

ALL ADULTS MUST REPORT CHILD SEXUAL ABUSE

FACTSHEET

New offence

From **1 September 2019** adults who reasonably believe that a sexual offence has been committed against a child, must make a report to police. Failure to make a report is an offence. The new offence has been introduced in response to recommendations made by the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

Who has to make a report?

Anyone over 18 years old who reasonably believes a sexual offence has been committed against a child.

What is a 'reasonable belief'?

You have a reasonable belief if you think it is likely a sexual offence has been committed against a child, and you think that if you gave someone else the information you have, they might think it is likely too.

It might be helpful to talk through the information with someone else, such as a manager or a trusted friend, to help identify whether your belief is reasonable.

What do I have to report?

You must report information you have about sexual offences committed against anyone who was under 18 at the time the offence was committed.

What is a sexual offence?

There are a range of sexual offences in the ACT. Some of the most common ones include:

- > having sexual intercourse with a person under the age of 16
- > grooming a person under 16
- > being an adult who has 'special care' for a person who is under 18 (e.g. as a teacher, employer, foster parent, etc) and having sexual intercourse with that person
- > certain family members having sexual intercourse with other family members
- > committing an act of indecency on or in the presence of a child or young person
- > using children to produce child pornography
- > maintaining a sexual relationship with a person under 16, or a person under 18 where there is a 'special care' relationship.

What if I suspect an offence might be committed in the future?

Under the Failure to Report offence, it is only an offence if you fail to report abuse you reasonably believe has already happened, not something that you think may happen in the future.

However, some people may have obligations under other laws or reporting schemes to make reports of a risk of future abuse to the police. For example, if you work in an organisation you should consider

1 See section 66A of the Crimes Act 1900, which applies to persons in authority in educational and other institutions. The legislation can be accessed at the following link: <https://www.legislation.act.gov.au/a/1900-40/>

2 To find out if you are a mandated reporter and what your obligations are, visit the following link: <https://www.communityservices.act.gov.au/ocyfs/keeping-children-and-young-people-safe>

3 To find out if you have obligations under the reportable conduct scheme and what those obligations are, visit the following link: <https://www.communityservices.act.gov.au/ocyfs/keeping-children-and-young-people-safe>

whether you have obligations under the Failure to protect offence,¹ Mandatory Reporting² or the Reportable Conduct Scheme.³

What if the abuse happened a long time ago?

If you obtain information after 1 September 2019, and the information leads you to reasonably believe a sexual offence has been committed against a child or young person, you must make a report.

If you received the information *before* 1 September 2019, you do not have to make a report under the new offence.

However, you may need to report it under other reporting obligations, such as the Reportable Conduct Scheme or mandatory reporting laws. Even if you have no legal obligation to report the information, you can still choose to report it to the police.

What should I do if I have to make a report?

If there is an immediate risk of harm, call 000. Otherwise, call ACT Policing on 131 444.

Are there any exceptions?

You **do not** have to make a report if:

- > you obtained the information after the victim became an adult and you believe he or she does not want a police officer to be told
- > you believe a police officer already has the information
- > you believe that giving the information to a police officer would endanger somebody's safety (other than the safety of the alleged abuser)
- > you are a mandated reporter and you have already reported the information to Child and Youth Protection Services (CYPS)
- > you are aware that a legal privilege applies (noting that no privilege applies for religious confessions)
- > you know that the information is generally available in the public domain

- > you have another reasonable excuse.

What if I'm already a mandated reporter?

If you are a mandated reporter, and you have made a mandatory report about child sexual abuse to CYPS, you **do not** have to report the same information to police under the Failure to Report offence. CYPS will pass relevant information onto the police.

However, you should be aware that if the information is not subject to a mandatory report, or is obtained outside the course of your employment, you will need to make a report to the police under the new legislation.

To find out if you are a mandated reporter and what your obligations are as a mandated reporter, visit the following link:

- > <https://www.communityservices.act.gov.au/oc-yfs/keeping-children-and-young-people-safe>

What if my organisation has obligations under the Reportable Conduct Scheme?

If your organisation has made a report to the ACT Ombudsman under the Reportable Conduct Scheme about a possible sexual offence, you should also make a separate report to the police.

To find out if your organisation has obligations under the Reportable Conduct Scheme and what those obligations are, visit the following link:

- > <http://ombudsman.act.gov.au/reportable-conduct-scheme>

Why are these laws needed?

These laws were introduced following the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission recommended that states and territories adopt a failure to report offence.

The Royal Commission said it's important that adults proactively report child sexual abuse because:

- > It's difficult for victims to disclose or report the abuse at the time, or even soon after it has occurred. If people other than the victim do not report, the abuse—and the perpetrator—may go undetected for years
- > Children are likely to have less ability to report the abuse or take steps to protect themselves, leaving them particularly in need of the active assistance and protection of adults
- > Those who commit child sexual abuse offences may have multiple victims and may offend against particular victims over lengthy periods of time. A failure to report may leave the particular child exposed to repeated abuse, and may expose other children to abuse
- > Failing to report abuse can have a negative impact on the victim for the duration of their life.