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AUSTRALIA

**CHILDREN'S RIGHTS:
INTERNATIONAL AND NATIONAL LAWS AND PRACTICE**

Australia is a signatory to all significant treaties that impact on children's rights. The rights and protection of children are governed by both Federal and state and territory law. Persons below the age of eighteen are generally considered children.

Children may be able to give consent to medical procedures where they are either over a statutory age (fourteen to sixteen depending on the jurisdiction), or, of sufficient maturity that they are able to comprehend the procedure and give informed consent.

Children below the age of ten are unable to be charged with a criminal offense and children between the ages of ten to fourteen have a refutable presumption that they are incapable of forming the necessary criminal intent for an offense.

Children below the age of seventeen may not volunteer to join the armed services.

Education of children is compulsory. The age between which children must be educated varies across jurisdictions but is generally between the ages of five to sixteen.

Australian children have a right to access health care via Australia's universal health insurance program and all jurisdictions have additional programs to encourage children and young persons to seek medical care.

I. Introduction

Australia has a federal constitutional system in which legislative, executive, and judicial powers are shared or distributed between the Federal Government and those of the six States – New South Wales (NSW), Victoria (Vic), Queensland (Qld), South Australia (SA), Tasmania (Tas), and Western Australia (WA) – and two internal self-governing territories – the Australian Capital Territory (ACT) and the Northern Territory (NT).

Australia includes a number of external territories of these only Norfolk Island and Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, are inhabited.

Of these external territories only Norfolk Island is essentially self-governing (for example, Norfolk Island has its own health and social security systems); the Federal Government, however, retains a veto power over legislation in some areas.

Thus the other external territories (and Norfolk Island in some areas) are governed by federal legislation. In many instances the Federal government has adopted Western Australian legislation and

entered into an agreement with the Western Australian government for the Western Australian government to administer the adopted legislation and provide government services to these territories.¹

Who Is a Child?

Under Australian law the age of majority is eighteen;² in many areas of law, however, a person under the age of eighteen may make decisions or be deemed old enough to be legally responsible for their actions.

Government Services for Youths

Federal, state and territory governments offer a range of services specifically aimed at children and young people. Services range from health services to general information and project to increase community participation by children and young people. Details of the programs are available on the Federal government department of Health and Ageing website.³

Each state and territory has a government office or statutory authority responsible for the coordination of government policies affecting children and youths.⁴

Three states have established independent bodies to review and advise on issues relevant to children. These are: New South Wales (Commission for Children and Young People);⁵ Queensland (Commission for Children and Young People and Children's Guardian);⁶ and Tasmania (Commissioner for Children).⁷

Within the Federal government this role is assumed by the Human Rights and Equal Opportunity Commission (HREOC) a national independent statutory government body established under the Human Rights and Equal Opportunity Commission Act 1986 (Cth) (HREOC Act).⁸

II. Implementation of the Rights of the Child

Among other relevant treaties and agreements the following child-specific treaties have entered into force in Australia:

- Convention on the Civil Aspects of International Child Abduction [1987] ATS 2. Entry into force for Australia: 1 January 1987.⁹

¹ Western Australia is the closest state to the external territories of Cocos (Keeling) Territory and Christmas Island Territory. see: Department of Foreign Affairs and Trade, AUSTRALIA'S COMBINED SECOND AND THIRD REPORTS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD MARCH 2003, available at http://www.dfat.gov.au/hr/downloads/australia_2nd_3rd_reports_convention_rights_child.pdf, p.3.

² For example, see Minors (Property and Contracts) Act 1970 (NSW) § 9; Age of Majority Act 1974 (Qld) § 5(2).

³ See <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-youth-information.htm> (last visited July 25, 2007).

⁴ Victoria: Office for Youth, Department of Victorian Committees, see <http://www.youth.vic.gov.au> (last visited July 25, 2007); South Australia: Office for Youth, Government of South Australia, see <http://svc031.wic138dp.server-web.com/youth/Home/tabid/161/Default.aspx> (last visited July 25, 2007); Australian Capital Territory, Office for Children, Youth and Family, Department of Disability, Housing and Community Services. Northern Territory: Office of Youth Affairs, Department of Chief Minister, see http://www.nt.gov.au/dcm/youth_affairs/home.shtml (last visited July 25, 2007).

⁵ The Commission for Children and Young People is an independent organization that administers the Commission for Children and Young People Act 1998 (NSW) and reports directly to the NSW Parliament

⁶ See Commission for Children and Young People and Child Guardian website at: <http://www.ccypcg.qld.gov.au/index.html> (last visited Aug. 3, 2007).

⁷ See Commissioner for Children Tasmania website, <http://www.childcomm.tas.gov.au/> (last visited Aug. 2, 2007).

⁸ Further information on HREOC is available from their website,

- Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (The Hague, 29 May 1993). [1998] ATS 21. Entry into force for Australia: 1 December 1998.¹⁰
- Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations. [2002] ATS 2. Entry into force for Australia: 1 February 2002.¹¹
- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect to Parental Responsibility and Measures for the Protection of Children (under the auspices of the Hague Convention) [2003] ATS 19. Entry into force for Australia: 1 August 2003.¹²
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [2006] ATS 12 Entry into force for Australia: 26 October 2006.¹³
- International Convention for the Suppression of the Traffic in Women and Children, 1921. (ATS 1922 no. 10) Entry into force for Australia: 28 June 1922.
- Protocol to amend the Convention for the Suppression of the Traffic in Women and Children of 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, 1933, (ATS 1947 No. 17). Entry into force for Australia 24 April 1950.
- Convention on the Rights of the Child [1991] ATS 4. Entry into force for Australia: 16 January 1991.¹⁴
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography [2007] ATS 6. Entry into force for Australia, 8 February 2007.¹⁵
- Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organised Crime 2000 [2005] ATS 27. Entry into force for Australia: 14 October 2005.¹⁶

⁹ Opened for signature Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 (entered into force Dec. 1, 1983), 19 Int'l Legal Materials 1501 (1980). Available from the Hague Conference on Private International Law website at: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=24 (last visited Aug. 6, 2007).

¹⁰ Opened for signature May 29, 1993, 1870 U.N.T.S. 167 (entered into force May 1, 1995), 32 Int'l Legal Materials 1139 (1993). Available from the Hague Conference on Private International Law website at: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69&zoek=children (last visited Aug. 6, 2007).

¹¹ 1021 U.N.T.S. 209, 11 Int'l Legal Materials 1286 (1972). Also available from the Hague Conference on Private International Law website at: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=38&zoek=children (last visited Aug. 6, 2007).

¹² Available from the Hague Conference on Private International Law website at: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=70&zoek=children (last visited Aug. 6, 2007).

¹³ G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000), 39 Int'l Legal Materials 1285 (2000). Available from the United Nations Office of the High Commissioner for Human Rights website at: <http://www.unhcr.ch/html/menu2/6/protocolchild.htm> (last visited Aug. 6, 2007).

¹⁴ G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49), at 167, U.N. Doc A/44/49 (1989), 28 Int'l Legal Materials 1456 (1989). Available from the United Nations Office of the High Commissioner for Human Rights website at: <http://www.ohchr.org/english/law/crc.htm> (last visited July 23, 2007).

¹⁵ G.A. Res. 54/263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (May 25, 2000). Available from the United Nations Office of the High Commissioner for Human Rights website, <http://www.ohchr.org/english/law/crc-sale.htm> (last visited Aug. 6, 2007).

¹⁶ G.A. Res. 55/25 (Nov. 15, 2000). Available from the United Nations Office of the High Commissioner for Human Rights website, <http://www.ohchr.org/english/law/protocoltraffic.htm> (last visited Aug. 6, 2007).

III. Child Health and Social Welfare

Family Law

In determining family law matters the Family Court will consider the wishes of a child when determining what is “in the best interests of the child.” The “best interests of the child” will be the court’s paramount consideration when making parenting, location and recovery orders.¹⁷

In some jurisdictions children’s rights and the child’s right to participate in decision making have been specifically incorporated into legislation. For example: in Queensland, a ‘Charter of Rights for Child in Care’ is included as a schedule to the Child Protection Act 1999 (Qld),¹⁸ NSW has non-binding principles for children to participate in decision making regarding their care and protection.¹⁹

General Access to Health Care

Australia has a universal health insurance program called Medicare.²⁰ People (including children) who reside in Australia (excluding Norfolk Island) are eligible to participate in Medicare if they:

- hold Australian citizenship;
- have been issued a permanent visa;
- hold New Zealand citizenship; or
- have applied for a permanent visa (excluding an application for a parent visa).

Norfolk Island does not participate in the Medicare program.

Medicare is funded by the Federal government from general revenue and partially funded via a taxation surcharge for those earning above a specified income threshold. This surcharge is discounted if the taxpayer has private health insurance.

Medicare provides free medical treatment as a public patient in a public hospital and free or subsidized treatment for some medical and optometrist services and dental care. Medicare may also support (via partial rebate of practitioner’s fees) treatments by allied health professionals such as physiotherapists, dietitians, and speech pathologists.²¹

Australian states and territories have the primary responsibility for Australia’s public hospital systems; the Federal government, however, has the power to pass legislation for sickness and hospital benefits and therefore contributes to the funding of hospitals.²² Licensing of private hospitals is undertaken by states or territories while some regulatory power is retained by the Federal government via its power to authorize the hospital to receive health insurance benefits.²³

¹⁷ Family Law Act 1975 (Cth) §§ 60B, 65CA, 67L, 67V, & 68F.

¹⁸ Child Protection Act 1999 (Qld) Sch. 1.

¹⁹ Children and Young Persons (Care and Protection) Act 1998 (NSW) § 9.

²⁰ Medicare Australia Act 1973 (Cth).

²¹ Under the Enhanced Primary Care program, fees to visit some allied health practitioners and some dental visits will be rebated by Medicare where the allied health professional or dentist is registered with Medicare and the patient’s attendance at the allied health professional is recommended by the patient’s general practitioner in relation to a chronic condition or complex health need or dental problem that is aggravating a chronic medical condition. See: Australian Government Department of Health and Ageing website, <http://www.health.gov.au/epc> (last visited July 24, 2007).

²² Australian Constitution § 51(xxiiiA); Health Care (Appropriation) Act 1998 (Cth).

²³ National Health Act 1953 (Cth); Health Insurance Act 1973 (Cth).

Federal funding of state and territory hospitals is governed by Australian Health Care Agreements signed between each state or territory and the Commonwealth.²⁴ These agreements identify the amount of Federal funding that will be provided to the state or territory's hospital system and require that: public hospital services be provided free of charge to public patients; access to public hospital services be on the basis of clinical need and within a clinically appropriate period; and that equitable access to public hospital services be provided regardless of geographical location.²⁵

Australia has several specialist hospitals that are dedicated to provide pediatric and neonatal care.²⁶

Access by Youths to Medical Services

All states and territories have initiatives designed to encourage children and young people to seek healthcare. In many instances individual health centers will not require a child or young person to pay or to provide their Medicare card (thus permitting children or young people to seek healthcare in the absence of parental knowledge).²⁷

The Federal, state, and territory governments have (in conjunction) undertaken several immunization programs that are directly relevant to children and young people. These include:²⁸

- human papillomavirus (HPV) vaccination program;
- meningococcal C program;
- chickenpox (varicella) program;
- pneumococcal program; and
- Hepatitis A program (for Aboriginal and Torres Strait Islander children in the NT, WA, SA and QLD).

The following vaccines are recommended and provided free of charge:

- Hepatitis B;
- Diphtheria, tetanus and whooping cough (pertussis);
- Hib (*Haemophilus influenzae* type b);
- polio;
- measles, mumps and rubella (German measles); and
- rotavirus

The following vaccines are also free of charge for Aboriginal and Torres Strait Islander children:

²⁴ See Australian Government, Department of Health and Ageing website, <http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/Australian+Health+Care+Agreements-1> (last visited Aug. 1, 2007).

²⁵ See Australian Health Care Agreement between the Commonwealth of Australia and the Australian Capital Territory 2003-2008 Part 2, available at [http://www.health.gov.au/internet/wcms/publishing.nsf/Content/B02C99D554742175CA256F18004FC7A6/\\$File/australian-capitalterritory.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/Content/B02C99D554742175CA256F18004FC7A6/$File/australian-capitalterritory.pdf). See also Health Care (Appropriate) Act 1998 (Cth).

²⁶ For information on Australia's specialist hospitals, see Australian Government website HealthInsite, http://www.healthinsite.gov.au/topics/Children_s_Hospitals. (last visited Aug. 3, 2007).

²⁷ Called 'innovative health services for homeless youth' (IHSY), funding provided by the Federal Government is matched by State and Territory Governments for the purpose of providing health services for homeless and at risk young people. Details of locations and services provided are available on the Australian Government Department of Health and Ageing website, <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pubhlth-strateg-youth-ihshya.htm#act> (last visited July 25, 2007).

²⁸ See Australian Government, Department of Health and Ageing: Immunisation programs and initiatives: Children website, <http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/programs#children> (last visited Aug. 2, 2007).

- pneumococcal; and
- Hepatitis A.

Consent to Medical Treatment

The age of consent for medical treatment differs across jurisdictions; for example, in Western Australia the age of consent remains at eighteen²⁹ (the general age of majority in Australia), in NSW and South Australia, however, the age of consent for making decisions regarding medical treatment has been amended by legislation to fourteen and sixteen respectively.³⁰

Generally treatment provided to children below the age of sixteen requires the consent of their parents or guardians. Parents may only consent to treatment that is in the best interests of the child.³¹

In all jurisdictions the consent of the child alone may be sufficient in circumstances where the child has “sufficient understanding and intelligence to enable him or her to understand fully what is proposed” (Gillick test).³² In South Australia this test has been modified by statute to be: if the child consents, and (1) the medication practitioner is satisfied that the child is capable of understanding the nature, consequences, and risks of the treatment, and that the treatment is in the best interests of the child's health and wellbeing; (2) and that this opinion of the medical practitioner is supported by the written opinion of another medical practitioner who has also examined the child.³³

A parent may not consent to certain treatments of children. Where a treatment involves major, invasive and irreversible surgery (not for the purpose of curing a malfunction or disease, e.g. sterilization or gender reassignment), neither a child nor a parent may consent and it is necessary to obtain the consent of both the court³⁴ and the parents.³⁵

Children should only participate in medical research with the consent of both the child and the parent in circumstances where the research is not contrary to the best interests of the child.³⁶

²⁹ Age of Majority Act 1972 (WA) § 5. Also see: Western Australian Government, CONSENT TO TREATMENT POLICY FOR THE WESTERN AUSTRALIAN HEALTH SYSTEM, Department of Health 2006, available at http://www.safetyandquality.health.wa.gov.au/programs/pdfs/61030_Consent_Policy_final.pdf.

³⁰ Minors (Property and Contracts) Act 1970 (NSW) § 49; Consent to Medical Treatment and Palliative Care Act 1995 (SA) s 6.

³¹ Department of Health and Community Services v JWB and SMB (Marion's case) (1992), 175 CLR 218 at 240.

³² Gillick v West Norfolk AHA (1986), AC 112 (HL) approved by the High Court of Australia in Department of Health and Community Services v JWB and SMB (Marion's case) (1992), 175 CLR 218. See: M. Harrison, What's New in Family Law? Parental Authority and its Constraints the Case of 'Marion', FAMILY MATTERS no.32 August 1992, pp.10-12, available from the Australian Institute of Family Studies, <http://www.aifs.gov.au/institute/pubs/fm1/fm32mh.html> (last visited August 3, 2007).

³³ Consent to Medical Treatment and Palliative Care Act 1995 (SA) § 12:

³⁴ The relevant court will be a court exercising jurisdiction under the Family Law Act 1975 (Cth) or as authorized by legislation, e.g., New South Wales Guardianship Tribunal, granted jurisdiction to consent to the carrying out of a “special medical treatment” by the Children and Young Persons (Care and Protection) Act 1998 (NSW) § 175.

³⁵ Gillick v West Norfolk AHA (1986), AC 112 (HL) approved by the High Court of Australia in Department of Health and Community Services v JWB and SMB (Marion's case) (1992), 175 CLR 218.

³⁶ Australian Government, National Health and Research Council, Human Research Ethics Handbook, Commonwealth, Australia, 2001 ¶ NS 4.1 available at the National Health and Research Council website at: <http://www.nhmrc.gov.au/publications/hrecbook/misc/contents.htm>.

Mortality Rates

In its 2007 report *The State of the World's Children* UNICEF has provided the following statistics on Australia:³⁷

Under-5 mortality rate, 2005 ³⁸	Infant mortality rate (under 1), 2005 ³⁹	Neonatal mortality rate, 2000 ⁴⁰
6	5	3

Financial Support to People with Children

The Federal government provides financial support to people with children (called family assistance). This financial support includes:

- Family Tax Benefit Part A – financial assistance;
- Family Tax Benefit Part B – additional financial assistance to families with one income;
- Child Care Benefit – financial assistance for child care;
- Child Care Tax Rebate – tax rebate for working persons incurring child care costs;
- Baby Bonus – one-off payment to off-set the costs of a new child (including adopted and still born children);
- Maternity Immunisation Allowance - payment for children aged eighteen to twenty-four months and who are fully immunized or have an approved exemption from immunization;
- Large Family Supplement – where the applicant has three or more children and receives the Family Tax Benefit for three or more children;
- Multiple Birth Allowance – applicable for births of three or more children;
- Double Orphan Pension – additional financial aid to provide assistance to raise children who are orphans;
- Jobs, Education and Training (JET) Child Care fee assistance – extra help with the cost of approved child care for eligible parents undertaking activities such as work, job search, training, study or rehabilitation as part of an activity agreement, to help them enter or re-enter the workforce.

IV. Education, including Special Needs

Child Care – General

Capital grants for non-profit child care centers and for research into child care centers may be funded by the Federal government.⁴¹ Child care services are jointly funded by Federal and state/territory governments.⁴²

³⁷ Available from the UNICEF website, <http://www.unicef.org/sowc07/docs/sowc07.pdf> (last visited Aug. 2, 2007).

³⁸ Under-five mortality rate - Probability of dying between birth and exactly five years of age expressed per 1,000 live births.

³⁹ Infant mortality rate - Probability of dying between birth and exactly one year of age expressed per 1,000 live births.

⁴⁰ Neonatal mortality rate – Probability of dying during the first 28 completed days of life expressed per 1,000 live births.

⁴¹ Child Care Act 1972 (Cth).

⁴² State and territory governments generally fund and regulate kindergartens (year before school), centre-based long day care and occasional care services, while the Federal government is responsible for the national child care policy and funds long day care childcare places and provides subsidies for family day care arrangements and outside school hours care via the Child Care Benefit. For example *see* State Government of Victoria, Department of Human Services, Office for Children website, <http://www.office-for-children.vic.gov.au/childrens-services/home> (last visited Aug. 3, 2007).

Preschool education is the responsibility of the states and territories, and services are provided by government, community and private providers. The Australian Government provides some funding for Indigenous preschool services.⁴³

Education - General

Australian schooling varies across each state and territory; in general, however, schooling consists of a preparatory year followed by twelve years of primary and secondary school. In the final year of secondary school (year twelve) students study for a government endorsed certificate that is recognized by all Australian universities and vocational education and training institutions. School hours are Monday to Friday generally from 9:00am to 3:30pm.⁴⁴

Australia has developed a national curriculum framework across eight “Key Learning Areas”: English, Mathematics, Studies of Society and the Environment, Science, Arts, Languages Other Than English, Technology and Personal Development, Health and Physical Education.⁴⁵

Funding of Australian schools (both public and private) is from both state and territory governments and the Federal Government.⁴⁶ Federal government funding of schools is legislated for four year periods.⁴⁷

State and territory legislation, in general, will govern matters such as: the obligation of the state to provide public education;⁴⁸ the compulsory curriculum;⁴⁹ compulsory attendance at school and exemption for attendance at certain classes;⁵⁰ government schools, including: their establishment⁵¹ and obligation to provide free instruction,⁵² their format (such as primary, secondary, for disability children, for advanced children, or focusing on technology or agriculture),⁵³ their secular and religious education,⁵⁴ admission⁵⁵ and discipline;⁵⁶ registration of non-government schools and home schooling;⁵⁷ and certificates of education or study to be awarded.⁵⁸

⁴³ See Australian Parliament Library, Social Policy Resources: Education and Training Resources Guide, <http://www.aph.gov.au/library/intguide/sp/speducation.htm#39> (last visited Aug. 2, 2007).

⁴⁴ Australian Government, Study in Australia, : <http://www.studyinaustralia.gov.au/Sia/en/WhatToStudy/Schools/SchoolSystem.htm> (last visited Aug. 3, 2007).

⁴⁵ *Id.*

⁴⁶ Australian Government, School Education Summary, http://www.dest.gov.au/sectors/school_education/School_education_summary2.htm (last visited Aug. 3, 2007)..

⁴⁷ Schools Assistance (Learning Together Achievement through Choice and Opportunity) Act 2004 (Cth); Schools Assistance Regulations 2005 (Cth).

⁴⁸ Education Act 1990 (NSW) § 4.

⁴⁹ *Id.* §§ 7-18A.

⁵⁰ *Id.* §§ 22-26.

⁵¹ *Id.* § 27.

⁵² *Id.* § 31.

⁵³ *Id.* § 29.

⁵⁴ *Id.* §§ 30, 32, 33.

⁵⁵ *Id.* § 34.

⁵⁶ *Id.* § 35.

⁵⁷ *Id.* §§ 37 -83.

⁵⁸ *Id.* §§ 84-96.

Relevant Legislation

Primary state and territory legislation governing education are as follows:

Australian Capital Territory: Education Act 2004 (ACT); Education Regulation 2005 (ACT).

New South Wales: Education Act 1990 (NSW); Education Regulations 2001 (NSW).

Northern Territory: Education Act (NT); Education (Board of Studies) Regulations (NT), Education (College and School Councils) Regulations (NT).

Queensland: Education (General Provisions) Act 2006 (QLD); Education (General Provisions) Regulation 2006 (QLD); Education (Accreditation of Non-State Schools) Act 2001 (QLD); Education (Accreditation of Non-State Schools) Regulation 2001 (QLD); Education (Capital Assistance) Act 1993 (QLD); Education (Capital Assistance) Regulation 2005 (QLD); Education (Overseas Students) Act 1996 (QLD); Education (Overseas Students) Regulation 1998 (QLD); Education (Queensland Studies Authority) Act 2002 (QLD); Education (Queensland Studies Authority) Regulation 2002 (QLD).

South Australia: Education Act 1972 (SA); Education (Councils - Transitional) Regulations 2001 (SA); Education (Registration of Non-Government Schools) Regulations 1998 (SA); Education Regulations 1997(SA).

Tasmania: Education Act 1994 (Tas); Education Regulations 2005 (Tas); Education Providers Registration (Overseas Students) Act 1991 (Tas); Education Providers Registration (Overseas Students) Regulations 2005 (Tas).

Victoria: Education and Training Reform Act 2006 (Vic); Education and Training Reform Regulations 2007 (Vic).

Western Australia: School Education Act 1999 (WA); School Education Regulations 2000 (WA); Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (WA); Education Service Providers (Full Fee Overseas Students) Registration Regulations 1992 (WA).

Federal: Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005 (establishes Australian Technical Colleges for Year 11 and Year 12 students); Student Assistance Act 1973 (Cth) (funds the student financial assistance schemes, ABSTUDY and the Assistance for Isolated Children Scheme); Indigenous Education (Targeted Assistance) Act 2000 (Cth) (legislative basis and appropriates funding for Indigenous education programs); Education Services for Overseas Students Act 2000 (Cth) (regulates the education and training sector's involvement with overseas students studying in Australia on student visas); Education Services for Overseas Students Regulations 2001 (Cth).

Education - Special Needs

In accordance with the Disability Discrimination Act 1992 (Cth) (DDA) it is unlawful for any person (including a child) to be discriminated against by an educational authority on the basis of a disability. Educational authority includes: all public and private educational institutions, primary and secondary schools, and tertiary institutions such as "Technical and Further Education" (TAFE),⁵⁹ private colleges and universities. Generally the DDA covers discrimination in the areas of admission, access, and harassment.

⁵⁹ "Technical and Further Education" is the designation for a preparatory course for or a course in trade, technical, or other skilled occupations. Technical and Further Education Commission Act 1990 (NSW); also Employment, Education and Training Act 1988 (Cth) § 3(1).

Disability Standards for Education 2005 (Cth),⁶⁰ made under the DDA, are legal standards applicable to education providers to ensure their compliance with the DDA. The Standards cover the following areas:

- enrollment (Part 4);
- participation (Part 5);
- curriculum development, accreditation and delivery (Part 6); and
- student support services (Part 7).

The Standards also require education providers to develop policies and programs that eliminate harassment and victimization.⁶¹

In general neither the DDA nor the Disability Standards for Education Standards require changes to be made where such changes would impose unjustifiable hardship on a person or organization.⁶²

V. Child Labor and Exploitation

Employment of Children

The minimum age of employment and regulation of children in employment varies across each state and territory.⁶³

For example NSW has no minimum age of employment and employment of children is only regulated in certain industries.⁶⁴ Thus, in NSW, employment of children under fifteen years of age in entertainment, exhibition, still photography or door-to-door sales is regulated by the Office for Children - Children's Guardian (OCCG).⁶⁵ Employers in these industries must be authorized to employ children and comply with the legislated Code of Practice.⁶⁶

In contrast, Victoria has a minimum age of employment and children below the age of thirteen may not be employed generally (exceptions exist for family businesses, entertainment industry and children above the age of eleven delivering newspapers, advertising material or delivers for a registered pharmacist), and any employed child (including children within family businesses) must only perform 'light work', work certain hours and be granted specified rest periods.⁶⁷

⁶⁰ Standards are subordinate legislation in accordance with Disability Discrimination Act 1992 (Cth) § 31, available at ComLaw website, [http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/CB9CCD31BB70C3ADCA256FD50023EABF/\\$file/F2005L00767.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/CB9CCD31BB70C3ADCA256FD50023EABF/$file/F2005L00767.pdf).

⁶¹ Disability Standards for Education 2005 (Cth) Part 8.

⁶² *Id.* Standard 10.1.

⁶³ Workplace Relations Act 1996 (Cth) § 16(2).

⁶⁴ In addition NSW has regulated employment of children under the federal employment legislation to ensure they do not suffer detriment from being employed under the federal system rather than under a NSW award. Industrial Relations (Child Employment) Act 2006 (NSW) Pt 2. As has Queensland and South Australia see: Child Employment Act 2006 (Qld); Child Employment Regulation 2006 (Qld); Fair Work Act 1994 (SA) § 98A; Child Labour Award 2006 (SA).

⁶⁵ Children and Young Persons (Care and Protection) Act 1988 (NSW), Chp. 13 & Sch. 2; Children and Young Persons (Care and Protection – Child Employment) Regulation 2005 (NSW). Also see: NSW Office of Children's Guardian website at: http://www.kidsguardian.nsw.gov.au/child_employment.php (last visited July 31, 2007).

⁶⁶ Children and Young Persons (Care and Protection – Child Employment) Regulation 2005 (NSW)

⁶⁷ Child Employment Act 2003 (Vic).

Children within the Australian Defence Force (ADF)

The ADF maintains a minimum voluntary recruitment age of seventeen years (with exceptions for entrants to military schools, apprentices and members of Service cadet programs).⁶⁸ All personnel wishing to join the ADF must provide evidence of their age and all minors require written informed consent from their parents or guardians.⁶⁹ ADF commanders are directed to take all feasible measures to ensure that minors do not participate in hostilities.⁷⁰

VI. Sale and Trafficking of Children

Criminal law is governed by both Federal and state and territory law. Therefore offenses against children will be a crime under both federal and state and territory law.

Under Federal law it is an offense to traffic in children, and slavery and sexual servitude are offenses with victims under the age of eighteen being an aggravating circumstance,⁷¹ for example:

- trafficking (domestic or international) of children. Maximum penalty of twenty-five years imprisonment.⁷²
- slavery. Maximum penalty of twenty-five years imprisonment;⁷³
- sexual servitude – where a person is engaged to provide sexual services subject to force or threats and is not free to cease or leave: Maximum penalty fifteen years imprisonment, or nineteen years if the victim is under eighteen years of age;⁷⁴ and
- deceptive recruiting – where a person deceptively induces another person to provide sexual services. Maximum penalty seven years imprisonment, or nine years if the victim is under eighteen years of age.⁷⁵

It is also an offense to: supply drugs (or other controlled substances) to children or to children for the purposes of trafficking,⁷⁶ to procure children to traffic drugs,⁷⁷ to expose children (below the age of fourteen) to the unlawful manufacture of drugs,⁷⁸ or to use a carriage service to possess, control, produce, supply or obtain child pornography or child abuse material, or use a carriage service to procure or groom a child (below the age of sixteen).⁷⁹

⁶⁸ Defence Instruction (General) PERS 33–4 (4 July 2005) (DI(G) PERS 33-4). Issue No. Pers B/9/2005/, NAVY PERS 61–4; ARMY PERS 116–17; AIR FORCE PERS 29–30 § 4, *available at* <http://www.defencejobs.gov.au/mediaUpload/mediaUpload/RecruitmentandEmploymentofMembersUnder18inADF.pdf> (last visited Aug. 1, 2007).

⁶⁹ DI(G) PERS 33-4 §§ 5,6.

⁷⁰ DI(G) PERS 33-4 § 10.

⁷¹ Criminal Code Act 1995 (Cth).

⁷² *Id* §§ 271.4, 271.7.

⁷³ *Id* § 270.3.

⁷⁴ *Id* §§ 270.6, 270.8.

⁷⁵ *Id* §§ 270.7, 270.8.

⁷⁶ *Id* §§ 309.2-309.4, 311.6, 311.17-21.

⁷⁷ *Id* §§ 309.4, 309.7, 309.8, 309.12, 309.13, 309.14 & 309.15.

⁷⁸ *Id* §§ 310.1-310.4.

⁷⁹ *Id* §§ 474.19, 474.20, 474.23, 474.26 & 474.27.

It is also an offense of genocide to forcibly transfer children,⁸⁰ and a war crime to use, conscript or enlist children below the age of fifteen.⁸¹

VII. Juvenile Justice

The standard age for criminal responsibility in all Australian jurisdictions is ten years of age.⁸² For children between the ages of ten and fourteen years there is a refutable presumption that they are incapable of forming the criminal intent necessary to be guilty of a crime (*doli incapax*).⁸³

Criminal law and procedure varies across each jurisdiction in Australia, generally, however, there are separate laws, procedures and courts for children.⁸⁴ For example, in NSW, any statement, confession, admission, or information made by a child to police without the presence of their guardian, lawyer, or other responsible adult is presumptively not admissible as evidence and may only be admitted where the court is satisfied that there was sufficient reason for the absence of the adult and that with, after consideration of all the circumstances, the statement or information should be admitted as evidence.⁸⁵

Children are prosecuted and sentenced in a children's court in relation to crimes committed when a child,⁸⁶ or may be processed via alternative proceedings such as youth justice conferences, cautions, and warnings.⁸⁷ Criminal proceedings against a child can not commence until the Court has explained to the child the nature of any allegations made against the child, and the facts that must be established before the child can be found guilty of the offence with which the child is charged.⁸⁸

Traditionally criminal proceedings against a child are not open to the public and names are suppressed from publication.⁸⁹ A person under the age of twenty-one may be sentenced to a term of imprisonment as a 'juvenile offender' that is to serve all or part of their imprisonment within a juvenile detention facility.⁹⁰ Children may also be subject to community service orders (including an order to remove graffiti).⁹¹

⁸⁰ *Id* § 268.7.

⁸¹ *Id* §§ 268.68, 268.88.

⁸² For example, *see* Crimes Act 1914 (Cth) § 4M; Criminal Code Act 1995 (Cth) § 7.1; Criminal Code 2002 (ACT) §25; Children (Criminal Proceedings) Act 1987 (NSW) § 5; Criminal Code Act (NT) § 38(1); Criminal Code Act 1899 (Qld) § 29(1); Young Offenders Act 1993 (SA) § 5; Criminal Code Act 1924 (Tas) § 18(1); Children and Young Persons Act 1989 (SA) § 127; Criminal Code Act Compilation Act 1913 (WA) § 29. Also see: Australian Government, Australian Institute of Criminology, Crime Fact Info. No. 106 THE AGE OF CRIMINAL RESPONSIBILITY, Sept. 13, 2005, available at <http://www.aic.gov.au/publications/cfi/cfi106.pdf>.

⁸³ Crimes Act 1914 (Cth) § 4N, Criminal Code Act 1995 (Cth) § 7.2. In some jurisdictions this is common law, for example in South Australia, Victoria and New South Wales, ie. established by case law. See: *R v CRH 18/12/96* Court of Criminal Appeal, NSW. 2(b) Criminal Code 2002 (ACT) §26; Criminal Code Act (NT) § 38(2); Criminal Code Act 1899 (Qld) § 29(2); Criminal Code Act 1924 (Tas) § 18(2); Criminal Code Act Compilation Act 1913 (WA) § 29.

⁸⁴ There are provisions protect children who are victims during criminal proceedings. For example see: Protection of children in proceedings for sexual offences, Criminal Act 1914 (Cth) Part IAD.

⁸⁵ Children (Criminal Proceedings) Act 1987 (NSW) § 13.

⁸⁶ For example: Children's Court Act 1987 (NSW). See: Children (Criminal Proceedings) Act 1987 (NSW) § 28 for jurisdiction of the children's court. In NSW the Children's Court does not have jurisdiction over proceedings in relation to an unrelated traffic offense or a 'serious children's indictable offence', eg. homicide or an offence punishable by imprisonment for life or for 25 years.

⁸⁷ Young Offenders Act 1997 (NSW).

⁸⁸ Children (Criminal Proceedings) Act 1987 (NSW) §§ 12(1), (2).

⁸⁹ *Id.* §§ 10, 11.

⁹⁰ Children (Detention Centres) Act 1987 (NSW).

⁹¹ Children (Community Service Orders) Act 1987 (NSW).

Convictions of children of summary offenses below the age of sixteen are not recorded and the court has discretion whether or not to record convictions of summary offenses of children aged between sixteen and eighteen and convictions of indictable offenses of children below the age of sixteen.⁹²

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⁹² Children (Criminal Proceedings) Act 1987 (NSW) § 14.