

2020

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020

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J2019-1491

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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(Attorney-General)

# **Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020**

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## **A Bill for**

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

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

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J2019-1491

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

6 (1) This Act (other than part 2) commences on the day after its  
7 notification day.

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

10 (2) Part 2 (Crimes Act 1900) commences 3 months after this Act's  
11 notification day.

12 **3 Legislation amended**

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

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1 **Part 2** **Crimes Act 1900**

2 **4** **Offences against Act—application of Criminal Code etc**  
3 **Section 7A, note 1**

4 *insert*

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

8 **5** **New sections 36A to 36C**

9 *insert*

10 **36A** **Abuse of vulnerable person**

11 (1) A person commits an offence if—

- 12 (a) the person is responsible for providing care to a vulnerable  
13 person; and
- 14 (b) the person engages in abusive conduct towards the vulnerable  
15 person; and
- 16 (c) the conduct results in—
  - 17 (i) harm to the vulnerable person; or
  - 18 (ii) a financial benefit for the person or someone else  
19 associated with the person; and

- 1 (d) the person is reckless about—
- 2 (i) if the vulnerable person suffers harm—causing the harm;
- 3 or
- 4 (ii) if the person or someone else associated with the person
- 5 obtains a financial benefit—obtaining the benefit.
- 6 Maximum penalty:
- 7 (a) if the person’s conduct results in harm, other than serious harm,
- 8 or a financial benefit—imprisonment for 3 years; or
- 9 (b) if the person’s conduct results in serious harm—imprisonment
- 10 for 5 years.
- 11 *Note* A law that creates an offence applies to a corporation as well as to an
- 12 individual (see [Legislation Act](#), s 161).
- 13 (2) Without limiting subsection (1) (a), a defendant is responsible for
- 14 providing care to a vulnerable person—
- 15 (a) if the defendant exercises control over any aspect of the care
- 16 needed by the vulnerable person; and
- 17 (b) regardless of whether the care of the vulnerable person is
- 18 short-term or long-term care.
- 19 (3) It is a defence to a prosecution for an offence against subsection (1)
- 20 if the defendant proves that—
- 21 (a) the defendant’s conduct was reasonable in all the circumstances;
- 22 or
- 23 (b) for a defendant who is associated with a relevant institution
- 24 providing care to the vulnerable person—
- 25 (i) the defendant’s conduct complied with—
- 26 (A) the relevant institution’s procedures and practices for
- 27 the care, supervision or control of the vulnerable
- 28 person; or

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

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

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

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

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

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

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

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

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

14 (5) In this section:

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

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

19 (b) that—

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

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

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

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

- 1 (D) deprive or restrict the vulnerable person's freedom of  
2 action; or
- 3 (E) frighten, humiliate, degrade or punish the vulnerable  
4 person; and
- 5 (ii) is not reasonably necessary for the safe and effective care  
6 of the vulnerable person, or for the safety of another person  
7 who is present or nearby.
- 8 ***harm*** means physical, psychological or financial detriment.
- 9 ***relevant institution*** means—
- 10 (a) an entity, other than an individual, that operates facilities for,  
11 engages in activities with, or provides services to, vulnerable  
12 people under the entity's care, supervision or control; or
- 13 (b) a group of entities mentioned in paragraph (a) if the entities—
- 14 (i) interact with each other, share similar characteristics and  
15 collectively have a sense of unity; or
- 16 (ii) are controlled, managed or governed by another entity.
- 17 **Examples—par (a)**  
18 religious organisations, hospitals, nursing homes, out-of-home carers
- 19 **Example—par (b)**  
20 a group of nursing homes controlled by a religious organisation or operated by a  
21 company
- 22 ***serious harm*** means any harm (including the cumulative effect of  
23 more than 1 harm) that—
- 24 (a) endangers, or is likely to endanger, human life; or
- 25 (b) is, or is likely to be, significant and longstanding.



- 1           ***vulnerable person*** means an adult who—
- 2           (a) has a disability within the meaning of the *Disability Services*
- 3           *Act 1991*; or
- 4           (b) is at least 60 years old and—
- 5                 (i) has a disorder, illness or disease that affects the person’s
- 6                 thought processes, perception of reality, emotions or
- 7                 judgement or otherwise results in disturbed behaviour; or
- 8                 (ii) has an impairment that—
- 9                         (A) is intellectual, psychiatric, sensory or physical in
- 10                        nature; and
- 11                        (B) results in a substantially reduced capacity of the
- 12                        person for communication, learning or mobility; or
- 13                 (iii) for any other reason is socially isolated or unable to
- 14                 participate in the life of the person’s community.

15   **36B       Failure to protect vulnerable person from criminal offence**

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

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

3 Maximum penalty: imprisonment for 5 years.

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

6 (2) In a prosecution for an offence against this section—

7 (a) it does not matter that an act or omission constituting the  
8 criminal offence happens, or is at risk of happening, outside the  
9 ACT if—

10 (i) the vulnerable person was in the ACT at any time the  
11 person in authority was aware that the risk mentioned in  
12 subsection (1) (b) existed; or

13 (ii) the person mentioned in subsection (1) (b) (i) or (ii) was a  
14 person associated with, or in authority in, a relevant  
15 institution in the ACT at any time the person in authority  
16 was aware that the risk existed; and

17 (b) it is not necessary to prove that a criminal offence has been  
18 committed.

19 (3) In this section:

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

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

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

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

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

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

1            *relevant institution*—see section 36A (5).

2            *serious offence* means—

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

6            *vulnerable person*—see section 36A (5).

7            **36C        Neglect of vulnerable person**

8            (1) A person commits an offence if—

- 9            (a) the person is responsible for providing care to a vulnerable  
10            person; and  
11            (b) the person recklessly or negligently fails to provide the  
12            vulnerable person with the necessities of life that are a necessary  
13            part of the care the person is responsible for providing to the  
14            vulnerable person; and  
15            (c) the person's failure causes serious harm to the vulnerable  
16            person.

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

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

21            (2) Without limiting subsection (1) (a), a defendant is responsible for  
22            providing care to a vulnerable person—

- 23            (a) if the defendant exercises control over any aspect of the care  
24            needed by the vulnerable person; and  
25            (b) regardless of whether the care of the vulnerable person is  
26            short-term or long-term care.

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

- 1 (5) In this section:  
2 *necessities of life* includes adequate food, clothing, shelter, hygiene  
3 and health care.  
4 *relevant institution*—see section 36A (5).  
5 *serious harm*—see section 36A (5).  
6 *vulnerable person*—see section 36A (5).

7 **6 New section 442C**

8 *insert*

9 **442C Review of operation of offences of abuse of vulnerable**  
10 **people**

- 11 (1) The Minister must review the operation of the following provisions  
12 no later than 2 years after the day they commence:  
13 (a) section 36A (Abuse of vulnerable person);  
14 (b) section 36B (Failure to protect vulnerable person from criminal  
15 offence);  
16 (c) section 36C (Neglect of vulnerable person).  
17 (2) The Minister must present a report of the review to the Legislative  
18 Assembly within 12 months after the day the review is started.  
19 (3) This section expires 3 years after the day it commences.

1 **Part 3** **Crimes (Sentencing) Act 2005**

2 **7 Sentencing—relevant considerations**

3 **New section 33 (1) (gb)**

4 *insert*

5 (gb) if the victim of the offence was a vulnerable person—

6 (i) whether the offender knew, or ought reasonably to have  
7 known—

8 (A) that the victim was a vulnerable person; or

9 (B) that the victim was a vulnerable person and the extent  
10 of the person’s vulnerability; and

11 (ii) the loss or harm to the vulnerable person;

12 **8 Section 33 (5), new definition of *vulnerable person***

13 *insert*

14 ***vulnerable person*** means an adult who—

15 (a) has a disability within the meaning of the *Disability Services*  
16 *Act 1991*; or

17 (b) is at least 60 years old and—

18 (i) has a disorder, illness or disease that affects the person’s  
19 thought processes, perception of reality, emotions or  
20 judgement or otherwise results in disturbed behaviour; or

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

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

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

**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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