



Australian Capital Territory

# Royal Commission Criminal Justice Legislation Amendment Act 2019

A2019-6

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Australian Capital Territory

# Royal Commission Criminal Justice Legislation Amendment Act 2019

**A2019-6**

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An Act to amend legislation about child sexual offences, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Royal Commission Criminal Justice Legislation Amendment Act 2019*.

### 2 Commencement

- (1) Section 15 commences on the day after this Act's notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

*Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 2* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

### 3 Legislation amended

This Act amends the following legislation:

- [Children and Young People Act 2008](#)
- [Crimes Act 1900](#)
- [Crimes \(Sentencing\) Act 2005](#)
- [Ombudsman Act 1989](#).

## Part 2

# Children and Young People Act 2008

### 4 Offence—mandatory reporting of abuse New section 356 (1A)

*after the notes, insert*

- (1A) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to make a mandatory report because it contains information communicated to the member during a religious confession.

### 5 Section 356 (2), definition of *mandated reporter*, new paragraph (oa)

*insert*

- (oa) a minister of religion, religious leader or member of the clergy of a church or religious denomination;

### 6 Section 356 (2), new definition of *religious confession*

*insert*

***religious confession*** means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

## Part 3 Crimes Act 1900

### 7 New sections 66AA and 66AB

*before section 66A, insert*

#### **66AA Failure to report child sexual offence**

- (1) A person commits an offence if the person—
- (a) is an adult; and
  - (b) obtains information that leads to the person reasonably believing that a sexual offence has been committed against a child; and
  - (c) does not, as soon as practicable after forming the belief, give the information to a police officer.

Maximum penalty: imprisonment for 2 years.

- (2) Subsection (1) does not apply if—
- (a) the person—
    - (i) obtains the information when the alleged victim was no longer a child; and
    - (ii) reasonably believes the alleged victim does not want a police officer to be told about the person's belief; or
  - (b) the person reasonably believes that giving the information to a police officer would endanger the safety of a person (other than a person reasonably believed to have committed the sexual offence); or
  - (c) the person reasonably believes a police officer already has the information; or

- (d) the person—
    - (i) is a mandated reporter under the *Children and Young People Act 2008*, section 356 (2); and
    - (ii) has reported the information under that Act, division 11.1.2 (Reporting abuse and neglect of children and young people) or reasonably believes someone else has done so; or
  - (e) subject to subsection (3), giving the information to a police officer would disclose information in relation to which privilege may be claimed under a law in force in the Territory; or
  - (f) the information is generally available in the public domain; or
  - (g) the person has another reasonable excuse.
- (3) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to give information under subsection (1) because the information was communicated to the member during a religious confession.
- (4) The *Criminal Code*, chapter 2 (other than the applied provisions) does not apply to an offence against this section.
- (5) If a person gives information mentioned in subsection (1) to a police officer honestly and without recklessness—
- (a) giving the information is not a breach of—
    - (i) confidence; or
    - (ii) professional etiquette or ethics; or
    - (iii) a rule of professional conduct; and
  - (b) the person does not incur civil or criminal liability only because of giving the information.
- (6) Subsection (5) does not apply if giving the information would be a breach of client legal privilege.

(7) This section applies to information obtained on or after the commencement of this section, including information about a sexual offence that occurred before the commencement of this section.

(8) In this section:

*applied provisions*—see the [Criminal Code](#), section 10 (1).

*religious confession* means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

*sexual offence* means—

- (a) an offence against—
  - (i) this part; or
  - (ii) any other provision prescribed by regulation; or
- (b) an offence against a sexual offence provision of this Act previously in force.

#### **66AB Making false report about child sexual offence**

- (1) A person commits an offence if—
  - (a) the person gives information to a police officer about an alleged sexual offence against a child; and
  - (b) the information is false or misleading in a material particular; and
  - (c) the person knows that the information—
    - (i) is false or misleading in a material particular; or



- (ii) omits something, without which, the information is false or misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (2) In this section:

*sexual offence*—see section 66AA (8).

**8 Sexual intercourse—people not to be presumed incapable by reason of age  
New section 68 (3)**

*insert*

- (3) This section applies whether the offence or alleged offence was committed before or after the commencement of this section.

**9 New section 441B**

*insert*

**441B Retrospective application of repealed alternative verdict provision for carnal knowledge**

- (1) This section applies to section 70 (the *repealed provision*) as in force at any time before the commencement of the *Crimes (Amendment) Ordinance (No 2) 1984*.

*Note* The ordinance became an ACT Act (the *Crimes (Amendment) Ordinance (No 2) 1984*) on 11 May 1989 (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 34 (4)).

- (2) The repealed provision is taken to have been amended by omitting paragraph (a) and substituting it with the following:

“(a) she was of or above that age but under the age of sixteen years; and”.

**10 New section 442A**

*insert*

**442A Review of operation of child sexual abuse reporting offence**

- (1) The Minister must review the operation of section 66AA (Failure to report child sexual offence) as soon as practicable after it has been in operation for 2 years.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

## Part 4 Crimes (Sentencing) Act 2005

### 11 Victim impact statements—use in court Section 52 (4)

*substitute*

- (4) Subsection (5) applies to a maker of a statement, if a special requirement for giving evidence—
- (a) applied to the maker giving evidence in the proceeding to which the statement relates; or
  - (b) would have applied to the maker had the maker given evidence in the proceeding.
- (5) If the maker of the statement wishes, the special requirement applies to the maker reading out the maker's statement in court as if the maker were a witness giving evidence in the proceeding.
- (6) In this section:
- special requirement***, for giving evidence, means any of the following provisions under the *Evidence (Miscellaneous Provisions) Act 1991*:
- (a) part 2.2 (Evidence of children—audiovisual links);
  - (b) division 4.3.2 (Special requirements—general);
  - (c) division 4.3.5 (Giving evidence by audiovisual link);
  - (d) section 101 (Child or witness with disability may have support person in court);
  - (e) section 102 (Witness with vulnerability may give evidence in closed court).

## Part 5 Ombudsman Act 1989

**12** **Definitions—div 2.2A**  
**Section 17D, definitions of *employee*, *head* and *reportable allegation***

*omit*

**13** **Meaning of *designated entity*—div 2.2A**  
**Section 17EA (2), definition of *religious body* and examples and note**

*relocate to section 17D*

**14** **New sections 17EAA to 17EAC**

*insert*

**17EAA** **Meaning of *head* of a designated entity—div 2.2A**

(1) In this division:

***head***, of a designated entity, means—

- (a) for an administrative unit—the director-general of the administrative unit; or
- (b) for a religious body—the individual nominated under subsection (2) or (3); or
- (c) for any other designated entity—
  - (i) if a regulation prescribes the head of the entity—the prescribed head of the entity; or
  - (ii) in any other case—the individual primarily in charge of the management of the entity.

- (2) A religious body must—
  - (a) nominate an individual as the head of the body for this division;  
and
  - (b) give the nomination to the ombudsman.
- (3) If a religious body does not make a nomination under subsection (2), the ombudsman may, in writing, nominate an individual as the head of the body for this division.

**17EAB Meaning of *reportable allegation*—div 2.2A**

- (1) For this division, a *reportable allegation* is an express assertion that reportable conduct has happened.
- (2) However, if an express assertion that reportable conduct has happened was made as a religious confession, the assertion is a reportable allegation if, and only if, it relates to—
  - (a) sexual abuse against a child; or
  - (b) non-accidental physical injury to a child.
- (3) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to report a reportable allegation because it contains information communicated to the member during a religious confession.
- (4) In this section:

*religious confession* means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

**17EAC Meaning of *employee*—div 2.2A**

(1) In this division:

*employee*, of a designated entity—

(a) means a person who is engaged—

(i) under a contract of employment with the designated entity;  
or

(ii) by the designated entity to provide services to children  
(other than under a contract of employment); or

**Examples**

- out-of-home carer
- volunteer

(iii) by another entity (whether or not under a contract of  
employment) to provide services to children on behalf of  
the designated entity; and

**Example**

subcontractor

(b) for a designated entity that, in accordance with the *Children and Young People Act 2008*, authorises an out-of-home carer to exercise daily care responsibility or long-term care responsibility for a child—includes an adult who stays for at least 21 days at premises provided by the authorised out-of-home carer for the child to live.

(2) However, for a designated entity that is a religious body, *employee*—

(a) means—

(i) a minister of religion, a religious leader or an officer of the  
religious body; or

(ii) a person who is engaged under a contract of employment  
with the religious body; or

- (iii) a person who is engaged by the religious body to provide services (other than under a contract of employment) whether or not the services are provided to children; but
- (b) does not include a person only because the person participates in worship.

**15 Expiry—pt 11  
Section 53**

*omit*

31 March 2019

*substitute*

the commencement of the *Royal Commission Criminal Justice Legislation Amendment Act 2019*, section 14

**16 Dictionary, definition of *employee***

*omit*

section 17D

*substitute*

section 17EAC

**17 Dictionary, definition of *head***

*omit*

section 17D

*substitute*

section 17EAA

**18 Dictionary, definition of *reportable allegation***

*omit*

section 17D

*substitute*

section 17EAB



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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 21 February 2019.

**2 Notification**

Notified under the [Legislation Act](#) on 27 March 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Royal Commission Criminal Justice Legislation Amendment Bill 2019, which was passed by the Legislative Assembly on 19 March 2019.

Clerk of the Legislative Assembly

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