

NEW LAWS TO PROTECT VULNERABLE ADULTS



INFORMATION FOR INSTITUTIONS AND EMPLOYEES

On 20 April 2021, new laws will come into effect in the ACT that create three new offences for the mistreatment of vulnerable adults (18 years and over). These are: abuse of vulnerable person, failure to protect vulnerable person from criminal offence, and neglect of vulnerable person.

Who is a vulnerable person?

A vulnerable person means:

- > An adult who has a disability; or
- > Someone who is at least 60 years old with one or more of the following elements of vulnerability:
 - 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.
 - Social isolation or an inability to participate in their community.

What are the new laws?

Abuse of vulnerable person

This offence criminalises abusive conduct by a person who is responsible for the care of a vulnerable person. This means:

- > If a caregiver engages in abusive conduct towards a vulnerable person in their care, which causes them physical, psychological or financial harm, the caregiver can be charged with this offence.
- > If a caregiver engages in abusive conduct towards a vulnerable person in their care, through which they, or a person associated with them, obtains a financial benefit, the caregiver can be charged with this offence.

The penalty for this offence depends on the severity of the harm the resident or patient experiences. If the abusive conduct results in serious harm, the maximum penalty is five years imprisonment. If the abusive conduct results in harm (but not serious harm), or a financial benefit, the maximum penalty is three years imprisonment.

Serious harm means an act or series of acts that endangers or is likely to endanger the vulnerable person's life, or is, or is likely to be significant and longstanding.

Examples of abusive conduct

A person engages in abusive conduct towards a vulnerable person if they engage in the following acts or omissions:

- > Physical violence
- > Threatening behaviour
- > Intimidation
- > Engaging in sexually inappropriate behaviour
- > Making the person dependent on or subordinate to the abusive person
- > Isolating the person from friends or family
- > Limiting the person's access to services that they need, including access to resources and peer connections that support their ethnicity, religion or spiritual beliefs, sexual orientation and gender identity
- > Depriving or restricting the person's freedom
- > Frightening, humiliating, degrading or punishing the person

Certain conduct is not abusive if it is reasonably necessary for the safe and effective care of the vulnerable person or the safety of another person nearby.

Failure to protect vulnerable person from criminal offence

This offence criminalises the failure of a person in authority within an institution to protect a vulnerable person 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 or another person in authority in the institution, and the person in authority must negligently or recklessly fail to reduce or remove the risk.

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
- > 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 *person in authority* is not defined in the legislation. Whether someone is a *person in authority* will depend on the

circumstances of each case, such as whether 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 five years imprisonment.

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. This means a care provider has a legal responsibility to ensure that vulnerable people in their care receive the *necessities of life*. *Necessities of life* include, at a minimum, adequate food, clothing, shelter, hygiene and health care, but can include other things.

If a care provider fails to provide vulnerable people in their care with the necessities of life and this causes serious harm to the vulnerable person such that it endangers, or is likely to endanger their life or leads to, or is likely to lead to significant and longstanding harm, the caregiver or health care professional can be charged with this offence.

The maximum penalties for this offence is a fine of up to \$80,000 for an individual and \$405,000 for a corporation and/or imprisonment for five years.

Does the law protect employees doing their job?

A person who is accused of committing the abuse or neglect offences can rely on the following in their defence:

- > Their conduct was reasonable in all the circumstances (abuse or neglect offences).
- > Their conduct was reasonably necessary for the safe and effective care of the vulnerable person or the safety of another person (abuse offence only).
- > For the abuse or neglect offences, that their conduct:
 - Was in accordance with the institution's policies, procedures or practices;
 - Was at the direction of a person in authority at the institution; or
 - Happened as a result of circumstances beyond their control.

Example

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 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 institution itself.

Obligations of institutions

All three offences apply to corporations, including aged and disability care providers. In light of the new laws, institutions should ensure that:

- > All employees are educated about the new laws.
- > Policies and procedures, including complaints processes, are in place.
- > Staff, including volunteers and contractors, are appropriately skilled.
- > Information is provided to clients and their families about the new laws, including information for making complaints.

Where do I find the new laws?

The new laws were introduced through the *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020*, which can be found on the ACT Legislation Register here:

<https://www.legislation.act.gov.au/View/a/2020-41/current/PDF/2020-41.PDF>.

For more information

More details on the new offences, and information and resources to assist vulnerable people and their families, are at <https://justice.act.gov.au/vulnerablepeople>. The information on the website and in this factsheet provides general information only and should not be considered legal advice. You should consider obtaining independent legal advice if you require it.

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. ADACAS is located at Unit 14/6 Gritten Street, Weston ACT 2611 and can be contacted on (02) 6242 5060 or by email at adacas@adacas.org.au. More information can be found at <http://www.adacas.org.au/>.

Complaints of abuse or neglect of a vulnerable person can also be made to the **ACT Human Rights Commission** to help address concerns without involving police. For more information on this process visit the Commission's website: <https://hrc.act.gov.au/complaints/>.

Advocacy for Inclusion provides individual, self and systemic advocacy for people with disabilities who live in the ACT. Their advocates can assist people with disability 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/>.

Consumer Law Centre and Care Inc Financial Counselling Service can offer assistance in relation to financial abuse. You can contact the Consumer Law Centre on (02) 6143 0044 or online at <https://www.carefcs.org/contact>.

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>.