

# Commonwealth Model Law on Protection of Vulnerable Persons Against Abuse by Persons in Positions of Trust



The Commonwealth

Office of Civil and  
Criminal Justice Reform

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# Commonwealth Model Law on Protection of Vulnerable Persons Against Abuse by Persons in Positions of Trust



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# Introduction

In several Commonwealth countries, there are gaps in the scope of legislation relating to sexual activity between minors, other vulnerable persons, and persons in positions of trust, responsibility or authority. In others, only minors are protected by law and not all under 18-year-olds where the age of consent is lower than 18 years.

In 2020, Commonwealth sports ministers, through the 'Commonwealth Consensus Statement on Promoting Human Rights in and through Sport',<sup>1</sup> resolved to invest in the effective implementation of human rights standards in and through sport, by developing governmental/non-governmental partnerships and using multi-stakeholder platforms to identify and promote measures to prevent and respond to human rights violations in sport.

This Model Law provides a model for legal protections for vulnerable persons against abuse by persons in positions of trust. The Model Law is intended as a working document that requires careful adaptation to the specific needs and circumstances of each Commonwealth country concerned. It is not designed to displace any legislative arrangements already in existence in any country, nor is it intended to replace other models for encouraging ethical behaviour that may also be available and applicable.

The Model Law represents a possible approach to handling the issue of abuse of positions of trust, responsibility or authority. It will be for each Commonwealth country to consider the merits of this model alongside other possible approaches and to reach an informed decision on which approach best meets its needs.

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1 The Commonwealth, 'The Commonwealth Consensus Statement on Promoting Rights in and through Sport', available at: <https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/inline/CW%20Consensus%20Statement-ADOPTED%20v2.pdf>

# Background

In a number of countries around the world, it is currently illegal for certain groups of professionals such as teachers, care workers and youth justice staff, to be involved in sexual activity with a child under the age of 18 years under their supervision, even if that child has reached an age where they are able to legally consent to sexual activity. This is generally referred to as an 'abuse of a position of trust'.

In 2019, UNICEF UK engaged DLA Piper UK LLP, an international law firm, to prepare a research report and draft principles for Model Legislative Provisions on Abuse of Positions of Trust. The research was initially designed to explore the degree to which existing legislation extended to people within relevant roles in sport, for example, a coach or official in a sports club.

Following the initial research, a working group comprising representatives from the Commonwealth Secretariat's Rule of Law and Sport for Development and Peace teams, UNICEF UK, DLA Piper UK LLP and an independent consultant, identified a need in many Commonwealth countries to improve legal protections against abuse of positions of trust more generally.

In January 2022, the Commonwealth Secretariat convened an Expert Working Group (EWG) comprising senior officials from law and sports ministries. The members were invited to seek feedback from education and social welfare and other relevant ministries within their countries. The EWG members were invited from Commonwealth countries in order to represent a range of levels of development in existing legislation on initial draft legislative principles on abuse of positions of trust.

The EWG reviewed the draft principles for Model Legislative Provisions on Abuse of Positions of Trust in agreement with their local context. The draft principles were tabled for information at both the Commonwealth Sports and Law Ministers Meetings in July and November 2022 respectively.

The EWG members concluded that model legislative provisions would assist those Commonwealth countries considering developing or amending legislation in this difficult area. Feedback on the initial draft principles was received from the Expert Working Group and draft legislative provisions were prepared. The legislative provisions were subjected to further scrutiny by the EWG members. The result is this Model Law, which was adopted by Commonwealth ministers on 27 July 2022.

## Arrangement of sections

### Section

1. Short title
2. Object
3. Definitions
4. Offences involving abuse of positions of trust
5. Defence
6. Aggravating factors
7. Obligation to report commission of offence involving abuse of position of trust
8. Orders for restorative justice measures

# Commonwealth Model Law on Protection of Vulnerable Persons Against Abuse by Persons in Positions of Trust Bill

An Act to Provide for the Protection of Vulnerable Persons against Abuse by Persons in Positions of Trust.

## 1. Short title

This Act may be cited as the 'Protection of Vulnerable Persons against Abuse by Persons in Positions of Trust Act'.

## 2. Object

The object of this Act is to address abuse by persons in positions of trust and to protect vulnerable persons against such abuse.

## 3. Definitions

In this Act, unless the contrary intention appears:

'a person in a position of trust' means a person who exercises authority, control or influence over a vulnerable person, or a person on whom a vulnerable person is dependent, and includes but is not limited to:

- a. a parent;
- b. a guardian or an authorised carer;
- c. a coach or trainer;
- d. a care professional;
- e. a teacher, tutor or educator;
- f. a religious or spiritual leader;
- g. a manager or supervisor in an employment relationship;
- h. a custodian;
- i. a health professional;
- j. law enforcement personnel;
- k. prison personnel;
- l. military personnel;

- m. a professional adviser; or
- n. a youth worker;

'restorative justice measure' includes, but is not limited to, victim assistance, peacemaking, healing discussions or victim–offender mediation;

'sexual activity' means any activity that a reasonable person in the circumstances would regard as sexual in nature and includes rape, defilement, assault by penetration, sexual assault, and indecent assault;

'vulnerable person' means a person:

- (a) who is under 18 years; or
- (b) who has characteristics of vulnerability, whether physical or mental.

## 4. Offences involving abuse of positions of trust

- (1) A person in a position of trust commits an offence involving a position of trust if they wilfully:
  - (a) engage in a sexual activity with, or in the presence of, a vulnerable person in their care or under their control or authority or influence, or who is dependent on them;
  - (b) cause, encourage or incite a vulnerable person in their care or under their control or authority or influence, or who is dependent on them, to engage in a sexual activity with them or with a third person;
  - (c) cause a vulnerable person in their care or under their control or authority or influence, or who is dependent on them, to watch a sexual act; or
  - (d) arrange for or facilitate the commission of any of the offences specified in paragraph (a), (b) or (c).
- (2) A person who is not in a position of trust commits an offence involving a position of trust if they wilfully aid, cause or incite a person in a position of trust to commit any of the offences specified under subsection (1)(a), (1)(b) or (1)(c).
- (3) A person who is convicted of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding .....years.
- (4) A person who is convicted of an offence under subsection (2) is liable on conviction to imprisonment for a term not exceeding .....years.

## 5. Defence

It is a defence to a prosecution for an offence under section 4 if the accused person proves that they believed on reasonable grounds that the victim was not a vulnerable person.

## 6. Aggravating factors

It will be an aggravating factor where the vulnerable person has additional characteristics that cause them to be more vulnerable, or the offence is accompanied by duress towards the vulnerable person.

## **7. Obligation to report commission of offence involving abuse of position of trust**

- (1) A person who has knowledge that an offence involving abuse of a position of trust has been committed against a vulnerable person in that person's care, control or authority, or who is dependent on that person, must report such knowledge immediately to a police officer.
- (2) A person who fails to report the knowledge referred to in subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding .....years.

## **8. Orders for restorative justice measures**

A court may, in addition to imposing any penalty on a person convicted of an offence under this Act, make an order for a restorative justice measure as it may deem fit in the circumstances of the case.



# Commentary

## Section 1. Short title: 'Protection of Vulnerable Persons Against Abuse by Persons in Positions of Trust Bill'

1. Each jurisdiction may choose to name the law differently.
2. Alternatively, a country may, instead of drafting a stand-alone law on protection of vulnerable persons against abuse by persons in positions of trust, choose to incorporate the provisions of this Model Law in existing criminal laws such as the Criminal Code, Penal Code or Sexual Offences legislation.

## Section 3. Definitions

### Definition of position of trust

3. The definition covers both exercise of authority, control or influence over the vulnerable person by the holder of the position, as well as dependence by the vulnerable person on the holder of the position of trust. It also underscores the fact that there must be a relationship between the holder of the position and the vulnerable person.
4. The list of possible positions of trust is not intended to be exhaustive, hence the use of the word 'includes'. It is intended to show examples of positions of trust. Each jurisdiction may add to, or remove, from the list.

### Definition of sexual activity

5. By using the term 'includes', this definition allows for flexibility to include other forms of sexual activity. Each jurisdiction may add to, or remove, from the list or name the types of sexual activity differently.

### Definition of vulnerable person

6. The Model Law proposes protection for both persons under 18 years of age, as well as persons with vulnerabilities other than young age. This is a common position seen in the legislation of a number of Commonwealth jurisdictions.
7. A jurisdiction may choose to protect only persons under 18 years in its legislation, but the model should offer to protect a wider range of vulnerabilities.

## Section 4. Offences involving abuse of position of trust

8. This section creates a wide array of the specific offences that may be committed by a person in a position of trust, and include both the prohibited acts or conduct (*actus reus*) and the individual's mental state at the time of the act (*mens rea*).
9. Under section 4(2), a person who is not in a position of trust may commit an offence involving abuse of a position of trust.

10. Every section creating an offence must state a penalty. Each jurisdiction may provide in its law the appropriate penalty. Separate penalties will apply for offences committed by a person in a position of trust and for a person who is not in a position of trust. It cannot be one penalty provision to cover both because the degree of severity must be considered.

## Section 5. Defence

11. The provision is drafted to impose a burden on the accused person to prove that he or she believed on reasonable grounds that the complainant/victim was not a vulnerable person within the definition of this Act.

## Section 7. Obligation to report commission of offence involving abuse of position of trust

12. The Model Law creates an offence for failure to report an offence involving abuse of a position of trust. This section is proposed as an optional provision. This provision appears in legislations of some Commonwealth jurisdictions, and not in others.

## Section 8. Orders for restorative justice measures

13. 'Restorative justice' refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of the conflict.





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