

Australia

National Child Protection Legislation

National Legislation

a) *Age of Consent*

The age of consent in Australia falls under State and Territory jurisdictional rules. Under the various criminal codes (also State- and Territory-specific), the age of consent for sexual interactions is 16 years old in the Australian Capital Territory¹, New South Wales², the Northern Territory³, Queensland⁴, Victoria⁵, and in Western Australia.⁶ The age of consent is 17 years in South Australia⁷ and Tasmania.⁸ The maximum penalty for having sexual relations with a child under the age of consent ranges from 14 years⁹ to life imprisonment.¹⁰ Aggravating factors imposing sentencing enhancements include cases where the child is under the offender's care, supervision, or authority¹¹; when the child is a person with an 'impairment of the mind'¹²; or when the child is under the age of 10 years.¹³

Division 272 of the Commonwealth *Criminal Code 1995* provides for the extraterritorial jurisdiction of the Australian courts over child sex offences outside Australia provided the offender is an Australian citizen or resident. There is no dual criminality requirement for extraterritorial jurisdiction under Division 272.

b) *Age of Criminal Responsibility*

Under Commonwealth (*i.e.*, Federal)¹⁴, as well as State and Territory laws¹⁵, the age of criminal responsibility is 10 years of age; however, the common law principle of *doli incapax* acts a rebuttable presumption that those between the age of 10 and 14 years are incapable of having committed a criminal offence.

c) *Age of Marriage*

As abovementioned, Section 11 of the *Marriage Act 1961* (Cth) states that the age of marriage in Australia is 18 years; Section 12 establishes an exception whereby a person who has attained 16 years may apply to a Judge or Magistrate for an order authorising him or her to marry a person who has reached 18 years in exceptional circumstances. Under Section 13, the marriage of a minor shall not be recognised by a Judge or Magistrate without the consent of a prescribed authority, such as the child's parents.¹⁶

¹ *Crimes Act 1900* (ACT), Section 55.

² *Crimes Act 1900* (NSW), Section 66C.

³ *Criminal Code Act 1983* (NT), Section 127.

⁴ *Criminal Code Act 1899* (Qld), Section 215.

⁵ *Crimes Act 1958* (Vic), Section 45.

⁶ *Criminal Code Act Compilation Act 1913* (WA), Section 321.

⁷ *Criminal Law Consolidation Act 1935* (SA), Section 49.

⁸ *Criminal Code Act 1924* (Tas), Section 124.

⁹ *Crimes Act 1900* (ACT), Section 55.

¹⁰ *Criminal Law Consolidation Act 1935* (SA), Section 49.

¹¹ *Criminal Code Act Compilation Act 1913* (WA), Section 321(7).

¹² *Criminal Code Act 1899* (Qld), Section 215.

¹³ *Criminal Code Act 1983* (NT), Section 127(3).

¹⁴ *Crimes Act 1914* (Cth), Section 4M.

¹⁵ *Criminal Code Act 2002* (ACT), Section 25; *Children (Criminal Proceedings) Act 1987* (NSW), Section 5; *Criminal Code Act 1983* (NT), Section 38; *Criminal Code Act 1899* (Qld), Section 29; *Young Offenders Act 1993* (SA), Section 5; *Criminal Code Act 1924* (Tas), Section 18; *Children Youth and Families Act 2005* (Vic), Section 344; *Criminal Code Act Compilation Act 1913* (WA), Section 29.

¹⁶ U.S. Department of State, *Australia 2016 Human Rights Report*, at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265320#> (last visited Jun. 19, 2017) (on file with the International Centre for Missing & Exploited Children).

Domestic legislation dealing with issues relating to child exploitation and abuse include:

- Commonwealth/Federal:
 - *Criminal Code Act 1995*
Source: <https://www.legislation.gov.au/Details/C2017C00235>
 - *Children and Young Persons Act (2008)*
Source: <http://www.legislation.act.gov.au/a/2008-19/current/pdf/2008-19.pdf>
 - *Enhancing Online Safety for Children (No. 25, 2015)*
Source: <https://www.legislation.gov.au/Details/C2015A00025>
 - *Immigration (Guardianship of Children) Act 1946*
Source: <https://www.legislation.gov.au/Details/C2016C00988>
 - *Marriage Act 1961*
Source: <https://www.legislation.gov.au/Details/C2016C00938>
- Australian Capital Territory:
 - *Criminal Code 2002.*
Source: <http://www.legislation.act.gov.au/a/2002-51/current/pdf/2002-51.pdf>
- New South Wales:
 - *Crimes Act 1900.*
Source: <https://www.legislation.nsw.gov.au/#/view/act/1900/40>
- Northern Territory:
 - *Criminal Code Act.*
Source: <https://legislation.nt.gov.au/en/Legislation/CRIMINAL-CODE-ACT>
- Queensland:
 - *Criminal Code Act 1899.*
Source: <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CriminCode.pdf>
- South Australia:
 - *Criminal Law Consolidation Act 1935.*
Source: <https://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOLIDATION%20ACT%201935/CURRENT/1935.2252.UN.PDF>
- Tasmania:
 - *Criminal Code Act 1924.*
Source: http://www.austlii.edu.au/au/legis/tas/consol_act/cca1924115/sch1.html
- Victoria:
 - *Crimes Act 1958.*
Source: http://www.austlii.edu.au/au/legis/vic/consol_act/ca195882/
- Western Australia:
 - *Criminal Code Act Compilation Act 1913.*
Source: <https://www.slp.wa.gov.au/statutes/swans.nsf/%28DownloadFiles%29/Criminal+Code.pdf/%24file/Criminal+Code.pdf>