morning, or earlier this afternoon, and their thoughts and views in relation to how we could achieve a scheme that addresses the concerns of victims, police and all other community stakeholders have been missed.

**MR RATTENBURY**: You were talking earlier about keeping a quasi-judicial role, and you talked about essentially going to registrars instead of magistrates. I was interested in that proposition in that, at the moment, I do not think that the registrars are available 24 hours a day, so you would actually have to set up a whole 24-hour scheme. I was interested in understanding why you think that is better. Maybe I misunderstood you, but given we already have a 24-hour scheme, why would you set up a new 24-hour scheme?

**Ms Ford**: It may be that if there is some concern or reticence in contacting a judge, having a registrar available may be less intimidating. With the registrar, there is their obligation in relation to considering it carefully—being mindful that they are answerable to a judge.

I bring my own personal experience to this, I confess. In one of my previous roles, as a registrar of the Family Court, I was responsible after hours in relation to and being first contact, if it was necessary for orders to be made after hours, in order to turn a plane around, stop someone leaving the country, issues in relation to safety or violence, or any other urgent matters that had to be dealt with after hours.

My role as a then deputy registrar was to be, after it had gone through the administrative piece, the first contact. Way back in those days, I was travelling around with a suitcase full of things, in order to be able to do what needed to be done. The process, the scheme, is not that complex. On a roster piece, I submit, it is capable of being contemplated at least and considered as an option if the current system is not working, and it provides another way and means for us to have a conversation around it.

**MR RATTENBURY**: If I have understood you correctly, you are implicitly suggesting that part of the flaw in the current system is the reluctance of a police officer to wake up a judge at 2 o'clock in the morning, essentially.

**Ms Ford**: I do not know. I have no evidence to support that, but when I look at the scheme, and I am trying to understand what the problems are in relation to the scheme operating in the way that it should, it is about looking at other ways and means for the scheme to operate in an effective way, but still achieving what police are trying to achieve. Instead of it being an inspector or a sergeant, it would be a registrar. The quasi-judicial delegation of powers has not been compromised. The obligation to consider a criminal justice response as the first response is not lost as an appropriate safeguard. It is a way to achieve, in essence, a family violence safety notice scheme that sits more consistently within our way of operating and, in essence, it is the first application for an interim family violence order.

The courts will certainly have a view in relation to that; I am very mindful of that, and I respect that. That is something that would need further consideration. It is an example, with respect to a review of the Family Violence Act, if we proceeded down that path, of the kind of things that could have been considered or contemplated in that forum, because there may be issues, obviously, in relation to that that I am unaware of.

**MR RATTENBURY**: The bar, in their submission, towards the end of it, laid out a series of: if you are going ahead with the FVSN scheme, here are some things you should do to provide further protections. Have you had a chance to look at those and do they make sense? Is there anything that you would comment on in that regard?

**Ms Ford**: We would not oppose some of the matters that they have raised. In my consideration, in relation to if we are going down this path, what some of the considerations would be, I have already referred to the legal seniority of someone within ACT Policing. It is imperative that the legislative protection of the pro-arrest policy is maintained and the primacy or the priority of considering the criminal justice response is preserved. There also should be a requirement that, in the documentation that is prepared, there be an indication that the police officer, if they have chosen not to go down that path right now, will continue to investigate whether there are any other criminal justice options available to them.

One of our concerns, set out in the submission, is that, rather than going down a criminal justice approach, we will default to this system, which is contrary to the work that the territory has engaged in over many years to ensure family violence offences are treated with the level of seriousness that they deserve.

There should be an amendment to the Crimes Act. I take you to paragraphs 34, 35 and 36 of my submission. They are the kind of considerations that we would say would need to be included in any such scheme. Most importantly, paragraph 36 refers to the question of data. We would propose that there needs to be a continual review, starting six months prior to the introduction of the scheme, looking at rates of criminal charges laid in family violence offences and looking at how the data progresses what that will look like over each six-month period, so that there is a tracking in relation to the impact of this scheme upon how matters are otherwise dealt with.

**MR RATTENBURY**: Thank you. That was a good crash course. I appreciate you trying to keep it compact.

**THE CHAIR**: That was really good. I have a few questions for the Human Rights Commission, but I will put them on notice.

**Dr Mathew**: Oh dear, no!

**THE CHAIR**: Unless you want to give us a really quick summary of your concerns around how this breaches, or whether or not there is a breach of, human rights.

**Dr Mathew**: Primarily, it is the Victims of Crime Commissioner's submission, but we did raise human rights concerns, beginning with that question of data that we started off with. How can we say that any limitations imposed on rights are demonstrably justified in a democratic society if we have not actually got the data? The second, really key point is lack of judicial oversight, when it is the judiciary who are going to protect against rights violations. Those are probably the two key points that I would pull out of those few paragraphs where we talk about human rights concerns. Of course, if you have lots of questions to ask, we are available to help.

**MR RATTENBURY**: That was a good summary.

**THE CHAIR**: That was really good. Thank you very much. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee within five business days of receiving the uncorrected proof *Hansard*. Thank you very much for your contribution. It was really useful.

**Ms Ford**: Thank you for the opportunity.

**Dr Mathew**: Thank you for the questions. They were very thoughtful and probing.

**HARDERS, MRS BRIGID,** Special Counsel, Executive, Legal Aid ACT

**THE CHAIR**: We now welcome Mrs Brigid Harders, from Legal Aid ACT. Please note that as a witness you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we are not taking opening statements, we will now proceed to questions. I want to go through your concerns. You have raised a few. So you are generally supportive of the scheme. I do not know how much you have been listening to the commissioner's response, but I want to ask questions around the specifics of the concerns that you have raised, particularly around section 13. You have raised concerns that the current composition of 13C will necessarily expand police detention powers. I want to understand your concerns around that and also 10C. I will go down the list of concerns that you have raised. I am sorry; I know you probably did not prepare the submissions and now I have asked you questions about it.

**Mrs Harders**: That is all right. On the four-hour detention period, the position is that that is entirely appropriate. When you look at the scheme as a whole, the real concern—and I think the commission has addressed this—is about taking away judicial power. We generally agree—and, again, we are taking this from two perspectives, because we represent both victim-survivors and perpetrators, or alleged perpetrators, of family violence. So, while I say that the commission is broadly supportive of the scheme, it is really a balance between victim safety and preserving the rights of an alleged offender. So, insofar as time restrictions are necessary, they need to be strict. Does that answer your question sufficiently?

**THE CHAIR**: Yes. On your comments around 13C, I just wanted to understand what the issue is with substituted service and how that is inconsistent.

**Mrs Harders**: Of the FVCN?

**THE CHAIR**: Of the FVSN, yes.

**Mrs Harders**: Sorry; I get the acronym wrong every time. The difficulty generally is that a substituted service regime, without the attempt of personal service first, risks alleged offenders or respondents missing it entirely. That is not uncommon for our clients, in particular. If you take into account the demographic of the type of clients that Legal Aid often has, we have issues where someone might not have reliable access to the internet or someone might not have reliable access to a mobile telephone. So, while substituted service broadly is a useful tool, it does not necessarily bring the order to the attention of the respondent, particularly for people who are at or just about the poverty line.

**THE CHAIR**: Thank you. The Victims of Crime Commissioner mentioned the inconsistency between the currently proposed FVSN scheme with the scheme we already have and the potential to have unintended consequences in that, for example, the person who needs to be protected becomes, I guess, the person who the FVSN order is served. Can I get your views on how frequently that could occur, noting that you represent both clients?

**Mrs Harders**: Again, we do not have any data on this, so we are in the same sort of position, but it is not an experience that is unfamiliar to us, by any stretch of the imagination. The misidentification question is something that is raised in our submission. It does happen, I think, realistically, and our submission addresses that it should be dealt with by greater education for police officers in terms of cycles of violence. That is probably the most comprehensive answer that is going to find the solution to that problem. But, yes, it does happen—and not without some frequency, is probably as high as I can put it.

**THE CHAIR**: You have indicated in your response that you try to strike a balance between the protection of victims and the rights of perpetrators. Do you think that the current proposed bill strikes that balance, noting all of the issues that have been raised by all of the witnesses?

**Mrs Harders**: Broadly, yes, subject to some difficulties in practice that we have highlighted. So, really, it is the distinction between, "Well, that is a good idea on its face; however, I can see some problems in the implementation of it and these are our suggestions for how to best maintain that balance going forward."

**MR WERNER-GIBBINGS**: I have one question about your submission that the ability to apply for an FVSN orally is inappropriate in most, if not all, circumstances. Can you please expand on these concerns, but with a particular focus on remedies that you would be aware of that Legal Aid has considered for situations where an application is impractical?

**Mrs Harders**: My first observation is that it is an administrative decision. So it is going to take some time to get to a review of decision, no matter which avenue you use or which forum you use. It is not going to be something that happens quickly. But the real concern is about not having a record of it. It is an administrative decision, and so it should be reviewable. It is not addressed in the submission—but I do not think I am speaking out of school—but, as an administrative decision, a particular review pathway needs to be considered. Whether the review pathway is inbuilt into the legislation so that it is through the registrar or through a magistrate or through the ACAT, for instance, there needs to be some record of the decision-making vis-a-vis the legislative criteria that they have to consider or there is no real capacity for someone challenging the decision to understand the grounds on which it was based. It is really a procedural fairness issue more than anything else. Does that answer your question?

**MR WERNER-GIBBINGS**: Yes. Thank you.

**MR RATTENBURY**: I want to go to issues around the Evidence (Miscellaneous Provisions) Act—just for a change of pace. I was really interested in the discussion around the return of audio copies of evidence, or statements, and you talk about where they have been lost. Does this happen often?

**Mrs Harders**: Yes, particularly if they are handed to an accused. It is not the case that every accused person has legal representation immediately. Our experience is often that they are provided with the interview before they retain legal representation. There may be some who do not obtain any legal representation, and they still have to be given that recording. So the short answer is: yes, it does happen.

**MR RATTENBURY**: You then go on to say that there should not be any penalty if someone does not return it. So, basically, you are saying to people, "Just claim it is lost and you will be fine."

**Mrs Harders**: Yes.

**MR RATTENBURY**: It just seems a little bit like, "Does it matter?"

**Mrs Harders**: Does what matter?

**MR RATTENBURY**: You seem unconcerned by the failure to return the evidence.

**Mrs Harders**: I am not sure that it is a lack of concern. There is just no fallback position for those who find themselves in a position where they simply cannot find it. Perhaps the answer or part of the answer to that is making sure that, when they are provided with that documentation, it is explained very clearly. That includes explanations that are not in English and explanations for people who have communication difficulties. If there is going to be a penalty provision attached, there needs to be some understanding that that can be a flow-on effect, in my submission.

**MR RATTENBURY**: Thank you. It was probably not the main issue; I was just struck by that. You brought it up and I was interested in the significance of it and where you sort of see—

**Mrs Harders**: Again, from the perspective of some of the clients that we have, there are issues of homelessness and issues of being excluded from their residence, particularly in a family violence type space. These things do happen—and, again, they do not happen infrequently, unfortunately.

**MR RATTENBURY**: Sure. I want to ask about independent legal representation for victim-survivors, particularly in sexual assault processes. We have received evidence around the importance of implementing it. From a Legal Aid perspective, I think the thing that worries me is that the victim-survivor does not necessarily know if their counselling records are being subpoenaed. In your experience of working on both sides of the applicant and respondent perspective, I am interested in your take on the value of that independent legal representation in improving the processes.

**Mrs Harders**: I have had clients who have absolutely wanted their records to be part of a court proceeding before and have sought representation and obtained grants of legal aid for that purpose. They are unique insofar as they have been discretionary type grants. It is a situation that comes up particularly for women—I say "women" but it need not be a woman; though it is typically women—who are involved in multiple jurisdictions at the same time. It is not uncommon for someone in a very violent relationship to be involved in care and protection proceedings, Family Court proceedings, criminal proceedings and general civil proceedings relating to the same perpetrator. The ability for her to have specific transferable advice across all jurisdictions is really important, because there is often some value in having those documents available in proceeding A but not in proceeding C. So, yes, generally the commission would support it.

**MR RATTENBURY**: You spoke to the fact that it is discretionary at the moment. The proposition is that there be, I guess, a legislated right for somebody to have that standing. In your experience, would that be valuable?

**Mrs Harders**: Yes. I think it is almost envisaged in the EMP Act at the moment. The protected confider has a right in there at the moment to be heard. How the court is interpreting that is very difficult, because it is not particularly specific. But, if it is in there, there should be the right to access that type of support and to understand the ramifications of releasing those materials.

**MR RATTENBURY**: Coming back to FVSNs, you raised the issue of essentially what prevails around court orders, bail orders and then you have got the FVSN. Firstly, can you talk us through the practical issues? To me, it makes sense that the most recent order is the one that should prevail, because it is kind of the thing that has been determined most recently and, therefore, it perhaps takes into account the latest circumstances. Would it be the case that the police officer issuing an FVSN, if that existed, would have knowledge of the bail conditions that are already in place or any other court orders? Do they have that information?

**Mrs Harders**: No; not necessarily. In my experience, they might have access to the bail conditions, if they exist, but they will not have access to a parenting plan between two parties, because that is generally a private document, and they will not have access to any orders from the Family Court, and they may not have access to care and protection orders, which are also relevant in this space.

**MR RATTENBURY**: So this goes to the heart of your concern: the potential for inconsistency?

**Mrs Harders**: Absolutely, yes—and, again, it is something that happens quite often.

**MR RATTENBURY**: So you could not have the FVSN be the predominant instrument because it potentially would be inconsistent?

**Mrs Harders**: Yes, and also not judicially made—on the current scheme. In practice, what often happens is that bail happens quickly. Bail conditions can be entered with a view to securing release. They may be inconsistent with the Family Court order, for instance—much more restrictive than a Family Court order. I suppose an accused would be remiss not to comply with the bail conditions, but there is still a question as to which ones prevail. Even more so when it is not a judicial order, there needs to be a scope of preferences.

**MR RATTENBURY**: I cannot imagine that is an easily solved proposition. Again going back to your earlier point around the cohort, we now have potentially have a person with bail conditions, a Family Court order and an FVSN.

**Mrs Harders**: And potentially care and protection orders, yes.

**MR RATTENBURY**: And they are having to navigate those inconsistent provisions.

**Mrs Harders**: Yes, that is right

**MR RATTENBURY**: It really does seem a problematic situation, because they are likely to make a mistake.

**Mrs Harders**: Yes.

**MR RATTENBURY**: There is no answer to that really, is there?

**Mrs Harders**: As far as the FVSN, as far as those orders go, the commission's reasoning is that the judicially-entered orders should take precedence, particularly with respect to bail.

**MR RATTENBURY**: Thanks for working through that.

**THE CHAIR**: Just going back to the FVSN being enforced, a bail order being enforced, a family violence order being enforced and a care and protection order being enforced, were you saying that the bail order, being the most restrictive, should be the one that prevails?

**Mrs Harders**: It is not necessarily the most restrictive. I was giving the example, I think, of where an accused applies for bail and initially provides a whole suite of conditions to ensure that they can secure bail. What generally happens is it is whittled down over time once they can show some compliance. But what they are really grappling with is, "Well, I have a family violence order which is much less restrictive over here, but I will agree to more significant conditions so that I can get my liberty," initially. So there is that type of inconsistency. There is also the inconsistency that flows from perhaps a bail condition being entered that allows you to speak to your children, when you are not allowed to over here, and the Magistrates Court will not necessarily know about this particular order when considering bail, particularly because it happens so quickly.

**THE CHAIR**: I want to go back to some of the concerns that the Victims of Crimes Commission raised, particularly around the cart essentially coming before the horse in that the review of the family violence order legislation should have taken place before this scheme was put forward, and I just wanted to get your views on that sequencing.

**Mrs Harders**: The commission has not expressed a view generally on that. My observations are that it can be quite difficult legislation to navigate in practice. There are some difficulties in interpretation that have flowed from adding clauses over the years. But I do not see it necessarily as an impediment to implementing a scheme like this in the interests of safety, as long as it is balanced with the interests of an alleged offender.

**THE CHAIR**: Thank you. The other question that I have is around service providers. Witnesses that we heard from this morning indicated that there were issues with accessing a AHO order and sometimes inconsistencies in those orders. I just wanted to get your views on that and whether or not that is an experience that you—

**Mrs Harders**: Inconsistencies in what orders?

**THE CHAIR**: Inconsistencies in the AHO, after-hours, orders that are issued.

**Mrs Harders**: Inconsistencies in what sense?

**THE CHAIR**: From memory, I think the evidence was that an after-hours order would be issued on a particular instance, but then in another instance with the same evidence the magistrate would indicate that there was not sufficient evidence to issue an order. So sometimes you could put the same sets of facts and get a different response. I just wanted to know whether that is your experience, but also particularly whether you have experienced issues where you have not had access to the after-hours orders and what your view on that was.

**Mrs Harders**: That has not been my personal experience. I could not speak for the commission generally, but I can say that I have not heard it being complained about.

**THE CHAIR**: In terms of accessing after-hours orders?

**Mrs Harders**: Yes.

**THE CHAIR**: Thank you.

**MR RATTENBURY**: In your submission, you express some concerns around the 14-day timeline for the FVSNs.

**Mrs Harders**: Yes.

**MR RATTENBURY**: I would be interested to get your views on what is appropriate, but I will set that up by saying that we have heard evidence from some of the service providers earlier about having greater flexibility—so having potentially a five- to 14-day window to allow some variation—but also, going to a point I think you make, a requirement of coming back to court sooner to allow the court to modify if the FVSN were to go down that path. Can you comment on that? At the moment, there is a rigid 14-day timeline. Do you have a preferred position?

**Mrs Harders**: I think, from the perspective of the early intervention practice, that what the commissioners were saying and what I heard them say earlier today about sometimes needing a stop gap rather than a very long period of time does apply in that particular space. From the accused's perspective, generally the answer is the shorter the better. I think I can leave it at that.

**MR RATTENBURY**: Yes, sure. So you do not have a particular view on what it should be—just that that is a long time?

**Mrs Harders**: No. It is a long time, yes. If the object is to ensure safety, one would think that with, say, a working week, a period of a working week should be sufficient.

**MR RATTENBURY**: I think the government's justification in the submission they made is it can take people time to sort out alternative arrangements and the like, and that is why they have gone for two weeks to essentially give the victim greater space to

reorganise their lives.

**Mrs Harders**: We hear that but we maintain that 14 days is still a very long time.

**MR RATTENBURY**: Sure. You made the explicit point of a requirement to have a hearing within two days. I think that was the point in your submission.

**Mrs Harders**: Yes. In practice, it can be difficult to get a hearing within that sort of timeframe. So some legislative direction there would be—

**THE CHAIR**: The Victims of Crime Commissioner gave evidence that perhaps the reason why the current after-hours orders are not being taken up is because of the reluctance of police to contact the judge, for instance, and has offered an alternative where a registrar, for example, makes that decision. Do you have any view on that?

**Mrs Harders**: I am not sure in practice whether it is strictly necessary. Our experience is that police are not reluctant to apply for after-hours warrants. I do not see why with proper education around the cycles of violence that this situation would be any different, and I can obviously see the flow-on cost implications of having a registrar and a magistrate available 24 hours a day.

**THE CHAIR**: I think the suggestion was that instead of a magistrate you would have a registrar, but I could be wrong.

**Mrs Harders**: In practice, you would still need a 24-hour magistrate to approve the warrants, and they are not reluctant to call the on-duty magistrate for that purpose. I do not think in practice that there would be any real reluctance, but perhaps it is a lack of appropriate training in the application process generally—and that misidentification issue springs to mind again. Does that answer your question?

**THE CHAIR**: Yes, it does.

**MR RATTENBURY**: That has been helpful.

**THE CHAIR**: That has been very useful. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you very much.

## Short suspension

**CHEYNE, MS TARA,** Attorney-General, Minister for Human Rights, Minister for City and Government Services and Minister for the Night-Time Economy
**PATERSON, DR MARISSA,** Minister for Police, Fire and Emergency Services, Minister for Women, Minister for the Prevention of Domestic, Family and Sexual Violence, Minister for Corrections and Minister for Gaming Reform
**BUXTON, MS CLAIRE,** Acting Executive Branch Manager, Criminal Law Branch, Legislation, Policy and Programs, Justice and Community Safety Directorate
**CHIN, MR RICHARD,** Deputy Chief Police Officer, ACT Policing
**GUO, MS EMMA,** Senior Team Leader, Legislation and Governance, ACT Policing
**LAWSON, MS KYLIE,** Detective Superintendent, Family Violence and Sexual Violence, ACT Policing
**LEE, MR SCOTT,** Chief Police Officer, ACT Policing
**NG, MR DANIEL,** Acting Deputy Director-General, Justice, Justice and Community Safety Directorate

**THE CHAIR**: We welcome Ms Tara Cheyne MLA, Attorney-General; Dr Marisa Paterson MLA, Minister for Police, Fire and Emergency Services; and officials. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we are not inviting opening statements, we will now proceed to questions.

My first question is around concerns that have been raised. We have heard mixed evidence today—firstly, in support of the scheme to an extent, and, secondly, around the inconsistency of the proposed scheme with existing family violence orders and after-hours orders. I have a few questions and I will try to keep this succinct. I have a lot. I will start with concerns around the lack of available data. I want to understand what the issues are that we are trying to solve—how we have come about understanding the issues and understanding the appropriate responses or the decision that this is the appropriate response.

**Ms Cheyne**: In terms of the lack of data, Mr Ng has some information in front of him which we can speak to. In terms of the genesis of this reform or proposal, it has been, quite honestly, through Policing's experience and what they have explained to us as the gaps in the system that have exposed people to the possibility of further harm. I will let other people with some more detail expand.

**Mr Ng**: Thanks, Attorney. Thank you, Madam Chair, for the question. I will start with the genesis of the proposal. I could speak a bit to that too. As the Attorney mentioned, the progress of the work on this scheme largely arose out of some feedback that had been received in the context of the previous Family Violence Act review. That review went to the challenges with the administration of the current after-hours scheme. That review was conducted in 2020. Part of the observation that there were opportunities for improvement came with a recommendation that government consider the opportunities with the introduction of a family violence safety notice scheme.

Since then, we have been working closely with Policing to develop a scheme, at the request of government. The key objectives were to deal with the availability issues identified with the current after-hours scheme and provide a scheme that dealt with the immediate safety needs of individuals in family violence situations. With respect to the

data, I can say that, in the 2024-25 financial year, our data reflects that 45 out-of-hours orders were granted.

**THE CHAIR**: From Policing's perspective, what is the current issue with the out-of-hours orders?

**Mr Lee**: Thank you for the question. As the Attorney and Mr Ng said, it is certainly an issue that we have raised in terms of the current application of the after-hours scheme. The issues from our perspective are in terms of immediate safety mechanisms for victim-survivors of domestic and family violence. A family violence safety notice regime in the ACT has certainly been an issue that we have been focused on for some time. From our perspective, our frontline experience reflects that the after-hours scheme is procedurally cumbersome, particularly when we are dealing with dynamic, high-risk situations, where we are trying to put more immediate safety around victim-survivors. Also from our perspective, as per the data, it is underutilised at the moment, given some of the challenges that we have with it. Certainly from our perspective, we see it as a regime that is required in the ACT and will provide us with a much better mechanism to ensure victim-survivor safety.

**Dr Paterson**: To add to that, in terms of the purpose and the importance of the scheme, it provides an immediate ability to reduce the risk to victim-survivors. As the Chief Police Officer said, often in these dynamic, high-risk situations, a family violence safety notice would allow police an ability to immediately intervene.

**THE CHAIR**: You mentioned that the current process is cumbersome. Could you please expand on that?

**Mr Lee**: Certainly. I might pass to Detective Superintendent Lawson, who is the strategic lead for domestic and family violence for ACT Policing.

**Ms Lawson**: Thanks for the question. It is about how it is practically operationalised in context. We might have two constables attending a domestic violence situation. If there is insufficient evidence to arrest and lay a charge, the appropriate mechanism that is the next step to secure safety is an after-hours FVO. There is then a phone call. The current act allows it through electronic means or in person. Electronic means is a telephone call to the on-call duty magistrate after hours.

We, as ACT Policing, have information when the on-call magistrate has not responded to those phone calls in a timely fashion or is tied up with issuing search warrants or other operational activity occurring across ACT Policing. There is a four-hour detainment period for the purposes of seeking that after-hours order. Safe detention of the person using violence requires a Policing resource whilst trying to obtain an order. That order is transcribed back and forth over the phone to make sure the conditions are fit for purpose and suit the circumstances. The issues are around getting that initial contact—the time that it takes—and then the follow-up, in terms of the FVO process, which I am sure we will get to in a later question.

**THE CHAIR**: What is the difference between that and the proposed scheme? Essentially, you still have a four-hour detention period. The attending officer would still need to go to a sergeant, for example, to get that. What is the difference between

the current scheme and the proposed scheme?

**Mr Lee**: It is important to point out that the four-hour timeframe is a maximum timeframe. What we would expect with the police issued notice—the new regime—is that the time in detention would be significantly reduced because you have a more dynamic decision-making process, where the police who are at the scene are able to provide information to the sergeant. In these circumstances, the sergeant will also be able to attend the scene. In particularly complex circumstances and high-risk situations, we have a 24/7 on-call inspector, and they will attend the scene if required.

We would have a situation where you have more real-time decision-making and real-time access to relevant information, in terms of the circumstances of the incident and the ability to issue that notice. It is a much more timely process that delivers a better outcome for the victim-survivor, as well as the perpetrator. Certainly from our perspective, we would estimate that people would be in detention for a much shorter time while the notice is issued.

**THE CHAIR**: My question is to the Attorney-General. There are concerns around magistrates not being available over 24 hours when they are required to be available over 24 hours. Has this issue been raised with you, and do you know why?

**Ms Cheyne:** It has been raised with me. In terms of why, the reasons vary. It can be simply sleeping through the phone ringing. It could be that there are other matters that they are attending to. The issue for me is that I have no way of directing different behaviour—rightly, due to the separation of powers. This is a separate jurisdiction. Certainly, with a new Chief Magistrate coming in, it is something we will be talking about. What you have just heard from ACT Policing is that it is not just that element of it; it is all the other steps as well, even if the magistrate has picked up the phone, in terms of what this actually looks like and how long it takes when, effectively, lives are at risk.

**THE CHAIR**: Mr Ng, you indicated that 45 out-of-hours orders were issued. How many were applied for?

**Mr Ng**: I do not have that data before me, Chair.

**MR WERNER-GIBBINGS**: I think this has actually been answered. The problem that this proposed scheme is solving that the current after-hours order process does not is around the actual or expected cumbersome nature and difficulty of getting orders done as quickly as they could be, which risks the mental health safety and physical safety of perhaps both the respondent and the applicant.

**Mr Lee**: Yes.

**MR WERNER-GIBBINGS**: Is there anything else?

**Mr Lee**: There are some additional benefits to the scheme which we can certainly step through. To answer your question, absolutely. Policing's view, and certainly Policing's advocacy, based on not only our experience but also the experience of every other jurisdiction in the country—because we are the only jurisdiction in the country without

a police issued family violence safety notice regime—is that it is to deliver better safety outcomes—more timely and immediate safety outcomes—so that we can ensure the safety of victims in our community. There are additional benefits proposed in the legislation. I can pass to Ms Guo, if you like, to step through those.

**Ms Guo**: Thank you, CPO. Another critical point that needs to be noted is that FVSNs can be applied for at any time of the day. The existing after-hours violence scheme is only accessible after hours, when the court is not sitting. One of the challenges that police are currently facing is that there are immediate intervention opportunities when it is business hours. It might be that a police officer attended an incident at 9 am and we have not been able to reach the appropriate arrest threshold, and there is no ability to then make the application to the court for an after-hours family violence order application. The only real mechanism for the victim is to make an application in the court for a family violence order. The victim might not be in the right headspace or have the means to make that application to the court.

That is one of the primary issues that we are facing: there is no immediate intervention opportunity. The victim might not be in a state or be ready to make that application to the court, even where they are able to. We understand there are challenges with being able to be seen by the courts at the appropriate time, so the application needs to occur early in the morning for it to be seen. Even if the victim is able to go to the court and apply for an FVO and it is granted, another challenge is the gap in service, because an FVO only comes into force once it has been served on the individual, and, if that person is evading police, there is no immediate protection available to the other person.

**Ms Cheyne:** Also, there is the 14-day timeframe. If an FVSN is issued, it allows a victim-survivor to seek support, take a breath and understand and think about the situation—what they need to do to keep themselves safe. It just buys them immediate time. Also, a point to make is that this is a police issued order, whereas, when a victim-survivor has to go to court and apply for an order, that is them seeking that order. In these immediate, high-risk situations, when you might have a perpetrator that is very agitated by what is going on, to have that directed more at police rather than at a victim-survivor—it is out of victim-survivors' hands, even though they would provide advice to police around the urgency and importance of this order—provides some breathing space for a victim-survivor to work out their next steps.

**MR RATTENBURY**: Could I come back to the issue of the non-answer from the on-call magistrate? Do you have data on the number of times there has been an attempt to reach a magistrate and they have not been available? You can provide that either now or later. Is that data that is recorded?

**Mr Lee**: We can certainly look at it for you, Mr Rattenbury. We will take it on notice. I would probably put a qualifier on it. I think it will be a question that will be challenging for us. It is something that I and the Chief Magistrate talk about regularly, not necessarily around family violence orders but certainly in terms of our broader engagement out of hours with the Magistrates Court. The Chief Magistrate has certainly been wonderful in terms of seeking to support that engagement and doing everything that she can. We can certainly take it on notice and come back to you.

**MR RATTENBURY**: I do not know if it is data you have, but, if you do, it would be

useful for the committee, so thanks.

**Mr Lee**: Of course.

**THE CHAIR**: Regarding data and taking it on notice, did you take on notice the data around how many were not issued, or did you say you do not have the data at all?

**Mr Ng**: I do not, Madam Chair. I am not sure that we have that data.

**THE CHAIR**: All right.

**MR RATTENBURY**: Mr Ng gave evidence that 45 AHOs were granted last year. Ms Lawson, I took from your comments that the system is currently being underutilised, so one of the reasons you believe this new system is an improvement is that you will see a greater level of utilisation where it is necessary.

**Ms Lawson**: Yes; absolutely—where it is necessary. That is right. Another feature of the bill is that the FVSNs can co-exist where police have arrested in a DFV context. We have stepped through the current after-hours process—that they cannot co-exist. I can see some utility in that circumstance, particularly where coercive control continues to be a feature of the relationship or there are escalating safety concerns.

**MR RATTENBURY**: Thank you.

**Mr Lee**: Mr Rattenbury, I could add to that. I am not suggesting there would be family violence safety notices in every situation, but it might assist to give you a sense of the quantum that we are dealing with at the moment. At the end financial year 2024-25, we responded to 4,495 domestic and family violence incidents. That was a five per cent increase on the previous year. There has been a 33 per cent increase over the past five years and we are seeing a continuing upward trend in the year to date, this financial year. Of those, over 1,400 involved a level of violence and resulted in assault charges from domestic and family violence matters. In terms of family violence orders that were issued, there were 1,794 in financial year 2023-24 and 1,400 in 2024-25. You and I have spoken about that previously, but I think it is useful to contextualise it around the underutilisation of the after-hours scheme.

**MR RATTENBURY**: It basically means that about one per cent of those call-outs are getting an after-hours order.

**Mr Lee**: That is right.

**MR RATTENBURY**: It does seem very low.

**Mr Lee**: That is right. Absolutely.

**MR RATTENBURY**: Thank you. That is helpful.

**MR WERNER-GIBBINGS**: My question is for JACS. How does this proposed scheme compare to the similar schemes that the Chief Police Officer mentioned in other jurisdictions? I asked this question of the Bar Association and provided some

information that I think a 14-day time period was the longest in Australia for that sort of likewise scheme, which is not what my information was, but I just wanted to check. So my question is in terms of the legislative model and how the schemes have been operating in practice.

**Mr Ng**: I can provide a bit of information about that. Certainly we considered the operation of models in other jurisdictions in the development of the model that is included in the bill. As the Chief Police Officer said, all other jurisdictions have family violence safety notice-like schemes but there are subtle variations across each of the jurisdictions. There is significant variance in relation to the length of time that a notice or order can be in place. I will take you to a few specific examples. There is a police protection direction scheme in Queensland, and they can be in place for 12 months or until a separate order or proceeding is made or on foot. In New South Wales, there is a comparable order which can be enforced for a period not more than 28 days. In South Australia, there is a like or comparable order where it requires the defendant to come before the court within eight days. So, as you can see, there is a bit of a variance in approach across the jurisdictions, but certainly the ACT sits within that spectrum.

**MR WERNER-GIBBINGS**: Do you have anything further to comment regarding the legislative model that you have chosen or why we have decided on this particular framework and what you have noticed from the operation of other schemes that informed the work in pulling this together?

**Mr Ng**: In terms of the landing point, there are a range of different features. I will not go through them all in terms of the deeper policy or design settings—

**MR WERNER-GIBBINGS**: You can do the highlights or the most persuasive.

**Mr Ng**: Particularly in relation to the length of time that the orders can be in place, the principle which underpins the 14 days was, as Minister Paterson referred to, the length of time which allows the victim to do a range of things, including sorting, potentially, alternate accommodations, seeking support from relevant NGO organisations but also make their own decisions about whether a long-term order is sought. A kind of key distinction about this process is that it is a police-led process, intentionally, at the start to remove some of the burden that is associated with going to the Magistrates Court and seeking an individual order like a personal protection order or a normal family violence order. That 14 days is intended to allow a period to engage with potentially legal support or other support to make key decisions about whether that individual would like to undertake the process of seeking a long-term order as well. With respect to experience in other jurisdictions, I might just see if Ms Buxton has anything else to add from our jurisdiction scheme.

**Ms Buxton**: One of the key distinctions perhaps to note is that our orders do not lead automatically into a court order—which I think goes to Mr Ng's point around giving the protected person some autonomy or agency in whether or not they want to make that order. The ACT does not have a police prosecutorial system. In other jurisdictions, the police are able to order the family violence safety notice order or the equivalent automatically leads to a court order. That is not a function of our scheme because that would require a broader systems review but also, I think, allows a person to make that decision themselves. It is probably one of the key distinctions.

**Ms Cheyne:** To go directly to your point, Mr Werner-Gibbings, 14 days is not a year, and so—

**MR WERNER-GIBBINGS**: No, or a month.

**Ms Cheyne:** With all due respect, on the evidence that you heard earlier, I certainly would not agree.

**MR RATTENBURY**: On that question of the length, we have heard in evidence from a range of witnesses and in submissions that having a fixed 14 days is perhaps undesirable and there might be value in having a maximum of 14 days—one suggestion was five to 14 days—to allow the issuing officer to have some flexibility. Is that a proposition that the government has considered, and is there a reason you ruled it out if that was the case?

**Ms Cheyne**: The way that it is intended to operate is, rather than leaving it up to Policing to go, "Should it be five, seven, 10, 14?" that it is 14, but the perpetrator or the victim, alleged in either case, can go to the court the next working day and seek to have it amended, seek to have it varied, changed, whatever it may be, and seek to have it removed if circumstances permit and that that is what the court decides. Of course, the court may not. Effectively, that was seen as the opportunity for a variation to occur. I think (1) it takes away the agency and (2) it is requesting something of Policing when in that moment that they do not have the full picture of what the person's needs are in either situation and what those needs may involve. I think when you are in a situation that requires a family violence safety notice, things are probably pretty heightened and you are not necessarily at your most logical thinking brain.

Arriving at this 14-day period that can be varied effectively the next day is to, as Minister Paterson said, provide enough breathing space, if that is what someone does need. If it was two days or five days, that really might not be enough time if, ultimately, you decide, "I would like to proceed with a family violence order, but I need to get my affairs in order." It might have taken a few days to come to terms with what happened or whatever it may be. So, effectively, I think that where we have landed is trying to allow for those circumstances that you are talking about, where shorter might be more appropriate, but the agency really does sit with the persons.

**MR RATTENBURY**: In that vein, it has also been put to us that we should provide a legislative steer to require that a matter be listed within a certain number of days—and the suggestion was within two days. The basis for that evidence appears to be issues of people getting listed in court in a timely manner and a view that a legislative steer—going to the point of separation of powers—would be valuable. Again, is that saying that it was considered in the preparation? Do you have a view on that?

**Ms Cheyne**: I do not, but someone will.

**Mr Lee**: We could certainly assist, Mr Rattenbury, I think, in terms of an operational view, if that would be—

**MR RATTENBURY**: Yes, thanks.

**Mr Lee**: Particularly in terms of a victim-centric approach to that issue, I think I might just pass to Detective Superintendent Lawson again.

**Ms Lawson**: For context, ACT Policing's submission was seeking 28 days—double the length of time where we have settled. If we think about our operational context, on a Thursday evening DFV incident that police are responding to, if we issue a family violence safety notice and then allow Friday to settle and compliance to that safety notice and we have the weekend, if it is unfortunate then it is a public holiday, we are already moving into Tuesday. We do know that, unless a signed affidavit or a sworn affidavit is ready to go at least by 11 o'clock in the Magistrates Court, the registrar will not hear it that day. It is then put over for several other days and locked in.

We see that this scheme allows not only the protected person but also the respondent to get some legal advice and to get support. We know that our sectors are talking to us in Canberra saying that they are very stretched, they are under-resourced and needing more time to work with both parties and children involved in these dynamic situations to make an informed decision and one that is right for them going forward.

**Ms Guo**: Just picking up on that point and going to your question relating to bringing it back to the courts, I would add that the FVSN scheme does not provide that obligation for the matter to be considered in court. It is only where the affected person, the protected person or a police officer seeks to amend or revoke that. Taking that victim-centric approach, I suppose, potentially erodes that by providing that they have to go back to court in order for that to be considered.

**MR RATTENBURY**: I think it has come—at least from some parties—from a place of concern around handing what is currently a judicial oversight to a member of the executive, essentially, via the police, and a view that it not only tests it but also brings it back into to the judicial regime in a fairly short time. That is coming from those who are arguing it is not appropriate to hand this from judiciary to non-judicial officers.

**Mr Lee**: We understand that, Mr Rattenbury. Certainly our position is not that there is not a level of judicial oversight; it is just at what juncture does judicial oversight come into the process?

**MR RATTENBURY**: Should it be triggered automatically or is it a choice for the parties?

**Ms Cheyne**: Yes.

**Mr Lee**: I think it is absolutely quite a challenging issue, given the complexity of the situation for the victim-survivor. The other aspect, from our perspective, with the 14-day period is also if there is a family violence order that is sought. So there is a continuity of a safety mechanism in terms of how long that might take to be implemented. It is obviously an issue that we are cognisant of and what that means, I suppose, in terms of that level of confidence around the regime.

**THE CHAIR**: On that issue, currently with the existing scheme—and please correct me if I am wrong—there is a natural trigger to go back to court, and that trigger is that

the police take the matter, for example. So, if it is an interim domestic family violence order that has been issued because the police has arrested the respondent, there is a trigger for the agency or the police to take the matter to court. Now we are removing that trigger and saying, "No, you take the matter to court if you feel that you want to amend or vary the 14-day order." Is that right? Is that how the scheme will operate?

**Mr Lee**: As the Attorney indicated, there is a trigger for either the victim-survivor or for the perpetrator if they wish to challenge the notice, and that can happen the next day. That can happen relatively immediate.

**THE CHAIR**: But it is still the victim-survivor and the respondent as against the police taking that matter on.

**Mr Lee**: Yes, and there are instances where we may seek a police-issued FVO. But, again, I will pass to Superintendent Lawson on that issue.

**Ms Lawson**: Currently, as it stands, people seeking protection will seek their own family violence order. I think you were alluding to, "Is there going to be an erosion of police initiating those orders on behalf?"

**THE CHAIR**: Yes. So currently you can issue a police-issued family violence order.

**Ms Lawson**: Yes.

**THE CHAIR**: Correct me if I am wrong, but you can then put a person on police-issued bail if the—

**Ms Lawson**: No.

**THE CHAIR**: Okay. So the scheme that exists—

**Ms Lawson**: There is a scheme where police can apply for a police-initiated family violence order. It is not widely utilised. The most frequent mechanism is for the protected person to seek their own order, with support from police and other agencies and after legal advice themselves. The number of police-initiated orders, sits at, anecdotally, about 10 in the last 12 months.

**THE CHAIR**: What is the restriction to utilising that more than, say, this scheme, for example? What is the reluctance to utilise the police-issued orders?

**Ms Lawson**: It is about the victim-survivor having their own sense of agency. It is about empowering them. So the order needs to be the right fit for them and their circumstances. Police will certainly support them through that, but it is best if the order is made in their own name. Then they can seek, through the duration of that order, to vary or have that order amended to suit their circumstances. Again, it was highlighted that ACT Policing do not have police prosecutors. So, where we do get a police-initiated order, we need to engage AFP Legal, who externally engage counsel to represent us to further those matters.

**Mr Ng**: Madam Chair, I would just add that those two schemes can service as different

safety outcomes as well. We talked a little bit today about the fact that family violence safety notices and the current after-hours orders scheme are targeted at meeting contemporaneous safety needs. I think Superintendent Lawson's evidence goes to the fact that those broader family violence orders are the ones that are subject to significantly more judicial testing and more evidence requirements. That is a reflection on the fact that they can apply for a lot longer period. So we are talking about the kind of confluence of dealing with the immediate and contemporaneous safety issue, as opposed to potentially a longer-term need for predictive measures to be in place.

I think your initial question was about whether there was a "come back to court" proposition for the current after-hours order scheme. Because the current after-hours order scheme is issued by a magistrate, that is the engagement with the court there. So there is no further engagement or come-back requirement to the court. That engagement with the magistrate satisfies the judicial oversight proposition of coming to court, as such, if that makes sense.

**Dr Paterson**: I would also highlight the complexity of the situation and that, when a victim-survivor is experiencing violence, they have to get their head across all of these processes. They have to attend the court, apply for the family violence order, collect their evidence, make the case, get legal advice, get advice from victim-survivor, make sure their children are safe and all of these things. All the burden is on the victim-survivor to learn a system potentially very, very quickly. I think where these family violence safety notices really come into their own is where police can issue an order at the scene, recognising that the violence has occurred, remove the perpetrator from the scene, calm everything down and support the victim-survivor to get support.

I think the consistency for police and for victim-survivors of the 14 days and knowing that that is what it is, I think, really important. Particularly like with bail criteria, I get a lot of advocacy from victim-survivors who talk about how challenging the bail system is for them, when they feel there have been breaches of bail, and there are thresholds and all these kinds of things, and it just presents a lot of unknowns and it can be very disempowering. Whereas, having that really consistent understanding that they have 14 days where they can just take a breath, take a moment, get safety and work their way through this process is really important.

**MR RATTENBURY**: In that vein, we got some really compelling evidence from the Victims of Crime Commissioner earlier who raised concerns about the potential for a new gap. I do not know if you heard the evidence. I will just try to—hopefully not unfairly—paraphrase her. She essentially said that, now, if you as a victim-survivor go and apply for a family violence order, you would sort of do it ex parte and the perpetrator does not know about it until service, at which point it takes effect. She then said that, under this scheme, you could have the 14 days and you could apply for an FVO during that period. But, then, depending if it takes a while to get served—and she gave evidence that you can have up to three or four weeks before service occurs—you will end up with this gap where the 14 days will expire, service does not come and you have this window in between where the victim-survivor has not got the protection of any orders. She was quite concerned about the consequence of the new scheme in that context. Does that sound correct? What are your thoughts on that scenario?

**Mr Lee**: There is potential complexity there if there is a gap between orders. But I

would bring it back to our proposition right from the beginning. I think the Family Violence Safety Notice Scheme is around a much more timely, immediate notice for us to ensure safety, which I think needs to be the primary priority, particularly when we are dealing with a high-risk situation where we need to ensure the safety of the victim-survivor. As the minister touched on, the 14-day period allows for them to be removed from the trauma, potentially removed from a level of coercive control and ensure they can get advice to ensure there is some clarity around their own decision-making processes and what decisions they want to take for themselves and potentially others around whether they wish to seek an order or not. Certainly from our perspective, there is an ability within that 14 days for them to seek that order.

Within the context of the safety notice, I think this would provide us with a more positive framework in which to engage, particularly in terms of our ability to access or identify the location of that perpetrator to ensure that order is issued. We have been very clear that we have had some significant gaps in our ability to locate and serve orders on perpetrators. Sometimes that will take us potentially anywhere between four to eight weeks because of the individual who is seeking to avoid police. We do not have the standard powers available to us to locate that person. The ordinary powers that we would have to locate an individual as per a standard criminal investigation or another criminal matter are not available to us with family violence orders. So it can be very challenging for us to locate that person.

**MR RATTENBURY**: Why has that issue not been addressed in this bill?

**Ms Cheyne**: Great question, Mr Rattenbury.

**MR RATTENBURY**: It always worries me when you say that, Attorney, because I know I am in for a long dissertation now.

**Ms Cheyne**: In fact, I have just been champing at the bit to say something. So perhaps I could make my two points—the first in response to this. We are looking at how we can better assist police through our legislative means and then what it looks like, I guess, on the ground in terms of service of notices. I have my own personal experience in terms of a notice being served that took a while, and it was no fault of Policing. I suspect that is the case in almost every circumstance, if not every circumstance, just because of the complexity.

At one point, I think, through this bill, we were hoping to progress some reform relating to that. But we got to a point where it was clear that we needed to do some more policy work on what including electronic service would look like. Minister Paterson and I have heard loud and clear from Policing and also from the experiences that have been relayed to us from community members that there are people out there who are waiting for their order to be served and that the time that it takes is incredibly distressing. Equally, the impact on ACT Policing's resources can be ridiculous because there can be someone who is evading or just not opening the door, and so Policing is attempting—

**MR RATTENBURY**: Exactly. It is a civil space, and the Chief Police Officer's point is they cannot use their criminal powers.

**Ms Cheyne**: Indeed.

**Dr Paterson**: Also, recognising the point that the Victims of Crime Commissioner made about a gap, there already potentially is a significant gap right at the very pointy end of where the violence has occurred to. They still would have to go to the court and apply for an order. I understand her point of you are delaying a potential gap. But, with these notices, it allows immediate intervention, which I think is really important.

**MR RATTENBURY**: Thank you.

**Ms Cheyne**: If you think about it—and this is another point, which Minister Paterson has said more articulately than me—in the reverse, and there is not a family violence safety notice in place and, let's say, the best-case scenario is that the person goes and applies for the FVO the next day, there is still whatever wait that there might be without that immediate protection. So, just because there might be a gap in some cases, it might not be the most perfect flow. But I still do not think that that is a compelling enough reason to not do it, because this is about providing safety to a person in the immediate sense and giving them that time and headspace to work through it. As the CPO said, they potentially then have much better information about the person to whom they need to serve the order on because they were there in the first place.

**THE CHAIR**: I want to go very quickly to the question I had around police-issued bail—and there was a reaction. My understanding is that, following an arrest, you can actually issue bail. Is that right?

**Mr Lee**: Yes; that is right.

**THE CHAIR**: I thought that was my understanding but you had a reaction to—

**Ms Cheyne**: But family violence safety notices are not an arrest.

**THE CHAIR**: No; the point I am trying to get to is: if you already have that power, for example, to be able to issue bail once an arrest has been made, why do you need this scheme?

**Mr Chin**: There are not very many scenarios where the police go to where there is extreme and heightened fear, and the situation that occurs may not reach the threshold of being suitable for someone to be arrested. But I think that is the scenario that we are talking about here, where there may have been threats, there may have been heightened emotion and there may be extreme fear. There may be certain scenarios and allegations that are just not at that particular threshold for arrest. But, having said that, the police who attend can clearly see or make the assessment that an intervention is required in that scenario. I think that is probably the circumstance that we are talking about.

**Ms Lawson**: Yes. Also, if there is an arrest, under the Family Violence Act there is a presumption against bail for domestic and family violence. So our watchhouse sergeant would not be considering bail. It will go before a judiciary next morning, where bail will be considered.

**THE CHAIR**: Just on that, one of the concerns that has been raised by the Victims of Crime Commissioner is that this scheme removes that arrest response to domestic and

family violence, which in her view signals a better response to domestic and family violence, noting this level of seriousness that the community has around this issue. I just wanted to get your views on that.

**Mr Lee**: I am aware that is a concern from the Victims of Crime Commissioner and the office. This is not a change of our policy on domestic and family violence responses in terms of a pro-arrest, pro-charge response, where we can. It does not signal a change of our policy, and our policy will not change. This is an additional mechanism for us to ensure that we can maintain community safety. It is a complimentary mechanism for a policy that will remain.

**Ms Cheyne**: So, if the threshold is being met, they will arrest. But, if the threshold is not being met but there is still heightened concerns and safety risks—and sometimes it could be, "We are not actually sure who the perpetrator is here,"—or whatever it might be, there is still another tool for Policing in that moment.

**Mr Lee**: It is also a mechanism that can be issued in parallel to the arrest. I might just pass to Ms Guo on that or Detective Superintendent Lawson. There are circumstances where a person has been arrested, but we may still seek to issue a safety notice given some of the other concerns that we hold.

**Ms Lawson**: If it suits the panel, I have a couple of case studies that I can talk through-perhaps one for each—where police have no arrested and where police have arrested and still sought an FVSN.

**MR RATTENBURY**: Sure; thanks.

**Ms Lawson**: Case study 1 is where the arrest threshold has been met and involves physical assault with escalation. The police are called to a home after neighbours hear yelling and a loud crash. On arrival, the affected person has visible redness and swelling to her cheek. She states her partner, being the respondent, slapped her during an argument about finances and threw her phone against the wall, smashing it. The respondent admits to the argument but says, "I only pushed her away because she was yelling." The key points are that police observe visible injuries consistent with an assault; there is an admission of physical contact and property damage—you can see that the phone has been destroyed; and are concerned about escalating behaviour. So the arrest threshold has been met, which is reasonable suspicion of assault with criminal damage, and we hold that an FVSN is justified because of the immediate risk of further violence and property damage.

Case study 2, is, similarly, where the arrest threshold has been met. Police attend a residence. The front door is kicked in and furniture is overturned. The affected person says the respondent forced entry after being locked out and smashed a glass table during the argument. The respondent is present and intoxicated. Clear evidence for police of forced entry, significant property damage and ongoing risk of apprehension of violence. The assessment is that the respondent or the person using violence will be arrested because that threshold has been met for criminal damage and possible unlawful entry, and the FVSN justified to prevent further damage and protect the person.

I will just talk to that, where you might think you have arrested the person, you have

removed the person using violence for that period of time. I also manage the Domestic Family Violence Investigation Unit and, even though it is a high-risk unit, we have retained carriage of investigations of breaches of family violence orders generated through the AMC. We are working really closely with AMC and Corrections to see what we can do to prevent those breaches. But it is that continuation of coercive control, where the physical violence is no longer a risk because they are detained or remanded or in custody; however, there is coercive control through phone calls or being patched through third parties to extend and exercise coercive control. We see that the FVSN is a very good tool to utilise in that position to prevent those calls. Immediately, when that person, the prisoner, is transferred from the watchhouse to AMC, we can advise of their family violence notice so that the protected person is put on an exclusion list immediately.

**THE CHAIR**: But my understanding of how the scheme would apply is that it is a threat of immediate safety risk or a threat of immediate danger. For a person in the AMC, what is the threat of immediate danger that the FVSN is dealing with then?

**Ms Lawson**: Domestic and family violence is not just physical violence; it is also coercive control or controlling an aspect of the victim-survivor's life causing them to do certain things to satisfy the offender. That can be through manipulating financial means, controlling or providing that sense of control over children, through their own lives, around their own patterns and movements of life and behaviour—that real loss of agency that comes through coercive control.

**THE CHAIR**: How does the FVSN scheme mitigate against that?

**Ms Lawson**: As a protected person, you would be able to communicate through the AMC and ask them to go on an exclusion list to prevent that contact.

**MR WERNER-GIBBINGS**: This is not about FVSN. We have support from stakeholders but who are wondering or have questions about whether or not it could go further. Attorney-General, you alluded that there is more work that you are looking at and that this is not the end, presumably, of the work in this area.

**MR RATTENBURY**: Most certainly not, I think would be the answer.

**Ms Cheyne**: This area as in the bill as a whole?

**MR WERNER-GIBBINGS**: The bill as a whole but the issues that it is dealing with.

**Ms Cheyne**: Absolutely. First of all, on the service of PPOs and FVOs, I do think there is a way that we can frame the legislation that empowers Policing to use other tools. It just needs to be worked through exactly how that works in practice, making sure that we understand what the benefits and any consequences—positive or neutral or not—there might be of changes in that area and how, if there are any risks to it, how we can mitigate those.

There are further conversations, certainly, about the Evidence (Miscellaneous Provisions) provisions—is that the word? It will come to me this Friday. We know that there have been some stakeholders who would like some of the reforms that we have

put forward to extend to criminal matters rather than civil in terms of how information is shared relating to a proceeding. That is something that we are happy to look at. But, in the short term we can see an issue that needs to be fixed and we can contain it in this bill and fix it while we work through the complexities more broadly. Then, on the good character offences—

**MR WERNER-GIBBINGS**: There was a comment around why not remove good character to mitigate all sexual assault as a mitigatory factor in all sexual assault as opposed to it being, at the moment, only child sex offenders.

**Ms Cheyne**: I guess it again goes back to where this came from. It is something I know that Mr Rattenbury received representations on and had also, I think, led the way nationally in starting a conversation about what this means and looks like. When it was presented to him, if I am not incorrect, but also to me, it was really about child sex abuse and that, when sentencing is occurring, there can be all sorts of good character references being presented, being read out in court, while the victim is present. This is when the person has been convicted. So it is during the sentencing hearing. So the guilt has been proven and still the good character and everyone saying, "Good bloke," "Can't believe he would ever do this," "Still do not believe it," or whatever, and the victim is sitting there going, "I am just"—

**MR WERNER-GIBBINGS**: "Are you kidding?"

**Ms Cheyne**: Yes. But it is not just that—as heinous as that is. It is also that, in basically every circumstance, what are the means that someone was able to be in a position where they were committing child sex abuse and, by nature of their good character, effectively—so by being a good bloke, being an upstanding citizen, being the trusted neighbour or whatever it might be—has resulted in a child being exposed to someone who has then committed some of the worst possible crimes against anybody, let alone a child. That is the argument that I was persuaded by and certainly that is the genesis of the campaign.

I am certainly interested in exploring whether good character needs to be applied at all in sentencing or if we just limit it to areas of sexual offending more broadly. But I think the distinction here is that the child sex abuse has been enabled because of the person's good character, and so then how can that then be a mitigating factor in their sentencing? Whereas, there are other offences that someone can commit where their good character did not enable them to be in those circumstances to commit an act of that nature. So, for me, the test or the connection issue is quite different and it raises different policy questions for us to work through.

We recognise that New South Wales has a bill—I do not think it has passed yet—that has been introduced to remove the good character reference for all offences. I think Victoria is looking at doing the same and Queensland has done it for sexual assault offences. In terms of going to removing it for all, what is proposed in the bill, as I understand it, is that the other sentencing principles still apply—things like prospects of rehabilitation, early pleas of guilt or whatever it might be. So there are still other things that come into play when it comes down to what the person's sentence should be, but the good character reference does not apply.

It is just a kind of different threshold of "What are we trying to solve here?" I firmly believe that what we have introduced with this bill addresses the campaign that had been run for years. There are now further conversations that are bringing other things into it in other parts of the country, which is absolutely fine, but those are different policy questions for us than the one that we have tackled in this bill.

**MR RATTENBURY**: I have two questions. One is on a different part of the bill. We have received representations from the group With You We Can around independent legal representation. That has not been picked up in this bill. Is there a reason it was not picked up in this bill? This is around the ability to be given an actual statutory right to participate in hearings and notification that people's records of various forms are being subpoenaed. There is a range of concerns here, which I imagine you are aware of.

**Ms Cheyne**: Yes, I am.

**MR RATTENBURY**: They have not being picked up in this bill. Is there a reason for that or is it on the future program?

**Ms Cheyne**: Someone is going to help me out here.

**MR RATTENBURY**: That would be you, Daniel or Claire.

**Ms Cheyne**: Why not this bill?

**Ms Buxton**: I understand that With You We Can are happy, to use that word, where we have landed with the bill, but would like us to go further. I think that will be a matter for further policy work and further engagement with stakeholders about what other amendments we could make to the Evidence (Miscellaneous Provisions) Act and bills to achieve those outcomes—but one step at a time.

**MR RATTENBURY**: Sure. They particular point to ALRC recommendation 10, which has now been around for a while and I think goes to the sensitivity of the legal process to encouraging victim-survivors to come forward and not find themselves unfairly exposed to having their records subpoenaed and given, in many cases, to their perpetrator. That answers the question.

**Ms Cheyne**: I think the short answer, Mr Rattenbury, is that we had progressed work on this particular provision to the point that it is at, and to be introduced, at this point in time, and I think the dovetailing of the representations has just not quite lined up with our readiness here. I think we are very open to what they put forward—and it is just kind of ships in the night in terms of—

**MR RATTENBURY**: Timing.

**Ms Cheyne**: Exactly—so not deliberate exclusion or we were going to put it in and then took it out, but rather it just did not quite line up.

**MR RATTENBURY**: No, that is a start. There is no opposition or no concerns with it at this point, but it is just not ready yet. Is that a fair sum of that?

**Mr Ng**: Yes, indeed, Mr Rattenbury. As a matter of fact, it is just not in the scope of works that we have progressed in this bill.

**MR RATTENBURY**: That is fine; thank you. There is another question I want to ask, if I can come back to the FVSNs. The Bar have made, as I am sure you have seen, quite a strong submission opposing the model, but towards the end of their submission they say, "If the government is to proceed, there is a series of amendments we would suggest that would ameliorate against some of the concerns." Perhaps rather than me go through them one by one, given the hour, can I get a broad comment on whether you been able to have a look at those. Are there any in there that raise particular concerns, or should the committee look at picking perhaps some of these up as part of our report and recommending that the government consider them? Do any of them represent a concern of the system as you have prepared it?

**Ms Cheyne**: We have lots of information in front of us, Mr Rattenbury—and I know we have the answer here.

**MR RATTENBURY**: While you are looking for that, Attorney, I will help you out.

**Ms Cheyne**: Please.

**MR RATTENBURY**: A lot of it goes to issues around detention. They made suggestions around people being able to perhaps not be put in a police cell because it is a civil matter, being able to retain their phones and these sorts of things. They are looking for a preservation of some rights, given that someone is not under a criminal charge. That is sort of the tenor of their issues. I do not know if you have any comments.

**Mr Lee**: Mr Rattenbury, I am also aware of some of their comments. I think it is probably one I would suggest we could consider and work through as part of the consideration around implementation. I think that would probably be a better process. I am aware of some of their observations around the four-hour detention period, but obviously we already have that under the after-hours scheme. As we said before, we certainly expect, and we will be working towards, minimising the impact on perpetrators through the FVSN scheme. But probably, subject to the minister's views and the Attorney's views, I think it would be something we probably could better consider through the implementation.

**MR RATTENBURY**: At this point, I am just trying to test for the committee's benefit whether any of these represent a major objection that we should take into account.

**Ms Cheyne**: No. I have found in my extensive table, "Detention" and ACT Bar Association's comments and our response. I will read it: "Protection for people in police custody is an important human rights consideration." I think we all accept that. It continues:

> JACS supports clarity of protections for respondents in relation to police detentions power. However, further policy work and consultation is required to determine how best to be implementing it in the scheme. We are considering approaches to detention powers that exist in current law as well as in other jurisdictions to see what changes, if any, are required to address the issues raised by the Bar, and we will continue this work to inform the government response

overall.

**MR RATTENBURY**: Okay; thanks.

**THE CHAIR**: I have two questions. Minister, there were concerns raised by victim advocates, service providers and the Bar Association about consultation on this bill. I want to understand what level of consultation has gone on. The particular issue that was raised was that this bill or the draft was circulated during a holiday period, over the Christmas break.

**Ms Cheyne**: The bill was introduced in early December. So they might have been referring to the inquiry.

**THE CHAIR**: The inquiry into the bill?

**Ms Cheyne**: This inquiry.

**THE CHAIR**: Okay; this inquiry.

**Ms Cheyne**: I cannot speak to when the earlier work was circulated. But, if they were referring to Christmas, this was introduced in the first week of December, and so they would be talking about the inquiry. But, if it is about our process, fair enough—time has been extended et cetera and there was more time applied, which is in our standing rules, because of the Christmas period. Take that as it is, but on our work before we introduced it, I will hand over to Ms Buxton.

**THE CHAIR**: So when did you undertake consultation on the bill? How long was the process for?

**Ms Buxton**: We engaged with quite a long list of stakeholders in various ways. We first provided a discussion paper to stakeholders, including the Bar Association, the Law Society, the Canberra Rape Crisis Centre et cetera—it is a long list—in June 2025. That is when they received the discussion paper. We then provided the draft model and the draft bill to the same list of stakeholders in September 2025. Then the bill, as the Attorney said, was introduced in December.

**THE CHAIR**: Okay. Can you please explain that discussion paper consultation process? Did you, for example, have an additional consultation post the consultation paper? How was the process fed back to the stakeholders?

**Ms Buxton**: Apologies, I misspoke; I think we provided the consultation paper on 1 July, not in June. We invited submissions and comments on the discussion paper in July 2025. We are always open to meeting with stakeholders. We have done quite a lot of consultation. Then we provided both a draft model of what the FVSN scheme would look like as well as a draft bill itself. There was quite a lot of opportunity to receive feedback.

**Mr Ng**: Indeed. Ms Barry, I would just like to add to that, in that our usual process goes to a level of transparency and engaging with stakeholders where we seek their views and present the latest thinking about the models that we are engaging with

government on. But, due to cabinet conventions, there is necessarily a process where we do need leave space for cabinet consideration of the final bill or model that is ultimately landed on by government. So there is a there is a level of back and forth with the stakeholders to engage with them about the issues they have raised and also talk to them about new and updated thinking on different features of the model. But, with all of our processes, there is a period where we go into supporting government decision-making through cabinet processes and the like where we leave space for government to take different views about what the final model looks like.

**Ms Cheyne**: I can give kind of a ministerial flavour to this as well in that, as you can see from some of the feedback that we have had—and further work that we are open to doing—there is a point where you kind of go, "All right; we have actually got pretty substantive reform here. Let's introduce this and then we can keep working on the next tranche." Otherwise you could be involved in creating a kind of mega-bill. It is already pretty big. So where does it stop? The more that you go through, the more asks there might be in this space, because there is a lot of work to do. We understand and respect that. I have certainly been of the view that there is some pretty meaty stuff in this, particularly on family violence safety notices and the real urgency around those, and I did not want to be stuck in a world of consultation forever.

Also, we are in a really different spot to even where we were five or six years ago when it comes to legislation. Being in a parliamentary and governing agreement, effectively going through cabinet was not definitely the two parties' views, but you could be pretty sure it was probably going to be the majority view and then be passed. In the last term of parliament, automatically bills began being referred to committees, which you are now enjoying—and that is new. That is novel for this parliament. I certainly expected that this bill would be inquired into, and certainly welcomed that, because it is complex and there will be stakeholder views that need to be aired and understood.

With that in mind, I am quite sure that there would have been a direction from me saying, "We cannot keep having iterative consultation because new issues keep being introduced or people are asking us to add in something else and think about this policy thing or whatever. We have a package. There is a lot in this. Let's get it in, and we can then start the conversation about the next tranche as well"—noting that there would be further consultation because of this committee process.

**THE CHAIR**: On that, as a last question, there is a significant concern that this is police overreach where you are transferring what are essentially judicial powers to the police. Do you think that, with this bill as it is currently drafted, there is a balance between the overwhelming breaches or potential breaches of rights of the individual? It was mentioned to us that, if someone loses their right to their home, there is the potential of misidentification—in which case, if someone has lost their right to their home and their children, that is a significant breach. Do you think that you have the right balance between protecting the rights of the individual against those issues and the rights of the victim?

**Ms Cheyne**: I definitely do, but Marisa will be able to be more eloquent.

**Dr Paterson**: I think the one thing that we need to be really clear about is that people have a right to be safe as well. Victim-survivors who are living in a situation or facing

a situation where their safety is directly threatened and police have been called have a right to be safe. As we have discussed through this hearing, the complexity of the court processes and application processes and the burden on victim-survivors is very significant. This relieves that for a moment in time. So I think this is very much in terms of protecting the rights of victims and people who are at risk of violence.

**THE CHAIR**: Thank you. On behalf of the committee, I thank you for your attendance today. If you have taken any questions of notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today. On behalf of the committee, I thank all of the witnesses who have attended and assisted us today through their experience and knowledge. We also thank Broadcasting and Hansard for their support.

**The committee adjourned at 4.45 pm**