

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Royal Commission Criminal Justice Legislation Amendment Bill 2019

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A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

6 (1) Section 14 commences on the day after this Act's notification day.

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

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

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

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

17 **3 Legislation amended**

18 This Act amends the following legislation:

- 19 • [Children and Young People Act 2008](#)
20 • [Crimes Act 1900](#)
21 • [Crimes \(Sentencing\) Act 2005](#)
22 • [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

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

- 1 (7) This section applies to information obtained on or after the
2 commencement of this section, including information about a sexual
3 offence that occurred before the commencement of this section.
- 4 (8) In this section:
- 5 *applied provisions*—see the [Criminal Code](#), section 10 (1).
- 6 *religious confession* means a confession made by a person to a
7 member of the clergy in the member’s professional capacity
8 according to the ritual of the member’s church or religious
9 denomination.
- 10 *sexual offence* means—
- 11 (a) an offence against—
- 12 (i) this part; or
- 13 (ii) any other provision prescribed by regulation; or
- 14 (b) an offence against a sexual offence provision of this Act
15 previously in force.
- 16 **66AB Making false report about child sexual offence**
- 17 (1) A person commits an offence if—
- 18 (a) the person gives information to a police officer about an alleged
19 sexual offence against a child; and
- 20 (b) the information is false or misleading in a material particular;
21 and
- 22 (c) the person knows that the information—
- 23 (i) is false or misleading in a material particular; or

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

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

- 5 (2) In this section:

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

7 **8 Sexual intercourse—people not to be presumed**
8 **incapable by reason of age**
9 **New section 68 (3)**

10 *insert*

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

13 **9 New section 441B**

14 *insert*

15 **441B Retrospective application of repealed alternative verdict**
16 **provision for carnal knowledge**

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

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

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

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

1 **10 New section 442A**

2 *insert*

3 **442A Review of operation of child sexual abuse reporting**
4 **offence**

- 5 (1) The Minister must review the operation of section 66AA (Failure to
6 report child sexual offence) as soon as practicable after it has been in
7 operation for 2 years.
- 8 (2) The Minister must present a report of the review to the Legislative
9 Assembly within 6 months after the day the review is started.
- 10 (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.

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

8 **17EAB Meaning of *reportable allegation*—div 2.2A**

- 9 (1) For this division, a *reportable allegation* is an express assertion that
- 10 reportable conduct has happened.
- 11 (2) However, if an express assertion that reportable conduct has
- 12 happened was made as a religious confession, the assertion is a
- 13 reportable allegation if, and only if, it relates to—
- 14 (a) sexual abuse against a child; or
- 15 (b) non-accidental physical injury to a child.
- 16 (3) A person who is or was a member of the clergy of a church or
- 17 religious denomination is not entitled to refuse to report a reportable
- 18 allegation because it contains information communicated to the
- 19 member during a religious confession.
- 20 (4) In this section:
- 21 *religious confession* means a confession made by a person to a
- 22 member of the clergy in the member's professional capacity
- 23 according to the ritual of the member's church or religious
- 24 denomination.

1 **17EAC Meaning of *employee*—div 2.2A**

2 (1) In this division:

3 *employee*, of a designated entity—

4 (a) means a person who is engaged—

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

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

9 **Examples**

- 10 • out-of-home carer
11 • volunteer

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

15 **Example**

16 subcontractor

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

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

24 (a) means—

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

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

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

6 **15 Expiry—pt 11**
7 **Section 53**

8 *omit*

9 31 March 2019

10 *substitute*

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

13 **16 Dictionary, definition of *employee***

14 *omit*

15 section 17D

16 *substitute*

17 section 17EAC

18 **17 Dictionary, definition of *head***

19 *omit*

20 section 17D

21 *substitute*

22 section 17EAA

- 1 **18 Dictionary, definition of *reportable allegation***
- 2 *omit*
- 3 section 17D
- 4 *substitute*
- 5 section 17EAB

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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