

CRIMES (OFFENCES AGAINST VULNERABLE PEOPLE) LEGISLATION AMENDMENT ACT 2020



Fact Sheet

AT A GLANCE

- > these offences protect adults with disability and older, vulnerable members of the community
- > the offences do not replace existing offences
- > the offences are targeting people and organisations responsible for care who are doing the wrong thing
- > there is a new offence targeting institutional failures to protect people within their institution from serious criminal offences
- > a person responsible for care includes people who provide care voluntarily, on a paid basis or while performing a role within an institution
- > these offences only apply to the aspect of care that the person is responsible for
- > the offences complement existing legislative and non-legislative protections

NEW OFFENCES

On 20 April 2021, new laws will come into effect in the ACT to provide additional protections for vulnerable adults in the ACT. Abusing, neglecting and failing to protect a vulnerable person will be offences in the ACT. The new offences have been proposed to protect adults with a disability and older, vulnerable members of the community.

Who is a 'vulnerable person'?

In the Act, a vulnerable person has been defined to mean an adult who has a disability, or someone 60 years of age or older to whom an element of vulnerability applies.

Those elements are:

- > a disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour;
- > an intellectual, psychiatric, sensory or physical impairment which results in a substantially reduced capacity of the person for communication, learning or mobility; or
- > any other reason the person is socially isolated or unable to participate in the life of the person's community.

Why 60 years of age?

The age limit set was guided by research, including a 2018 World Health Organization (WHO) report indicating that around one in six people aged 60 years and older experienced some form of abuse in community settings during the past year.¹ The Australian Law Reform Commission report into Elder Abuse² was also considered, including information about differences in life expectancy for Aboriginal and Torres Strait Islander people, relative to the broader Australian community.

It is commonly accepted and understood that, at 60 years of age, members of the community are able and entitled to be treated differently. This is the age at which members of the ACT community are characterised as seniors, and subject to differential treatment in a range of respects. The same age threshold for 'senior' status applies throughout Australia.

Why does the definition of 'vulnerable person' include a person with a disability?

The Government consulted in late 2019 on potential criminal laws to address elder abuse. Feedback on potential reforms included suggestions that protections could be

extended to people with disabilities and not limited to older people.

The purpose of the Act is to improve the protection for vulnerable people who rely on the care of others by criminalising the abuse and neglect of vulnerable people in our community. There is widespread evidence that both older people, as well as people with disabilities, are disproportionately vulnerable to abuse.

Who is an 'adult with disability' under this legislation?

The meaning of an adult with disability mirrors the provisions in the *Disability Services Act 1991*. This includes a person with an intellectual, psychiatric, sensory or physical impairment. The disability is permanent, or likely to become permanent and means the person has a 'substantially reduced capacity' for communication, learning or mobility together with the need for continuing support services. A person with a disability that is chronic or episodic in nature will still be covered under this definition if the other criteria are met.

This definition attempts to balance the need to protect some people from abuse if they are unable to protect themselves, with the established understanding that people who are disabled are not always any more or less vulnerable than anyone else.

New offence – Abuse of Vulnerable Person

This offence criminalises abusive conduct by a person who is responsible for the care of a vulnerable person. The conduct must result in harm to the vulnerable person or a financial benefit to the abuser or someone associated with them, and the abuser must be reckless as to causing the harm or obtaining the benefit.

Abusive conduct can be an act (doing something) or an omission (not doing something). There are two types of conduct that can be abusive. The first is conduct directed at the vulnerable person of a violent, threatening, intimidating or sexually inappropriate nature.

The second is conduct directed at the vulnerable person or someone they know, and reasonably likely to have one of the following effects:

- > make the vulnerable person dependent on the abusive person
- > isolate the vulnerable person
- > limit the vulnerable person's access to services they need, including access to resources and peer connections that support their ethnicity, religion or spiritual beliefs, sexual orientation and gender identity

¹ World Health Organization, 2018, 'Elder Abuse,' available online at: [who.int/news-room/fact-sheets/detail/elder-abuse](https://www.who.int/news-room/fact-sheets/detail/elder-abuse).

² Australian Law Reform Commission, 2017, Australian Law Reform Commission Report 131 *Elder Abuse— A National Legal Response*.

- > deprive or restrict the vulnerable person's freedom of action
- > frighten, humiliate, degrade or punish the vulnerable person.

However, in relation to the second type of conduct, resulting in one of the above-listed effects, this conduct will only meet the definition of abusive conduct if it is not reasonably necessary for the safe and effective care of the vulnerable person, or for the safety of another person who is present or nearby.

For example, conduct that deprives or restricts a vulnerable person's freedom of action might include restricting the person's ability to leave a care facility, and be reasonably necessary to ensure the person's safety.

There are two levels of penalty for the offence of abusing a vulnerable person:

- > If the harm caused is serious harm, the maximum penalty for this offence is up to five years imprisonment.
- > In all other circumstances where harm is caused, the maximum penalty for this offence is up to three years imprisonment.

Defences are available to ensure that people acting in good faith are not criminally liable for this offence.

New offence – Failure to protect vulnerable person from criminal offence

This offence criminalises the failure of a person in authority within an institution to protect the vulnerable people in their care.

For this offence to apply, a person in authority must be aware of a substantial risk of a serious offence being committed against a vulnerable person, by a person associated with the institution, and the person in authority must negligently or recklessly fail to act to protect the vulnerable person.

A person associated with an institution is a person who:

- > owns, manages or controls the institution;
- > is employed or engaged by the institution;
- > works as a volunteer for the institution;
- > engages in an activity with or for the institution; or
- > is in a position to influence the institution due to their authority in relation to the institution.

The offence can only apply to a person who, because of their position in the institution, can reduce or remove the risk to the vulnerable person.

The term 'a person in authority' is not defined and whether someone is a person in authority will depend on the circumstances of each case. Considerations likely to be relevant include the extent to which the person is

empowered to take actions, including making decisions, affecting the way in which people in the care of the institution are exposed to, or protected from, the risk of a serious criminal offence.

The maximum penalty for this offence is up to five years imprisonment.

New offence – Neglect of Vulnerable Person

This offence criminalises the neglect of a vulnerable person by a person who is responsible for the vulnerable person's care.

A person responsible for care must, under the new laws, ensure that the 'necessities of life' are provided to the person they care for. This law applies to people responsible for care that fail to provide those necessities of life that are a necessary part of the care the person is responsible for providing.

The maximum penalty for this offence is up to five years imprisonment.

Which people responsible for care do the new offences apply to?

The offences of abusing a vulnerable person and neglect of a vulnerable person apply to a person who is responsible for providing care to a vulnerable person.

A person is responsible for providing care to a vulnerable person if they exercise control over any aspect of the care needed by the vulnerable person, regardless of whether the care is short-term or long-term care.

People responsible for care to whom the new offences could apply include those providing care services for payment as well as those providing care under less formal arrangements.

How do the new offences apply to institutions?

All offences apply to both individuals and corporate entities (section 161 of the *Legislation Act 2003*).

All three offences recognise that care of vulnerable people can occur in both a private setting, for example by family members providing care at home, and in an institutional setting, with employees responsible for care in accordance with the policies and procedures of the entity employing them.

A focus of these offences is to ensure that, where care is provided in an institutional setting, there is appropriate attribution of liability for abuse or neglect, or a failure to protect vulnerable person, and the concept of a 'relevant institution' is included in all three offences.

Relevant institution is defined to mean an entity, other than an individual, or a group of entities that operates facilities for, engages in activities with, or provides services to, vulnerable people under the entity's care, supervision or control.

This means that institutions as well as individual people responsible for care have a responsibility to protect vulnerable people in their care.

What defences are available?

There are a number of defences available for the new offences.

The defences provided apply where the defendant can prove that:

- > the defendant's conduct was reasonable in all the circumstances; or
- > where a defendant is associated (eg as a manager, or employee) with a relevant institution, the relevant conduct:
 - was in accordance with that institution's policies and procedures,
 - was at the direction of a person in authority at the institution, or
 - happened as a result of circumstances that were beyond the defendant's control.

The defence that the conduct was reasonable in all the circumstances, is intended to capture circumstances such as where a person (the person responsible for care) may be caring for a vulnerable person in good faith and to the best of their ability, but limitations relating to the person responsible for care's financial or other resources, or access to support, result in unintended harm to the vulnerable person. It recognises that there may be circumstances where individuals who have caring roles may be ill-equipped and unsupported (and themselves vulnerable), with limited capacity or opportunity to address deficiencies in the level of care they are capable of providing.

The defences that apply to those providing care in an institution, are intended to ensure that workers in an institutional context are not liable where they are either following procedures, direction or practice, or may not have sufficient resources or time to adequately care for the vulnerable person. This is so that workers are not held accountable for the result of their actions if these are beyond their ability to control. For example, while a residential aged care institution's policies or procedures may theoretically require certain levels of care to be provided by staff, rostering and staffing levels may mean it is physically impossible for the staff to comply with those requirements. In those circumstances, the staff member should not be held accountable for the results of actions and decisions outside their control. The appropriate entity to hold accountable in that situation is the institutional entity.

What does it mean to say the conduct is 'reasonable in all the circumstances'?

What is reasonable will depend on the circumstances of each case, and the courts will take into account the level of training and expertise of the person who is responsible for care.

For unpaid or volunteer carers, the courts will likely consider the care provided, and the level of care expected from someone who is providing care on a voluntary basis.

For people trained in care, or who may work in an institution, the courts will consider those circumstances when deciding whether their conduct was reasonable.

What are some examples of a 'serious offence'?

Serious offences are defined to mean offences with a penalty of five years imprisonment or more. This is a common way to describe 'serious offence' in ACT legislation.

Some examples of serious offences include:

- > assault occasioning actual bodily harm
- > inflicting or assaults occasioning grievous bodily harm
- > threats to inflict grievous bodily harm
- > breaching a family violence or personal violence order
- > most sexual offences
- > murder and manslaughter
- > major theft, robbery and burglary
- > obtaining property by deception
- > obtaining financial advantage by deception
- > major damage to property

Serious offences **do not include**, for example:

- > minor theft
- > common assault
- > unlawful possession of stolen property
- > traffic offences
- > minor damage to property.

How do individuals affected by abuse or witnessing abuse make complaints under this legislation?

The mechanism for making a complaint is the same as the mechanism for any other criminal offence. As with all other criminal behaviour, police are the appropriate people to talk to in the first instance.

Is there an obligation to make a complaint by a witness under this legislation? What is the implication for someone who does not make a complaint?

If you are a witness to an offence under this legislation, and you are not in a position of authority in an institution, there are no additional obligations placed on you under this legislation.

Therefore, for most members of the community, as with any other criminal offence, there are no implications if you do not report it to the police.

However, if you are in a position of authority in an institution, and some form of reporting is necessary to reduce the risk of a serious offence against a vulnerable person by another person associated with the institution, then you must do what is in your power to reduce the risk of a serious criminal offence being committed against a vulnerable person.

Do these laws introduce new mandatory reporting obligations?

No. The new laws do not change existing requirements for mandatory reporting and impose no new obligations for reporting. The new offences should be treated the same way as any other new offence created. The only difference in this case is that the offences, instead of protecting all people, specifically apply to vulnerable people (as defined).

If a person becomes aware of abuse or possible abuse of a vulnerable person, unless they are a person in authority in an institution and some form of reporting is necessary to reduce the risk of a serious offence against a vulnerable person by another person associated with the institution, these new offences do not change the status quo.

If organisations have existing obligations under regulatory frameworks to report or take other action about criminal behaviour committed or suspected, against a vulnerable person, these continue to apply.

If organisations have existing protocols for determining whether the reporting of a suspected offence to police should occur, or alternative actions should be considered, this is unchanged (again subject to the new rules applying to a person in authority in an institution who must take action to remove or reduce the risk of a vulnerable person being the victim of a serious offence committed by someone else associated with the institution).

Do these new laws replace other offences?

These laws do not replace existing criminal offences. The new offences create additional protections within the law

for vulnerable adults and complement existing criminal provisions.

Do the new laws apply to children?

The offences only apply to adults. There is a range of other existing criminal and non-criminal laws in place to protect children and target child abuse, including mandatory reporting laws and the offence of neglect of children.

The existing neglect offence relating to children (section 39 *Crimes Act 1900*) has lower maximum penalties than the new neglect of a vulnerable adult person offence. This is because of differences in the elements of the respective offences. In particular the new offence is only established where there is a failure to provide the necessities of life and the neglect causes serious harm to a vulnerable person. The offence relating to children can occur where there is ill-treatment, abuse or parental neglect and irrespective of the level of harm caused.

Will the Government consider other measures to protect vulnerable people?

The Government is pursuing reforms to Power of Attorney laws, to be progressed as soon as possible, recognising the significance of financial abuse of vulnerable people.

What other protections are available for older Canberrans and those with a disability?

There are existing complaints mechanisms under the *Human Rights Commission Act 2005* (HRC Act) for complaints to be made and considered, relating to services provided to people with a disability and the people responsible for their care, and services provided to older people and the people responsible for their care.

These will continue to be available and appropriate avenues to seek, through conciliation, to resolve failures of service providers to meet appropriate levels of service including where they are not meeting relevant standards.

Changes to the HRC Act have recently been made giving the Human Rights Commission a power to hear and handle complaints about treatment of vulnerable people (defined in the same way as for the purposes of the three new offence provisions).

This will enable the Human Rights Commission to consider and take further actions about allegations of abuse, neglect or exploitation of vulnerable people.

It is open to individuals to discuss the matter with both the ACT Human Rights Commission and ACT Policing and to decide whether to make a criminal complaint or complaint to the ACT Human Rights Commission (or both).

Towards Disability Justice for the ACT³ notes a number of protections available for Canberrans with a disability,

³ For more information, see pages 71-75 of communityservices.act.gov.au/__data/assets/pdf_file/0005/13

[37783/Towards-Disability-Justice-for-the-ACT-Summary-of-research-and-consultations-2019.pdf](https://communityservices.act.gov.au/__data/assets/pdf_file/0005/13).

including measures that have already been implemented to support people with disability in the ACT.

Support

If someone is experiencing or witnessing abuse or neglect, there are a number of community-led organisations in the ACT that can provide support and assistance to Canberrans. You can find out more about advocacy services in the ACT here: <https://www.communityservices.act.gov.au/quality-complaints-and-regulation/advocacy>.

1800RESPECT is the national sexual assault, domestic and family violence counselling service, and provides support for people experiencing, or at risk of experiencing, violence and abuse, their friends and family, and professionals. Please call 1800 737 732 to discuss your needs with a qualified counsellor or visit their website at <https://www.1800respect.org.au/services/about-service-directory>.

ACT Disability, Aged and Carer Advocacy Service (ADACAS) is a human rights based organisation that provides free individual advocacy, information and advice to people with disability, people experiencing mental ill health, older people and carers. Their advocates can assist in understanding the new laws, provide support to make a report or complaint. ADACAS is located at Unit 14/6 Gritten Street, Weston and can be contacted on (02) 6242 5060 or by email at adacas@adacas.org.au. More information about ADACAS can be found at <http://www.adacas.org.au/>.

Advocacy for Inclusion provides individual, self and systemic advocacy for people with disabilities who live in the ACT. Their advocates can assist with further information about the new laws, to get help, or to make a complaint or report. Advocacy for Inclusion is located at Suite 2.02 Griffin Centre, 20 Genge Street, Canberra ACT 2601 and can be contacted on (02) 6257 4005 or by email at info@advocacyforinclusion.org. More information can be found at <https://www.advocacyforinclusion.org/>.

The **Canberra Rape Crisis Centre** provides crisis and counselling telephone support service on (02) 6247 2525. More information can be found at <https://www.crc.org.au/>.

Carers ACT provides a wide range of support specifically for unpaid carers including advocacy information and advice and can be contacted on (02) 6296 9900 or <https://www.carersact.org.au/advocacy-and-representing-your-views/>.

Consumer Law Centre and Care Inc Financial Counselling Service can offer assistance to anyone who has been subject to or affected by financial abuse. The Consumer Law Centre can be contacted on (02) 6143 0044 or online at <https://www.carefcs.org/contact>.

The **Domestic Violence Crisis Service (DVCS)** offers a range of services including 24/7 crisis intervention services to anyone who is experiencing, or has experienced, domestic

and family violence. DVCS also offers legal support and advocacy. For more information, visit <https://dvcs.org.au/our-services/crisis-intervention/> or contact (02) 6280 0900. Additional contact details can be found at <https://dvcs.org.au/contact/contacts/>.

The **Legal Aid ACT Helpline** can provide legal information and organise appointments for free legal advice. The Legal Aid ACT Helpline can be contacted on 1300 654 314.

The **National Disability Abuse and Neglect Hotline** is a free, independent and confidential service for reporting abuse and neglect of people with disability. To make a report, contact the Hotline on 1800 880 052 or send an email to hotline@workfocus.com. More information can be found at <https://www.jobaccess.gov.au/complaints/hotline>.

OneLink provides information and connections for support services in the ACT, including services for families and young people, and services for people who are homeless or at risk of homelessness. Contact 1800 176 468 or visit <https://www.onelink.org.au/> for more information.

Victim Support ACT provides a range of services to people who are victims of crime. Victim Support ACT can be contacted on 1800 822 272 or online at <https://www.victimsupport.act.gov.au/functions/contact-us>.

Languages

To speak to someone in a language other than English please telephone the Telephone Interpreter Service (TIS) 131 450. This service operates 24 hours a day, seven days a week.

إذا كنت بحاجة إلى مترجم إتصل بالرقم: 13 14 50

如果您需要翻譯，請致電：13 14 50

Ako trebate tumača, nazovite: 13 14 50

Αν χρειάζεστε διερμηνέα, τηλεφωνήστε: 13 14 50

Se hai bisogno di un interprete, chiamate: 13 14 50

Jekk għandek bżonn ta 'interpretu, sejha: 13 14 50

اگر شما لازم است، فراخوان 131 450

Jeśli potrzebujesz tłumacza, zadzwoń: 13 14 50

Se você precisar de um intérprete, ligue para: 13 14 50

Если Вам нужен переводчик, пожалуйста звоните по номеру 13 14 50

Ако треба тумача, назовите: 13 14 50

Si usted necesita un intérprete, llame al: 13 14 50

Eğer bir tercümana ihtiyacınız Arama: 13 14 50

Nếu bạn cần một thông dịch viên, xin gọi: 13 14 50

For more information

More information on the new laws and an Easy English version of this document can be found at <https://justice.act.gov.au/vulnerablepeople>.