

**2024**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**SEXUAL, FAMILY AND PERSONAL VIOLENCE LEGISLATION AMENDMENT  
BILL 2023**

**GOVERNMENT AMENDMENTS**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**To be moved by  
Shane Rattenbury MLA  
Attorney-General**

# Sexual, Family and Personal Violence Legislation Amendment Bill 2023

## Government Amendments

### Outline of Government Amendments

On 2 November 2023, the Sexual, Family and Personal Violence Legislation Amendment Bill 2023 (the Bill) was introduced to the Legislative Assembly. The policy objective of the Bill is to improve how ACT laws respond to sexual violence with an aim of improving victim-survivors' access to justice and enhancing their safety.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill.

The Government amendments make changes to the Bill in response to recommendations of the Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023 in *Report No. 25 Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023*. These Government amendments are necessary to ensure the Bill achieves its intended objectives.

### Consistency with Human Rights

#### Rights Promoted

The Government amendments engage and may promote the rights to a fair trial (section 21) in the *Human Rights Act 2004* (HRA).

Section 21 of the HRA states '[e]veryone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing'.

The right to fair hearing is concerned with procedural fairness and encompasses notions of equality in proceedings.<sup>1</sup>

This right is engaged and promoted by the following Government amendments that:

- allow a magistrate to review a decision by the registrar to refuse to grant certain conditions on an interim order; and
- clarify that a magistrate's review of a relevant decision may be requested orally or in writing.

The right to a fair trial is promoted by the Government amendments to allow a magistrate to review a decision by the registrar to refuse to grant certain conditions on an interim order.

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<sup>1</sup> UN Human Rights Committee, *General Comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial* (2007) [25].

Currently, decisions of a Registrar in the ACT Magistrates Court made under the *Family Violence Act 2016* and the *Personal Violence Act 2016* can be reviewed de novo by a Magistrate pursuant to Practice Direction 2 of 2018. However, the Acts provide that decisions of the ACT Magistrates Court can be appealed to a judge in the ACT Supreme Court.

The Bill seeks to codify a review process for family violence orders and personal protection orders that is already provided for in Practice Direction 2 of 2018. The Government amendments ensure that a current practice which has not been made explicit in the Practice Direction is upheld.

The Government amendments provide applicants to a family violence order or personal protection order application another more accessible review avenue by allowing a Magistrate to review a registrar's decision in relation to the refusal to grant an interim order condition, rather than requiring an applicant to appeal the registrar's decision in the Supreme Court.

The Government amendments will allow applicants to a protection order to navigate the courts more efficiently and have reviews expedited as they will be able to be undertaken within the same court simply and inexpensively, without undue delay. This will allow for determination on the making of interim orders faster so that victim-survivors can get the protection they need.

The right to a fair trial is also promoted by the Government amendments to clarify that a magistrate's review of a relevant decision may be requested orally or in writing. The amendment clarifies that the review process is flexible and informal (which aligns with the objectives of the *Family Violence Act 2016* and *Personal Violence Act 2016*) and makes clear the avenues available to seek the review. The amendment facilitates the applicant's access to justice by assisting them to navigate court processes. .

## **Rights Limited**

The Government amendments do not limit any human rights provided under the HRA.

# Sexual, Family and Personal Violence Legislation Amendment Bill 2023

## Government Amendments

### Detail

#### **Clause 1 — Clause 4, Proposed new schedule 1, part 1.1**

This amendment omits and substitutes the proposed new schedule 1, part 1.1 in its entirety. Part 1.1 (schedule 1) of the *Bail Act 1992* details the offences in the *Crimes Act 1900* (Crimes Act) to which a presumption of bail does not apply (where there is a neutral presumption of bail).

The amendment corrects an unintentional editorial error whereby this schedule was amended by the Bill and the Bail Amendment Bill 2023 at the same time. The Bail Amendment Bill 2023 added two new offences of the Crimes Act to part 1.1 – i.e. s29 (Culpable driving of motor vehicle) and s29A (Driving motor vehicle at police). Meanwhile, the Bill inserted an entirely new iteration of part 1.1 but did not include the ss29 and 29A Crimes Act offences. The amendment reinserts the ss29 and 29A Crimes Act offences.

#### **Clause 2 – Clause 15, Proposed new section 82B(2)**

This amendment omits the words ‘hear and decide the provisional amendment at any time’ in new section 82B(2) and substitutes them with ‘make the provisional amendment at any time before the application for the amendment is decided’.

The amendment changes the language in the Bill used with reference to the making of a provisional amendment by the Magistrates Court in proposed section 82B of the *Family Violence Act 2016* to ensure consistency with other provisions in the Act. This amendment does not change the policy or effect of the provision. It ensures the language of the Bill is consistent with other provisions in the Act, which provide that the Court ‘may make an order/amendment’.

#### **Clause 3 – Clause 16, Proposed new section 91B heading**

This amendment omits and substitutes the heading of new section 91B with ‘Magistrate review of registrar decisions’. This removes references to ‘deputy registrar’ as reflected by the amendments in clause 4.

#### **Clause 4 – Clause 16, Proposed new section 91B(1)**

This amendment omits all mentions of the words ‘or a deputy registrar’ given the deputy registrar may exercise the functions of a registrar pursuant to section 9B *Magistrates Court Act 1930* and there does not need to be a distinction.

Section 9B of the *Magistrates Court Act 1930* provides that registrars have the power to administer oaths and may exercise other functions under the Act, another territory law or an order of the court. It further provides that a deputy registrar may exercise the functions of the registrar under the Act or another territory law subject to the Act and any directions of the registrar.

#### **Clause 5 – Clause 16, Proposed new section 91B(2)**

This amendment omits the words ‘or deputy registrar’ as reflected by the amendments in clause 4.

#### **Clause 6 – Clause 16, Proposed new section 91B(3A)**

The amendment inserts new section 91B(3A) to provide clarification that the request for a magistrate to review a registrar’s decision may be made orally or in writing.

This amendment provides some clarity to parties about the process for requesting a review of a registrar’s decision. It is a minor amendment to reduce ambiguity and is not considered as new policy.

#### **Clause 7 – Clause 16, Proposed new section 91B(4) and (5)**

This amendment omits all mentions of the words ‘or deputy registrar’ as reflected by the amendments in clause 4.

#### **Clause 8 – Clause 16, Proposed new section 91B(7)**

This amendment omits and substitutes new section 91B(7) which defines a ‘relevant decision’ of the registrar which may be reviewed. It substitutes the section to add another relevant decision that can be reviewed i.e. the amendment allows a registrar’s refusal to grant a condition of an interim order to be reviewed by a Magistrate.

The amendment also clarifies that the registrar’s refusal to include a condition of a similar kind in an interim order is not a relevant decision. The amendment provides an example of a condition of a similar kind i.e. it is not a relevant/reviewable decision if a registrar decides to grant a distance condition where the respondent can be within 20m of the applicant when the applicant sought a distance condition of 50m.

This amendment will ensure current practice is not inadvertently displaced and provides another review option. While it is the current practice of the court, it has not been made explicit in the Practice Direction (Practice Direction 2 of 2018) which the

Bill has sought to codify. On this basis, while it may be consistent with current practice, it will look like new policy in legislation.

#### **Clause 9 – Clause 27, Proposed new section 83B heading**

This amendment omits and substitutes the heading of new section 83B with 'Magistrate review of registrar decisions'. This removes references to 'deputy registrar' as reflected by the amendments in clause 10.

#### **Clause 10 – Clause 27, Proposed new section 83B(1)**

This amendment omits all mentions of the words 'or a deputy registrar' given the deputy registrar may exercise the functions of a registrar pursuant to section 9B *Magistrates Court Act 1930* and there does not need to be a distinction.

Section 9B of the *Magistrates Court Act 1930* provides that registrars have the power to administer oaths and may exercise other functions under the Act, another territory law or an order of the court. It further provides that a deputy registrar may exercise the functions of the registrar under the Act or another territory law subject to the Act and any directions of the registrar.

#### **Clause 11 – Clause 27, Proposed new section 83B(2)**

This amendment omits the words 'or deputy registrar' as reflected by the amendments in clause 4.

#### **Clause 12 – Clause 27, Proposed new section 83B(3A)**

The amendment inserts new section 83B(3A) to provide clarification that the request for a magistrate to review a registrar's decision may be made orally or in writing.

#### **Clause 13 – Clause 27, Proposed new section 83B(4) and (5)**

This amendment omits all mentions of the words 'or deputy registrar' as reflected by the amendments in clause 4.

#### **Clause 14 – Clause 27, Proposed new section 83B(7)**

This amendment omits and substitutes new section 83B(7) which defines a 'relevant decision' of the registrar which may be reviewed. It substitutes the section to add another relevant decision that can be reviewed i.e. the amendment allows a registrar's refusal to grant a condition of an interim order to be reviewed by a Magistrate.

The amendment also clarifies that the registrar's refusal to include a condition of a similar kind in an interim order is not a relevant decision. The amendment provides an example of a condition of a similar kind i.e. it is not a relevant/reviewable decision if a registrar decides to grant a distance condition where the respondent can be

within 20m of the applicant when the applicant sought for a distance condition of 50m.

This amendment will ensure current practice is not inadvertently displaced and provides another review option. While it is the current practice of the court, it has not been made explicit in the Practice Direction (Practice Direction 2 of 2018) which the Bill has sought to codify. On this basis, while it may be consistent with current practice, it will look like new policy in legislation.