

# “FAILURE TO REPORT” LAWS

## WHAT’S THE ISSUE?

The Royal Commission into Institutional Responses to Child Sexual Abuse found that adults who become aware of sexual abuse involving a child do not always report it to police, nor do they always take steps to protect the child from abuse.<sup>1</sup>

The Royal Commission also revealed systemic practices of hiding child sexual abuse within institutions.<sup>2</sup>

Failing to report, or concealing child sexual abuse, has left vulnerable victims without protection. In some cases that behaviour has allowed the offender to commit further offences against other children.<sup>3</sup>

## WHAT’S THE CURRENT LAW IN THE ACT?

There is no blanket legislation that requires all people in the ACT to report child sexual abuse if they become aware of it, and there is no criminal penalty for all people who fail to report.

Some sectors of the community are subject to mandatory reporting laws, which require professionals like teachers, doctors and police to report child sexual abuse allegations to child protection agencies. The ACT’s mandatory reporting laws carries a maximum penalty of six months’ imprisonment<sup>4</sup> for failing to report.

The ACT also has a Reportable Conduct Scheme, which places an obligation on employers in workplaces dealing with children to report certain types of misconduct, including sexual misconduct involving a child, to the ACT Ombudsman. The Reportable Conduct Scheme will include religious institutions by 1 July 2018.<sup>5</sup>

Investigations, via the Reportable Conduct Scheme or mandatory reporting, may lead to police involvement but neither requires that allegations be reported directly to police.

A new criminal offence could compel reporting to the police<sup>6</sup>, to put a clear ‘focus on catching, prosecuting and convicting offenders’.<sup>7</sup>

## WHAT’S THE POSITION IN OTHER JURISDICTIONS?

Both NSW and Victoria have offences that apply to people who fail to report child sexual abuse. However, the Royal Commission has recommended that such offences should apply only to institutions, not to all people, saying this will ‘assist to overcome any conflict between the institutional representative’s duty to report and their interest in seeking to protect the reputation of the institution’.<sup>8</sup>

1 Commonwealth, Royal Commission, *Criminal Justice Report Parts III – VI* (2017) 133.

2 Commonwealth, Royal Commission, *Criminal Justice Report Parts III – VI* (2017) 146.

3 Commonwealth, Royal Commission, *Criminal Justice Report Parts III – VI* (2017) 133.

4 *Children and Young People Act 2008 (ACT)* s 356.

5 *Reportable Conduct Scheme Discussion Paper: Extending the Scope of the Scheme in the ACT to help organisations become more child safe and child friendly*, Chief Minister, Treasury and Economic Development Directorate <http://www.cmd.act.gov.au/policystrategic/reportable-conduct-scheme>

6 Royal Commission, *Criminal Justice Report, Parts III – VI* (2017) 176.

7 *Ibid* 176, quoting Victorian Parliament, *Family and Community Development Committee, Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations* (2013, vol 2) 486.

8 Royal Commission, *Criminal Justice Report, Parts III – VI* (2017) 210.

## WHAT THE ROYAL COMMISSION RECOMMENDS

The Royal Commission has recommended that all jurisdictions introduce a targeted offence for failing to report institutional child sexual abuse, which would apply only to adults working as part of an institution that provides services to children.<sup>9</sup>

## WHAT THE ACT GOVERNMENT NEEDS TO CONSIDER

Should the ACT create a new criminal offence for failing to report suspected child sexual abuse?

Should laws criminalising failure to report be targeted at people working in institutions?

Should there be any exceptions to a new criminal offence for failure to 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

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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.

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<sup>9</sup> Recommendation 33, Royal Commission, Criminal Justice Report.



**Justice and Community  
Safety Directorate**

**March 2018**