



ACT HUMAN RIGHTS COMMISSION

Australian Capital Territory



Mrs Giulia Jones MLA
Chair, Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
[By email: Giulia.Jones@parliament.act.gov.au]

CC: Mr Andrew Snedden, Committee Secretary
[By email: scrutiny@parliament.act.gov.au]

11 May 2020

Dear Mrs Jones

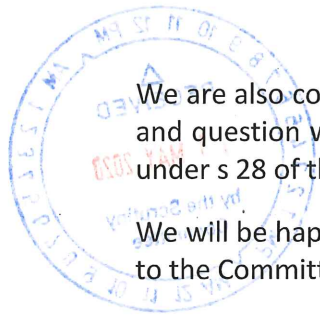
Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020

We are writing to contribute to the Committee's examination of the Crimes (Offences Against Vulnerable People) Legislation Amendment Bill 2020, as introduced in the ACT Legislative Assembly on 7 May 2020. As you know, the bill will introduce new offences and a new sentencing consideration relating to abuse and neglect of vulnerable people in the ACT.

The Commission appreciates and supports the underlying intent in proposing discrete offences of elder abuse – that being, to raise awareness of and deter criminal conduct against older people occurring within a relationship of trust. However, as drafted, we are concerned that the proposed offences in s 36A and s 36C may give rise to issues of incompatibility with the right to be presumed innocent in s 22(1) of the *Human Rights Act 2004* (HR Act).

In particular, we are concerned that the defences set out in s 36A(3) and s 36C(3) of the bill place a reverse legal burden on defendants that, in some circumstances, may not be possible to discharge. Although some of these matters may, as the explanatory statement asserts, be 'peculiarly within the defendant's knowledge', compatibility will still depend on it being shown that the defendant's right to a defence is retained (e.g. defences relate to matters defendants are able to prove). For example, even if it were 'peculiarly within the defendant's knowledge' that the relevant conduct was 'at the direction of a person in authority at the institution', it is not clear that a defendant would in fact be in a position to prove those matters to a legal standard. These human rights concerns are exacerbated by their potential penalty of imprisonment of up to five years.

In our view, the bill's explanatory statement does not adequately explain why an evidential burden of proof, akin to that under s 44 of the *Crimes Act 1900* (NSW) (offence for failing to provide the necessities of life), is not a reasonably available less restrictive alternative for these comparable offences. We note that claims of greater convenience or ease for the prosecution in proving a case are generally insufficient, in and of themselves, to justify a limitation on the defendant's right to be presumed innocent.



We are also concerned by the breadth of the conduct that the offence in s 36A is likely to capture, and question whether, as currently drafted, it meets the requirements of the 'quality of law' test under s 28 of the HR Act.

We will be happy to provide further information about these matters, should that be of assistance to the Committee.

Yours sincerely

Jodie Griffiths-Cook
A/g President and Human Rights Commissioner