

Australian child protection legislation

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In Australia, state and territory governments are responsible for the administration and operation of child protection services. Legislative Acts in each state and territory govern the way such services are provided. Table 1 (see page 2) lists the principal child protection Acts in each Australian state and territory. The table also outlines other Acts of Parliament pertinent to the operation and delivery of various services to children and families across Australia.

Key principles guiding legislation

Australia is a signatory to the United Nations Convention on the Rights of the Child (1989) and many of the principles within the Convention are embedded within child protection legislation. Together with policy frameworks, which depict the nature, extent, and fashion in which services and interventions are to be provided, legislative principles reflect the service goals to which governments aspire. Bromfield and Holzer (2008) in a study examining similarities and differences in child protection services across Australia, found that legislation in each state and territory differed considerably in accordance with local needs. However, legislation across all states and territories were found to possess similar guiding principles in several key areas. These include:

■ A “best interest” principle

Legislation in all jurisdictions identify the paramount importance of the principle of the “best interests of the child” and policy provisions providing guidance as to how such decisions are made are presented in each jurisdiction.

■ Early intervention

While all jurisdictions consistently identify the active use of early intervention services with the goal of preventing entry/re-entry in the statutory system, the approaches in the delivery of such services varies (for example, the degree to which non-government service providers are involved/ responsible for the delivery of services and funding sources).

■ The participation of children and young people in decision-making

Legislation in all Australian jurisdictions endorses the importance of involving children and young people in decision-making (to the extent that their age and maturity enables) and to consult and seek the views of children on issues affecting their lives. To illustrate, Section 8(3) of the *Children, Young Persons and Their Families Act 1997* (TAS) states “in any exercise of powers under this Act in relation to a child, if a child is able to form and express views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child’s age and maturity.”

■ Out-of-home care

Out-of-home care represents the most extreme end of the statutory child protection continuum (given that other protective options are typically exhausted before alternative care arrangements are pursued for children deemed to be at risk of maltreatment). Although there are provisions for children to be placed in out-of-home care voluntarily by parents (e.g., for respite), most children in out-of-home care are placed according to an Order made by the relevant court.

■ Culturally specific responses to Aboriginal and Torres Strait Islander people

General provisions regarding maintaining a child’s sense of cultural identity and community connectedness are present in legislation of each jurisdiction with respect to all children (both Indigenous and non-Indigenous). Provisions specific to Aboriginal and Torres Strait Islander children, young people and their families are particularly pertinent with respect to the provision of out-of-home care. All relevant Acts make reference to placement principles for Aboriginal and Torres Strait Islander children (often termed the “Aboriginal Child Placement Principle”) either in legislation, and/or policy, or other forms of delegated legislation such as regulations.

Table 1. Child protection legislation in Australian states and territories

Jurisdiction	Principal Act	Other relevant Acts/Legislation
Australian Capital Territory (Office for Children, Youth and Family Support, Department of Disability, Housing and Community Services) www.legislation.act.gov.au	<i>Children and Young People Act 2008</i> (ACT) (NOTE: Not all provisions are in force)	<i>Adoption Act 1993</i> (ACT) <i>Human Rights Act 2004</i> (ACT) <i>Human Rights Commission Act 2005</i> (ACT) <i>Public Advocate Act 2005</i> (ACT) <i>Family Law Act 1975</i> (Cth)
New South Wales (Department of Community Services) www.legislation.nsw.gov.au	<i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)	<i>Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Act 2006</i> (NSW) <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) <i>Crimes Act 1900</i> (NSW) <i>Commission for Children and Young People Act 1998</i> (NSW) <i>The Ombudsman Act 1974</i> (NSW) <i>Family Law Act 1975</i> (Cth) <i>Reform: Children and Young Persons (Care and Protection) Amendment Bill 2009</i> —introduced to make further provision with respect to out-of-home-care designated agencies and the provision of information to the Children's Guardian and the Director-General of the Department of Community Services
Northern Territory (Children, Youth and Families, Department of Health and Families) www.nt.gov.au/lant/hansard/hansard.shtml	<i>Care and Protection of Children Act 2007</i> (NT) (NOTE: Not all provisions are in force)	<i>Information Act 2006</i> (NT) <i>Disability Services Act 2004</i> (NT) <i>Criminal Code Act 2006</i> (NT) <i>Family Law Act 1975</i> (Cth)
Queensland (Department of Communities) www.legislation.qld.gov.au/OQPChome.htm	<i>Child Protection Act 1999</i> (Qld)	<i>Commission for Children and Young People and Child Guardian Act 2000</i> (Qld) <i>Education (General Provisions) Act 2006</i> (Qld) <i>Public Health Act 2005</i> (Qld) <i>Adoption of Children Act 1964</i> (Qld) <i>Family Law Act 1975</i> (Cth)
South Australia (Families SA; Department for Families and Communities) www.legislation.sa.gov.au/index.aspx	<i>Children's Protection Act 1993</i> (SA)	<i>Young Offenders Act 1994</i> (SA) <i>Adoption Act 1988</i> (SA) <i>Children's Protection Regulations 2006</i> (SA) <i>Family Law Act 1975</i> (Cth) <i>Family and Community Services Act 1972</i> (SA)
Tasmania (Child Protection Services, Department of Health and Human Services) www.thelaw.tas.gov.au/index.w3p	<i>Children, Young Persons and their Families Act 1997</i> (Tas.)	<i>The Family Violence Act 2004</i> (Tas.) <i>Family Law Act 1975</i> (Cth)
Victoria (Children Protection and Juvenile Justice Branch; Department of Human Services) www.dms.dpc.vic.gov.au	<i>Children, Youth and Families Act 2005</i> (Vic.)	<i>Working with Children Act 2005</i> (Vic.) <i>Child Wellbeing and Safety Act 2005</i> (Vic.) <i>The Charter of Human Rights and Responsibilities Act 2006</i> (Vic.) <i>Family Law Act 1975</i> (Cth)
Western Australia (Department for Child Protection) www.slp.wa.gov.au/statutes/swans.nsf	<i>Children and Community Services Act 2004</i> (WA)	<i>Working with Children (Criminal Record Checking) Act 2004</i> (WA) <i>Family Court Act 1997</i> (WA) <i>Adoption Act 1994</i> (WA) <i>Family Law Act 1975</i> (Cth)

Key issues that were found to be less consistent with several variations in each state and territory included:

■ “After care” support

After care support is premised on the understanding that young people will continue to need support after leaving out-of-home care as they make the transition to independence. Legislative provisions regarding after care support are detailed in all jurisdictions in Australia, however, variations exist in the ages to which child protection departments expressly stipulate that after-care support is to be provided to young people. For example, in Victoria, legislation provides for after-care support up to 21 years of age; New South Wales, South Australia, the Northern Territory and Western Australia provide support up to 25 years of age. The Australian Capital Territory, Queensland and Tasmania have provisions, however the age to which support is provided is not stated.

■ Permanency planning and stability of care

Permanency planning is a relatively recent area of development in Australian child protection. Given that it is a recent development, not all jurisdictions have implemented legislative provisions around this aspect of service planning and delivery. Nonetheless, in jurisdictions without express mention of permanency planning in legislation, policy frameworks often provide guidance with respect to this area.

This Resource Sheet provides a brief overview of child protection legislation across state and territory jurisdictions in Australia. For a more detailed discussion of legislative principles underpinning practice and cross references to specific sections in state and territory legislation relevant to each principle see Chapter 4 of *The National Approach to Child Protection: Protect Report*, available at <www.aifs.gov.au/nch/pubs/reports/cdsmac/cdsmac.pdf>.

References

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