



Australian Capital Territory

# Sexual Assault Reform Legislation Amendment Act 2023

A2023-15

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J2022-453

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Australian Capital Territory

# Sexual Assault Reform Legislation Amendment Act 2023

**A2023-15**

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An Act to amend legislation about sexual assault, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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J2022-453

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Sexual Assault Reform Legislation Amendment Act 2023*.

### 2 Commencement

This Act commences on the 7th day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 Legislation amended

This Act amends the following legislation:

- [Bail Act 1992](#)
- [Crimes Act 1900](#)
- [Evidence \(Miscellaneous Provisions\) Act 1991](#)
- [Personal Violence Act 2016](#).

*Note* This Act also amends other legislation (see sch 2).

## Part 2                      Bail Act 1992

### **4                      Offences against Crimes Act 1900                             Schedule 1, part 1.1, new items 7 to 9**

*insert*

- |   |         |   |
|---|---------|---|
| 7 | 55 (3)  | sexual intercourse with young person under 16 years old             |
| 8 | 55A (1) | sexual intercourse with young person under special care             |
| 9 | 56 (1)  | persistent sexual abuse of child or young person under special care |

## Part 3 Crimes Act 1900

### 5 Meaning of *sexual act*—pt 3 Section 50C (1)

*substitute*

(1) In this part:

*sexual act*—

(a) means—

- (i) sexual intercourse; or
- (ii) an act of indecency; or
- (iii) any other act in circumstances where a reasonable person would consider the act to be sexual; but

(b) does not include—

- (i) an act carried out for a proper medical purpose; or
- (ii) an act otherwise authorised by law.

*Note* The definition of *sexual act* applies to all of pt 3 unless another provision of pt 3 provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155).

### 6 Section 50C (3), definition of *sexual touching*

*omit*

### 7 When a person does not consent to an act Section 67 (6), definition of *intoxication*

*substitute*

*intoxication*—see the [Criminal Code](#), section 30 (1).

**8 New section 67A**

*insert*

**67A Words, actions and self-induced intoxication of accused person**

- (1) This section applies to a proceeding for an offence against a sexual offence consent provision.
- (2) In deciding a person's (the *accused person*) knowledge or belief, or recklessness, about whether another person consented to an act mentioned in the provision, the trier of fact—
  - (a) must consider all the circumstances of the case, including anything the accused person said or did; but
  - (b) must not consider the accused person's self-induced intoxication.
- (3) In this section:

*intoxication*—see the [Criminal Code](#), section 30 (1).

*self-induced*—see the [Criminal Code](#), section 30 (2) and (3).

*sexual offence consent provision*—see section 67 (6).

## Part 4 Evidence (Miscellaneous Provisions) Act 1991

### 9 New section 74A

*in division 4.4.1, insert*

#### 74A Evidence of family violence may be relevant evidence

- (1) In a sexual offence proceeding, evidence of family violence may be relevant evidence in the proceeding if it provides context for a fact in issue in the proceeding.

*Note* For when relevant evidence is admissible in a proceeding, see the [Evidence Act 2011](#), s 56.

- (2) In considering whether evidence of family violence is relevant evidence, the court must take into account that—
- (a) a single act may amount to family violence; and
  - (b) a number of acts that form part of a pattern of behaviour may amount to family violence, even though some or all of the acts, when viewed in isolation, may appear to be minor or trivial.

- (3) In this section:

*evidence of family violence* includes evidence of—

- (a) in relation to a person—any of the following:
  - (i) the history of the relationship between the person and a family member, including family violence by—
    - (A) the family member towards the person; or
    - (B) the person towards the family member; or
    - (C) the family member or the person in relation to any other family member;



- (ii) the cumulative effect, including the psychological effect, of the family violence on the person or a family member;
  - (iii) any social, cultural or economic factors that impact on the person or a family member who has been affected by the family violence; and
- (b) in relation to family violence generally—any of the following:
- (i) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
  - (ii) the cumulative effect, including the psychological effect of family violence on people who are, or have been, in a relationship affected by family violence;
  - (iii) the social, cultural or economic factors that impact on people who are, or have been, in a relationship affected by family violence.

*family member*—see the *Family Violence Act 2016*, section 9.

*family violence*—see the *Family Violence Act 2016*, section 8.

## **10 Directions about mistaken belief about consent Section 80D**

*omit*

## Part 5 Personal Violence Act 2016

### 11 Division 3.3

*substitute*

#### Division 3.3 Interim orders

##### Subdivision 3.3.1 Making interim orders

#### 17 Interim orders—only on application for final order

- (1) The Magistrates Court may make an interim order only on an application for a final order.
- (2) The Magistrates Court may make an interim order at any time before the application for the final order is decided.

#### 18 Interim orders—grounds for making

A court may make an interim order if satisfied that the order is necessary to do either or both of the following until the application for the final order is decided:

- (a) ensure the safety of an affected person from personal violence;
- (b) prevent substantial damage to—
  - (i) for a personal protection order—an affected person's property; or
  - (ii) for a workplace protection order—property at a workplace.

*Note* The court must consider the matters mentioned in s 11 in deciding whether to make the interim order.

**19 Interim orders—general interim orders and special interim orders**

- (1) On an application for a final order, the Magistrates Court may make—
  - (a) if there is a related charge outstanding in relation to the respondent—a special interim order; or
  - (b) in any other case—a general interim order.
- (2) If the court makes a special interim order in circumstances where a general interim order may be made—
  - (a) the operation of the special interim order is not affected by the fact that a general interim order may have been made; and
  - (b) the court may set aside the special interim order and make a general interim order.
- (3) If the court makes a general interim order in circumstances where a special interim order may be made—
  - (a) the operation of the general interim order is not affected by the fact that a special interim order may have been made; and
  - (b) the court may set aside the general interim order and make a special interim order.

**Subdivision 3.3.2 General interim orders****20 General interim orders—only 1 may be made**

Only 1 general interim order may be made in relation to an application for a final order unless section 24 (General interim orders—further orders) applies.

**21 General interim orders—length**

A general interim order must not be in force for more than 12 months plus any extension under—

- (a) section 24AA (General interim orders—extension for non-service of application); or
- (b) section 24AB (General interim orders—extension for non-service of final order).

**22 General interim orders—ending**

A general interim order ends if any of the following happens:

- (a) if a period is stated in the interim order—the period, including any extension under section 24AA or section 24AB, ends;
- (b) the interim order is revoked;
- (c) the application for a final order on which the interim order was made is discontinued or dismissed;
- (d) a final order is made and the respondent is present when it is made.

**23 General interim orders—taken to be special interim orders if related charges laid**

- (1) This section applies if—
  - (a) the court makes a general interim order; and
  - (b) after the general interim order is made, but before the final order is made, the respondent is charged with an offence; and
  - (c) the charge is related to the application for the final order.

- (2) The general interim order is taken to be a special interim order—
- (a) in the same terms as the general interim order; and
  - (b) subject to the same conditions as the general interim order.

*Note* The application for the final order must not be decided until all related charges are finalised (see s 24AD (1)).

- (3) Unless section 24AD (2) applies, the return date for a hearing to decide the application for the final order must be changed after all related charges are finalised to a day as soon as practicable after the day all related charges are finalised.

## **24 General interim orders—further orders**

- (1) This section applies if a general interim order has ended or is about to end.
- (2) The Magistrates Court may make a further general interim order if satisfied there are special or exceptional circumstances (having regard to the objects of this Act and how those objects are to be achieved as set out in section 7) that justify the making of a further general interim order.

*Note* Section 21 limits the length of a further general interim order.

- (3) Only 1 further general interim order may be made under this section in relation to an application for a final order.
- (4) However, a further general interim order must not be made as a consent order.

*Note* An interim order may be amended in certain circumstances (see s 77).

**24AA General interim orders—extension for non-service of application**

- (1) This section applies if the registrar adjourns a proceeding for a final order because the respondent has not been served with a copy of the application for the final order and a timing notice.
- (2) The registrar may also amend a general interim order made in relation to the application by extending it to take into account the delay caused by the adjournment.
- (3) The registrar must not extend a general interim order under subsection (2) for more than 8 weeks.

**24AB General interim orders—extension for non-service of final order**

- (1) This section applies if—
  - (a) a final order is made; and
  - (b) the respondent is not present at the making of the final order; and
  - (c) a general interim order made in relation to the application for the final order would, but for this section, expire before the final order is served on the respondent.

*Note* A further order may be made in special or exceptional circumstances (see s 24).

- (2) The general interim order is extended until the final order is served on the respondent.

**Subdivision 3.3.3 Special interim orders****24AC Special interim orders—ending**

A special interim order ends only when the first of the following happens:

- (a) the special interim order is revoked;
- (b) the application for a final order on which the special interim order was made is discontinued or dismissed;
- (c) a final order is made and the respondent is present when it is made;
- (d) if a final order is made but the respondent is not present when it is made—the final order is served on the respondent.

**24AD Special interim orders—application not to be decided until related charges finalised**

- (1) If a court makes a special interim order, the court must not decide the application for the final order until all related charges are finalised.
- (2) However, the application for the final order may be finalised by the court before all related charges are finalised—
  - (a) under section 48 (Applicant not present at return of application); or
  - (b) under section 49 (Respondent not present at return of application); or
  - (c) by consent.

**24AE Special interim orders—final application decided**

- (1) This section applies if—
  - (a) a court makes a special interim order; and
  - (b) all charges related to the special interim order are finalised; and

(c) the application for the final order has not yet been decided.

*Note* The court must not decide the application for the final order, unless by consent or because a party is not present at a time when the application is returned before the court, until all related charges are finalised (see s 24AD).

- (2) After the final related charge is finalised by the court, the court must also—
- (a) if the court is the Magistrates Court—decide the application for the final order; or
  - (b) if the court is another court—
    - (i) decide the application for the final order as if it were the Magistrates Court; or
    - (ii) notify the Magistrates Court that the final related charge has been decided.
- (3) If a court notifies the Magistrates Court under subsection (2) (b) (ii)—
- (a) the court may give the Magistrates Court guidance about, or a direction for, suitable conditions to be included in the final order; and
  - (b) the Magistrates Court must decide the application for the final order.
- (4) A decision to dismiss the application for the final order may only be made after giving the parties an opportunity to be heard.
- (5) The court deciding the application for the final order under this section may set a return date for the hearing of the application for the final order.



**12 Interim order sought  
New section 41 (2)**

*after the note, insert*

- (2) Subsection (1) (b) continues to apply even if the order is taken to be a special interim order under section 23 (General interim orders—taken to be special interim orders if related charges laid) before a preliminary conference is held.

**13 If no consent order at preliminary conference  
New section 45 (c)**

*insert*

- (c) if a special interim order has been made—adjourn the proceeding until all related charges are finalised.

**14 Service of protection orders  
New section 64C (1A)**

*after the note, insert*

- (1A) If the registrar serves a special interim order on a person, the registrar must also give the person a notice telling the person that—
- (a) the respondent may apply to the court for review of the order under section 80A (Special interim orders—application for review); and
  - (b) if a preliminary conference in relation to the application for the protection order is held and a consent order is not made—the court will set a return date for a hearing to decide the application for the final order after all related charges are finalised.

**15 New sections 80A and 80B**

*in part 6, insert*

**80A Special interim orders—application for review**

The Magistrates Court may, on application by the respondent to a special interim order, give leave to the respondent to apply to the court for review of the order in relation to any of the following only:

- (a) the identity of the respondent;
- (b) an administrative defect or error in the special interim order;
- (c) whether or not there are outstanding related charges in relation to the respondent.

*Note 1* Section 19 deals with the making of general interim orders and special interim orders.

*Note 2* Section 83 also applies to applications for review of consent orders.

**80B Special interim orders—review**

- (1) On hearing an application for review under section 80A, the Magistrates Court must, by order—
  - (a) dismiss the application; or
  - (b) confirm the special interim order; or
  - (c) revoke the special interim order; or
  - (d) set aside the special interim order and make a new interim order.
- (2) The Magistrates Court may revoke the special interim order only if satisfied that the special interim order is no longer necessary for the protection of the protected person.

- (3) If the Magistrates Court revokes the special interim order and the protected person is not present in court when the order is revoked, the court must notify the protected person, in writing, as soon as practicable.

**16 Dictionary, new definition of *general interim order***

*insert*

*general interim order*—

- (a) means a protection order (including a consent order) made under section 19 (Interim orders—general interim orders and special interim orders); and
- (b) includes an order (other than a final order) that amends or revokes a general interim order.

**17 Dictionary, definition of *interim order***

*substitute*

*interim order* means—

- (a) a general interim order; or
- (b) a special interim order.

**18 Dictionary, new definitions**

*insert*

*related*—a charge against a person for an offence is *related* to an application for a final order and, if an interim order is made on the application, an interim order if—

- (a) the person charged is the respondent to the application; and
- (b) the offence is against the affected person, other than an offence against section 35 (Offence—contravention of protection order).

*special interim order*—

- (a) means a protection order (including a consent order) made under section 19 (Interim orders—general interim orders and special interim orders); and
- (b) includes an order (other than a final order) that amends or revokes a special interim order.

## Schedule 1 Personal Violence Act 2016— Consequential amendments

(see s 3)

### [1.1] Section 25 (5) (b), note

*substitute*

*Note* Section 21 limits the length of a general interim order.

### [1.2] Section 44, note 2

*substitute*

*Note 2* The registrar may also extend an interim order (see s 24AA).

### [1.3] Section 48, note

*substitute*

*Note* An interim order ends if the application for a final order on which the interim order was made is discontinued or dismissed (see s 22 and s 24AC).

### [1.4] Section 70 (3)

*omit*

section 19

*substitute*

section 18

### [1.5] Section 101, new note

*insert*

*Note* If the Magistrates Court is making an interim order and there is a related charge outstanding in relation to the respondent, the court must make a special interim order (see s 19 (1) (a)).

**[1.6] Section 205 heading**

*substitute*

**205 Extending general interim orders**

**[1.7] Section 205 (1)**

*omit*

an interim order

*substitute*

a general interim order

**[1.8] Section 205 (2)**

*before*

interim

*insert*

general

## Schedule 2      Technical amendments

(see s 3)

### Part 2.1              Crimes Act 1900

#### [2.1]      Section 219 (4)

*omit*

section 49 (1)

*substitute*

section 49 (2)

#### **Explanatory note**

This amendment corrects a cross-reference.

#### [2.2]      Dictionary, notes 1 and 2

*substitute*

*Note*      The [Legislation Act](#) contains definitions relevant to this Act.  
For example:

- ACAT
- Act
- adult
- ambulance service
- chief police officer
- civil partnership
- civil union
- commissioner of police
- contravene
- correctional centre
- corrections officer
- director-general (see s 163)
- director of public prosecutions

- doctor
- domestic partner (see s 169)
- fail
- fire and rescue service
- function
- head of service
- health practitioner
- indictable offence (see s 190)
- intersex person (see s 169B)
- judge
- lawyer
- magistrate
- may (see s 146)
- medical practitioner
- midwife
- must (see s 146)
- penalty unit (see s 133)
- police officer
- rural fire service
- SES
- summary offence (see s 190)
- the Territory
- transgender person (see s 169A).

**Explanatory note**

This amendment updates notes in line with current legislative drafting practice.



## **Part 2.2                      Family Violence Act 2016**

### **[2.3]            Section 16 heading**

*substitute*

#### **16            Who may apply for protection orders?**

##### **Explanatory note**

This amendment corrects a typographical error.

### **[2.4]            Section 27 (2), note**

*substitute*

*Note*        Section 24 limits the length of a further general interim order.

##### **Explanatory note**

This amendment corrects a cross-reference.

### **[2.5]            Section 33 (5) (b), note**

*substitute*

*Note*        Section 24 limits the length of general interim orders and s 35 limits the length of final orders.

##### **Explanatory note**

This amendment corrects a cross-reference.

### **[2.6]            Section 53, note**

*substitute*

*Note*        An interim order ends if the application for a final order on which the interim order was made is discontinued or dismissed (see s 25 and s 30).

##### **Explanatory note**

This amendment corrects a cross-reference.

## [2.7]        Section 151, note

### *substitute*

*Note*        If the Magistrates Court is making an interim order and there is a related charge outstanding in relation to the respondent, the court must make a special interim order (see s 22 (1) (a)).

### **Explanatory note**

This amendment corrects a cross-reference.

## [2.8]        Dictionary, notes 1 and 2

### *substitute*

*Note*        The [Legislation Act](#) contains definitions relevant to this Act.  
For example:

- adult
- breach
- chief police officer
- child
- civil union
- civil union partner
- contravene
- director of public prosecutions
- domestic partner (see s 169)
- found guilty
- lawyer
- magistrate
- Magistrates Court
- may (see s 146)
- must (see s 146)
- parent
- police officer
- proceeding
- public advocate

- registrar
- registrar of firearms
- Supreme Court.

**Explanatory note**

This amendment updates notes in line with current legislative drafting practice.

**[2.9] Dictionary, definition of *special interim order*, par (a)**

*omit*

or

*substitute*

and

**Explanatory note**

This amendment corrects a typographical error.

## **Part 2.3 Personal Violence Act 2016**

**[2.10] Dictionary, notes 1 and 2**

*substitute*

*Note* The [Legislation Act](#) contains definitions relevant to this Act.  
For example:

- adult
- breach
- chief police officer
- child
- contravene
- director of public prosecutions
- lawyer
- magistrate
- Magistrates Court
- may (see s 146)

**Schedule 2**            Technical amendments  
**Part 2.3**             Personal Violence Act 2016

Amendment [2.10]

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- must (see s 146)
- parent
- police officer
- proceeding
- public advocate
- registrar
- registrar of firearms
- Supreme Court.

**Explanatory note**

This amendment updates notes in line with current legislative drafting practice.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 11 October 2022.

**2 Notification**

Notified under the [Legislation Act](#) on 17 May 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Sexual Assault Reform Legislation Amendment Bill 2023, which originated in the Legislative Assembly as the Sexual Assault Reform Legislation Amendment Bill 2022 and was passed by the Assembly on 9 May 2023.

Clerk of the Legislative Assembly

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