

# “FAILURE TO PROTECT” LAWS

## WHAT’S THE ISSUE?

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that all jurisdictions introduce a targeted offence of failure to protect a child against institutional child sexual abuse.<sup>1</sup> This recommendation from the Royal Commission is aimed at improving the prevention of child sexual abuse.

Current reporting requirements, like mandatory reporting and Reportable Conduct, are reactive in that they require an action after instances of child sexual abuse have occurred, but do not require any action to prevent them from occurring.

The Royal Commission noted that “[i]t is not and should not be thought to be sufficient to wait until abuse occurs and then inform the police”.<sup>2</sup> The Royal Commission says a new criminal offence should be created to emphasise the responsibility of individuals within an institution to act to protect children from known risks.

## WHAT’S THE CURRENT LAW IN THE ACT?

Currently, there is no ‘failure to protect’ offence under the ACT criminal law.

## WHAT’S THE POSITION IN OTHER JURISDICTIONS?

Victoria has an offence that covers the failure to protect a child from the risk of sexual abuse. The Royal Commission has endorsed the Victorian offence as a useful precedent for other jurisdictions like the ACT.

The Victorian law says a person has committed an offence:

- if they work for, or with, a relevant organisation;
- if there is substantial risk that any relevant child under the age of 16 will become a victim of a sexual offence committed by an adult also associated with the organisation;
- if the person knows the risk exists and has the power or responsibility within that organisation to reduce or remove that risk; and
- if they fail to do so.

## WHAT THE ROYAL COMMISSION RECOMMENDS

The Royal Commission recommended that all jurisdictions introduce a targeted offence of failure to protect a child against institutional child sexual abuse.<sup>3</sup>

## WHAT THE ACT GOVERNMENT NEEDS TO CONSIDER

Should there be a criminal offence for failing to protect a child?

Is the Victorian legislation the correct model for an offence of failure to protect?

<sup>1</sup> Recommendation 36, Royal Commission, *Criminal Justice Report*.

<sup>2</sup> Royal Commission, *Criminal Justice Report, Parts III – VI (2017)* 246.

<sup>3</sup> Recommendation 36, Royal Commission, *Criminal Justice Report*.

## SEND US YOUR FEEDBACK

Help the ACT Government consider the questions above by sending your feedback to:

▷ Email: [JACSLPP@act.gov.au](mailto:JACSLPP@act.gov.au) (with the subject “**Criminal justice reform**”)

▷ Post:

**Child sexual abuse reform options – Submissions**

Legislation, Policy & Programs

Justice and Community Safety Directorate

ACT Government

GPO Box 158

Canberra ACT 2601

Submissions must be received by close of business on **27 April 2018**. All submissions and comments will be treated as public, and may be published, unless the author indicates that it is to be treated as confidential. All requests for the submission to be treated confidentially will be respected and dealt with in accordance with any applicable laws, including freedom of information legislation.



**Justice and Community  
Safety Directorate**

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