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**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SEXUAL AND VIOLENT OFFENCES LEGISLATION AMENDMENT BILL  
2008**

**GOVERNMENT AMENDMENTS**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

Circulated with the authority of  
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## SEXUAL AND VIOLENT OFFENCES LEGISLATION AMENDMENT BILL 2008

### SUPPLEMENTARY EXPLANATORY STATEMENT

This explanatory statement supplements the explanatory statement to the Sexual and Violent Offences Legislation Amendment Bill 2008 (the Bill) as introduced into the ACT Legislative Assembly on 3 July 2008.

#### Overview of amendments

Government amendment 1 amends clause 2 of the Bill to change the automatic commencement period of the Act from six months to nine months.

Government amendments 2 to 9 make a distinction between serious violent offences and less serious violent offences. Particular protections under the Act will continue to apply automatically for victims of serious violent offences, but will only apply to victims of less serious violent offences if the court is satisfied that:

- the witness is a relevant person in relation to the accused; or
- the witness suffers from a disability that affects their ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Government amendment 10 inserts new part 10 into the Act to provide a transitional provision to the effect that the amendments in part 2 of the Act do not apply to a proceeding if the hearing of the proceeding has started before the amendments in the Act commence.

Government amendment 11 is consequential on amendments 2 to 9, inserting new definitions of ***less serious violent offence***, ***relevant person*** and ***serious violent offence*** into the dictionary of the Act.

Government amendment 12 inserts new chapter 12 into the Act to provide a transitional provision to the effect that the amendments in part 3 of the Act do not apply to a proceeding if the hearing of the proceeding has started before the amendments in the Act commence.

#### Detail of amendments

##### Amendment 1

Clause 2

Page 2, line 5—

Clause 2 of the Bill sets out the commencement date for the Act. The Act will commence on a day fixed by the Minister by written notice. However, section 79 of the *Legislation Act 2001* applies to the Act and accordingly the Act automatically commences on the first day following a period of six months from notification.

Government amendment 1 amends clause 2 in the Bill to remove the operation of section 79 of the *Legislation Act 2001*. The Government amendment instead provides for an automatic commencement day following a period of nine months from notification.

## **Amendment 2**

Clause 4

Proposed new section 37, new definitions of ***less serious violent offence*** and ***serious violent offence***

Page 3, line 9—

The Bill currently affords special protections for the giving of evidence to victims and other vulnerable witnesses in violent offence proceedings. Violent offence proceeding is currently defined by reference to the list of violent crimes under the *Victims of Crime (Financial Assistance) Act 1983*.

Government amendment 2 inserts two new definitions of ***less serious violent offence*** and ***serious violent offence*** into the Bill to distinguish between violent offences on the basis of the severity of punishment. Less serious offences are categorised as offences punishable by a term of imprisonment of five years or less. Serious violent offences are categorised as offences punishable by a term of imprisonment of more than five years.

## **Amendment 3**

Clause 4

Proposed new section 37, definition of ***violent offence***

Page 3, line 21—

Clause 4 currently substitutes a new section 37 to insert new definitions for the following terms in part 4:

- ***sexual offence***;
- ***similar act witness***;
- ***violent offence***; and
- ***witness with a disability***.

***Violent offence*** is currently defined to mean any of the violent crimes contained in section 3 of the *Victims of Crime (Financial Assistance) Act 1983*.

Government amendment 3 replaces this definition of ***violent offence*** to recognise the two new categories of violent offences, being serious violent offences and less serious violent offences. Government amendment 2 has inserted definitions of these two terms.

**Amendment 4**

Clause 8

Proposed new section 38AA

Page 5, line 20—

Clause 8 inserts new sections 38A, 38B, 38C and 38D into division 4.2 of the Act.

Government amendment 4 inserts new section 38AA into division 4.2 of the Act. New section 38AA defines **relevant person** for division 4.2 to clarify the relationships between a witness and an accused which are recognised for the purposes of automatic protection under the special measures in the Bill. New section 38AA defines **relative** and provides a cross-reference to the *Domestic Relationships Act 1994* for a definition of **domestic relationship** to aid the definition of **relevant person**.

**Amendment 5**

Clause 8

Proposed new section 38B(1)

Page 5, line 22—

New section 38B permits the court to arrange the courtroom to provide that complainants and similar act witnesses, in sexual or violent offence proceedings, are not required to view the accused or anyone else the court orders, while they are giving evidence in the proceeding.

Government amendment 5 substitutes new section 38B(1) to provide that the court can make arrangements to block the view of the accused from complainants and similar act witnesses in sexual and serious violent offence proceedings, but can only make these arrangements for complainants and similar act witnesses in less serious violent offence proceedings if the court is satisfied that:

- the complainant or similar act witness is a relevant person in relation to the accused; or
- the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding because of the circumstances of the proceeding or the witness's circumstances.

**Amendment 6**

Clause 8

Proposed new section 38C(1)

Page 6, line 15—

New section 38C prohibits a self-represented accused from personally cross-examining any of the following witnesses for the prosecution in a sexual or violent offence proceeding:

- a complainant;
- a child;
- a similar act witness; or
- a witness with a disability.

Government amendment 6 substitutes new section 38C(1) to provide that section 38C applies automatically to:

- complainants and similar act witnesses in sexual and serious violent offence proceedings; and
- children and disabled witnesses in sexual, serious violent and less serious violent offence proceedings.

The Government amendment also provides that section 38C applies to complainants and similar act witnesses in less serious offence proceedings if the court is satisfied that:

- the complainant or similar act witness is a relevant person in relation to the accused; or
- the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding because of the circumstances of the proceeding or the witness's circumstances.

### **Amendment 7**

Clause 8

Proposed new section 38D(1)

Page 8, line 14—

New section 38D provides an entitlement to a complainant or a similar act witness in a sexual or violent offence proceeding to have a support person seated close to them, and within their sight, while they are giving evidence.

Government amendment 7 substitutes new section 38D(1) to provide that the court can order a support person for a complainant or a similar act witness in a sexual or serious violent offence proceeding, but can only order a support person for a complainant or a similar act witness in a less serious violent offence if the court is satisfied that:

- the complainant or similar act witness is a relevant person in relation to the accused; or
- the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding because of the circumstances of the proceeding or the witness's circumstances.

### **Amendment 8**

Clause 9

Proposed new section 39(1)

Page 9, line 13—

New section 39 provides the court with the discretion to order the court to be closed to the public while a complainant or similar act witness in a sexual or violent offence proceeding is giving evidence.

Government amendment 8 substitutes new section 39(1) to provide that the court can order the court to be closed to the public while a complainant or a similar act witness is giving evidence in a sexual or serious violent offence proceeding, but can only order a closed court while a complainant or a similar

act witness is giving evidence in a less serious violent offence if the court is satisfied that:

- the complainant or similar act witness is a relevant person in relation to the accused; or
- the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding because of the circumstances of the proceeding or the witness's circumstances.

### **Amendment 9**

Clause 16

Proposed new section 42

Page 26, line 20—

Clause 16 of the Bill currently substitutes a new section 42 to provide that division 4.3 applies whether the evidence given by a complainant or a similar act witness in a sexual or violent offence proceeding is to be given on oath or otherwise.

Government amendment 9 replaces clause 16 to substitute a new section 42 to provide that division 4.3 applies if the complainant or similar act witness is to give evidence in any of the following proceedings, whether the evidence is to be given on oath or otherwise:

- sexual offence proceeding;
- serious violent offence proceeding;
- less serious violent offence proceeding if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused, or has a disability that affects their ability to give evidence in the proceeding because of the circumstances of the proceeding or the witness's circumstances.

### **Amendment 10**

Proposed new clause 25A

Page 32, line 20—

Government amendment 10 inserts new part 10 into the Act. New part 10 provides a transitional provision to the effect that the amendments in part 2 of the Act do not apply to a proceeding if the hearing of the proceeding has started before the amendments in the Act commence.

It is intended that the new amendments will apply to all cases that are on foot, unless a hearing has already commenced. It will not be relevant when the charges were laid, or the offence occurred, but if a hearing or sentencing proceeding has commenced, then the new provisions will not apply.

**Amendment 11**

Clause 28

Dictionary, proposed new definitions

Page 34, line 9—

Clause 28 of the Bill inserts new definitions of ***similar act witness, violent offence, violent offence proceeding, witness and witness with a disability*** into the Dictionary of the Act. The new definitions provide cross-references to the sections in the Act where the terms are defined.

Government amendment 11 inserts three additional definitions of ***less serious violent offence, relevant person and serious violent offence*** into the Dictionary of the Act as a consequence of Government amendments 2-9. The additional definitions provide cross-references to sections 37 and 38AA of the Act where the terms are defined.

**Amendment 12**

Proposed new clause 34

Page 38, line 13—

Government amendment 12 inserts new chapter 12 into the Act. New chapter 12 provides a transitional provision to the effect that the amendments in part 3 of the Act do not apply to a proceeding if the hearing of the proceeding has started before the amendments in the Act commence.

It is intended that the new amendments will apply to all cases that are on foot, unless a hearing has already commenced. It will not be relevant when the charges were laid, or the offence occurred, but if a hearing or sentencing proceeding has commenced, then the new provisions will not apply.