



Australian Capital Territory

Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020

A2020-41

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Crimes Act 1900	
4	Offences against Act—application of Criminal Code etc Section 7A, note 1	3

J2019-1491

Contents

		Page
5	New sections 36A to 36C	3
6	New section 442C	11
Part 3	Crimes (Sentencing) Act 2005	
7	Sentencing—relevant considerations New section 33 (1) (gb)	12
8	Section 33 (5), new definition of <i>vulnerable person</i>	12



Australian Capital Territory

Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020

A2020-41

An Act to amend legislation in relation to offences committed against vulnerable people, and for other purposes

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

J2019-1491

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020*.

2 Commencement

This Act commences 8 months after its notification day.

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

3 Legislation amended

This Act amends the *Crimes Act 1900* and the *Crimes (Sentencing) Act 2005*.

Part 2 Crimes Act 1900

4 Offences against Act—application of Criminal Code etc Section 7A, note 1

insert

- s 36A (Abuse of vulnerable person)
- s 36B (Failure to protect vulnerable person from criminal offence)
- s 36C (Neglect of vulnerable person)

5 New sections 36A to 36C

insert

36A Abuse of vulnerable person

- (1) A person commits an offence if—
- (a) the person is responsible for providing care to a vulnerable person; and
 - (b) the person engages in abusive conduct towards the vulnerable person; and
 - (c) the conduct results in—
 - (i) harm to the vulnerable person; or
 - (ii) a financial benefit for the person or someone else associated with the person; and

- (d) the person is reckless about—
 - (i) if the vulnerable person suffers harm—causing the harm;
or
 - (ii) if the person or someone else associated with the person obtains a financial benefit—obtaining the benefit.

Maximum penalty:

- (a) if the person's conduct results in harm, other than serious harm, or a financial benefit—imprisonment for 3 years; or
- (b) if the person's conduct results in serious harm—imprisonment for 5 years.

Note A law that creates an offence applies to a corporation as well as to an individual (see [Legislation Act](#), s 161).

- (2) Without limiting subsection (1) (a), a defendant is responsible for providing care to a vulnerable person—
 - (a) if the defendant exercises control over any aspect of the care needed by the vulnerable person; and
 - (b) regardless of whether the care of the vulnerable person is short-term or long-term care.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
 - (a) the defendant's conduct was reasonable in all the circumstances;
or
 - (b) for a defendant who is associated with a relevant institution providing care to the vulnerable person—
 - (i) the defendant's conduct complied with—
 - (A) the relevant institution's procedures and practices for the care, supervision or control of the vulnerable person; or

(B) the direction of a person in authority in the relevant institution; or

(ii) the abusive conduct happened as a result of circumstances beyond the defendant's control.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

(4) For subsection (3) (b), a defendant is *associated* with a relevant institution if the defendant—

(a) owns, manages or controls the institution; or

(b) is employed or engaged by the institution; or

(c) works as a volunteer for the institution; or

(d) engages in an activity with or for the institution; or

(e) is in any other position of authority in relation to the institution.

(5) In this section:

abusive conduct, engaged in by a person (the *abusive person*) toward a vulnerable person, means an act or omission—

(a) that is directed at the vulnerable person, and is of a violent, threatening, intimidating or sexually inappropriate nature; or

(b) that—

(i) is directed at the vulnerable person, or someone known to the vulnerable person, and is reasonably likely to—

(A) make the vulnerable person dependent on or subordinate to the abusive person; or

(B) isolate the vulnerable person from friends or family;
or

(C) limit the vulnerable person's access to services needed by the vulnerable person; or

- (D) deprive or restrict the vulnerable person's freedom of action; or
- (E) frighten, humiliate, degrade or punish the vulnerable person; and
- (ii) 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.

harm means physical, psychological or financial detriment.

relevant institution means—

- (a) an entity, other than an individual, that operates facilities for, engages in activities with, or provides services to, vulnerable people under the entity's care, supervision or control; or
- (b) a group of entities mentioned in paragraph (a) if the entities—
 - (i) interact with each other, share similar characteristics and collectively have a sense of unity; or
 - (ii) are controlled, managed or governed by another entity.

Examples—par (a)

religious organisations, hospitals, nursing homes

Example—par (b)

a group of nursing homes controlled by a religious organisation or operated by a company

serious harm means any harm (including the cumulative effect of more than 1 harm) that—

- (a) endangers, or is likely to endanger, human life; or
- (b) is, or is likely to be, significant and longstanding.

vulnerable person means an adult who—

- (a) has a disability within the meaning of the *Disability Services Act 1991*; or
- (b) is at least 60 years old and—
 - (i) has a disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour; or
 - (ii) has an impairment that—
 - (A) is intellectual, psychiatric, sensory or physical in nature; and
 - (B) results in a substantially reduced capacity of the person for communication, learning or mobility; or
 - (iii) for any other reason is socially isolated or unable to participate in the life of the person's community.

36B Failure to protect vulnerable person from criminal offence

- (1) A person commits an offence if—
 - (a) the person is a person in authority in a relevant institution (the ***person in authority***); and
 - (b) there is a substantial risk that a serious offence will be committed against a vulnerable person under the institution's care, supervision or control by—
 - (i) a person associated with the institution; or
 - (ii) by another person in authority in the institution; and
 - (c) the person in authority is aware that the risk exists; and
 - (d) the person in authority can, because of the position the person occupies in the institution, reduce or remove the risk; and

- (e) the person in authority recklessly or negligently fails to reduce or remove the risk.

Maximum penalty: imprisonment for 5 years.

Note A law that creates an offence applies to a corporation as well as to an individual (see [Legislation Act](#), s 161).

- (2) In a prosecution for an offence against this section—
 - (a) it does not matter that an act or omission constituting the criminal offence happens, or is at risk of happening, outside the ACT if—
 - (i) the vulnerable person was in the ACT at any time the person in authority was aware that the risk mentioned in subsection (1) (b) existed; or
 - (ii) the person mentioned in subsection (1) (b) (i) or (ii) was a person associated with, or in authority in, a relevant institution in the ACT at any time the person in authority was aware that the risk existed; and
 - (b) it is not necessary to prove that a criminal offence has been committed.

- (3) In this section:

associated—a person is ***associated*** with a relevant institution if the person—

- (a) owns, manages or controls the institution; or
- (b) is employed or engaged by the institution; or
- (c) works as a volunteer for the institution; or
- (d) engages in an activity with or for the institution; or
- (e) is in any other position of authority in relation to the institution.

relevant institution—see section 36A (5).

serious offence means—

- (a) an offence punishable by imprisonment for 5 years or longer; or
- (b) an offence in another jurisdiction that would be an offence under paragraph (a) if committed in the ACT.

vulnerable person—see section 36A (5).

36C Neglect of vulnerable person

- (1) A person commits an offence if—
 - (a) the person is responsible for providing care to a vulnerable person; and
 - (b) the person recklessly or negligently fails to provide the vulnerable person with the necessities of life that are a necessary part of the care the person is responsible for providing to the vulnerable person; and
 - (c) the person's failure causes serious harm to the vulnerable person.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note A law that creates an offence applies to a corporation as well as to an individual (see [Legislation Act](#), s 161).

- (2) Without limiting subsection (1) (a), a defendant is responsible for providing care to a vulnerable person—
 - (a) if the defendant exercises control over any aspect of the care needed by the vulnerable person; and
 - (b) regardless of whether the care of the vulnerable person is short-term or long-term care.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) the defendant’s conduct was reasonable in all the circumstances; or
 - (b) for a defendant who is associated with a relevant institution providing care to the vulnerable person—
 - (i) the defendant’s conduct complied with—
 - (A) the relevant institution’s procedures and practices for the care, supervision or control of the vulnerable person; or
 - (B) the direction of a person in authority in the relevant institution; or
 - (ii) the failure to provide the necessities of life happened as a result of circumstances beyond the defendant’s control.
- Note* The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).
- (4) For subsection (3) (b), a defendant is *associated* with a relevant institution if the defendant—
- (a) owns, manages or controls the institution; or
 - (b) is employed or engaged by the institution; or
 - (c) works as a volunteer for the institution; or
 - (d) engages in an activity with or for the institution; or
 - (e) is in any other position of authority in relation to the institution.

(5) In this section:

necessities of life includes adequate food, clothing, shelter, hygiene and health care.

relevant institution—see section 36A (5).

serious harm—see section 36A (5).

vulnerable person—see section 36A (5).

6 New section 442C

insert

442C Review of operation of offences of abuse of vulnerable people

- (1) The Minister must review the operation of the following provisions as soon as practicable after the end of their first 12 months of operation:
 - (a) section 36A (Abuse of vulnerable person);
 - (b) section 36B (Failure to protect vulnerable person from criminal offence);
 - (c) section 36C (Neglect of vulnerable person).
- (2) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

Part 3 Crimes (Sentencing) Act 2005

7 Sentencing—relevant considerations New section 33 (1) (gb)

insert

- (gb) if the victim of the offence was a vulnerable person—
- (i) whether the offender knew, or ought reasonably to have known—
 - (A) that the victim was a vulnerable person; or
 - (B) that the victim was a vulnerable person and the extent of the person’s vulnerability; and
 - (ii) the loss or harm to the vulnerable person;

8 Section 33 (5), new definition of *vulnerable person*

insert

vulnerable person means an adult who—

- (a) has a disability within the meaning of the *Disability Services Act 1991*; or
- (b) is at least 60 years old and—
 - (i) has a disorder, illness or disease that affects the person’s thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour; or

- (ii) has an impairment that—
 - (A) is intellectual, psychiatric, sensory or physical in nature; and
 - (B) results in a substantially reduced capacity of the person for communication, learning or mobility; or
- (iii) for any other reason is socially isolated or unable to participate in the life of the person's community.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 May 2020.

2 Notification

Notified under the [Legislation Act](#) on 20 August 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020, which was passed by the Legislative Assembly on 13 August 2020.

Clerk of the Legislative Assembly

© Australian Capital Territory 2020