



## **Legislative Assembly for the Australian Capital Territory**

Standing Committee on Justice and  
Community Safety

# **Inquiry into Sexual, Family and Personal Violence Amendment Bill 2023**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Justice and Community Safety

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Approved for publication

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Report 25  
10th Assembly  
March 2024



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

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## About this inquiry

The Sexual, Family and Personal Violence Legislation Amendment Bill 2023 was presented in the Assembly on 2 November 2023 and referred to the Standing Committee on Justice and Community Safety. Standing order 174 refers all bills presented to the Assembly to the relevant standing committee for inquiry. A Committee has three weeks from the date of presentation, or one week after the tabling of the relevant scrutiny report, whichever is later, to advise the Speaker on whether it will undertake an inquiry.

If the Committee does decide to undertake an inquiry, it must report within three months from the date of presentation of the bill, with the exception of bills presented in the last sitting period of a calendar year, in which case the Committee has four months to inquire and report.

The Committee decided to inquire into the bill on 8 November 2023.

Committees may seek an extension from the Assembly to the reporting date of a Bill inquiry. The Committee sought and was granted an extension for this inquiry on 28 November 2023, with the new reporting date of 14 March 2024.<sup>1</sup>

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<sup>1</sup> ACT Legislative Assembly, *Minutes of Proceedings*, no 107, 28 November 2023, pp 1606-1607.

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## Acronyms & Abbreviations

Acronym or Abbreviation	Long form
ACT	Australian Capital Territory
The Bill	Sexual, Family and Personal Violence Legislation Amendment Bill 2023
The Committee	Standing Committee on Justice and Community Safety
The Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny role)

## Glossary

Acronym	Long form
applicant	The person who makes an application for a family violence order.
family violence order	An order, made by a court, to ‘prohibit someone from engaging in family violence towards family members’. <sup>2</sup>
perpetrator	Individual who carries out a harmful act such as violence.
personal protection order	An order, made by a court, to ‘prohibit someone from engaging in personal violence towards an individual or for a workplace’. <sup>3</sup>
protected person	A person who is protected under a family or personal violence order.
respondent	The person against whom an order is requested or made.
victim-survivor	A person who has experienced violence (noting the term ‘does not displace the presumption of innocence or reverse the onus of proof’) <sup>4</sup>

<sup>2</sup> ACT Magistrates Court, *Family Violence Orders*, <https://www.courts.act.gov.au/magistrates/law-and-practice/family-violence-and-protection-orders> (accessed 17 January 2024).

<sup>3</sup> ACT Magistrates Court, *Personal Protection and Workplace Protection Orders*, [https://www.courts.act.gov.au/magistrates/law-and-practice/family-violence-and-protection-orders/personal-protection-and-workplace-orders#personal\\_violence](https://www.courts.act.gov.au/magistrates/law-and-practice/family-violence-and-protection-orders/personal-protection-and-workplace-orders#personal_violence) (accessed 27 February 2024).

<sup>4</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *Explanatory Statement*, p 4.

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government puts in place processes to ensure that protected persons who turn 18 and other relevant parties are:

- made aware of what the proposed changes will mean in respect of any parenting orders that were in place under the *Family Law Act 1975* once the protected person turns 18; and
- advised of what actions are required if they want the contact between the protected person and respondent to continue.

## Recommendation 2

The Committee recommends that the ACT government develop guidelines for defining what is an ‘unacceptable risk’ for purposes of making decisions on whether to have preliminary conferences.

## Recommendation 3

The Committee recommends that the ACT Government further explore the complex issues raised in relation to the misidentification of respondents and victim-survivors.

## Recommendation 4

The Committee recommends that the ACT Government introduce amendments to the bill (in proposed subsections 82B(2) and 82B(3)) to make the language consistent in relation to the Magistrates Court making provisional amendments.

## Recommendation 5

The Committee recommends that the ACT Government introduce amendments to the bill that will also allow decisions of a Registrar relating to the refusal of conditions to be reviewed by a Magistrate.

## Recommendation 6

The Committee recommends that the ACT Government develop guidance for applicants on how to make a request for a review by a Magistrate of a decision by a Registrar.





# 1. Conduct of the Inquiry

- 1.1. The Committee received six submissions to the inquiry. These are listed in Appendix A.
- 1.2. The Committee requested an extension to the required reporting date of 26 January 2024 by motion in the Assembly on 28 November 2023. The Assembly resolved to grant an extension until 14 March 2024.<sup>5</sup>

# 2. Introduction

## Background to the bill

- 2.1. The bill has been identified as a Significant Bill, meaning it is considered likely to impact the realisation of human rights. As such, a comprehensive explanation of its compatibility with the *Human Rights Act 2004* was required in the explanatory statement.<sup>6</sup>
- 2.2. This bill proposes amendments to several Acts:
  - a) *Crimes Act 1900*;
  - b) *Bail Act 1992*;
  - c) *Crimes (Forensic Procedures) Act 2000*;
  - d) *Family Violence Act 2016*; and
  - e) *Personal Violence Act 2016*.<sup>7</sup>
- 2.3. Broadly, these amendments seek to promote safety and access to justice and make proceedings more flexible for victim-survivors of personal, family, and sexual violence.<sup>8</sup> Several of the amendments to the Family Violence Act and Personal Violence Acts are very similar in nature and seek the same outcome.<sup>9</sup>
- 2.4. The explanatory statement summarises that the bill, if passed, will:
  - a) Create a neutral bail presumption for certain sexual offences.<sup>10</sup>
  - b) Remove aiding and abetting family violence order breaches as an offence for those who are listed as a ‘protected person’ in the order, with the aim of:
    - i) Ensuring ‘responsibility for complying with a family violence order rests with the respondent, rather than the victim-survivor’;<sup>11</sup>

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<sup>5</sup> ACT Legislative Assembly, *Minutes of Proceedings*, No 107, 28 November 2023, p1606.

<sup>6</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *Explanatory Statement*, p 3.

<sup>7</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *Explanatory Statement*, p 2.

<sup>8</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), *Scrutiny Report 37*, p 6.

<sup>9</sup> See, for example, proposed sections 83A(1)(a) and 91A(1)(a), Sexual Family and Personal Violence Legislation Amendment Bill 2023.

<sup>10</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), *Scrutiny Report 37*, p 7.

<sup>11</sup> Mr Shane Rattenbury MLA, Attorney-General, ACT Legislative Assembly, *Proof Daily Hansard*, 2 November 2023, p 3758.

- ii) Making clear that a protected person cannot aid the breach of an order designed to protect them.<sup>12</sup>
- c) Streamline proceedings relating to protection orders, and provide support for parties to these applications by:
  - i) Adding provisions for review of Registrar decisions;
  - ii) Allowing applications for temporary amendments to a family violence order to be heard on an *ex parte* basis (that is, without all parties present);
  - iii) Allowing interim hearings for changes in circumstance;
  - iv) Adding additional processes related to protection orders to allow for changes and updates when required; and
  - v) Making clear that a protection order still applies if a person turns 18.<sup>13</sup>
- d) Correct a legislative issue in relation to summary offences that was inadvertently created by the Family violence Legislation Amendment Bill 2022.<sup>14</sup>

## Legislative Scrutiny

- 2.5. The Bill was considered by the Standing Committee on Justice and Community Safety (Legislative Scrutiny role) (the Scrutiny Committee) in its Scrutiny Report 37 of 21 November 2023.
- 2.6. The Scrutiny Committee noted that the Bill may limit several rights of respondents. The following rights from the *Human Rights Act 2004* were identified as potentially limited:
- Right to recognition and equality before the law (section 8);
  - Right to freedom of movement (section 13);
  - Right to liberty and security of person (section 18);
  - Right to a fair trial (section 21);
  - Rights in criminal proceedings (section 22);
  - Right to work and other work-related rights (section 27B).<sup>15</sup>
- 2.7. The Scrutiny Committee noted that:

The explanatory statement accompanying the Bill recognises these potential limitations and sets out why they should be considered reasonable using the framework in section 28 of the HRA [*Human Rights Act 2004*]. The Committee refers that statement to the Assembly.<sup>16</sup>

<sup>12</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *Explanatory Statement*, p 34.

<sup>13</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *explanatory statement*, p 3.

<sup>14</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *explanatory statement*, p 32.

<sup>15</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), Scrutiny Report 37, pp 7-8.

<sup>16</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), Scrutiny Report 37, p 8.

- 2.8. Although the Scrutiny Committee drew these issues to the attention of the Assembly, it did not require a response from the Minister.<sup>17</sup>

### 3. Neutral bail presumptions

- 3.1. The committee did not receive any submissions that raised concerns regarding the amendments to include additional offences that are subject to a neutral presumption of bail, but notes that the Victims of Crime Commissioner has provided support for the change.<sup>18</sup>
- 3.2. The committee sought advice from the Attorney-General, Mr Shane Rattenbury MLA, regarding technical issues about the amendments. Certain offences (culpable driving of a motor vehicle and driving motor vehicle at police) in the existing list of offences that are subject to neutral presumptions do not appear in the bill. The committee received a response confirming that there were some technical errors in the bill and explanatory memorandum that are proposed to be addressed.<sup>19</sup>
- 3.3. Based on this undertaking by the Attorney-General, the committee has not made a recommendation in this regard.

### 4. Continuing protection orders for protected persons turning 18

- 4.1. Part 4 of the bill proposes amendments to the *Family Violence Act 2016*. Under proposed new section 44A, '[a] family violence order continues in force when [a] protected person becomes an adult'.<sup>20</sup> Several submissions supported this proposed amendment.<sup>21</sup>
- 4.2. Part 5 of the bill also includes this same amendment to the *Personal Violence Act 2016* under proposed new section 38A. The Victims of Crime Commissioner and Australian Federal Police Association both noted their support for its inclusion in both Acts.<sup>22</sup>
- 4.3. However, there were practical concerns with this proposed amendment:
- currently, for a respondent to spend time with a child named as a protected person, they generally rely on the exception in the Family Violence Orders - 'except in accordance with an order or parenting plan made under the *Family Law Act 1975*' (A Commonwealth Act); this means either the protected person who has turned 18 or the respondent will need to make an application to amend the protection order if they wish to continue the contact;<sup>23</sup> and

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<sup>17</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny role), Scrutiny Report 37, p 8.

<sup>18</sup> Victims of Crime Commissioner, *Submission 4*, p 4.

<sup>19</sup> Mr Shane Rattenbury MLA, Attorney-General, correspondence received 22 February 2024, *exhibit 1*, p 1.

<sup>20</sup> Part 4, proposed section 44A, Sexual, Personal and Family Violence Legislation Amendment Bill 2023.

<sup>21</sup> See, for example, Legal Aid ACT, *Submission 1*, p 3, Victims of Crime Commissioner, *Submission 4*, p 4, Australian Federal Police Association, *Submission 5*, p 4.

<sup>22</sup> Victims of Crime Commissioner, *Submission 4*, p 4 and Australian Federal Police Association, *Submission 5*, p 4.

<sup>23</sup> Legal Aid ACT, *Submission 1*, p 2, Women's Legal Centre ACT, *Submission 3*, p 4.

- it may not be clear to protected persons who have recently turned 18 that the parenting plan or order no longer applies and that they may need to (and are able to) make a change to the protection order.<sup>24</sup>
- 4.4. The ACT Law Society pointed out that to address these problems, either the respondent or protected person would need to apply to amend the protection order to avoid a breach of the protection order. They also told the committee that:
- it is not clear if a protected person who has turned 18 is able to apply for an extension of a final protection order; and
  - the protected person should be entitled to a reverse onus – in other words, the respondent must satisfy the court that the order is no longer necessary.<sup>25</sup>
- 4.5. The Domestic Violence Crisis Centre emphasised that ‘when the young person turns 18, the choices and agency of the young adult should be heard, respected and promoted about what contact, if any, they want with their parent’.<sup>26</sup>

### Recommendation 1

The Committee recommends that the ACT Government puts in place processes to ensure that protected persons who turn 18 and other relevant parties are:

- made aware of what the proposed changes will mean in respect of any parenting orders that were in place under the *Family Law Act 1975* once the protected person turns 18; and
- advised of what actions are required if they want the contact between the protected person and respondent to continue.

## 5. Preliminary conferences

- 5.1. The bill proposes to remove the obligation that a court must have a preliminary conference of an application for family violence or personal protection orders. Where the preliminary conference would create an unacceptable risk to a person’s safety or would be unlikely to achieve its objectives, the court is not obliged to hold the conference.<sup>27</sup>
- 5.2. Whilst broadly supportive of this amendment, several submissions raised concerns about use of the phrase ‘unacceptable risk’.<sup>28</sup>

<sup>24</sup> Domestic Violence Crisis Centre, *Submission 2*, p 3.

<sup>25</sup> ACT Law Society, *Submission 6*, p 2.

<sup>26</sup> Domestic Violence Crisis Service, *Submission 2*, p 3.

<sup>27</sup> Part 4, proposed new paragraphs 46(1)(a), 47(2)(a), 82A(1)(a), and 91A(1)(a) and Part 5, proposed new paragraphs 40(1)(a), 41(2)(a), 76A(1)(a), 83A(1)(a), Sexual, Family and Personal Violence Legislation Amendment Bill 2023.

<sup>28</sup> See, for example, Women’s Legal Centre ACT, *Submission 3*, p 5.

- 5.3. The ACT Law Society told the Committee that the legislation should provide some guidance as to what an ‘unacceptable risk’ is, and that people making these decisions need relevant training.’<sup>29</sup>
- 5.4. The Domestic Violence Crisis Service agreed, arguing that there are ‘differing levels of understanding and expertise within the courts’ when it comes to assessing risk, and suggested that the ACT Domestic and Family Violence Risk Assessment and Management Framework<sup>30</sup> should be used to help consistently define ‘unacceptable risk’ and train court staff.<sup>31</sup>
- 5.5. The Women’s Legal Centre also queried how ‘unacceptable risk’ would be defined.<sup>32</sup>
- 5.6. When addressing proposed section 40 (which would amend the *Personal Violence Act 2016*) the explanatory statement refers to a High Court of Australia decision in which the definition of ‘unacceptable risk’ was considered, and stated that this definition was intended for use. The Committee notes however that:
  - the requirement to assess ‘unacceptable risk’ in relation to preliminary conferences appears in eight proposed parts of the Bill (in relation to both the *Family Violence Act 2016* and the *Personal Violence Act 2016*);<sup>33</sup> and
  - clarity in relation to the term was a concern amongst submitters.<sup>34</sup>

## Recommendation 2

The Committee recommends that the ACT government develop guidelines for defining what is an ‘unacceptable risk’ for purposes of making decisions on whether to have preliminary conferences.

## 6. Provisional amendment of protection order in special or exceptional circumstances

- 6.1. Proposed section 82B, to amend the *Family Violence Act 2016*, allows an applicant or protected person to apply for a provisional amendment to a family violence order immediately where ‘special and exceptional circumstances exist’.<sup>35</sup>

<sup>29</sup> ACT Law Society, *Submission 6*, p 2.

<sup>30</sup> ACT Community Services Directorate, *ACT Domestic and Family Violence Risk Assessment and Management Framework*, July 2022 (accessed 16 January 2024).

<sup>31</sup> Domestic Violence Crisis Service, *Submission 2*, p 2.

<sup>32</sup> Women’s Legal Centre ACT, *Submission 3*, p 5.

<sup>33</sup> Part 4, proposed new paragraphs 46(1)(a), 47(2)(a), 82A(1)(a), and 91A(1)(a) and Part 5, proposed new paragraphs 40(1)(a), 41(2)(a), 76A(1)(a), 83A(1)(a), Sexual, Family and Personal Violence Legislation Amendment Bill 2023.

<sup>34</sup> Domestic Violence Crisis Service, *Submission 2*; p 2. Women’s Legal Centre ACT, *Submission 3*, p 5; and ACT Law Society, *Submission 6*, p 2.

<sup>35</sup> Sexual, Family and Personal Violence Legislation Amendment Bill 2023, *explanatory statement*, p 37.

- 6.2. Several submissions supported this amendment but argued that a respondent should also be eligible to seek such an amendment. Legal Aid ACT and the ACT Law Society noted that respondents are not always the perpetrators of family violence, as sometimes people experiencing violence themselves are misidentified as a perpetrator.<sup>36</sup> The ACT Law Society stated that ‘perpetrators can seek protection orders against another person to perpetuate or further perpetuate family violence against that person’.<sup>37</sup>
- 6.3. Legal Aid ACT cited evidence from the Queensland Domestic and Family Violence Death Review and Advisory Board annual report of 2016-2017<sup>38</sup> which described the levels of misidentification noted during the review:
- ... in just under half (44.4%) of all cases of female deaths subject to the review, the woman had been identified as a respondent to a family violence protection order on at least one occasion. Moreover, in nearly all of the domestic and family violence related deaths of a First-Nations person, the deceased had been recorded as both the respondent and aggrieved [victim survivor] prior to their death.<sup>39</sup>
- 6.4. The Domestic Violence Crisis Service also addressed the issue of misidentification of perpetrators in their submission, suggesting that a range of problems emerge when a perpetrator is mistakenly identified as a victim-survivor. They emphasised that ‘training for police and court staff around identifying the primary aggressor would help prevent them [problems caused by misidentification] from arising at all’.<sup>40</sup>

### Recommendation 3

The Committee recommends that the ACT Government further explore the complex issues raised in relation to the misidentification of respondents and victim-survivors.

- 6.5. The ACT Law Society and Legal Aid ACT also raised concerns about inconsistent language in proposed subsection 82B(2), noting the following:
- a) proposed subsection 82B(2) – says ‘The Magistrates Court may hear and decide the provisional amendment at any time’; whereas
  - b) proposed subsection 82B(3) – says ‘If the Magistrates Court makes a provisional amendment’.<sup>41</sup>

<sup>36</sup> Legal Aid ACT, *Submission 1*, p 2, Domestic Violence Crisis Service, *Submission 2*, p 5, Womens Legal Centre, *Submission 3*, p 6 and ACT Law Society, *Submission 6*, p 3.

<sup>37</sup> ACT Law Society, *Submission 6*, p 3.

<sup>38</sup> Coroner’s Court of Queensland, *Domestic and Family Violence Review and Advisory Board Annual Report 2016-17*, <https://www.coronerscourt.qld.gov.au/dfvdrab/annual-reports-and-government-responses> (accessed 6 March 2023).

<sup>39</sup> Legal Aid ACT, *Submission 1*, p 3.

<sup>40</sup> Domestic Violence Crisis Service, *Submission 2*, p 2.

<sup>41</sup> Part 4, Proposed section 82B(2) and 82B(3), Sexual, Family and Personal Violence Legislation Amendment Bill 2023.

- 6.6. Legal Aid ACT suggested altering 82B(2) to match 82B(3), stating that ‘consistency in the language of the provision is important and the term ‘makes a provisional amendment’ is far clearer than ‘hear and decide’.’<sup>42</sup>

#### Recommendation 4

The Committee recommends that the ACT Government introduce amendments to the bill (in proposed subsections 82B(2) and 82B(3)) to make the language consistent in relation to the Magistrates Court making provisional amendments.

## 7. Magistrate review of registrar and deputy registrar decisions

- 7.1. The bill introduces changes to allow decisions of a Registrar to be reviewed by a Magistrate in the first instance of orders made pursuant to the *Family Violence Act 2016* and *Personal Violence Act 2016*.<sup>43</sup>
- 7.2. While there was support for this proposal, the ACT Law Society and Women’s Legal Centre ACT suggested that applicants should also be able to request a review also where there has been a refusal of requested conditions.<sup>44</sup>
- 7.3. The Women’s Legal Centre ACT told the committee that:

the definition of relevant decision [should] also include refusal of requested conditions such as, but not limited to, an exclusion order, not including children on orders or granting a reduced or no distance clause etc. Our reading of the definition only allows for a review to be requested if an interim FVO is refused entirely.<sup>45</sup>

- 7.4. The ACT Law Society also agreed with this position:

The Society suggests the Committee give consideration to whether there should be an avenue for review where a Registrar decides to make an interim order but does not include all of the conditions sought by the applicant in the order.<sup>46</sup>

#### Recommendation 5

The Committee recommends that the ACT Government introduce amendments to the bill that will also allow decisions of a Registrar relating to the refusal of conditions to be reviewed by a Magistrate.

<sup>42</sup> Legal Aid ACT, *Submission 1*, p 2.

<sup>43</sup> Part 4, proposed section 91B and Part 5, proposed subsection 83B(3), Sexual, Family and Personal Violence Legislation Amendment Bill 2023.

<sup>44</sup> Women’s Legal Centre ACT, *Submission 3*, p 6 and ACT Law Society, *Submission 6*, p 3.

<sup>45</sup> Women’s Legal Centre ACT, *Submission 3*, p 6.

<sup>46</sup> ACT Law Society, *Submission 6*, p 3.

- 7.5. In addition, there were concerns about the practical realisation of applying for such a review. Comments included:
- a) The inclusion of a ‘more formal pathway’ listed in the proposed section would improve clarity;<sup>47</sup>
  - b) The need for guidance to be provided to applicants explaining exactly how to go about requesting a review;<sup>48</sup>
  - c) Including in such guidance details about exactly where, and with whom, to request a review.<sup>49</sup>

### **Recommendation 6**

The Committee recommends that the ACT Government develop guidance for applicants on how to make a request for a review by a Magistrate of a decision by a Registrar.

## **8. Conclusion**

- 8.1. The Committee notes that all submissions to this inquiry were generally supportive of the amendments this Bill makes to the five acts.
- 8.2. Despite this, there were several concerns raised about the proposed bill that should be considered by the Government
- 8.3. The Committee has made 6 recommendations.
- 8.4. The Committee wishes to thank all those organisations who made submissions to this Inquiry.

Peter Cain MLA

Chair

March 2024

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<sup>47</sup> Legal Aid ACT, Submission 1, p 2.

<sup>48</sup> ACT Law Society, *Submission 6*, p 3.

<sup>49</sup> Women’s Legal Centre ACT, *Submission 3*, p 6.



## Appendix A: Submissions

No.	Submission by	Received	Published
1	Legal Aid	28/11/2023	07/12/2023
2	Domestic Violence Crisis Service	29/11/2023	07/12/2023
3	Women's Legal Centre ACT	29/11/2023	07/12/2023
4	Victims of Crime Commissioner	29/11/2023	07/12/2023
5	Australian Federal Police Association	30/11/2023	07/12/2023
6	ACT Law Society	04/12/2023	07/12/2023