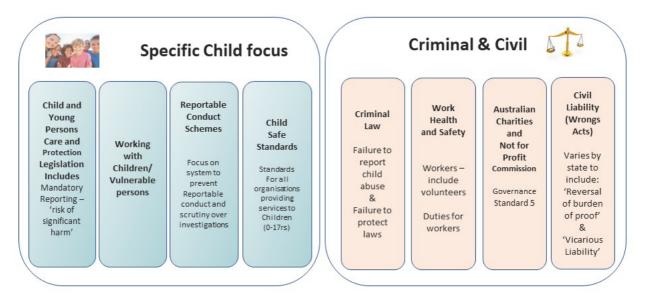
# Overview of Australian Legislation and Government Agencies Relevant to Child Safety

June 2023

Relevant Australian government agencies, legislation and state government websites, 29 June 2023.

- > The list is not exhaustive, but rather highlights the main legislation by state and territory.
- ➤ As these laws are amended regularly, the current official version of legislation should be checked. <a href="https://legify.com.au">https://legify.com.au</a>
- For child protection legislation see the Commonwealth Government's Australian Institute of Family Studies. https://aifs.gov.au/cfca/publications/australian-child-protection-legislation



#### In general, venues need to be aware of, and comply with:

- Duty of Care (civil litigation claims of negligence, WHS & ACNC governance standards)
- Response to Complaints processes that uphold principles of natural justice (also known as procedural fairness)

### More specifically venues need to be aware of, and comply with:

- Criminal Codes (including state-based crimes of failure to report and failure to protect in jurisdictions where these criminal offences apply – see state and territory lists below)
- Work Health & Safety and/or other occupational safety legislation
- Civil Law (Wrongs) Acts or equivalent
- Child Safe Legislation (June 2023 NSW 10 Child Safe Standards and Victoria 11 Child Safe Standards)
- Child Protection Legislation (including Care and Protection laws, Working with Children Check laws, Reportable Conduct Schemes)
- Australian Standards (e.g. building)
- Australian Charities and Not For Profits Commission
- Copyright and music playing licences such as APRA, CCLI, CAL licences
- Local government food preparation and storage guidelines

## Commonwealth

- National Office for Child Safety https://www.childsafety.gov.au/
- eSafety Commission https://www.esafety.gov.au
- Human Rights Commission National Principles for Child Safe Organisations https://childsafe.humanrights.gov.au/national-principles/download-national-principles
  - Australian Human Rights Commission Act 1986 <a href="https://www.humanrights.gov.au/our-work/commission-general/publications/know-your-rights-about-us">https://www.humanrights.gov.au/our-work/commission-general/publications/know-your-rights-about-us</a>
- Privacy Act 1988 https://www.legislation.gov.au//Details/C2022C00361
- Privacy Regulation 2013 <a href="https://www.legislation.gov.au//Details/F2022C00068">https://www.legislation.gov.au//Details/F2022C00068</a>
- ➤ Disability Discrimination Act 1992
  <a href="https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-discrimination-act-25th-anniversary-easy-read">https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-discrimination-act-25th-anniversary-easy-read</a>
- Workplace Gender Equality Act 2012 https://www.dss.gov.au/sites/default/files/documents/11 2012/factsheet amended 201112.pdf
- Racial Discrimination Act 1975
  <a href="https://www.humanrights.gov.au/our-work/employers/racial-discrimination/publications/fact-sheet-racism-it-stops-me-community-service">https://www.humanrights.gov.au/our-work/employers/racial-discrimination/publications/fact-sheet-racism-it-stops-me-community-service</a>
- Family Law Act 1975 <a href="https://www.afp.gov.au/what-we-do/crime-types/family-law-kit">https://www.afp.gov.au/what-we-do/crime-types/family-law-kit</a>
- Sex Discrimination Act 1984 <a href="https://humanrights.gov.au/our-work/sex-discrimination/publications/guidelines-special-measures-under-sex-discrimination-act">https://humanrights.gov.au/our-work/sex-discrimination/publications/guidelines-special-measures-under-sex-discrimination-act</a>
- The federal government has also ratified the United Nations Convention on the Rights of the Child (1989) [Ratified by Australian Parliament, 17 December 1990]
  <a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx</a>
- > Australian Charities and Not-for-profits Commission (ACNC) Governance Standard 5: Duties of Responsible Persons
  - 1. Act with reasonable care and diligence
  - 2. Act honestly in the best interests of the charity and for its purposes.
  - 3. Not misuse the position of responsible person
  - 4. Not to misuse information obtained in performing duties
  - 5. Disclose any actual or perceived conflict of interest
  - 6. Ensure that the charity's financial affairs are managed responsibly
  - 7. Not allow a charity to operate while insolvent

https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards

# **Australian Capital Territory**

Community Services – Children and Families https://www.communityservices.act.gov.au/children-and-families

## Responsible for:

Children and Young People Act 2008

What to report s.354

Who are mandatory reporters? s.356

https://www.legislation.act.gov.au/View/a/2008-19/current/PDF/2008-19.PDF

https://www.communityservices.act.gov.au/ocyfs/children/child-and-youth-protection-services/report-child-abuse-and-neglect

https://www.communityservices.act.gov.au/children-and-families/resources/Children-and-Young-People-Lens-of-ACT-Wellbeing-Framework

Access Canberra – WWVP

https://www.accesscanberra.act.gov.au/s/article/working-with-vulnerable-people-wwvp-registration-tab-overview

➤ Working with Vulnerable People (Background Checking) Act 2011

https://www.accesscanberra.act.gov.au/app/answers/detail/a id/1804/~/working-with-vulnerable-people-%28wwvp%29-registration

ACT Ombudsman – Reportable Conduct Scheme <a href="https://www.ombudsman.act.gov.au/archive/reportable-conduct-scheme">https://www.ombudsman.act.gov.au/archive/reportable-conduct-scheme</a>

Crimes Act 1900

http://classic.austlii.edu.au/au/legis/act/consol\_act/ca190082/

#### Including:

Criminal Offence - Failure to Report Child Sexual Offences (Crimes ACT 1900 Section 66AA) http://www5.austlii.edu.au/au/legis/act/consol\_act/ca190082/s66aa.html

Criminal Offence - Failure of Person in Authority to Protect Children Risk of Sexual Offence (Crimes ACT 1900 Section 66A)

http://classic.austlii.edu.au/au/legis/act/consol act/ca190082/s66a.html

Civil Law (Wrongs) Act 2002 (including Institutional Child Abuse Chapter 8A) https://www.legislation.act.gov.au/a/2002-40

> ACT Human Rights Act 2004

http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/act/consol\_act/hra2004148/

Work Health and Safety Act 2011 https://www.legislation.act.gov.au/a/2011-35/

## **New South Wales**

Department of Communities and Justice https://www.dcj.nsw.gov.au/children-and-families.html

### Responsible for:

- Children and Young Persons (Care and Protection) Act 1998 (NSW) What to report s.23
  Who are mandatory reporters? s.27
  https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-157
- Children and Young Persons (Care and Protection) Regulation 2022 Application of Mandatory Reporting Requirements s.7 https://legislation.nsw.gov.au/view/html/inforce/current/sl-2022-0479#statusinformation
- Office of the Children's Guardian (OCG) https://ocg.nsw.gov.au/

## Responsible for:

Working with Children Check

Child Protection (Working with Children) Act 2012 <a href="https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-051">https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-051</a> Child Protection (Working with Children) Regulation 2013 <a href="https://legislation.nsw.gov.au/view/html/inforce/current/sl-2013-0156">https://legislation.nsw.gov.au/view/html/inforce/current/sl-2013-0156</a>

- Reportable Conduct Scheme (Children's Guardian Act 2019 Part 4) https://legislation.nsw.gov.au/view/html/inforce/current/act-2019-025#pt.4
- Child Safe Standards (Children's Guardian Act 2019 Part 3A) https://legislation.nsw.gov.au/view/html/inforce/current/act-2019-025#pt.3A
- Criminal Offences (Crimes Act 1900) https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040

#### Including:

- Concealing serious indictable offence (S.316) https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#sec.316
- Failure to report child abuse offence (S.316A) <a href="https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#sec.316A">https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#sec.316A</a>
- Failure to protect offence (S.43B) <a href="https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#sec.43B">https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#sec.43B</a>
- Procurement and Grooming (S.66Eb & S.66EC)
  <a href="https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#pt.3-div.10-sdiv.9">https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#pt.3-div.10-sdiv.9</a>
- Civil Liability Act 2002 (Part 1B Child Abuse liability of organisations) https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-022#pt.1B

Work Health and Safety Act 2011 https://legislation.nsw.gov.au/view/html/inforce/current/act-2011-010

## **Victoria**

Department of Families, Fairness and Housing https://www.dffh.vic.gov.au/ Responsible for:

- Children and Youth and Families Act 2005 <a href="https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/133">https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/133</a>
- Working with Children Check Victoria <a href="https://www.workingwithchildren.vic.gov.au/">https://www.workingwithchildren.vic.gov.au/</a>
  Responsible for:
  - Working with Children Check

Worker Screening Act 2020 <a href="https://www.legislation.vic.gov.au/in-force/acts/worker-screening-act-2020/004">https://www.legislation.vic.gov.au/in-force/acts/worker-screening-act-2020/004</a>
Worker Screening Regulations 2021 <a href="https://www.legislation.vic.gov.au/in-force/statutory-rules/worker-screening-regulations-2021/001">https://www.legislation.vic.gov.au/in-force/statutory-rules/worker-screening-regulations-2021/001</a>

- Commission for Children and Young People Responsible for:
  - Reportable Conduct Scheme (Child Safety and Wellbeing Act 2005 Part 5A)
    <a href="https://content.legislation.vic.gov.au/sites/default/files/2022-12/05-83aa038-authorised.pdf">https://content.legislation.vic.gov.au/sites/default/files/2022-12/05-83aa038-authorised.pdf</a>
  - Child Safe Standards (Child Safety and Wellbeing Act 2005 Part 6) https://content.legislation.vic.gov.au/sites/default/files/2022-12/05-83aa038-authorised.pdf
- Criminal Offences (Crimes Act 1958) https://www.legislation.vic.gov.au/in-force/acts/crimes-act-1958/296
  - > Failure to disclose sexual offence committed against child under the age of 16 years (S.327)
  - Failure by a person in authority to protect a child from a sexual offence (S.490)
  - > Grooming for sexual conduct with a child under the age of 16 (S.49M)
- Civil Liability in relation to child abuse
  - Wrongs Act 1958 (Part XIII Organisational liability for child abuse) https://content.legislation.vic.gov.au/sites/default/files/2020-04/58-6420aa127%20authorised.pdf
  - Legal Identity of Defendants (Organisational Child Abuse) Act 2018 https://content.legislation.vic.gov.au/sites/default/files/2020-04/18-18aa002%20authorised.pdf
- Occupational Health and Safety Act 2004 <a href="https://www.legislation.vic.gov.au/in-force/acts/occupational-health-and-safety-act-2004/043">https://www.legislation.vic.gov.au/in-force/acts/occupational-health-and-safety-act-2004/043</a>
- Change or Suppression (Conversion) Practices Prohibition Act 2021 <a href="https://content.legislation.vic.gov.au/sites/default/files/2023-02/21-3aa002-authorised.pdf">https://content.legislation.vic.gov.au/sites/default/files/2023-02/21-3aa002-authorised.pdf</a>
- Equal Opportunity Act 2010 https://content.legislation.vic.gov.au/sites/default/files/2022-12/10-16aa030%20authorised.pdf

# **Northern Territory**

NT Government Community support and care https://nt.gov.au/community

Care and Protection of Children Act 2007 What to report s.14, s.15 & s.20 Who are mandatory reporters? s.26 <a href="https://legislation.nt.gov.au/Legislation/CARE-AND-PROTECTION-OF-CHILDREN-ACT-2007">https://legislation.nt.gov.au/Legislation/CARE-AND-PROTECTION-OF-CHILDREN-ACT-2007</a>

> NT Government Child Safety

https://nt.gov.au/emergency/child-safety

Working With Children Check (Ochre Card)

https://nt.gov.au/emergency/child-safety/working-with-children-clearance-before-you-apply

https://nt.gov.au/emergency/child-safety/apply-for-a-working-with-children-clearance

Mandatory reporting of domestic violence to the police

https://nt.gov.au/law/crime/domestic-family-and-sexual-violence/report-domestic-family-and-sexual-violence

https://nt.gov.au/law/crime/domestic-family-and-sexual-violence

Criminal Code ACT 1983

https://legislation.nt.gov.au/Legislation/CRIMINAL-CODE-ACT-1983

Personal Injuries (Liabilities And Damages) Act 2003 (Part 3A Institutional Liability for child abuse)

https://legislation.nt.gov.au/en/Legislation/PERSONAL-INJURIES-LIABILITIES-AND-DAMAGES-ACT-2003

Work Health and Safety Act 2011

https://legislation.nt.gov.au/Legislation/WORK-HEALTH-AND-SAFETY-NATIONAL-UNIFORM-

LEGISLATION-ACT-2011

https://worksafe.nt.gov.au/

## Queensland

 Department of Child Safety, Seniors and Disability Service (DCSSDS) (website under construction)

https://www.cyjma.qld.gov.au/protecting-children

Responsible for:

Child Protection Act 1999 Reporting Risk of Harm Part 1 AA Who are mandatory reporters? - S.13E https://www.legislation.gld.gov.au/view/html/inforce/current/act-1999-010#

- Queensland Family and Child Commission https://www.legislation.qld.qov.au/view/html/inforce/current/act-2014-027#
- Blue Card Services (Working with children check) https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card-services
  - Working With Children (Risk Management & Screening) Act 2000 https://www.legislation.gld.gov.au/view/html/inforce/current/act-2000-060
  - Working With Children (Risk Management & Screening) Regulation 2000 https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2020-0131
- Criminal Offences (Criminal Code Act 1899) https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009
  - Failure to report belief of sexual offences against children under 16 or under 18 with impairment of the mind (S.229BC)

    <a href="https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children/failure-to-report">https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children/failure-to-report</a>
  - Failure to protect child from child sexual offence (S.229BB)
  - Grooming child under 16 years or parent or carer of child under 16 years (S. 218B)
- Civil Liability Act 2003 (Part 2A Liability of institutions for child abuse) https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-016#ch.2-pt.2A
- Work Health and Safety Act 2011 <a href="https://www.legislation.qld.gov.au/view/html/inforce/current/act-2011-018">https://www.legislation.qld.gov.au/view/html/inforce/current/act-2011-018</a>\

## **South Australia**

Department for Child Protection https://www.childprotection.sa.gov.au/

Responsible for:

Children and Young People (Safety) Act 2017

What to report – s.31

Who are mandatory reporters? – S.30

https://www.legislation.sa.gov.au/ legislation/lz/c/a/children%20and%20young%20people% 20(safety)%20act%202017/current/2017.25.auth.pdf

Commissioner for Children and Young People

https://www.ccyp.com.au/

Working with Children Checks

https://www.sa.gov.au/topics/rights-and-law/rights-and-responsibilities/screening-checks/screening-wwcc

- Child Safety (Prohibited Persons) Act 2016 <a href="https://www.legislation.sa.gov.au/">https://www.legislation.sa.gov.au/</a> legislation/lz/c/a/child%20safety%20(prohibited%20persons)%20act%202016/current/2016.49.auth.pdf
- Child Safety (Prohibited Persons) Regulations 2019 <a href="https://www.legislation.sa.gov.au/">https://www.legislation.sa.gov.au/</a> legislation/lz/c/r/child%20safety%20(prohibited%20persons)%20regulations%202019/current/2019.5.auth.pdf
- Criminal Law Consolidation Act 1935

 $https://www.legislation.sa.gov.au/\__legislation/lz/c/a/criminal\%20law\%20consolidation\%20act\%201935/current/1935.2252.auth.pdf$ 

- Failure to report suspected child sexual abuse (Section 64A)
- Failure to protect child from sexual abuse (Section 65)
- Civil liability Act 1936 (Child Abuse Liability for Institutions) <a href="https://www.legislation.sa.gov.au/">https://www.legislation.sa.gov.au/</a> legislation/lz/c/a/civil%20liability%20act%201936/current/19 36.2267.auth.pdf
- Work Health and Safety Act 2012
  <a href="https://www.legislation.sa.gov.au/">https://www.legislation.sa.gov.au/</a> legislation/lz/c/a/work%20health%20and%20safety%20act %202012/current/2012.40.auth.pdf

## **Western Australia**

- > Department of Communities <a href="https://www.wa.gov.au/organisation/department-of-communities">https://www.wa.gov.au/organisation/department-of-communities</a>
  - > Responsible for:

Children and Communities Services Act 2004

What to report – S. 124A (Mandatory reporting of child sexual abuse)

Who are mandatory reporters? – S. 124B and S.124BA (provision for ministers of religion)

https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc 45609.pdf/\$FILE/Children%20and%20Community%20Services%20Act%202004%20-%20%5B05-j0-00%5D.pdf?OpenElement

Commissioner for Children and Young People https://www.ccyp.wa.gov.au/

Implementation of the National Principles for Child Safe Guidelines https://www.ccyp.wa.gov.au/our-work/child-safe-organisations-wa/

https://www.ccyp.wa.gov.au/media/3946/child-safe-organisations-wa-guidelines-updated-november-2019.pdf

- Working with Children Check https://workingwithchildren.wa.gov.au/
  - Working with Children (Criminal Record Checking) Act 2004 https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_45967.pdf/\$FI LE/Working%20with%20Children%20(Criminal%20Record%20Checking)%20Act%202004% 20-%20%5B03-n0-00%5D.pdf?OpenElement
- Ombudsman WA Reportable Conduct Scheme 2022 (Note: Religious bodies commencement 2024)

https://www.ombudsman.wa.gov.au/Reportable Conduct/Reportable Conduct.htm

https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_45439.pdf/\$FILE/Parliamentary%20Commissioner%20Amendment%20(Reportable%20Conduct)%20Act%202022%20-%20%5B00-00-00%5D.pdf?OpenElement

Criminal Code Act Compilation Act 1913

https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_37141.pdf/\$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913%20-%20%5B19-a0-00%5D.pdf?OpenElement

(No criminal offences of Failure to Report or Failure to Protect in 2023)

- Civil Liability Act 2002 (Child Sexual abuse Actions Part 2A)
  <a href="https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_45282.pdf/\$FILE/Civil%20Liability%20Act%202002%20-%20%5B04-j0-00%5D.pdf?OpenElement">https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_45282.pdf/\$FILE/Civil%20Liability%20Act%202002%20-%20%5B04-j0-00%5D.pdf?OpenElement</a>
- Work Health and Safety Action 2020 https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc 45102.pdf/\$FILE/ Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-d0-00%5D.pdf?OpenElement
- Work Health and Safety Regulations 2022 <a href="https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\_46066.pdf/\$FILE/Work%20Health%20and%20Safety%20(General)%20Regulations%202022%20-%20%5B00-e0-00%5D.pdf?OpenElement</p>

## **Tasmania**

- Department for Education, Children and Young People <a href="https://www.decyp.tas.gov.au/children/">https://www.decyp.tas.gov.au/children/</a>
  Responsible for:
  - Children, Young Persons and their Families Act 1997 Responsibility to prevent abuse or neglect or certain behaviour - s.13 What to report - s. 14 Who are mandatory reporters? - s. 14 <a href="https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028">https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028</a>
- Commissioner for Children and Young People https://childcomm.tas.gov.au/
  - Commissioner for Children and Young People Act 2016 https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-002
- Working With Vulnerable People Check https://www.cbos.tas.gov.au/topics/licensing-and-registration/work-with-vulnerable-people/applications/apply#How-to-apply
  - Registration to Work with Vulnerable People Act 2013 https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-065
- Child Safe Standards Commence 1 July 2023 Religious entities commencement 1 January 20024
  - ➤ Child and Youth Safe Organisations Bill 2022 Part 3 https://www.parliament.tas.gov.au/Bills/Bills2022/pdf/54 of 2022.pdf
- Reportable Conduct Scheme commencing 1 January 2024 <a href="https://www.justice.tas.gov.au/carcru/child-and-youth-safe-organisations-framework/reportable-conduct-scheme">https://www.justice.tas.gov.au/carcru/child-and-youth-safe-organisations-framework/reportable-conduct-scheme</a>

Child and Youth Safe Organisations Bill 2022 – Part 4 <a href="https://www.parliament.tas.gov.au/Bills/Bills2022/pdf/54">https://www.parliament.tas.gov.au/Bills/Bills2022/pdf/54</a> of 2022.pdf

- Criminal Code 1924 https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069
  - Failing to report the abuse of a child (S.105A)
  - Failure by a person in authority to protect a child from a sexual offence (S.125E)
  - ➤ Grooming Procuring child or young person for sexual abuse (S.125C) and Communications with intent to procure child or young person (S.125D)
- Wrongs Act 1954
- Justice Legislation Amendment (Organisational Liability for Child Abuse) Act 2019 <a href="https://www.justice.tas.gov.au/">https://www.justice.tas.gov.au/</a> data/assets/pdf file/0010/566470/FACT-SHEET-Justice-Legislation-AmendmentOrganisational-Liability-for-Child-Abuse-Act-2019.pdf
- Work Health and Safety Act 2012 <a href="https://www.legislation.tas.gov.au/view/html/inforce/current/act-2012-001">https://www.legislation.tas.gov.au/view/html/inforce/current/act-2012-001</a>