



ACT
Government

Government Response

to the *Listen. Take Action to Prevent,
Believe and Heal* Report

Presented by Ms Yvette Berry MLA

Minister for the Prevention of Domestic and Family Violence

Legislative Assembly of the Australian Capital Territory

Introduction

On 28 April 2021, responsible Ministers, all political parties, the Directors-General of all relevant ACT Public Services Directorates, the Chief of Police and representatives from non-government organisations came together to make a commitment to take action to prevent and respond to sexual violence in Canberra.

To give effect to this commitment, the ACT Government announced the establishment of the Sexual Assault Prevention and Response Program (SAPRP) led by an independent Steering Committee chaired by Ms Renée Leon.

The Steering Committee was tasked with setting key priorities for future work and action by government to develop effective, systemic, evidence-based responses to sexual violence in the ACT.

To ensure this work progressed with the right representation and the right governance, an Aboriginal and Torres Strait Islander Consultation Committee, three working groups (focussed on prevention, response, and law reform respectively) and a Workplace Reference Group were established to make recommendations to the Steering Committee.

The lived expertise and experience of victim survivors of sexual violence led this work. The SAPRP heard the voices of victim survivors, both directly in their evidence provided to the Steering Committee, and through the data and experience of the organisations that provide services to them.

The Steering Committee completed the *Listen. Take Action to Prevent, Believe and Heal* Report to government in November 2021.

Summary of recommendations

On 13 December 2021, the ACT Government received the *Listen. Take Action to Prevent, Believe and Heal* Report (the Report).

The Report made 24 recommendations to improve how the ACT prevents and responds to sexual violence in our community.

The Report identified that not only is there an unacceptable prevalence of sexual violence in the ACT community, but that the systems responses available to victim survivors in the ACT are inadequate. It found that the network of community and government agencies in the ACT designed to provide support and services to people who have experienced sexual violence is struggling to do so effectively notwithstanding the extraordinary commitment of those who work in the sector.

The recommendations cover a broad range of themes, including a long-term sexual violence prevention strategy, an ongoing consultation program with victim survivors, enhanced workplace safety, improved data collection and a governance model for the coordination of these reforms.

Recommendations also relate to training and education, including relationship and sexuality education, improved training on the dynamics of sexual violence, cultural competency of specialist workers and their organisations and bystander training.

The Report recommends a Specialist Services Review of all agencies and statutory bodies that provide services related to sexual violence, improvements to integration, collaboration and case coordination between the response services, and more assistance for victim survivors to navigate the system. There are also several recommendations relating specifically to children and young people.

There is a recommendation to establish a service to provide mentoring and training to the current and next generation of Aboriginal and Torres Strait Islander workers in the sexual violence service sector.

Finally, there are a number of justice system reforms and reviews that have been recommended, including relating to policing, the courts, and the law. Importantly the legislative reforms include amending the law to establish an affirmative communicative model of consent.

Overview of the Government Response

The ACT Government has carefully considered each recommendation and provided a detailed and thorough response to the Report.

Responses against a given recommendation fall within one of four defined categories:

Agree	The government agrees to this recommendation, and relevant details of the proposed implementation strategy are included with the response.
Agree in principle	The government generally supports the recommendation but does not necessarily agree with some of the details in the recommendation.
Noted	The government considers no specific action or response is necessary to this recommendation.
Not agree	The government does not agree to the recommendation.

There are 24 recommendations that have been made, of which some comprise multiple elements. Where the government has a consistent position for the entire recommendation, the Government:

- **agrees** to 13 recommendations
- **agrees in principle** to 9 recommendations
- **notes** one recommendation

For recommendation 23 which is made up of 18 sub-recommendations, the ACT Government, responses given against a given sub-recommendation fall within one of the five defined categories:

Agree	The government agrees to this recommendation, and relevant details of the proposed implementation strategy are included with the response.
Agree in principle	The government generally supports the recommendation but does not necessarily agree with some of the details in the recommendation.

Noted for further consideration	The government considers that this recommendation requires further analysis and consultation to determine whether legislative amendments should be made.
Noted	The government considers no specific action or response is necessary to this recommendation.
Not agree	The government does not agree to the recommendation.

The ACT Government:

- **agrees** to 8 sub-recommendations.
- **agrees in principle** to 4 sub-recommendations.
- **notes for further consideration** 3 sub-recommendations
- **notes** 2 sub-recommendations: and
- has **not agreed** to one sub-recommendation.

Implementation

The Report is clear that the recommendations will need to be implemented across multiple sectors over an extended period of time as part of a phased reform program. It proposes that the ACT Government establish mechanisms within government to coordinate reform and work with the community and justice agencies to ensure oversight of implementation and ongoing expert input into policy and service design. The Report acknowledges that as part of this process, additional or revised recommendations may be made and that this set of recommendations is only the start of an evolving process.

The first step in a phased implementation of the recommendations is to identify where the immediate priorities lie and to ensure a co-ordinated response across government. The Report identified that currently within ACT Government responsibility for implementation of the recommendations outlined in the Report and any further recommendations would fall across a range of directorates and agencies. To address this, the ACT Government will appoint a Coordinator-General for the prevention of sexual violence in accordance with recommendation 24.

The functions of the Co-ordinator-General will be to provide strategic leadership, whole-of-government collaboration, and co-ordination of the government's response to the reforms. This role will not only work across government but also consult broadly with all stakeholders to inform priorities in the phased implementation of the recommendations to improve how the ACT Government responds to sexual violence.

Responses to Recommendations

Recommendation 1: The ACT Government establish and appropriately resource an ongoing structured consultation program with victim survivors to continue to drive and inform change in the prevention of and response to sexual violence in the ACT.

Government Position: Agree

The ACT Government acknowledges that the lived experience and expertise of victim survivors should be central to driving and informing change. The Office of the Coordinator-General for Family Safety (OCGFS) will work closely with the Victims of Crime Commissioner (VOCC) and relevant sector partners to establish an ongoing structured consultation program and will address a number of practical considerations including how victim survivor voices are captured appropriately and safely together with related matters of privacy, consent, and resourcing.

Recommendation 2: The ACT Government fund training to relevant government and community settings on the dynamics of sexual violence, responding to sexual violence disclosures, and sexual violence active bystander training.

Training to be provided to:

- *frontline workers in health, education, child protection, and housing*
- *primary health care and allied health professionals in collaboration with professional bodies*
- *culturally and linguistically diverse community and cultural leaders, drawing on culturally and linguistically diverse expertise*
- *targeted community organisations*
- *tertiary education settings*
- *other workplaces including staff in the relevant service sector.*

Government position: Agree in principle

The ACT Government is committed to delivering training for frontline workers to ensure they are equipped to appropriately respond to sexual violence. The ACT Government acknowledges the importance of trauma informed practice and responses to sexual violence, to ensure the responses are sensitive, appropriate and cause no further harm to victim survivors.

In addition to the work already underway, in response to this recommendation, the ACT Government will work with each directorate to strengthen any existing training already available to staff. Consideration will also be given to the development of additional training to deliver across government and to a variety of sectors and agencies to ensure a better baseline standard of understanding of sexual violence dynamics, best practice with respect to responding to disclosures and active bystander training. Funding for such training will be subject to consideration as part of future budget processes.

The ACT Government is already taking action to respond to this recommendation. For example, the Education Directorate (EDU) is implementing the Safe and Supportive Schools Policy in all ACT Public schools, requiring them to identify at least two Safe and Supportive School Contact Officers (SASSCOs). SASSCOs play an important role in building positive, engaging cultures using strategies for prevention and early intervention/responses. SASSCOs undertake tailored professional learning and work with the school leadership team to prevent, identify and respond to bullying, discrimination, and racial and sexual harassment.

The EDU will continue to strengthen the supports provided to SASSCOs to assist them in their role. In addition to SASSCOs, schools have access to a range of specialist staff including school psychologists, School Youth Health Nurses, Youth Workers, Social Workers, and Allied Health professionals.

The EDU also uses trauma informed practice to support students with trauma backgrounds. Trauma informed practice is a strengths-based framework grounded in an understanding of and responsiveness to the impact of trauma, that emphasises physical, psychological, and emotional safety for everyone, and which creates opportunities for students to feel empowered.

Further, during 2020-21 the Homelessness Services within Housing ACT, Community Services Directorate (CSD) engaged a consultant to design and deliver Trauma Informed Care training to the specialist homelessness sector. This training resulted in increased sector capability in understanding and responding to the impacts of trauma when working with vulnerable clients experiencing or at risk of homelessness. A component of the training focused on developing skills about responding to disclosures including disclosures of abuse, domestic and sexual violence.

Child and Youth Protection Services (CYPS) are committed to building a thorough and effective workforce which understands sexual violence, to ensure children, young people and their families are best supported. CYPS staff are required to attend several trainings including Introduction to Sexual Abuse and Working with children and young people who engage in sexually harmful behaviour.

CYPS staff also complete Safe and Together Blended Core Training. The Safe and Together training explores the suite of tools and interventions designed to support child protection practitioners become domestic violence informed. The child-centred model provides a framework for partnering with domestic violence survivors and intervening with domestic violence perpetrators to enhance the safety and well-being of children and young people.

Recommendation 3: Integration, collaboration and case coordination between the response services must be immediately improved along with assistance to victim survivors to navigate the system.

- a. The response services should, at a minimum, be resourced to take immediate action to improve case coordination and collaboration when providing services to victim survivors. This should include reinstating the wraparound model with regular face-to-face meetings to coordinate addressing the needs of victim survivors, including children and young people, and to ensure provision of coordinated support whether or not the matter is, or is likely to be, proceeding through the criminal justice system.*
- b. The ACT Government should immediately scope and pilot new mechanisms to further improve system coordination from the point of disclosure onwards while also increasing the ease of system navigation for victim survivors. This should include the establishment of a Multi-*

Disciplinary Centre (MDC) where specialist sexual violence response services, including police, would be co-located and able to collaborate immediately and as intensively as required when addressing sexual violence cases (especially children's cases, high risk and complex cases). It should also include the engagement of one or more Independent Sexual Violence Advisers who would support and assist victim survivors to navigate the system. There should be a specific service for Aboriginal and Torres Strait Islander women established to seek advice and support either separately or co-located with the MDC. Finally, a Centre for Healing should be established within the MDC to provide dedicated therapeutic pathways for victim survivors to recover and heal.

Government position: 3a - Agree, 3b - Agree

The ACT Government understands the immediate need to strengthen and improve assistance to victim survivors navigating the service response service system. To give effect to recommendation 3a, the ACT Government will facilitate the secretariat function of the wraparound model to reinstate face to face collaborative meetings. In addition to reinstating the wraparound model, the ACT Government will also consider other innovative mechanisms that support the achievement of enhanced case coordination and collaboration.

In relation to recommendation 3b, the ACT Government is committed to delivering a best practice, responsive and high-quality services response system. The ACT Government acknowledges that improvements are needed to improve service responses for victim survivors. The researching and scoping of a best practice MDC suitable for the ACT is the pivotal first step leading to a pilot of a Multi-Disciplinary Centre (MDC) and establishment of Independent Sexual Violence Advisors (ISVAs). This initial work will involve working with relevant stakeholders and consider models used in other jurisdictions. This initiative will promote an integrated coordinated response to the needs of a victim survivor and protect against a systems response which is retraumatising.

Recommendation 4: The ACT Government undertake a specialist services review of all agencies and statutory bodies, funded either wholly or partly by ACT Government, that provide services related to sexual violence with a view to identifying current system strengths requiring further investment to address survivors' needs, as well as changes needed in services' operating practices, performance measures and standards, training, cultural capacities, structures, coordination systems and current funding arrangements, with a view to informing future investments in necessary system improvements to enable victim survivors to receive highly effective, timely support in an integrated way.

Government position: Agree

The ACT Government is committed to ensuring that specialist services, agencies and statutory bodies work effectively and are resourced appropriately to provide timely and integrated responses to victim survivors of sexual violence.

The ACT Government will initiate the review, to investigate the existing service responses available to victim survivors, to identify what interventions can be made to provide greater efficiencies in the specialist response system and where further investment and changes need to occur to address victim survivors' needs.

Recommendation 5: The ACT Government, ACT Policing and non-government service providers take action to improve the cultural competency of workers and the cultural responsiveness of specialist services in relation to Aboriginal and Torres Strait Islander people.

Government position: Agree

The ACT Government acknowledges the importance of culturally responsive and safe services and commits to continuously improve approaches that support the achievement of equitable outcomes for Aboriginal and Torres Strait Islander people.

The ACT Government is already taking steps to deliver on this recommendation. For example, ACT Policing notes that elements of this recommendation are captured through separate bodies of work, including ACT Policing's response to the Ombudsman's report into its engagement with the Aboriginal and Torres Strait Islander community. The ACT Health Directorate (ACTHD) currently offers training on Aboriginal and Torres Strait Islander Awareness and Disability Awareness and is developing an Inclusion Strategy that will provide an overarching direction for the ACTHD, outlining the vision to support an inclusive organisation for its workforce. Further, in support of this recommendation, all ACT Government staff have access to high quality cultural competency training.

Despite these things underway, the ACT Government acknowledges that more work is needed with the service sector and relevant stakeholders to enhance and improve the cultural competency of workers. This work will be led by further engagement with the Aboriginal and Torres Strait Islander community to ensure improved cultural responsiveness of specialist services for Aboriginal and Torres Strait Islander people. The ACT Government will commence scoping this work and will gain a better understanding of the extent of the work required to achieve the intent of this recommendation.

Recommendation 6: The ACT Government establish a service to provide mentoring and training to the current and next generation of Aboriginal and Torres Strait Islander workers currently employed or hoping to be employed in the specialist response service sector.

Government position: Agree

The ACT Government acknowledges the importance of this recommendation and will commence foundational work to determine how best to establish a service to provide mentoring and training to the current and next generation of Aboriginal and Torres Strait Islander workers currently employed or hoping to be employed in the specialist response service sector. This work will be undertaken across a number of years to ensure appropriate mechanisms and processes are in place to achieve the intent of the recommendation.

This work will be led by further engagement with the Aboriginal and Torres Strait Islander community.

The ACT Government will lead the implementation of this recommendation by initially undertaking a review of specialist service responses to identify the current capacity to support and train Aboriginal and Torres Strait Islander workers. Based on the outcome of this review, a review of the potential need to upskill Aboriginal and Torres Strait Islander specialists as part of future service delivery will be undertaken. The ACT Government will then work with the sector and government partners to identify and define the

training needs and appropriate mentoring approaches to design and develop the required training packages and mentoring service specifications.

Recommendation 7: The ACT Government:

- A. resource ACT Policing Sexual Assault and Child Abuse Team (SACAT), Child at Risk Health Unit (CAHRU) and Child and Youth Protective Services (CYPS) to initially conduct a feasibility study of how joint investigations of child sexual abuse could be carried out in the ACT and thereafter implement a (minimum) 12-month pilot of joint investigations of child sexual abuse based on learnings from the NSW Joint Child Protection Response Program ('JCPRP', previously referred to as JIRT).**
- B. review of the role and mandate of the Liaison Officers from other directorates, such a Police and Canberra Health Services that are located within CYPS.**

Government position: Agree

The ACT Government is committed to improving systemic responses to child sexual abuse. The government will establish a joint Steering Committee to review current models of services operating across jurisdictions. It will also consider operational aspects of any model within the ACT context and undertake a study of how joint investigations of child sexual abuse could be carried out in the ACT. It will further consider the development of a joint response service within the context of recommendation 3b.

Consideration will be given to the scope of the service, defining how a joint response to child sexual abuse can be undertaken to embed reporting, investigation of an incident, support of victim survivors of sexual violence, and specialist services to address the impact of child sexual abuse on children, young people, and families. The implementation of this recommendation will be undertaken across a number of years to ensure appropriate mechanisms and processes are in place to achieve the intent of the recommendation.

b) The ACT Government acknowledges the need to continuously improve and strengthen collaborative initiatives across relevant directorates. The government will firstly establish a working group with all relevant stakeholders, to review Liaison Officer positions located within CYPS.

The working group will conduct a review of the current role and mandate of each liaison officer, to ensure that the description of their role meets the requirements as defined by the home agency. The roles will then be rescoped based on the assessment findings. Protocols will then be established with home agencies to describe functions, accountabilities, and reporting requirements.

Recommendation 8: The ACT Government fund specialist children's services to provide additional training on effectively responding to children who have experienced sexual abuse and to increase collaboration and integrated responses across the system responding to child sexual abuse.

Government position: Agree in principle

The ACT Government acknowledges the need to provide additional training on effectively responding to children who have experienced sexual abuse and to increase collaboration and integrated responses across the system responding to child sexual abuse.

The ACT Government would give effect to this recommendation by embedding a clinical educator position in the Canberra Health Services' (CHS) child sexual assault service (currently known as CARHU) to support building expertise and capability to respond to children who have experienced sexual abuse. Delivering on this approach is subject to consideration as part of future budget processes.

The ACTHD is already progressing work to consider options in relation to this recommendation through a Service Mapping Analysis (the Analysis) for children with harmful sexual behaviours, which was undertaken in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Analysis is expected to be finalised by mid-2022 and could inform future responses in relation to this recommendation.

Recommendation 9: The ACT Government consult with ACT Courts for the purposes of undertaking a review and investigation of the NSW specialist court program to hear the matters of adults, children and young people who have experienced sexual violence.

Government position: Agree

The ACT Government will give further consideration to introducing a specialist court for sexual offences in the ACT. The ACT Government will engage closely with the ACT Courts and Tribunals throughout this process.

Following that consultation, the ACT Government may progress further work to introduce a similar court program for the benefit of victim survivors of sexual violence in the ACT.

Recommendation 10: The ACT Government commission a Sexual Violence Data Collection Framework and embed a requirement for compliance with this framework in service funding agreements.

Government position: Agree in principle

The ACT Government acknowledges the importance of robust data collections to build a strong evidence base to inform policy work, needs analysis and funding for service responses. It is also acknowledged that data collections in the ACT are currently inconsistent and fail to provide a comprehensive understanding of sexual violence and its prevalence in the ACT.

This recommendation is to ensure that practical issues in relation to the development of such a framework can be worked through, prioritised, and implemented. This work will need to include best practice data collection methods, data ownership, legal capacity to share data, analysis and collection of data, data comparability, collection system limitations and privacy. In undertaking this important work, consideration will need to be given to the implementation of such a framework and the ability (capacity and capability) of organisations to collect against best practice data standards.

Notwithstanding the above considerations, ACT Policing has already progressed responses in relation to this recommendation and has commenced trialling measures to improve its ability to collect data on sexual offence investigations.

Recommendation 11: The ACT Government research and consider measures to improve victim survivors' experiences of the criminal justice process and ensure they are acknowledged and recognised throughout the process.

Government position: Agree in principle

The ACT Government is committed to improving a victim survivors experience of the criminal justice system and acknowledges that improving the criminal justice process may lead victim survivors to feel more supported to report sexual violence and proceed to trial.

The ACT Government agrees to further research and to consider measures to improve the criminal justice process so that victim survivors are better acknowledged and recognised through the process. The government acknowledges that many victim survivors find the current adversarial system retraumatising. Further consideration will also be given to the exploration of improved criminal justice responses for victim survivors adopted in other jurisdictions nationally and internationally.

Any proposed amendments to the criminal justice process may impact on front-line service delivery, court resourcing and may require legislative change to enable new regimes.

Recommendation 12: Justice agencies (Department of Public Prosecution, Police, Corrections and Courts) review their internal procedures with a view to ensuring that they comply with their obligations to victim survivors pursuant to the Victims of Crime Act 1994 (ACT).

Government position: Agree

The ACT Government acknowledges the importance of complying with its obligations to victim survivors under the *Victims of Crime Act 1994 (ACT)*. The ACT Government will work closely with prescribed justice agencies under the *Victims of Crime Act 1994 (ACT)* and the Victims Advisory Board (VAB) to strengthen current internal processes to ensure agencies are complying with their obligations pursuant to the legislation. Should further work be needed to enhance current frameworks, this will be subject to future budget submissions.

The government notes that some agencies have already enhanced their current processes to strengthen their response to victim survivors. Since the introduction of the Charter, ACT Policing have introduced a mechanism for matters to be referred to the VOCC. ACT Policing's internal procedures require members to meet their obligations under the *Victims of Crime Act 1994 (ACT)*. ACT Policing note that they will continue to be proactive in this space in both meeting obligations to victim survivors, in addition to further providing support mechanisms and assisting victim survivors to navigate the complex processes involved in pursuing a case within the criminal justice system.

Subject to resourcing constraints, government proposes that internal reviews be undertaken annually on a self-assessment basis with required annual reporting mechanisms to the relevant Director-General and/or the VAB be established.

Recommendation 13: The ACT Government research and pilot additional mechanisms to hold perpetrators to account including by:

- A. expanding restorative justice processes for victim survivors; and**
- B. alternative civil justice regimes.**

Government position: Agree in principle

The ACT Government acknowledges that currently there are limited pathways open to victim survivors that are timely and responsive and facilitate accountability for perpetrators in a formal setting without having to engage with the criminal justice system. The ACT Government agrees to further research and to consider expanding restorative justice processes for victim survivors in relation to this recommendation. The piloting of such approaches may be subject to consideration as part of future budget processes.

Further consideration will also be given to alternative civil justice regimes, including exploration of models used in other jurisdictions. Any proposed civil justice regimes may impact on front-line service delivery, court resourcing and may require legislative change to enable new civil regimes.

Recommendation 14: The ACT Government consider development of a Ministerial Direction to ACT Policing to focus specifically on the priority of effectively responding to sexual violence against children and adults as a strategic crime type, and that this be reflected in the Australian Federal Police (AFP) Corporate Plan.

Whether or not the proposed direction is made, ACT Policing should:

- a. review its communications strategy to ensure all relevant information to victim survivors is provided in a more accessible, responsive, and streamlined way.*
- b. support SACAT to conduct a review of the current training framework for both specialist SACAT investigators and all other community-facing ACT Policing capabilities as they apply to sexual assault and child abuse investigations.*
- c. review its policies for recruitment of SACAT officers, to address the lack of diversity and particularly to allow a victim survivor's right to elect the gender of the interviewing officer, by:*
 - i) increasing the number of women employed in SACAT including women in senior positions*
 - ii) employing Aboriginal and Torres Strait Islander officers to work in SACAT.*
- d. fund the design and delivery of externally provided specialist training to SACAT officers on an annual basis in relation to the conduct of effective Evidence in Chief (EIC) Interviews with vulnerable witnesses including children, young people, people with disabilities, Aboriginal and Torres Strait Islander people, and ensure that new officers to SACAT do not undertake EIC Interviews with vulnerable witnesses until they have undertaken the specialist training.*
- e. in conjunction with ACT Government, consider a 12-month pilot engaging forensic psychologists to advise on the preparation for and conduct of EIC Interviews with witnesses reporting sexual assault, adopting a suitable forensic investigative model compliant with ACT law, and suitably tailored for the presenting witness.*
- f. immediately implement clear procedures to be followed when a decision is made not to charge. These procedures are to address:*
 - i) the requirement that a senior designated officer with oversight of the case must review and approve the decision not to charge*
 - ii) written reasons to be recorded on the file setting out the basis of the decision and the victim survivor is notified of the decision not to charge and the reasons*

- iii) decisions not to charge are reviewable by a representative of the DPP upon the request of a victim survivor or their representative**
- g. collaborate with the DPP to provide training to all officers on an annual basis, addressing the legislative test to decide whether or not to charge**
- h. direct and support priority being given to examining forensic samples in sexual assault cases within a specific timeframe**

Government position: Agree in principle

The ACT Government acknowledges the bravery and courage of victim survivors reporting matters of sexual violence and is committed to working with ACT Policing in relation to this recommendation. To this end when the Minister for Police and Emergency Services is due to issue a Ministerial Direction in conjunction with the next Purchasing Agreement in mid-2022 the inclusion of these suggestions will be considered.

ACT Policing continues to be committed to reviewing and improving its operations responding to sexual violence where care of the victim survivor is the core consideration.

ACT Policing notes and takes seriously each of the matters addressed in sub-paragraphs (a) – (h) and has implemented several initiatives to improve its capacity and capability to investigate sexual assault matters. These activities address the intent of the recommendation and include strengthening cross-agency collaboration to ensure policies and frameworks around charging, prosecuting and decision making reflect community expectations. Further oversight mechanisms regarding key decisions of the investigative process have been implemented and will continue to be reviewed to ensure outcomes of the investigative process remain victim survivor centric whilst focussing on holding perpetrators to account through the criminal justice system.

ACT Policing continues to review its staffing and recruitment strategies to meet the needs of victims, especially those who report sexual violence. Diversity of the ACT Policing workforce remains a key feature of strategic workforce planning decisions.

ACT Policing acknowledges that continued and enhanced training for investigations that conduct Evidence in Chief (EIC) Interviews with victims of sexual assault and sexual violence is necessary. However how this is achieved is a matter for ACT Policing as additional training for specialist teams within ACT Policing require considerable significant investment. Funding will be subject to consideration as part of future budget processes and the next Purchasing Agreement with ACT Policing.

ACT Policing supports the provision of appropriate specialist clinical psychological expertise on developing investigative activities and strategies including EIC interviews, evidence collection, alleged offender engagement and the training initiatives. Funding for this initiative will also be subject to consideration as part of future budget processes and the next Purchasing Agreement with ACT Policing.

ACT Policing will continue to consider these recommendations and potential implementation in due course subject to future budget considerations.

Recommendation 15: The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared, or withdrawn. The initial phase of the review to focus on reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review is to be extended to all reports made since 1 January 2015 that have not progressed to charge. Further any victim survivor whose matter has not progressed to charge outside of this stated review period may also request a review of their matter.

Government position: Agree

The ACT Government acknowledges that this work is critical in informing improvements in response to sexual assault matters. The ACT Government has committed funding through the 2021-22 ACT Budget Review to implement this recommendation. This funding will establish a multidisciplinary team to review all sexual assault cases reported to ACT Policing between 1 July 2020 and 31 December 2021 which were not progressed to charge, including those deemed unfounded, uncleared, or withdrawn.

The purpose of the review is to identify systemic issues leading to the low number of sexual assault reports proceeding to the point of charge and to identify ways that victim rights can be better upheld, including ways to reduce the re-traumatisation that many victims experience when they engage with the justice system. While so many victim survivors of sexual violence do not report to the police it is imperative that for those who do, the response is best practice.

The commitment to fund the review will lead to a better understanding about the barriers that prevent complaints leading to charges and identify how to make it easier for victim survivors to engage with the justice system.

The Director of Public Prosecutions (DPP), ACT Policing, the VOCC and the OCGFS will work together as members of an Oversight Committee and with an independent chair to progress this work in 2022.

Recommendation 16: That there be ongoing education of all stakeholders working in the criminal justice system, including the judiciary, lawyers, law enforcement personnel, and persons who work with victim survivors to understand and appreciate the nature and extent of sexual violence in society; misconceptions and myths about sexual violence including in relation to child related offences; the social context of sexual violence including modern sexual practices and communication methods surrounding sexual interactions among young people; grooming behaviours; and the ongoing effects of sexual violence on victim survivors, particularly regarding how this impacts their capacity to engage with criminal justice processes.

Government position: Agree in principle

The ACT Government is committed to ensuring access to ongoing education on sexual violence for all stakeholders working in the criminal justice system. The ACT Government acknowledges the importance of trauma informed practice and responses to sexual violence, to ensure the responses are sensitive, appropriate and do not unintentionally cause further harm to victim survivors.

In response to this recommendation, the ACT Government will work with each directorate and agency to strengthen any existing training already available to staff. Consideration will also be given to the development of additional training to deliver across government and to a variety of sectors and agencies. Training for the judiciary is a matter for the Heads of Jurisdiction.

Funding for such training will be subject to consideration as part of future budget processes.

Recommendation 17: The ACT Government, ACT Policing and non-government service providers undertake training that improves cultural competency and the ability of staff to deliver inclusive and respectful practices to diverse groups. This training should be designed and delivered in collaboration with representatives of the culturally and linguistically diverse community, the LGBTIQ+ community, the disability community, and other relevant stakeholders.

Government position: Agree in principle

The ACT Government is committed to implementing further training to improve the cultural competency of the ACT workforce to ensure staff can provide inclusive and respectful practices to diverse groups. The ACT Government acknowledges the importance of ongoing training to ensure staff can deliver contemporary and respectful practice.

The ACT Government will work with each directorate to strengthen any existing trainings already available to staff. It will also consider developing additional training to deliver across government and to a variety of sectors and agencies. Funding for any new training modules and packages will be subject to consideration as part of future budget processes.

Notwithstanding the above, ACT Policing are involved in separate bodies of work that align with this recommendation, including its response to the Ombudsman's report into ACT Policing's engagement with the Aboriginal and Torres Strait Islander Community.

Recommendation 18: The ACT Courts should develop a Sexual Assault Bench Book.

Government position: Noted

The ACT Government notes that the development of a Bench Book is a matter for the heads of jurisdiction of the ACT Courts and Tribunal. The ACT Government will engage with the heads of jurisdiction in relation to this recommendation.

Recommendation 19: The ACT Government design, implement and fund a long-term 10-year strategy for the prevention of sexual violence. The strategy should aim to change the attitudes and behaviours that perpetuate sexual violence and implement tailored actions to reduce the risk and occurrence of sexual violence in all settings where ACT residents live, work and play.

Government position: Agree

The ACT Government is committed to implementing a long-term strategy for the prevention of sexual violence to ensure lasting change. To give effect to this recommendation, the ACT Government will firstly consult with experts in the prevention of sexual violence and other stakeholders to ensure the Strategy is enduring and delivers on the expectations of the community.

Recommendation 20: The ACT Government fund and make accessible evidence based lifelong comprehensive relationships and sexuality education (RSE) to all members of the community. For RSE in the Aboriginal and Torres Strait Islander community it is recommended that RSE be co-designed and delivered in collaboration with the representatives of the Aboriginal and Torres Strait Islander community to ensure it is culturally appropriate, respectful, and safe within the community.

Government position: Agree in principle

The ACT Government is committed to the implementation of this recommendation across all settings and environments where Canberrans work, live, learn, and play. The recommendation anticipates that relationships and sexuality education (RSE) must be a shared commitment across the community to build on the foundations for children and young people to thrive within empowering and respectful relationships across the course of their lives, including workplaces, sporting groups, tertiary institutions and in the family home.

The ACT Government is already progressing work which delivers on this recommendation in part. The EDU acknowledges that schools play a critical role in the primary prevention of gender-based violence through approaches to teaching and learning that positively influence the attitudes and social norms of our children and young people in their formative years. The EDU will work with ACT Public Schools, Independent and Catholic Education sectors to strengthen relationships and sexuality education building on the insights gained from the 2021 Respectful Relationships, Sexuality and Consent roundtable and the sharing of resources.

To further deliver on this recommendation, initiatives will be included as part of the proposed Prevention Strategy to ensure the principles and themes of RSE are accessible to members of the community. For the Aboriginal and Torres Strait Islander community, the ACT Government recognises that community led approaches to RSE must be designed and delivered with representatives of the Aboriginal and Torres Strait Islander community. The ACT Government will commence foundational work with the Aboriginal and Torres Strait Islander community to identify the best way to design and deliver RSE which is culturally appropriate, respectful, and safe within the community.

Recommendation 21: The following workplace reforms are recommended:

- A. The ACT Government review enterprise bargaining agreements (EBAs) in the ACT Public Service (ACTPS) in consultation with affected trade unions to:**
- i. ensure workplaces can respond effectively to allegations of sexual harassment and assault, and**
 - ii. to develop appropriate EBA clauses to give effect to the Respect@Work recommendations of the Australian Human Rights Commission, to the extent possible in the ACT context.**
- B. The ACT Government use legislative, policy and funding mechanisms to place a positive duty on organisations to prevent sexual harassment and sexual violence, including to add provisions to the Secure Local Jobs Code (SLJC) to require employers to institute policies which prevent sexual harassment and assault in the workplace.**
- C. WorkSafe ACT to adequately regulate the prevention of and responses to sexual harassment and sexual assault in ACT workplaces.**

Government position: 21A- Agree, 21B - Agree, 21C- Agree

(a) The ACT Government agrees to this recommendation and will consider these issues in the upcoming bargaining round for 17 new ACT Public Sector enterprise agreements which are due to expire by October 2022.

(b) The ACT Government agrees to this recommendation and supports achieving gender equality and preventing gendered violence. Procurement practices in the ACT Government have been strengthened to support achieving gender equality through the Secure Local Jobs Code. In addition, the Government is progressing consultation on reforms to the ACT *Discrimination Act 1991* which would introduce a positive duty on organisations to prevent and eliminate discrimination, sexual harassment and vilification. It is proposed that the positive duty would apply initially to public authorities and would be extended to other organisations over time.

The Secure Local Jobs Code ensures that ACT Government contracts are only awarded to businesses that meet the highest ethical and labour standards. If a business wants to apply for a tender with the ACT Government (for cleaning, traffic management, security, or construction contracts of any value or for other services contracts where labour is the primary cost and the contract is above \$200,000), then they must first obtain Secure Local Jobs Code Certification. Before a business can obtain certification, the business is audited for their compliance with a broad range of legislation relating to industrial relations, employment and/or workplace safety obligations – including obligations that help to try and achieve workplace safety and the prevention of violence against women, for example:

- *Fair Work Act 2009* (Cth), this includes the entitlement for Family and Domestic Violence Leave (unpaid) afforded through the National Employment Standard.
- *Workplace Gender Equality Act 2012* (Cth).

- *Paid Parental Leave Act 2010* (Cth).
- *Discrimination Act 1991* (ACT); and
- *Work Health and Safety Act 2011* (ACT).

The ACT Government's use of Labour Relations, Training, and Workplace Equity Plans as part of the Secure Local Jobs Code also helps support achieving gender equity and preventing violence against women. Relevant tenders have additional obligations inserted within the procurement contract requiring businesses to develop and implement a Labour Relations, Training, and Workplace Equity Plan. These plans, among other things, require the business to describe the strategies and processes they have in place to support diversity, equal opportunity, and for removing barriers to employing women. If a business fails to comply with agreed Labour Relations, Training, and Workplace Equity Plans then there may be contract consequences and/or the business may lose their Secure Local Jobs Code Certification.

(c) The ACT Government agrees to this recommendation. It has a strong commitment to ensuring the adequate regulation of the work health and safety laws including the prevention of and response to sexual harassment and sexual assault in ACT workplaces.

Through the 2021 Ministerial Statement of Expectations provided to the Work Health and Safety Commissioner, the ACT Government indicated its expectation that WorkSafe ACT should continue its work to address the impact of psychosocial hazards, including work related violence, sexual harassment, and sexual assault in the workplace by educating duty holders of their obligations and ensuring compliance with these obligations.

To meet the ACT Government's expectations, WorkSafe ACT has developed a Strategy for Managing Work-Related Psychosocial Hazards 2021-2023, and an associated plan for Managing Work-related Sexual Harassment 2021-2023. The focus areas for implementation over the next two years are:

- the gap in knowledge that sexual harassment is a WHS issue, a perception gap recognised in the Respect@Work report. That report highlighted that WHS laws are an underutilised opportunity to prevent and address work-related sexual harassment
- the lack of a uniform approach to the collection and reporting of data related to sexual harassment in Australia. WorkSafe ACT is contributing to the Respect@Work Working Group to Standardise Regulatory Agency Data on Workplace Sexual Harassment through the Heads of Workplace Safety Authorities (HWSA), and
- improving WorkSafe ACT's Internal capability to effectively regulate work-related psychosocial harm and sexual harassment through increased specialist inspector numbers in the psychosocial team and improved training and development across the inspectorate in regard to psychosocial matters.

Recommendation 22: The ACT Government should amend the law in relation to consent by establishing an affirmative communicative model of consent. This reform to the law should be accompanied by community education measures.

Government position: Agree

The ACT Government acknowledges the importance of amending the law in relation to consent. The *Crimes (Consent) Amendment Bill 2022* introduced by Dr Marisa Paterson MLA on 8 February 2022 was passed in

the Assembly on 5 May 2021. This Bill amends the definition of consent to an affirmative communicative model and brings the ACT legislation in line with contemporary understandings of consensual sexual activity. The changes to this law will be supported by a sustained community education campaign as part of an overall prevention strategy.

Recommendation 23: The ACT Government review and reform the laws and procedures set out in detail in Appendix 6 of this report.

Appendix 6 of the Report made 18 recommendations for law and procedural reform.

The ACT Government:

- **Agrees** to 8 sub-recommendations.
- **Agrees in principle** to 4 sub-recommendations.
- **notes for further consideration** 3 sub-recommendations
- **Notes** 2 sub-recommendations.
- Does **not agree** to one sub-recommendation.

The ACT Government has closely considered the law reform recommendations summarised in Table 1 below. A detailed summary can be found at [Appendix A](#) to the Government Response.

Recommendation Topic	Recommendation	Government Position
Penalties for Sexual Offences	Legislative maxima for sexual assault offences, to align with current practice in other Australian jurisdictions more closely.	Noted for further consideration
Penalties for Sexual Offences	For identified serious sexual offences, the ACT Government introduce a rebuttable presumption that a custodial sentence should be imposed, unless exceptional circumstances apply.	Noted for further consideration
Penalties for Sexual Offences	Introduce a legislative presumption that Intensive Correctional Orders and suspended sentences are not to be imposed for serious sexual offences.	Noted for further consideration
Sentencing Submissions	The rule established in <i>Barbaro v The Queen</i> [2014] HCA 2 be overridden.	Not agree
Admissibility of Evidence	Reform to make clear that evidence of prior family violence between the parties is relevant and admissible in sexual assault cases, provided this evidence is not unfairly prejudicial to the defendant.	Agree

Recommendation Topic	Recommendation	Government Position
Admissibility of Evidence	When evidence of prior family violence between the parties being relevant and admissible in sexual assault cases it should also explicitly apply to people with disability, in care relationships and residential settings, highlighting the findings of the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, noting the different dynamics.	Agree
Presumed Harms	The ACT Government review whether legislative reform is the most appropriate mechanism to introduce a rebuttable presumption in sentencing for sexual offences that the offending caused certain harms for the victim survivor.	Agree
Mandatory closure of the courtroom	That a presumption be introduced that the courtroom be mandatorily closed when a victim survivor witness is giving evidence in a sexual assault matter, either live or by recording. Provisions regarding the mandatory closure of the courtroom to also apply in a civil family violence proceeding, if the family violence application has been made based on a sexual assault and if the same protections would apply in a criminal setting.	Agree
Bail	That s55,55A,56 and 66B of the Crimes Act 1900 (ACT) be amended to provide that the presumption of bail does not apply.	Agree
Sexual Assault Communications Privilege	The court rules be amended, to provide that additional notices are to be attached to subpoenas dealing with confidential counselling notes for victims of sexual assault.	Agree in principle
Jury directions about mistaken belief regarding consent	Section 80D of the Evidence (Miscellaneous Provisions) Act 1991 (ACT) to ensure that in a sexual offence proceeding, the jury considers whether the defendant's mistaken belief as to consent was reasonable in the circumstances.	Agree
The defendant's level of intoxication	Legislative reform to clarify that in a sexual assault trial, the defendant's level of intoxication is irrelevant to any assessment made by the factfinder as to the defendant's recklessness regarding the element of consent.	Agree in principle

Recommendation Topic	Recommendation	Government Position
The wording of offences	Amend the title of the offence 'sexual relationship with child or young person under special care' (Crimes Act 1900 (ACT) section 56) to remove the term 'relationship'.	Agree
Workplace and personal protection orders	In relation to the Personal Violence Act 2016 (ACT): Amend the Act to include the provision of special interim personal and workplace protection orders consistent with the provisions that are currently available in the Family Violence Act 2016 (ACT) when there are ongoing related criminal proceedings.	Agree
Workplace and personal protection orders	In relation to the Personal Violence Act 2016 (ACT): Consideration be given to expand the legislation so that there is capacity for both individuals and trade unions to apply for Workplace Protection Orders.	Agree in principle
Work Health and Safety Act	In relation to the Work Health and Safety Act: At section 19 include an obligation upon the employer to provide a workplace free from acts of gendered violence and sexual assault.	Noted
Work Health and Safety Act	In relation to the Work Health and Safety Act: At section 35 consider including psycho-social injuries in the definition of notifiable incidents.	Agree in principle
Work Health and Safety Act	In relation to the Work Health and Safety Act: It is recommended that consideration be given to extending the application of the Regulations set out in r21A and 21B, and part 6.4, to all work environments where there is a principal contractor and sub-contractors, to the extent possible and relevant, rather than being limited to the construction industry.	Noted

Recommendation 24: The ACT Government:

- A. make an annual ministerial statement to the Legislative Assembly to report on these reforms.**
- B. create (or combine) a single role in the ACT Government for the coordination of reforms at the level of Coordinator-General to ensure a sufficient level of responsibility and power to hold all directorates to account for reforms**
- C. establish a Community Reference Group with a focus on policy advice to government and monitoring the performance of government and the community sector in the implementation of the recommendations.**

Government position: Agree

The ACT Government will appoint a Coordinator-General for the prevention of sexual violence and make an annual ministerial statement to the Legislative Assembly to report on these reforms and will also work towards establishing a Community Reference Group.

Appendix A

Recommendation 23: The ACT Government review and reform the laws and procedures set out in detail in Appendix 6 of the *Listen. Take Action to Prevent, Believe and Heal* Report

Appendix 6 of the *Listen. Take Action to Prevent, Believe and Heal* Report (the Report) made 18 recommendations for law and procedural reform.

The ACT Government's position on each recommendation is outlined below:

Penalties for Sexual Offences

Recommendation (a): Legislative maxima for sexual assault offences, to align with current practice in other Australian jurisdictions more closely

Government position: Noted for further consideration

The ACT Government will consider whether the current maximum penalties for certain sexual offences are appropriate, following further analysis and consultation on this issue.

Recommendation (b): For identified serious sexual offences, the ACT Government introduce a rebuttable presumption that a custodial sentence should be imposed, unless exceptional circumstances apply

Government position: Noted for further consideration

The ACT Government notes that there is merit in further exploration of and consultation on this proposal. The ACT Government notes that the approach of introducing a rebuttable presumption is not necessarily agreed, but the Government will consider this approach as part of considering a range of potential law reform options to address the concerns about sentencing for sexual offences discussed in the Report.

For three serious sexual offence types, non-custodial sentences are handed down in a significant number of cases. As an example of this, as noted in appendix 11 of the Report, between 1 July 2012 – 30 November 2020, 27.7% of sentences imposed for the offence of sexual intercourse with a young person under the age of 16 during this period were fully suspended sentences.

The ACT Government notes, however, that the amendment would be contrary to section 10 of the *Crimes (Sentencing) Act 2005* (ACT) which provides that the court may sentence the offender to imprisonment if the court is satisfied, having considered possible alternatives, that no other penalty is appropriate. The proposal, while not mandatory sentencing, would still restrict judicial discretion in sentencing, particularly as exceptional circumstances are a high threshold to meet before a judge can consider a non-custodial sentencing option.

Recommendation (c): Introduce a legislative presumption that Intensive correctional orders and suspended sentences are not to be imposed for serious sexual offences.

Government position: Noted for further consideration

The ACT Government notes that there is merit in further exploration of and consultation on this proposal. The ACT Government will consider the introduction of a legislative presumption as part of a range of potential law reform options to address the concerns about sentencing for sexual offences discussed in the Report.

As of 28 February 2022, according to a data snapshot provided by ACT Corrective Services, there were two offenders serving a sentence of imprisonment by way of intensive correction order (ICO) for a serious sexual offence (that is, a sexual offence involving physical contact, and which carries a maximum penalty of more than 10 years imprisonment) and 26 offenders serving a sentence of imprisonment in prison for a serious sexual offence. Data over a period of time (as opposed to a snapshot) would be required to confirm this.

The proposal would restrict judicial discretion in sentencing (although not to the same extent as recommendation (b)). A presumption can be displaced, meaning that a sentencing court could still order a sentence of imprisonment be served by way of ICO or suspended sentence in certain circumstances, allowing for enough judicial discretion to avoid unfairness in specific cases.

The ACT Government notes that in the *ICO Review Report (2019)*, the ACT Government committed to consider recommendations for changes to the ICO scheme, including a proposal to 'exclude certain serious offences from being amenable to an ICO and limit availability of ICOs to lower terms of imprisonment.'

Sentencing Submissions

Recommendation: The rule established in *Barbaro v The Queen* [2014] HCA 2 be overridden.

Government position: Not agree

In *Barbaro v The Queen* [2014] HCA 2, the High Court held that prosecutors are not permitted to make sentencing submissions in relation to the upper and lower limits within which a sentence should be imposed.

The ACT Government notes that the rule in *Barbaro* protects the fundamental discretion and independence of the court and reflects the High Court's disapproval of a mathematical approach to sentencing. Prosecutors may still make submissions as to the facts that should be found, the relevant principles that should be applied and the sentences that have been imposed in comparable cases.

There is limited evidence to indicate that the rule in *Barbaro* has led to an increase in appeals based on manifestly inadequate or excessive sentences. In addition, Queensland is the only jurisdiction which has legislatively overridden the rule in *Barbaro*. As a result, the ACT Government is of the view that the rule in *Barbaro* should not be overridden by legislation at this time. The ACT Government will reconsider this position if evidence emerges that demonstrates a consistent increase in appeals attributable to the rule in *Barbaro*.

.

Admissibility of Evidence

Recommendation (a): Reform to make clear that evidence of prior family violence between the parties is relevant and admissible in sexual assault cases, provided this evidence is not unfairly prejudicial to the defendant.

Government position: Agree

The ACT Government notes that, under the uniform evidence legislation and the common law, evidence of prior uncharged acts of family violence is already admissible in sexual assault cases as relationship evidence where it is relevant to a fact in issue and not unfairly prejudicial. The ACT Government notes that there would be benefits to reiterating this position through legislative reform.

Recommendation (b): When evidence of prior family violence between the parties being relevant and admissible in sexual assault cases it should also explicitly apply to people with disability, in care relationships and residential settings, highlighting the findings of the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, noting the different dynamics.

Government position: Agree

As with the previous recommendation, evidence of uncharged acts of violence is already admissible under the uniform evidence legislation and common law as relationship evidence where it is relevant to a fact in issue and not unfairly prejudicial. The ACT Government notes that there may be additional benefit in clarifying in legislation that this type of evidence is admissible in care relationships and residential settings.

Presumed Harms

Recommendation: The ACT Government review whether legislative reform is the most appropriate mechanism to introduce a rebuttable presumption in sentencing for sexual offences that the offending caused certain harms for the victim survivor.

Government position: Agree

The ACT Government will consider whether legislative reform is an appropriate mechanism to introduce a rebuttable presumption in sentencing for sexual offences that the offending caused certain harms for the victim survivor.

Mandatory Closure of the Courtroom

Recommendation: That a presumption be introduced that the courtroom be mandatorily closed when a victim survivor witness is giving evidence in a sexual assault matter, either live or by recording. Provisions regarding the mandatory closure of the courtroom to also apply in a civil family violence proceeding, if the family violence application has been made based on a sexual assault and if the same protections would apply in a criminal setting.

Government position: Agree

The ACT Government notes that while the court already has the discretion to order the court be closed while a complainant's evidence is given during sexual offence proceedings, there may be benefits in

introducing a presumption that this is the case and extending this presumption to a hearing for a family violence order where evidence is given by a sexual assault complainant. In developing this reform, the ACT Government will give careful consideration to upholding the principle of open justice, any limitations on the right of the accused and any practical implications.

Bail

Recommendation: That ss55,55A,56 and 66B of the Crimes Act 1900 (ACT) be amended to provide that the presumption of bail does not apply.

Government position: Agree

Schedule 1 of the *Bail Act 1991* (ACT) does not currently capture all of the most serious sexual offences. An amendment would more accurately reflect the severity of the offences prescribed in ss 55, 55A, and 56 of the *Crimes Act 1900* (ACT). The ACT Government notes that section 66B of the *Crimes Act 1900* is not a separate offence but sets out principles for how child sexual offences may be charged as part of a course of conduct.

Sexual Assault Communications Privilege

Recommendation: The court rules be amended, to provide that additional notices are to be attached to subpoenas dealing with confidential counselling notes for victims of sexual assault.

Government position: Agree in principle

Noting that the *Court Procedures Rules 2006* is a matter for the Joint Rules Advisory Committee, the ACT Government will work with all relevant justice stakeholders to find an effective way to increase complainant's access to the sexual assault communications privilege, including increasing counsellors' awareness of the privilege.

Jury Directions about Mistaken Belief regarding Consent

Recommendation: Section 80D of the Evidence (Miscellaneous Provisions) Act 1991 (ACT) to ensure that in a sexual offence proceeding, the jury considers whether the defendant's mistaken belief as to consent was reasonable in the circumstances.

Government position: Agree

The *Crimes (Consent) Amendment Act 2022* which commenced on 12 May 2022 addressed this recommendation by introducing including express provisions as to the reasonableness of a mistaken belief. Section 67 (4) of the *Crimes Act 1900* (ACT) now provides that the accused person is taken to know that another person does not consent to an act if any belief that the accused person has, or may have, that the other person consents is not reasonable in the circumstances. In addition, a belief is taken not to be reasonable in circumstances where the accused person did not say or do anything to ascertain whether the other person consented. The Government agrees to amend section 80D of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) to align with this reform.

The Defendant's Level of Intoxication

Recommendation: *Legislative reform to clarify that in a sexual assault trial, the defendant's level of intoxication is irrelevant to any assessment made by the factfinder as to the defendant's recklessness regarding the element of consent.*

Government position: Agree in principle

The ACT Government will consider this recommendation alongside Recommendation 22 (adopting an affirmative model of consent). The Government will conduct further analysis and consultation to ensure any amendments result in a fair and cohesive approach to consent laws in the ACT.

The Wording of Offences

Recommendation: *Amend the title of the offence 'sexual relationship with child or young person under special care' (Crimes Act 1900 (ACT) section 56) to remove the term 'relationship'.*

Government position: Agree

The name of the offence in section 56 will be changed to 'persistent sexual abuse of a child or young person under special care' once the *Family Violence Legislation Amendment Bill 2022* has passed.

Workplace and Personal Protection Orders

Recommendation (a): In relation to the Personal Violence Act 2016 (ACT): **Amend the Act to include the provision of special interim personal and workplace protection orders consistent with the provisions that are currently available in the Family Violence Act 2016 (ACT) when there are ongoing related criminal proceedings.**

Government position: Agree

The ACT Government will amend the *Personal Violence Act* to allow special interim orders to be made where there are related charges. These amendments will create consistency between the *Family Violence Act* and *Personal Violence Act* and increase efficiency for the court and parties.

Recommendation (b): In relation to the Personal Violence Act 2016 (ACT): Consideration be given to expand the legislation so that there is capacity for both individuals and trade unions to apply for Workplace Protection Orders.

Government position: Agree in principle

The ACT Government notes that under the *Personal Violence Act 2016*, only the employer for a workplace may apply to the Magistrates Court for a workplace protection order. The ACT Government will give consideration to expanding those with standing to make an application for a workplace protection order to ensure that employees are adequately protected in the workplace.

Work Health and Safety Act

Recommendation (a): In relation to the Work Health and Safety Act: At section 19 include an obligation upon the employer to provide a workplace free from acts of gendered violence and sexual assault.

Government position: Noted

The ACT Government notes this recommendation and has a strong commitment to ensuring the ongoing effectiveness of our work health and safety laws in protecting the health and safety of workers in the ACT.

Section 19 of the *Work Health and Safety Act 2011* (WHS Act) places a general duty on persons who conduct a business or undertaking (PCBU) to ensure the health and safety of workers in their workplace, as far as reasonably practicable. In carrying out this duty, PCBUs are required to use a risk-based approach in identifying and controlling all workplace risks, which would include risks arising from psychosocial hazards, gendered violence, and sexual violence.

As such, this is a broad general duty under the WHS Act that applies to all workplace risks and hazards. In doing so, it already imposes a work health and safety obligation on duty holders to manage workplace health and safety risks and hazards from work-related violence and sexual assault.

Recommendation (b): In relation to the Work Health and Safety Act: At section 35 consider including psycho-social injuries in the definition of notifiable incidents.

Government position: Agree in principle

The ACT Government supports in-principle this recommendation and notes that work is already underway at a national level to review the WHS Act incident notification provisions.

The 2018 review of the model work health and safety laws (2018 Review) recommended that Safe Work Australia (SWA) review incident notification provisions in the model Work Health and Safety Act (model WHS laws). This recommendation was agreed to at the May 2021 work health and safety Ministers meeting, with SWA to commence a review to ensure that:

- the incident notification provisions meet the intention outlined in the 2008 national review;
- the incident notification provisions capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements; and
- WHS regulators have appropriate visibility of work related psychological injuries and illnesses.

In addition to reviewing the incident notification provisions, work is underway at a national level to develop amendments to the work health and safety regulations to deal with psychosocial hazards (recommendation 2 of the 2018 Review) and would include associated work to develop a model Code of Practice specific to managing psychosocial hazards in the workplace.

Recommendation (c): In relation to the Work Health and Safety Act: It is recommended that consideration be given to extending the application of the Regulations set out in r21A and 21B, and part 6.4, to all work

environments where there is a principal contractor and sub-contractors, to the extent possible and relevant, rather than being limited to the construction industry.¹

Government position: Noted

The ACT Government notes this recommendation and will continue to monitor the effectiveness of the model work health and safety laws as implemented in the ACT.

The primary duty holder, the PCBU is capable of responding to a broad range of modern work relationships and business structures including arrangements where a workplace has multiple PCBUs.

Under the WHS Act, Health and Safety Committees (HSCs) must be established in all workplaces within two months after:

- A PCBU is requested to do so by a health and safety representative for that workplace; or
- If requested to do so by five or more workers at the workplace.

This establishes a risk-based framework that provides PCBUs with the flexibility to implement mechanisms that are suited to their size, work, and worker requests in meeting their WHS duties and obligations. In doing so, it mandates that in certain circumstances, a PCBU must establish particular work health and safety consultative mechanisms such as HSCs. Relevantly, these provisions also cover circumstances where the particular PCBU may or may not have a health and safety representative at the workplace. Whether or not a request is made, the WHS laws also do not prevent a PCBU from choosing to establish a HSC for the workplace.

The ACT Government, as signatory to the 2008 Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety will consider any national guidance released by SWA for local adoption.

It is noted that several recommendations from the 2018 review of model WHS laws, as agreed by work health and safety Ministers in May 2021 would seek to clarify workplace consultation, collaboration and cooperation, contractual chain issues and issues where there is more than one duty-holder.

¹ In the construction industry, current work health and safety regulations require principal contractors to take steps to ensure the health and safety of all persons engaged on any project they control, including the employees of subcontractors, by developing safety plans for the entire workplace.