

2025

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

PERSONAL VIOLENCE (TRANSITIONAL PROVISIONS)

REGULATION 2025

SL2025-12

EXPLANATORY STATEMENT

**Presented by
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Personal Violence (Transitional Provisions) Regulation 2025 (No 1)

OVERVIEW

The policy objective of the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (the Amendment Act) is to raise the minimum age of criminal responsibility (MACR) in the ACT from 10 to 14 years, to ensure that children under the age of 14 years, except for those aged 12 and 13 years who commit certain exceptionally serious and intentionally violent offences, cannot be held criminally responsible.

Part 8 of the Amendment Act amended the *Personal Violence Act 2016* (the PV Act) to reflect the change in the MACR and provide that a person under the MACR cannot be a respondent to an application for a protection order. It was intended that any orders in place for children and young people under the MACR would no longer be enforceable once the MACR is raised, noting that a child under the MACR cannot be held criminally responsible for the offence of breaching a protection order. Accordingly, it is not appropriate for such orders to be made against children under the MACR.

Sections 111 and 112 of the Amendment Act introduced transitional provisions to the PV Act for when the MACR was raised to 12 and 14, respectively. Section 111 introduced Part 23 to the PV Act to provide that law enforcement action carried out by a police officer in a proceeding for a protection order against a child respondent is to end, applications for protection orders against child respondents are discontinued and cease to have effect. This commenced on 22 November 2023 when the MACR was raised to 12.

Section 112 introduced new Part 24 of the PV Act, largely replicating new Part 23, but with a later commencement date of 1 July 2025 to align with the date the MACR was raised to 14.

The following issues have been identified in relation to the drafting of provisions in sections 120 and 121 of the Amendment Act which mean the policy intent of the Amendment Act cannot be fully realised:

1. The definition of child respondent at section 121 of the Amendment Act (section 221(b) of the PV Act) uses the term ‘family violence order’ rather than ‘protection order’, unintentionally limiting the scope of Part 24 of the PV Act.
2. The definition of ‘registered order’ at sections 120 and 121 of the Amendment Act (section 215(4) and section 225(4) of the PV Act) does not include a protection order made under the PV Act by an ACT Court. This means protection orders made locally were not automatically revoked when the MACR was raised to 12 and to 14 years old upon the commencement of these sections, although protection orders made in another jurisdiction and registered in the ACT were revoked. This creates an inconsistency which should be resolved.

These issues limit the intended scope of the amendments to the PV Act in relation to the raising of the MACR to 12 and 14 years, by providing that some children under the MACR are still subject to the protection order scheme under the PV Act.

This Regulation introduces amendments to address these issues. Sections 211 and 221 of the PV Act, provide that a regulation may modify Part 23 and Part 24, respectively, to make provision in relation to anything that is not adequately or appropriately dealt with, in the Executive's opinion.

Schedule 1 cl 1.1 introduces a new provision to Part 23 of the PV Act to provide that a protection order made against a child respondent (as defined under section 210 of the PV Act) is revoked on the commencement day. This resolves the inconsistency in the automatic revocation of registered protection orders and local protection orders.

Under section 2(1) of the Regulation, section 3 and schedule 1 have a retrospective commencement and are taken to have commenced on the commencement of section 120 of the Amendment Act, being 22 November 2023. This ensures that any child respondent who was 12 years old when a local protection order was made against them, and who was subject to the protection order between November 2023 and the notification of this Regulation is not unfairly impacted by the delayed revocation of the protection order. Rather, the protection order will be taken to have been revoked when the MACR was raised to 12 in November 2023, as originally intended and consistent with the revocation of registered orders.

Schedule 2 cl 2.1 amends the definition of 'child respondent' in section 220 of the PV Act to provide that a child respondent means

- a. a child who is under 14 years old and a respondent in a proceeding for a protection order; or
- b. a child against whom a protection order was made when the child was under 14 years old.

This ensures that Part 24 of the PV Act applies to a child respondent who was under 14 years old when a protection order was made, and is not limited to a child respondent to a family violence order. This aligns with the definition of a child respondent at section 210(b) of the PV Act.

Schedule 2 cl 2.2 replicates Schedule 1 cl 1.1 to provide that a protection order made against a child respondent (as defined under s 220 of the PV Act) is revoked on the commencement day.

Under section 2(2) of the Regulation, section 4 and schedule 2 have a retrospective commencement and are taken to have commenced on the commencement of section 121 of the Amendment Act, being 1 July 2025. This ensures there is no delay to the resolution of these issues, which would negatively impact child respondents and create uncertainty for parties to a protection order. As above, this also ensures that any child respondent who was 14 years old when a local protection order was made against them is not unfairly impacted by the delayed revocation of the protection order. The protection order will be taken to have been revoked when the MACR was raised to 14 on 1 July 2025 as originally intended and consistent with the revocation of registered orders.

Impact on Human Rights

Rights promoted

The Regulation will promote the rights of children (section 11(2) of the HR Act) as children and young people under the raised MACR will not be engaged in the justice system or subject to a protection order as a response to harmful behaviour. The amendments support the right of children and young people to the protections they require because of their age. The amendments recognise that a child or young person is highly vulnerable and does not possess fully developed physical or mental capacity when compared to an adult. Their involvement in the justice system is particularly harmful due to their age, with long term impacts on their health, wellbeing and life outcomes.

The retrospective commencement of section 3 and schedule 1, and section 4 and schedule 2 of the Regulation will also ensure that any child respondent to a protection order which was intended to have been revoked upon the commencement of Part 23 and the raising of the MACR to 12 years old on 22 November 2023, or the commencement of Part 24 and the raising of the MACR to 14 years old on 1 July 2025, will have been taken to have been revoked when the MACR was raised. This will redress any ongoing impact of this for any child unintentionally impacted by these errors.

Rights limited

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

These amendments may limit the right to security for applicants and protected persons in protection order matters. The right to security of person (section 18 of the HR Act) requires the government to provide reasonable measures to protect a person's physical security. Expanding the definition of 'child respondent' and providing that protection orders made against a child respondent are to be revoked mean persons who feel at risk from the behaviour of a child or young person under the MACR can no longer apply for or rely on a protection order as a mechanism for safety.

Importantly, the retrospective commencement of the section 3 and schedule 1, and section 4 and schedule 2 of the Regulation is not anticipated to impact or limit this right for protected persons. Although protection orders against a child respondent are to be revoked under schedule 1 clause 1.1 and schedule 2 clause 2.2, these protection orders could not be enforced or amended under the transitional provisions in Part 23 and Part 24 to the PV Act which already commenced when the MACR was raised to 12 and 14 years old and have been in force since 22 November 2023 and 1 July 2025, respectively. Therefore, protected persons were unable to rely on these protection orders in any case.

2. Legitimate purposes (28(2)(b)) and rational connection between the limitation and the purpose (s28(2)(d))

These amendments are necessary to achieve the policy intent of raising the MACR to enable a better response to the complex needs of children and young people who engage in harmful behaviours. This will likely result in fewer children and young people becoming involved in the justice system and improved safety for the community.

3. Proportionality (s28(2)(e))

The limitation on a person's right to security is the least restrictive method of achieving the policy goal of raising the MACR to an appropriate age and ensuring the PV Act and protection order scheme operates consistently with this intention.

The rights of victims in relation to the justice system can no longer be given effect to in the same way because there will no longer be a justice response to the harmful behaviour of children and young people under 14 for most offences. The response to this cohort is so that these children and young people will receive intensive support and therapy to address harmful behaviours through the framework of support introduced in the Amendment Act. This has the aim of reducing such behaviour and ultimately keeping our community safer.

It would be inappropriate and inconsistent to enable protection orders to be taken out and enforced against a respondent who is aged under the MACR or was at the time the order was made, given they cannot be held criminally responsible for a breach.

Additionally, the amendment by regulation is a safeguard as regulations are subject to examination by the Legislative Assembly.

On balance and considering the factors listed in section 28 of the HR Act, the limitation to the rights of security of the person are balanced and proportionate to achieve the legitimate aim.

Detail

Clause 1 – Name of regulation

This clause establishes the name of the Regulation as *Personal Violence (Transitional Provisions) Regulation 2025*.

Clause 2 – Commencement

This is a formal provision specifying when the Regulation will commence.

Section 3 and schedule 1 of the Regulation are taken to have commenced on the commencement of section 120 of the Amendment Act, being 22 November 2023, to align with the date the MACR was raised to 12.

Section 4 and schedule 2 of the Regulation are taken to have commenced on the commencement of section 121 of the Amendment Act, being 1 July 2025, to align with the date the MACR was raised to 14.

Clause 3 – Modification of Act, pt 23—Act, s 211 (2)

Schedule 1 of this Regulation modifies Part 23 of the PV Act.

Clause 4 – Modification of Act, pt 24—Act, s 221 (2)

Schedule 2 of this Regulation modifies Part 24 of the PV Act.

Clause 5 – Expiry

This clause provides that the Regulation expires on the day Part 24 of the PV Act expires, except for section 3, schedule 1 and section 5(2) which expire on the day Part 23 of the PV Act expires.

Schedule 1 – Modification of Act – Part 23

Clause 1.1

This clause inserts a new subsection to section 215 of the PV Act to provide that a protection order made against a child respondent is revoked on the commencement day, being 22 November 2023 through the operation of clause 2 of this Regulation.

A protection order is defined in the dictionary of the PV Act. A child respondent is defined under section 210 of the PV Act.

Schedule 2 – Modification of Act – Part 24

Clause 2.1

This clause amends the definition of child respondent at section 220(b) of the PV Act to substitute the term ‘family violence order’ for ‘protection order’. A protection order is defined in the dictionary of the PV Act.

This aligns with the terms used in the definition of child respondent at section 210(b) of the PV Act.

Clause 2.2

This clause inserts a new subsection to section 225 of the PV Act to provide that a protection order made against a child respondent is revoked on the commencement day, being 1 July 2025 through the operation of clause 2 of this Regulation.

A protection order is defined in the dictionary of the PV Act. A child respondent is defined under section 220 of the PV Act.