

## Submission on *Bail Law Reform in the ACT*

### Acknowledgement of Country

Women's Health Matters acknowledges Aboriginal and Torres Strait Islander peoples as the traditional custodians of the land on which we live and work. We recognise these cultures as among the oldest living cultures in human history and pay our respects to Elders past and present. We acknowledge the history of dispossession and its ongoing impact on Aboriginal and Torres Strait Islander communities. We particularly recognise the strength, resilience, and wisdom of Aboriginal and Torres Strait Islander women, and honour their continuing connection and contribution to Country, community, and culture. We are committed to walking alongside Aboriginal and Torres Strait Islander peoples in our shared journey toward health equity and justice. This land always was, and always will be, Aboriginal land.

### About Women's Health Matters

Women's Health Matters is an independent, non-partisan organisation that works to improve the health and wellbeing of all women in the ACT and surrounding region. We seek to improve access to health information and enhance knowledge and understanding about the determinants of health and illness among anyone who identifies as a woman.

We advocate on behalf of all ACT women, especially those experiencing disadvantage and vulnerability. We want women to feel in control of and understand the determinants of their own health and wellbeing. We do this through health promotion and by providing evidence-based social research, policy development and advocacy services to governments, the corporate sector, policy makers, service providers and peak bodies.

### Our submission

Women's Health Matters (WHM) welcomes the opportunity to provide feedback to inform changes to the *Bail Act 1992* (the Act). Bail law reform in the ACT presents an opportunity to embed victim survivor expertise at the heart of legislative change, recognising that those with lived experience of domestic, family and sexual violence (DFSV) are best positioned to identify necessary systemic improvements. The development of responsive bail law reform in the ACT must ensure that the lived and living experiences of victim survivors are not merely consulted but are central to shaping policy frameworks and judicial practices.

This approach aligns with ACT Government commitments to engage with victim survivors to drive and inform change in the prevention of and response to DFSV, including agreed recommendations from the 2021 *Listen, take action to prevent, believe and heal* report.

While this submission is informed by preliminary insights from our Victim Survivor Voice pilot program, we recommend utilising this mechanism to inform ongoing efforts to ensure victim survivors' rights are being upheld outside of the internal review system.

## Centring lived and living experiences of domestic, family and sexual violence in law reform

Recommendation 1 of [\*Listen, take action to prevent, believe and heal \(2021\)\*](#) called for the ACT Government to establish and appropriately resource an ongoing structured victim survivor consultation program to drive and inform systemic change in preventing and responding to sexual violence.

The ACT Government accepted this recommendation alongside proposed law and procedural reforms, including amendments to sections 55, 55A, 56 and 66B of the *Crimes Act 1900* (ACT) to remove the presumption of bail in certain circumstances (see Appendix 6 pp. 151-157). Drawing on lived expertise, the report further identified opportunities to strengthen bail compliance monitoring systems, demonstrating how victim survivor insights can inform both legislative reform and practical implementation measures.

Translating these recommendations into action, the ACT Government allocated specific funding to establish the victim survivor consultation mechanism called for in the 2021 report. In the 2022-23 Budget, the ACT Government committed \$1.4 million over four years to establish a structured Victim Survivor Consultation Program to ensure the voices and experiences of victim survivors remain central to sexual violence reforms.

Subsequently, WHM was funded by the ACT Government Domestic, Family and Sexual Violence Office to establish and pilot the Victim Survivor Voice, a peer-led community listening program open to people over the age of 18 who have lived or living experience of domestic, family, and/or sexual violence and live in the ACT and surrounding regions. The 2025-26 ACT Budget allocated a further \$646,000 for continuation of this pilot program.

Sisters in Spirit Aboriginal Corporation have also been funded to partner with WHM to uplift the voices of Aboriginal and Torres Strait Islander women.

The implementation of an independent and trusted mechanism to discuss individual experiences provides the opportunity to:

- Maintain continuous, meaningful engagement with victim survivors during all stages of policy development and implementation.
- Recognise and value lived and living expertise.
- Embed survivor voices in system reform.
- Bring resolution to their experiences with the justice system.
- Critically review harmful aspects of the system.

The focus of the pilot phase of the Victim Survivor Voice is ongoing engagement with adult victim survivors in the ACT community to inform:

- Development of an ACT Domestic, Family and Sexual Violence Strategy,
- Improving community understanding and responses to coercive control, and
- Improving support for people with disability experiencing DFSV.

While this submission is informed by preliminary findings from victim survivor consultation on these matters, the Victim Survivor Voice has not been specifically utilised for the purpose of bail

law reform. Our submission responds to the questions where we have preliminary findings or evidence to support these, and as such have not responded to every question.

WHM welcomes further engagement with this mechanism to guide decision-making processes to ensure reforms genuinely enhance safety and justice outcomes.

### **Responses to May 2025 discussion paper questions**

#### *Q1. What are the risks or benefits in providing for a clearer framework of considerations for the decision-maker as outlined above?*

While WHM generally agrees that a clearer framework could allow for a more nuanced response in instances of DFSV, the implementation of a one size fits all approach will not necessarily deliver adequate outcomes for each case. A framework built from evidence-based risk factors will assist in assessing the situation (Toivonen & Backhouse, 2018), however we suggest that utilising lived and living expertise will provide specific contextual information for the ACT.

#### *Q2: Should a victim's concerns that need to be taken into consideration be broader than what is currently legislated? If so, what would be an appropriate expansion?*

Yes, it would be recommended that there is a mechanism for the victim, where safe to do so, to provide a response prior to bail being considered if they choose. This would be recognising victim survivors as experts in their own experiences, in line with the ACT Government commitment to centre victim survivor voices. Broadening the legislative language to include “real or perceived harm to the victim or their dependents, including emotional, psychological, and indirect threats (such as to pets or property)” would ensure courts are better equipped to make bail decisions that genuinely reflect victims’ safety needs. This approach centres the lived experience of victim survivors and aligns with a trauma-informed and safety-first framework.

#### *Q3: Is there value in a criterion which reflects victims' views and knowledge more broadly? If so, should this be in addition to or instead of a “risk of harm” criterion?*

Yes, there is significant value in including a criterion that reflects victims’ views and knowledge more broadly, in addition to a “risk of harm” criterion. When used as a complementary criterion, victim survivors can provide unique insights and experiences into the accused’s behaviours, especially in cases involving coercive control, a form of DFSV, that can help inform and contextualise the assessment of risk. This approach is supported by the ACT Government’s promise to centre the voices of victim survivors and supports meaningful engagement.

#### *Q4: Should decision-makers be specifically required to have regard to the presence of established risk factors when deciding a bail application in the context of a domestic and family violence offence?*

Yes, decision-makers should be required to consider the presence of established risk factors. Centring victim survivor expertise in this stage could include the option to provide a self-assessment of their own risk. Ongoing risk assessments would be required, given the changing nature of risk factors over time (Toivonen & Backhouse, 2018). This approach recognises and

values lived experience, providing insight and recognising the complex and often invisible nature of violence.

*Q5: If so, if an FVRAT has been completed by ACT Policing, should it be provided as a relevant consideration that the decision-maker needs to have regard to? Or, is there another tool which could be used instead of, or in addition to, an FVRAT?*

Evidence from tools like the Family Violence Risk Assessment Tool (FVRAT) shows that while no tool is perfect, actuarial and red-flag indicators—such as previous threats, escalation, strangulation, or coercive control—are consistently linked to serious harm or fatality. Including these in bail decision-making aligns the justice process with evidence-based risk indicators.

*Q6: Where a victim dies because of the commission of an offence of which the accused person is accused, should the definition of victim be expanded to include immediate family members, rather than only persons who were financially or psychologically dependent?*

Yes, the definition of “victim” in the Bail Act should be expanded to include immediate family members, with particular consideration of children and young people as victims in their own right. It is also important to consider family members that were not financially or psychologically dependent on the deceased, as limiting recognition to financial or psychological dependence ignores the real and substantial emotional, relational, and psychological impacts experienced by immediate family members when a loved one is killed. The expanded definition also allows for those most affected by the crime to have their views considered in relation to bail, risk and safety, as well as providing behavioural context.

*Q7: Is this provision in the Victorian legislation appropriate for the ACT context? Can it be improved?*

The appropriateness of the Victorian provision for the ACT context cannot be determined without actively seeking specific contextual information from those with lived and living experience, with particular attention to Aboriginal and Torres Strait Islander voices who face distinct experiences shaped by colonisation and overrepresentation in the justice system. The ACT's existing consultation structures, including the partnership between WHM and Sisters in Spirit Aboriginal Corporation, provide an opportunity to ensure reforms are genuinely tailored to local circumstances. Any legislative adaptation must be informed by comprehensive consultation to identify potential modifications that would enhance safety outcomes for all community cohorts, rather than simply transplanting provisions from another jurisdiction.

*Q8: Should an accused being a primary carer or pregnant be a relevant consideration for a decision-maker in deciding to grant bail? If so, what form should the provision take?*

Yes, these are relevant factors for the decision maker. Incarceration of pregnant people can negatively impact perinatal health, maternal wellbeing and birth outcomes.

WHM also recommends that this be expanded to also include individuals with financial commitments (i.e. child support). While the individual may not have carer responsibilities, their financial responsibilities that should be considered.

This could be done by embedding a requirement for supporting evidence to confirm or disclose carer or financial responsibilities. In the event that bail was denied, the decision maker would need to provide reasoning to explain how the best interest of the dependants were considered.

*Q9: Should an accused person's disability needs, health needs and relevant related circumstances be required to be considered by a decision-maker in deciding whether to grant bail? If so, what form should the provision take?*

Yes, the Bail Act should be amended to explicitly require decision-makers to consider the disability, health (including mental health) needs, and relevant circumstances of an accused person when deciding to grant bail and setting bail conditions. We suggest consulting with ACT Disability Persons' Organisations for specific, contextual advice and recommendations.

*Q10: Should the legislation contain a specific provision requiring a court to consider a written submission from police in its decision-making?*

There is tentative support for this, provided there were appropriate safeguards put in place including that the submission must on be based on factual observations of the accused, and not inclusive of generalised statements or sentiments.

*Q11: With the nature and seriousness of an offence already provided for as a relevant consideration, should this be expanded to include the prevalence of the offence?*

Prevalence of the offence should be added as a consideration. In cases of DFSV, this could be done through the victim statement (as above). The accused current and past action bear weight in this scenario, and these need to be considered to effectively address behaviours and deterrents.

*Q12: Are the types of risks that a decision-maker is required to assess the likelihood of sufficient for the purposes of granting bail?*

In considering the safety of women and their families in the current bail conditions, it is unclear if consideration is given to the fact that some members of the community face more risk than others, including the frequency, severity and range of barriers to safety (Toivonen & Backhouse, 2018). The decision maker will need to ensure, if granted bail, there has been sufficient consideration to this range of factors and there are appropriate mitigations in place to ensure the safety of the victim.

*Q14: Is it useful to continue with having some criteria being required to be considered and others which may be taken into account? If so, should there be any changes? Or, should all criteria be relevant considerations that need to be given appropriate regard? How could decision-makers and persons appearing before a court be supported so that all evidence relating to the criteria is available?*

As highlighted earlier in the paper, where it is safe to do so, the victim should be given the opportunity to provide a statement to be considered. Where this statement is provided, it must be considered, however it is not a requirement for the victim to provide such a statement where they choose not to.

Q15: What further information or specificity could be provided in the bail conditions which would ensure their enforceability?

Bail conditions in this regard should be considered in the same manner that bail is considered, with due consideration to the victim and any undue burden or risk that conditions would place on them. It is noted that the discussion paper notes “conditions can be resource intensive for those required to enforce them” and that ACT Policing has difficulty enforcing them where not provided for sufficiently.

We also urge consideration of clearly communicating bail conditions and means of enforcement to victims, given the impact on their safety planning and the offender’s accountability. As noted in *Listen, take action to prevent, believe and heal* (2021), bail conditions should not be in place without stringent mechanisms to ensure compliance.

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