

**1. Commonwealth**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence</p>	<p><b>Criminal Code Act 1995</b></p>	<p>Cth</p>	<p>7.1</p>	<p>A child under 10 years old is not criminally responsible for an offence.</p>
			<p>7.2</p>	<p>A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.</p> <p>The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.</p>
			<p>104.28</p>	<p>Like Preventative Detention Orders, control orders cannot be made for children under 16.</p> <p>Section 104.28(1) states that a control order cannot be requested, made or confirmed in relation to a person who is under 16 years of age.</p> <p>However, children who are at least 16 but under 18, may be subject to orders of up to three months, with provision for successive orders.</p> <p>Under s104.28(2), if an issuing court is satisfied that a person in relation to whom an interim control order is being made or confirmed is at least 16 but under 18, the period during which the confirmed control order is to be in force must not end more than 3 months after the day on which the interim</p>

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<p>and visits, save in exceptional circumstances;</p> <p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>			<p>105.5</p>	<p>control order is made by the court.</p> <p>Section 104.28(3) states that subsection (2) does not prevent the making of successive control orders in relation to the same person.</p> <p>Children over 16 can be detained under the Preventative Detention Order scheme set out in The Criminal Code.</p> <p>Under s105.5(1), a preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.</p> <p>If a person is being detained under a preventative detention order or a purported preventative detention order; and the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age, the police officer must:</p> <ul style="list-style-type: none"> <li>- if the police officer is an AFP member—release the person, as soon as practicable, from detention under the order or purported order; or</li> <li>- if the police officer is not an AFP member—inform a senior AFP member, as soon as practicable, of the police officer’s reasons for being satisfied that the person is under 16 years of age.</li> </ul> <p>If a senior AFP member is informed by a police officer under paragraph (2)(d); and the senior AFP member is satisfied on reasonable grounds that the person being detained is under 16 years of age, the senior AFP member must arrange to have he</p>

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			105.39	<p>person released, as soon as practicable, from detention under the order or purported order.</p> <p>Under s105.39, there are special contact rules for a person under 18 or incapable of managing own affairs.</p> <p>The person is entitled, while being detained under the order, to have contact with:</p> <ul style="list-style-type: none"> <li>(a) a parent or guardian of the person; or</li> <li>(b) another person who: <ul style="list-style-type: none"> <li>(i) is able to represent the person’s interests; and</li> <li>(ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and</li> <li>(iii) is not an AFP member; and</li> <li>(iv) is not an AFP employee (within the meaning of the <i>Australian Federal Police Act 1979</i>); and</li> <li>(v) is not a member (however described) of a police force of a State or Territory; and</li> <li>(vi) is not an officer or employee of the Australian Security Intelligence Organisation.</li> </ul> </li> </ul> <p>If the person being detained (the detainee) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section</p>

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				<p>105.40, to have contact under subsection (2) with each of those parents or guardians; and the detainee is entitled to disclose the following to a person with whom the detainee has contact:</p> <ul style="list-style-type: none"> <li>(i) the fact that a preventative detention order has been made in relation to the detainee;</li> <li>(ii) the fact that the detainee is being detained;</li> <li>(iii) the period for which the detainee is being detained.</li> </ul> <p>The form of contact that the person being detained is entitled to have with another person under subsection (2) includes:</p> <ul style="list-style-type: none"> <li>(a) being visited by that other person; and</li> <li>(b) communicating with that other person by telephone, fax or email.</li> </ul> <p>The period for which the person being detained is entitled to have contact with another person each day is:</p> <ul style="list-style-type: none"> <li>(a) 2 hours; or</li> <li>(b) such longer period as is specified in the preventative detention order.</li> </ul> <p>The police officer who is detaining the person may permit the person to have contact with a person for a period that is longer than the period provided for in subsection (5).</p>

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				<p>The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.</p> <p>If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.</p> <p>The interpreter referred to in that subsection may be a police officer.</p> <p>If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must:</p> <p>(a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and</p> <p>(b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.</p>
			105.43	Section 105.43 deals with taking fingerprints, recordings, samples of handwriting or photographs and contains special rules dealing with children under the age of 18.

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				<p>Under s105.43(4), a police officer must not take identification material (other than hand prints, fingerprints, foot prints or toe prints) from the person if the person is under 18 years of age unless a Federal Magistrate orders that the material be taken.</p> <p>In deciding whether to make such an order, the Federal Magistrate must have regard to the age of the person; and such other matters as the Federal Magistrate thinks fit.</p> <p>The taking of identification material from a person who is under 18 years of age must be done in the presence of a parent or guardian of the person; or if a parent or guardian of the person is not acceptable to the person—another appropriate person.</p> <p>Identification material may be taken from a person who is under 18 years of age and is capable of managing his or her affairs if: subsections 105.43(8) and (9) are satisfied; or subsection (8) or (9) is satisfied (but not both) and a Federal Magistrate orders that the material be taken.</p> <p>Section 105.43(8) applies if the person agrees in writing to the taking of the material.</p> <p>Section 105.43(9) applies if either:</p> <p>(a) a parent or guardian of the person; or</p> <p>(b) if a parent or guardian is not acceptable to the person—another appropriate person;</p>

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				<p>agrees in writing to the taking of the material.</p> <p>Under Section 105.43(10), despite this section, identification material may be taken from a person who:</p> <p>(a) is at least 18 years of age; and</p> <p>(b) is capable of managing his or her affairs;</p> <p>if the person consents in writing.</p> <p>Section 105.43(11) sets out who can constitute an 'appropriate person' in relation to the person who is under 18 years of age.</p>
	<p><b>Crimes Act 1914</b></p>	<p>Cth</p>	<p>3 (interpretation)</p>	<p><b>'child'</b>: without limiting who is a child of a person for the purposes of this Act, someone is the child of a person if he or she is a child of the person within the meaning of the <i>Family Law Act 1975</i>.</p>
<p>4M</p>			<p>A child under 10 years old cannot be liable for an offence against a law of the Commonwealth.</p>	
<p>4N</p>			<p>A child aged 10 years or more but under 14 years old can only be liable for an offence against a law of the Commonwealth if the child knew that his or her conduct is wrong.</p> <p>The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.</p>	

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			20C	<p>Under this section, a child or young person who, in a State or Territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State or Territory.</p> <p>Where a person under the age of 18 years is convicted of an offence against a law of the Commonwealth that is punishable by death, he or she shall not be sentenced to death but the court shall impose such other punishment as the court thinks fit.</p>
			Division 4A - Determining a person's age  s3ZQA - Definitions	<p><b>'age determination information'</b> means a photograph (including an X-ray photograph) or any other record or information relating to a person that is obtained by carrying out a prescribed procedure.</p> <p><b>'appropriately qualified'</b>, in relation to the carrying out of a prescribed procedure, means:</p> <p>(a) having suitable professional qualifications or experience to carry out the prescribed procedure; or</p> <p>(b) qualified under the regulations to carry out the prescribed procedure.</p> <p><b>'Commonwealth offence'</b> means:</p> <p>(a) an offence against a law of the Commonwealth, other than an offence that is a service offence for the purposes of the <i>Defence Force Discipline Act 1982</i> ; or</p>

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				<p>(b) a State offence that has a federal aspect.</p> <p><b>'investigating official'</b> means:</p> <p>(a) a member or special member of the Australian Federal Police; or</p> <p>(b) a member of the police force of a State or Territory; or</p> <p>(c) a person who holds an office the functions of which include the investigation of Commonwealth offences and who is empowered by a law of the Commonwealth because of the holding of that office to make arrests in respect of such offences.</p> <p><b>'prescribed procedure'</b> means a procedure specified by regulations made for the purposes of subsection (2) to be a prescribed procedure for determining a person's age.</p> <p>(2) The regulations may specify a particular procedure, which may include the taking of an X-ray of a part of a person's body, to be a prescribed procedure for determining a person's age.</p> <p>(3) A procedure prescribed for the purposes of subsection (2):</p> <p>(a) may involve the operation of particular equipment that is specified for the purpose; and</p> <p>(b) must require that equipment to be operated by an</p>

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				<p>appropriately qualified person.</p> <p>(4) Before the Governor-General makes a regulation for the purposes of subsection (2), the Minister must consult with the Minister responsible for the administration of the <i>Therapeutic Goods Act 1989</i>.</p>
	<b>Crimes Regulations 1990</b>	Cth	6C	Under regulation 6C, for subsection 3ZQA (2) of the Act, the procedure specified as the prescribed procedure for determining a person's age, is that a radiograph must be taken of a hand and wrist of the person whose age is to be determined.
	<b>Crimes Act 1990</b>	Cth	3ZQB	This section sets out the circumstances where an investigating official may seek authority to carry out a prescribed procedure for determining a person's age.
			3ZQC	This section deals with the obtaining of consents for the carrying out of a prescribed procedure for determining a person's age.
			3ZQD	This section deals with the withdrawal of consent to the carrying out of a prescribed procedure for determining a person's age by the person.
			3ZQE	This section deals with the recording of giving of information about carrying out a prescribed procedure and relevant responses.
			3ZQF	This section deals with the circumstances where a judge or magistrate may order the carrying out of a prescribed

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				procedure on his or her own initiative.
			3ZQG	This section deals with orders made by judges or magistrates concerning the carrying out of a prescribed procedure
			3ZQI	This section states that except where the carrying out of a prescribed procedure to determine a person's age is undertaken with the consent of that person and of an additional adult person in accordance with section 3ZQC, the person carrying out the procedure, and any person assisting that person, is entitled to use such force as is reasonable and necessary in the circumstances
			Division 6 (section 176 to 187)	<p>This division states that certain non-citizens are to be kept in immigration detention.</p> <p>This Division is enacted because the Parliament considers that it is in the national interest that each non-citizen who is a designated person should be kept in immigration detention until he or she:</p> <ul style="list-style-type: none"> <li>(a) leaves Australia; or</li> <li>(b) is given a visa.</li> </ul>
			s196	<p>An unlawful non-citizen detained under section 189 must be kept in immigration detention until he or she is:</p> <ul style="list-style-type: none"> <li>(a) removed from Australia under section 198 or 199; or</li> <li>(b) deported under section 200; or</li> </ul>

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				(c) granted a visa.
			205	<p>Where the Minister makes or has made an order for the deportation of a person who has a spouse or de facto partner, the Minister may, at the request of the spouse or de facto partner of that person, remove the spouse or de facto partner and a dependent child or children of that person.</p> <p>Where the Minister makes or has made an order for the deportation of a person who does not have a spouse or de facto partner but who does have a dependent child or children, the Minister may, at the person's request, remove a dependent child or children of the person.</p>
			236A	<p>If a child is charged with a people smuggling offence, a court can dismiss the charges without conviction if it is found on the balance of probabilities that the person was under 18 years at the time of the offence.</p> <p>The relevant section states that the court may make an order under section 19B of the <i>Crimes Act 1914</i> in respect of a charge for an offence against section 233B, 233C or 234A only if it is established on the balance of probabilities that the person charged was aged under 18 years when the offence was alleged to have been committed.</p>
			236B	<p>If a child is convicted, a court is not required to impose the mandatory minimum sentences that ordinarily apply.</p> <p>This section sets mandatory minimum penalties for certain offences (e.g. aggravated people smuggling), however this section does <b>not</b> apply if it is established on the balance of</p>

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				<p>probabilities that the person was aged under 18 years when the offence was committed.</p> <p>[note: children who are incorrectly determined to be adults are therefore subject to these mandatory sentences]</p>
			261AL	<p>This section deals with the identification of minors less than 15 years old</p> <p>(1) A non-citizen who is less than 15 years old must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:</p> <p>(a) a measurement of the non-citizen’s height and weight; or</p> <p>(b) the non-citizen’s photograph or other image of the non-citizen’s face and shoulders.</p> <p><b>Consent</b></p> <p>(2) A non-citizen who is a minor must not be required under section 40, 46, 188 or 192 to provide a personal identifier by way of an identification test carried out by an authorised officer unless:</p> <p>(a) subject to subsection (3), a parent or guardian of the minor consents to the minor providing the personal identifier; or</p> <p>(b) if no parent or guardian of the minor is readily available, or the Minister is the minor’s guardian—an independent person consents to the minor providing the personal</p>

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				<p>identifier.</p> <p>(3) If the Minister is the minor’s guardian, the Minister cannot consent to the minor providing the personal identifier.</p> <p>(4) Before obtaining the consent of a parent or guardian, or the independent person, an officer or authorised officer must inform the parent, guardian or independent person of the matters of which the minor must be informed under section 258B.</p> <p><b>Persons present while identification test is carried out</b></p> <p>(5) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:</p> <p>(a) a parent or guardian of the minor; or</p> <p>(b) an independent person.</p> <p>(6) However, if the Minister is the minor’s guardian, the test must be carried out in the presence of an independent person other than the Minister.</p>
	<b>Migration Act 1958</b>	Cth	4AA	<p>Under this section, the Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.</p> <p>The reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a</p>

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				residence determination.
			5 (Interpretation)	<p><b>'child'</b> of a person has a meaning affected by section 5CA.</p> <p><b>'parent'</b> of a person if the person is his or her child because of the definition of child in section 5CA.</p> <p><b>'detain'</b> means:</p> <p>(a) take into immigration detention; or</p> <p>(b) keep, or cause to be kept, in immigration detention;</p> <p>and includes taking such action and using such force as are reasonably necessary to do so.</p>
			5CA	<p>This section defines what is meant by a 'child of a person'. The definition includes:</p> <p>(a) someone who is a child of the person within the meaning of the <i>Family Law Act 1975</i> (other than someone who is an adopted child of the person within the meaning of that Act);</p> <p>(b) someone who is an adopted child of the person within the meaning of this Act.</p>
			5G	<p>This section 5G deals with relationships and family members and states that for the purposes of this Act, if one person is the child of another person because of the definition of child in section 5CA, relationships traced to or through that person are to be determined on the basis that the person is the child</p>

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				<p>of the other person.</p> <p>For the purposes of this Act, the members of a person's family and relatives of a person are taken to include the following:</p> <p>(a) a de facto partner of the person;</p> <p>(b) someone who is the child of the person, or of whom the person is the child, because of the definition of child in section 5CA;</p> <p>(c) anyone else who would be a member of the person's family or a relative of the person if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family or a relative of the person.</p> <p>This does not limit who is a member of a person's family or relative of a person.</p>
			10	<p>This section sets out the children who are taken to have entered Australia at birth, namely a child who:</p> <p>(a) was born in the migration zone; and</p> <p>(b) was a non-citizen when he or she was born;</p> <p>shall be taken to have entered Australia when he or she was born</p>
			72 and	<p>Section 72 of the <i>Migration Act</i> and Regulation 2.20(7) and (9) of the Migration Regulations, set out circumstances in</p>

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			Regulation 2.20	<p>which children in detention might be eligible to apply for a Bridging Visa.</p> <p>An 'eligible non-citizen' is defined to include a non-citizen who the Minister has determined to be an eligible non-citizen.</p> <p>Sub-regulation 2.20 states that it applies to a non-citizen who is in immigration detention under Division 6 of Part 2 of the Act; and who has not turned 18; and</p> <ul style="list-style-type: none"> <li>- in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and</li> <li>- in respect of whom the Minister is satisfied that: <ul style="list-style-type: none"> <li>(i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and</li> <li>(ii) those arrangements are in the best interests of the non-citizen; and</li> <li>(iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.</li> </ul> </li> </ul> <p>There are also provisions for people who have a special need (based on health or a previous experience of torture or</p>

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				<p>trauma) in respect of a which a medical specialist appointed by Immigration has certified that the non-citizen cannot be properly cared for in a detention environment and in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.</p> <p>Under s72(2), the Minister can make a determination that a non-citizen is an eligible non-citizen if the non-citizen (including a child) has been in immigration detention for a period of more than 6 months after the application for a protection visa was made and the Minister thinks that the determination would be in the public interest.</p>
			78	<p>Section 78 deals with children born in Australia. If a child born in Australia is a non-citizen when born and at the time of the birth:</p> <p>(i) one of the child's parents holds a visa (other than a special purpose visa); and</p> <p>(ii) the other parent is, under section 83, included in that visa or does not hold a visa (other than a special purpose visa);</p> <p>the child is taken to have been granted, at the time of the birth, a visa of the same kind and class and on the same terms and conditions (if any) as that visa.</p> <p>If a child born in Australia is a non-citizen when born and at the time of the birth, each of the child's parents holds a visa (other than a special purpose visa), the child is taken to have been granted, at the time of the birth, visas of the same kind and class and on the same terms and conditions (if any) as</p>

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				each of those visas.
			83	<p>This section states that certain persons are taken to be included in the spouse, de facto partner or parent's visa.</p> <p>Where the name of a child is included in the passport or other document of identity of a parent of the child and the child accompanies that parent to Australia (whether before or after the commencement of this section), the child shall be taken to be included in any visa granted to the parent evidence of which is endorsed on the passport or other document of identity if, and only if, the child's name is included in the endorsement.</p>
			84	<p>This section 84 states that the Minister may suspend the processing of visa applications by a notice in the Gazette.</p> <p>However, under subsection (3), a notice under this section does not have any effect in relation to an application for a visa made by a person on the ground that he or she is the spouse, de facto partner or dependent child of:</p> <ul style="list-style-type: none"> <li>(a) an Australian citizen; or</li> <li>(b) the holder of a permanent visa that is in effect; or</li> <li>(c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.</li> </ul> <p>For the purposes of this section, a child of a person is a</p>

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				<p>dependent child if the child:</p> <ul style="list-style-type: none"> <li>(a) does not have a spouse or de facto partner; and</li> <li>(b) either:               <ul style="list-style-type: none"> <li>(i) is under 18; or</li> <li>(ii) is 18, 19 or 20 and is dependent on the person for:                   <ul style="list-style-type: none"> <li>(A) financial and psychological support; or</li> <li>(B) physical support.</li> </ul> </li> </ul> </li> </ul>
			85, 86, 87	<p>Under s85, the Minister may determine a limit on visas. However, under s87, the limit does not prevent the grant of a visa to a person who applied for it on the ground that he or she is the spouse, de facto partner or dependent child of:</p> <ul style="list-style-type: none"> <li>(a) an Australian citizen; or</li> <li>(b) the holder of a permanent visa that is in effect; or</li> <li>(c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.</li> </ul> <p>The definition of a dependent child is the same as in the row above.</p>
			140	<p>Section 140 states that the cancellation of a visa results in other cancellation. If a person's visa (the cancelled visa) is</p>

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				cancelled under any provision of this Act and the person is a parent of another person, and the other person holds a particular visa (the other visa), that was granted under section 78 (child born in Australia) because the parent held the cancelled visa, the other visa is also cancelled.
			173	<p>This section states that if the holder of a visa enters Australia in a way that contravenes section 43 (Visa holders must usually enter at a port), or regulations to which that section is subject, the visa ceases to be in effect.</p> <p>(However to avoid doubt, a non-citizen child who is taken to have been granted a visa or visas, at the time of the child's birth, by virtue of the operation of section 78, is not to be taken, by virtue of that birth, to have entered Australia in a way that contravenes section 43 or regulations to which that section is subject.)</p>
			Division 6 (section 176 to 187)	<p>This division states that certain non-citizens are to be kept in immigration detention.</p> <p>This Division is enacted because the Parliament considers that it is in the national interest that each non-citizen who is a designated person should be kept in immigration detention until he or she:</p> <ul style="list-style-type: none"> <li>(a) leaves Australia; or</li> <li>(b) is given a visa.</li> </ul>
			s196	An unlawful non-citizen detained under section 189 must be

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>kept in immigration detention until he or she is:</p> <ul style="list-style-type: none"> <li>(a) removed from Australia under section 198 or 199; or</li> <li>(b) deported under section 200; or</li> <li>(c) granted a visa.</li> </ul>
			205	<p>Where the Minister makes or has made an order for the deportation of a person who has a spouse or de facto partner, the Minister may, at the request of the spouse or de facto partner of that person, remove the spouse or de facto partner and a dependent child or children of that person.</p> <p>Where the Minister makes or has made an order for the deportation of a person who does not have a spouse or de facto partner but who does have a dependent child or children, the Minister may, at the person's request, remove a dependent child or children of the person.</p>
			236A	<p>If a child is charged with a people smuggling offence, a court can dismiss the charges without conviction if it is found on the balance of probabilities that the person was under 18 years at the time of the offence.</p> <p>The relevant section states that the court may make an order under section 19B of the <i>Crimes Act 1914</i> in respect of a charge for an offence against section 233B, 233C or 234A only if it is established on the balance of probabilities that the person charged was aged under 18 years when the offence was alleged to have been committed.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			236B	<p>If a child is convicted, a court is not required to impose the mandatory minimum sentences that ordinarily apply.</p> <p>This section sets mandatory minimum penalties for certain offences (e.g. aggravated people smuggling), however this section does <b>not</b> apply if it is established on the balance of probabilities that the person was aged under 18 years when the offence was committed.</p> <p>[note: children who are incorrectly determined to be adults are therefore subject to these mandatory sentences]</p>
			261AL	<p>This section deals with the identification of minors less than 15 years old</p> <p>(1) A non-citizen who is less than 15 years old must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:</p> <p>(a) a measurement of the non-citizen’s height and weight; or</p> <p>(b) the non-citizen’s photograph or other image of the non-citizen’s face and shoulders.</p> <p><b>Consent</b></p> <p>(2) A non-citizen who is a minor must not be required under section 40, 46, 188 or 192 to provide a personal identifier by way of an identification test carried out by an authorised officer unless:</p> <p>(a) subject to subsection (3), a parent or guardian of the</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>minor consents to the minor providing the personal identifier; or</p> <p>(b) if no parent or guardian of the minor is readily available, or the Minister is the minor’s guardian—an independent person consents to the minor providing the personal identifier.</p> <p>(3) If the Minister is the minor’s guardian, the Minister cannot consent to the minor providing the personal identifier.</p> <p>(4) Before obtaining the consent of a parent or guardian, or the independent person, an officer or authorised officer must inform the parent, guardian or independent person of the matters of which the minor must be informed under section 258B.</p> <p><b>Persons present while identification test is carried out</b></p> <p>(5) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:</p> <p>(a) a parent or guardian of the minor; or</p> <p>(b) an independent person.</p> <p>(6) However, if the Minister is the minor’s guardian, the test must be carried out in the presence of an independent person other than the Minister.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
	<b>Australian Human Rights Commission Act 1986</b>	Cth	s3 (Interpretation)	The term 'Declarations' is defined to include the 'Declaration of the Rights of the Child' proclaimed by the General Assembly of the United Nations on 20 November 1959, a copy of the English text of which is set out in Schedule 3 of the Act.
			s3	The term 'human rights' is defined to include the rights and freedoms declared by the Declarations.
			s11	<p>Under the Act, the Commission has specific legislative functions and responsibilities for the protection and promotion of human rights. Among other functions, the Commission can:</p> <ul style="list-style-type: none"> <li>• examine enactments for the purpose of ascertaining whether the enactments are inconsistent with or contrary to any human right and report to the Minister the results of any such examination (section 11(1)(e))</li> <li>• inquire into acts or practices that may be inconsistent with or contrary to any human right (section 11(1)(f))</li> <li>• promote an understanding, acceptance and public discussion of human rights in Australia (section 11(1)(g))</li> <li>• advise on laws that should be made by the Parliament or action that should be taken by the Commonwealth on matters relating to human rights (section 11(1)(j))</li> <li>• advise on what action, in the opinion of the Commission, Australia needs to take to comply with the provisions of the International Covenant on Civil and Political Rights</li> </ul>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				(ICCPR), <u>the Declarations annexed to the Act</u> or any relevant international instrument declared under the Act (section 11(1)(k)).
			s46C	<p>Section 46(1) of the Act sets out functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner. For example, the Commissioner must submit a report to the Minister annually regarding the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons.</p> <p>In the performance of such functions, the Commissioner must, as appropriate have regard to the Convention on the Rights of the Child.</p>

**2. New South Wales**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC) ARTICLE 37: TABLE OF RELEVANT NEW SOUTH WALES LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</p>	<p><b>Law Enforcement (Powers and Responsibilities) Act 2002</b></p>	<p>NSW</p>	11	<p>A person is legally required to identify himself or herself if police suspect on reasonable grounds that the person may be able to assist them to investigate an indictable offence because the person was at or near the scene of the offence.</p>
			12	<p>A person who is requested by a police officer in accordance with sections 11 and 201 to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.</p>
			13	<p>A person must not, without reasonable excuse, in response to a request made by a police officer in accordance with this Division:</p> <p>(a) give a name that is false in a material particular, or</p> <p>(b) give an address other than the person's full and correct address.</p>
			31	<p>A police officer or other person who is authorised to search a person may conduct a strip search of the person if the police officer or other person suspects on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.</p>
			ss.33, 34	<p>A parent, guardian or personal representative of the person</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'<sup>5</sup></p>				<p>being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.</p> <p>A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.</p> <p>A strip search must not involve a search of a person's body cavities or an examination of the body by touch.</p> <p>A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.</p> <p>A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.</p> <p>A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being</p>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				present.
			Section 108	<p>Police may arrest a person if:</p> <ul style="list-style-type: none"> <li>• they know or suspect on reasonable grounds that the person has committed an offence (<i>Law Enforcement (Powers and Responsibilities) Act 2002, s99</i>) or breached his or her bail conditions (<i>Bail Act, s50</i>); or</li> <li>• they think the person is about to commit a 'breach of the peace', or</li> <li>• there is a warrant out for the person's arrest (e.g. for failing to appear at court, breaching parole).</li> </ul> <p>Section 108 provides that nothing in Part 8 (Powers relating to arrest) requires a police officer to arrest a person <u>under the age of 18 years</u> if it is more appropriate to deal with the matter under the <i>Young Offenders Act 1997</i>.</p>
			ss.115-120	<p>The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.</p> <p>The maximum investigation period is 4 hours or such longer period as the maximum investigation period may be extended to by a detention warrant.</p> <p>Without limiting the relevant circumstances that must be taken into account in determining what is a reasonable time,</p>

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				the person's age must be taken into account.
			133	<p>A police officer may take or cause to be taken all particulars that are necessary to identify a person who is in lawful custody for any offence.</p> <p>If the person is over the age of 14 years, the particulars may include the person's photograph, finger-prints and palm-prints.</p>
			136	<p>This section applies to a child under the age of 14 years who is in lawful custody for an offence.</p> <p>A person must not take a photograph or the finger-prints or palm-prints of a child except in accordance with this section. Nothing in this section, however, prevents the taking of any child's photograph, finger-prints or palm-prints in accordance with the order of a court under section 134.</p> <p>A police officer of the rank of sergeant or above may, in respect of a child, apply:</p> <p>(a) to the Children's Court, or</p> <p>(b) if it is not possible to apply to the Children's Court within 72 hours after the taking of the child into custody, to an authorised officer,</p> <p>for an order authorising, for the purpose only of identifying the child, the taking of the child's photograph, finger-prints and palm-prints.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>The Children’s Court or authorised officer may hear the application and may make the order sought in the application.</p> <p>In determining whether to make the order, the Children’s Court or authorised officer is to take into account the following:</p> <ul style="list-style-type: none"> <li>(a) the seriousness of the circumstances surrounding the offence,</li> <li>(b) the best interests of the child,</li> <li>(c) the child’s ethnic and cultural origins,</li> <li>(d) so far as they can be ascertained, any wishes of the child with respect to whether the order should be granted,</li> <li>(e) any wishes expressed by the parent or guardian of the child with respect to whether the order should be granted.</li> </ul> <p>A child must not be held in custody for the purpose only of an application being made under this section.</p>
	<p><b>Law Enforcement (Powers and Responsibilities) Regulations</b></p>		24	Section 24(1) defines a reference in this Division to a vulnerable person to include a child.
			23	Under s23, a child means a person who is under the age of 18 years.
			27	A detained person who is a vulnerable person is entitled to have a support person present during any investigative

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				<p>procedure in which the detained person is to participate.</p> <p>Before any such investigative procedure starts, the custody manager for the detained person must inform the person that the person is entitled to the presence of a support person during the investigative procedure.</p> <p>If the detained person wishes to have a support person present, the custody manager must, as soon as practicable:</p> <p>(a) give the detained person reasonable facilities to enable the person to arrange for a support person to be present, and</p> <p>(b) allow the detained person to do so in circumstances in which, so far as practicable, the communication will not be overheard.</p> <p>The custody manager must defer for a reasonable period any such investigative procedure until a support person is present unless the detained person has expressly waived his or her right to have a support person present.</p> <p>An investigative procedure is not required to be deferred for more than 2 hours to allow a support person to arrive at the place of detention.</p>
	<p><b>Crimes (Forensic Procedures) Act 2000</b></p>		3	<p><b>'child'</b> means a person who is at least 10 years of age but under 18 years of age.</p>
			Part 8A	<p>Part 8A deals with the carrying out of forensic procedures on children under 10 years of age.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>The <i>Crimes (Forensic Procedures) Act 2000</i> allows police to take forensic samples (e.g. a strand of hair, a swab from inside the mouth, a blood test). These are usually used for DNA testing, to match against DNA found at the crime scene or on victims.</p> <p>A forensic procedure may be carried out on a suspect, a convicted indictable offender (someone serving a prison sentence for an offence carrying a maximum penalty of 5 years or more), or a volunteer (e.g. someone who is not a suspect but wants to take a DNA test to establish their innocence).</p> <p>Suspects who are children or incapable persons (e.g. people with intellectual disabilities who cannot understand the procedure or its implications) are deemed to be unable to give informed consent. To carry out a forensic procedure on a suspect who is a child or incapable person, there must be a court order.</p>
	<b>Children's Court Act 1987</b>		Part 3	<p>In court proceedings, the majority of juvenile charges brought by the police are dealt with by the Children's Court under the provisions of the <i>Young Offenders Act 1997</i> and the <i>Children (Criminal Proceedings) Act 1987</i>. Police charges for very serious offences are dealt with by the District and Supreme Courts.</p> <p>Part 3 concerns the jurisdiction of the Children's Court.</p>
	<b>Young Offenders Act 1997</b>		s. 3; generally	<p>The detection and investigation of crime is the responsibility of New South Wales police. For eligible and entitled <u>young offenders</u>, the police may use the alternatives to court of</p>

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				<p>warnings, cautions or referrals to youth justice conferences that are set out in the <i>Young Offenders Act 1997</i>.</p> <p>Section 3 provides that the objects of the Act are to:</p> <p>(a) establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and</p> <p>(b) establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and</p> <p>(c) establish and use youth justice conferences to deal with alleged offenders in a way that:</p> <p>(i) enables a community based negotiated response to offences involving all the affected parties, and</p> <p>(ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and</p> <p>(iii) meets the needs of victims and offenders, and</p> <p>(d) address the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system through the use of youth justice conferences, cautions and warnings.</p> <p>The Act sets out an integrated hierarchical scheme of police warnings, cautions and youth justice conferences designed to</p>

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				<p>divert young offenders from formal court processes for certain offences. Young offenders are entitled under the Act to be dealt with by way of the least intrusive response that is appropriate in the circumstances of the offence.</p> <p>There are limitations in the Act on both the type and seriousness of the offence, on the time taken for each response, and on the age of the offender (10 to 18). Offences that cause the death of a person, sexual assault offences, traffic offences where the child is old enough to hold a permit or a licence, breaches of apprehended violence orders, and most drug offences are all excluded from the operation of the Act.</p> <p>All summary offences that do not involve violence (for example, offensive language) are potentially offences for which police can give a child a warning (and not arrest). The child does not have to admit the offence before a warning is given, but police must record the child's name, cultural background, age and sex.</p> <p>When police arrest a child they must first consider whether the child is 'eligible' for a caution or a youth justice conference. That is, they must decide whether the offence is one that is 'covered' by the Act, and that the child has admitted the offence and consented to be cautioned or participate in a conference. If so, they must apply a given set of criteria before deciding whether this child should be cautioned, referred to a youth justice conference, or charged. The criteria are: the seriousness of the offence, the degree of violence involved, the harm caused to any victim, the child's</p>

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				<p>previous offending history and the number of times the child has been cautioned or participated in a youth justice conference, as well as any other appropriate matters.</p> <p>To be eligible for a caution or conference, the child must admit the offence in the presence of an appropriate adult (ss.19 ,36). If the child is 16 or over, the child may choose an adult to be present. If the child is under 16, the adult must be a '<b>person responsible</b>' (generally a parent or guardian), a person chosen by the person responsible, or a legal practitioner chosen by the child (s10). The Act promotes the principle that children are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain such advice (s7). Police must inform a child of their right to legal advice, and where to obtain it, before arranging for a caution or conference (ss.22, 24, 39, 45).</p>
	<b>Bail Act 1978</b>		s. 5	<p>This Act applies to a person whether or not the person has attained the age of 18 years.</p> <p>[Bail is an agreement to appear in court on a set day. It is a child's right to apply for bail when charged with an offence. Bail applies only if the child has been charged and does not apply to a child if her or she has been issued with a court attendance notice (CAN).]</p>
	<b>Children (Criminal Proceedings) Act (NSW) 1987</b>		s. 5; generally	<p>In NSW there is a conclusive presumption that a child under the age of ten cannot commit an offence [s5].</p> <p>The commencement, conduct and outcome of court proceedings against children alleged to have committed an offence and who are not diverted under the <i>Young Offenders</i></p>

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				<p><i>Act 1997</i> are governed principally by the <i>Children (Criminal Proceedings) Act 1987</i>.</p> <p>Section 6 sets out the principles applicable to all courts exercising criminal jurisdiction with respect to children. These are</p> <ul style="list-style-type: none"> <li>(a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard and a right to participate, in the processes that lead to decisions that affect them;</li> <li>(b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance;</li> <li>(c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption;</li> <li>(d) that it is desirable, wherever possible, to allow a child to reside in his or her own home;</li> <li>(e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind;</li> <li>(f) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties;</li> <li>(g) that it is desirable that children who commit offences</li> </ul>

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				<p>accept responsibility for their actions and, wherever possible, make reparation for their actions;</p> <p>(h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.</p> <p>Except as provided by the Act, the Local Court may not hear and determine criminal proceedings that the Children’s Court has jurisdiction to hear and determine. The Drug Court may not hear or determine criminal proceedings that a Children’s Court has jurisdiction to hear and determine.</p>
			[s10(1)a]	Provides that any person not 'directly interested in the proceedings should be excluded from the court.
			[s12(1)]	If criminal proceedings are brought against a child, the court that hears those proceedings must take such measures as are reasonably practicable to ensure that the child understands the proceedings.
			s13	<p>Any statement, confession, admission or information made or given to a member of the police force by a child who is a party to criminal proceedings shall not be admitted in evidence in those proceedings unless:</p> <p>(a) there was present at the place where, and throughout the period of time during which, it was made or given:</p> <p>(i) a person responsible for the child,</p>

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				<p>(ii) an adult (other than a member of the police force) who was present with the consent of the person responsible for the child,</p> <p>(iii) in the case of a child who is of or above the age of 14 years-an adult (other than a member of the police force) who was present with the consent of the child, or</p> <p>(iv) an Australian legal practitioner of the child’s own choosing, or</p> <p>(b) the person acting judicially in those proceedings:</p> <p>(i) is satisfied that there was proper and sufficient reason for the absence of such an adult from the place where, or throughout the period of time during which, the statement, confession, admission or information was made or given, and</p> <p>(ii) considers that, in the particular circumstances of the case, the statement, confession, admission or information should be admitted in evidence in those proceedings.</p>
			[s14]	Provides that the Court may refuse to record a conviction for children aged 16 and over against whom an offence is proved.
			[s19]	Provides for the automatic transfer to adult custody of young people convicted of a serious children’s indictable offence when they turn 18 years of age. This section also provides the court with the discretion to make an order for the young person to remain in juvenile detention up to the age of 21

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				<p>years if there</p> <p>are special circumstances. However, not all young people over 18 years in the juvenile system are the subject of the findings of ‘special circumstance’.</p>
			[s25]	<p>A court shall not sentence a person to whom section 25 applies to a term of imprisonment, or make an order under s33(1)(g) in respect of the person, in connection with an offence unless the requirements of s25(2) are satisfied.</p>
			[Part 3]	<p>Concerns criminal proceedings in the Children’s Court.</p>
			[s33]	<p>Permits the courts to make any of the following orders: a dismissal and/or caution, a good behaviour bond with or without</p> <p>supervision, a fine, referral to a youth justice conference, conditional or unconditional probation, a community service order, or an order that confines a young person to a period to detention.</p> <p>Section 33C concerns the application of <i>Crimes (Sentencing Procedure) Act 1999</i> to children.</p>
			s38	<p>If the Children’s Court finds a person not guilty of an offence to which this Division applies, or finds a person guilty of such an offence but makes an order dismissing the charge under section 33 (1) (a) (i), the Children’s Court is to make an order that requires any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children’s Court), relating to the offence to be</p>

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				<p>destroyed.</p> <p>If the Children’s Court finds a person guilty of an offence to which this Division applies and makes any other order in respect of the person under section 33, it may, if it is of the opinion that the circumstances of the case justify its doing so, make an order (whether on the application of the person or otherwise) that requires any photographs, finger-prints and palm-prints, and any other prescribed records (other than records of the Children’s Court), relating to the offence to be destroyed.</p> <p>If the Children’s Court makes an order under subsection (1) or (2) in respect of a person, it shall cause a copy of the order to be given to the person and, if the person is a child, to a person responsible for the child.</p>
	<p><b>Children (Community Service Orders) Act 1987</b></p>		<p>ss. 5, 6</p>	<p>(1) If, in dealing with a person to whom this Act applies, a court would, but for s5:</p> <p>(a) make an order imposing a sentence of imprisonment on the person, or</p> <p>(b) make an order under s33(1)(g) of the <i>Children (Criminal Proceedings) Act 1987</i> in respect of the person,</p> <p>the court may, instead of making that order, make an order requiring the person to perform community service work.</p> <p>(1A) An order under this section may recommend that the community service work to be performed by the person in</p>

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				<p>respect of whom the order is made should include:</p> <p>(a) the removal of graffiti from buildings, vehicles, vessels and places, and</p> <p>(b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.</p> <p>(1B) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include participation in a personal development, educational or other program.</p> <p>(2) A court that is exercising the functions of the Children’s Court under Division 4 of Part 3 of the <i>Children (Criminal Proceedings) Act 1987</i> shall not exercise its powers under this section otherwise than in accordance with the provisions of that Division.</p> <p>(3) A court, other than a court that is exercising the functions of the Children’s Court under Division 4 of Part 3 of the <i>Children (Criminal Proceedings) Act 1987</i>, shall not exercise its powers under this section in relation to an offence if it has given or made, or proposes to give or make, a direction or order under Division 3 of Part 2 of the <i>Crimes (Sentencing Procedure) Act 1999</i> in relation to the same offence.</p> <p>If a court proposes to make a children’s community service order in respect of a person, it shall, before making the order, explain or cause to be explained to the person the nature and</p>

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				effect of proposed children's community service order.
	<b>Children (Detention Centres) Act, 1987</b>			<p>The Act governs under what circumstances juvenile offenders may be confined to a detention centre, the treatment of detainees, the granting to a detainee of leave from a juvenile justice centre and discharge from a centre.</p> <p>Within the NSW Juvenile Justice system young people who were under the age of 18 years at the time of their offence can serve all or part of their sentence in a Juvenile Justice Centre. Detainees 16 years and over, who are of high classification, are able to be administratively transferred from the Department of Juvenile Justice to the Department of Corrective Services with the consent of the Commissioner for Corrective Services and pursuant to s28(1) of the <i>Children (Detention Centres) Act 1987</i>.</p>
	<b>Children (Interstate Transfer of Offenders) Act 1988</b>		ss. 4, 6, 7	<p>(1) The responsible Minister may (subject to the Act) enter into an agreement with a Minister of another State, or with a person authorised to enter into an agreement on behalf of such a Minister, providing generally:</p> <p>(a) for the transfer of young offenders from or to New South Wales, or</p> <p>(b) for the transfer of young offenders through New South Wales from one State to another.</p> <p>(1) Such an arrangement must not be made unless:</p> <p>(a) the young offender or a person responsible for the young</p>

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				<p>offender applies for the transfer to be made, and</p> <p>(b) the Director-General is of the opinion that the transfer is appropriate, having regard to all the circumstances, including:</p> <p>(i) the place or intended place of residence of the parents or other relatives of the young offender, and</p> <p>(ii) the present and future education, training or employment of the young offender, and</p> <p>(iii) the medical or other needs of the young offender, and</p> <p>(c) the young offender has been given independent legal advice of the effect of the arrangement, and</p> <p>(d) the young offender consents to the arrangement, or the Director-General determines that the particular circumstances of the case indicate the arrangement should be made without the young offender's consent, and</p> <p>(e) the Director-General is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.</p> <p>An arrangement for the transfer of a young offender from another State to New South Wales must not be made unless the Director-General is satisfied that there are adequate facilities in New South Wales for the young offender to be accepted and dealt with as provided in the arrangement.</p>

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	<b>Education Act 1990 (NSW)</b>		s35 & s47(h)	Corporal punishment was banned in government schools in NSW pursuant to the <i>Education Act 1990</i> (NSW). An amendment to the Act (the <i>Education Discipline Act 1995</i> , which came into effect in 1997) extended the ban on corporal punishment to non-government schools.
	<b>Summary Offences Act 1988</b>		11	A person is legally required to identify himself or herself if the person is under 18 and police suspect the person of carrying or consuming alcohol in public

**3. Victoria**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC) ARTICLE 37: TABLE OF RELEVANT VICTORIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</p>	<p><b>Children, Youth and Families Act 2005</b></p>	<p>Vic</p>	<p>[s1]</p>	<p>The juvenile justice system in Victoria has a strong emphasis on the diversion of young people away from the formal criminal justice system. This emphasis is reflected in the legislation and in the approach taken to working with young people from the initial point of contact with the police through to completion of any order imposed by the court.</p> <p>In Victoria, juvenile offenders are prosecuted under the Children and <i>Young Persons Act 1989</i>. This specifies the developmental needs of young people (as distinct from those of adults) and sets out the sentencing hierarchy and judicial processes that result in entry to the juvenile justice program.</p> <p>The purposes of the CYFA are-</p> <p>(a) to provide for community services to support children and families; and</p> <p>(b) to provide for the protection of children; and</p> <p>(c) to make provision in relation to children who have been charged with, or who have been found guilty of, offences; and</p> <p>(d) <u>to continue</u> the Children's Court of Victoria as a specialist court dealing with matters relating to children.</p>

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<p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'<sup>5</sup></p>			[s3]	<p><b>'child'</b> (so far as it is relevant to Art. 37) means:</p> <p>in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court.</p>
			[s344]	It is conclusively presumed that a child under the age of 10 years cannot commit an offence.
			[ss.8-14]	<p>The CYFA assembles in ss.8-14 a number of principles to which decision makers must have regard in making any decision or taking any action under the CYFA. In particular, all judicial and administrative decisions and actions under the CYFA – other than those in relation to Chapter 5 [Children and the Criminal Law] – must be consistent with the 'best interests principles':</p> <p>(1) 'the best interests of the child must always be paramount'; and</p> <p>(2) when determining whether a decision or action is in the best interests of a child, 'the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered'; and</p> <p>(3) consideration must also be given, where they are relevant to the decision or action, to each of the 18 other matters listed</p>

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				<p>in s10(3).</p> <p>In addition, principles which must be complied with when dealing with Aboriginal children include, in ss.13-14, the nationally agreed Aboriginal Child Placement Principle.</p> <p>The duties &amp; powers of the arresting police officer, the Children's Court and a bail justice in relation to a child who is in custody</p>
			[s346(6)]	<p>provides that, to the extent that it is not inconsistent with s346, the <i>Bail Act 1977 (Vic)</i> applies to an application for bail by a child.</p>
			[s346(2)]	<p>If a child is arrested and taken into custody by a police officer, the child must be:</p> <p>(a) released unconditionally [with or without being charged]; or</p> <p>(b) released on bail by a sergeant of police or officer in charge of a police station pursuant to s10 of the <i>Bail Act 1977 (Vic)</i>; or</p> <p>(c) brought before the Court; or</p> <p>(d) if the Court is not sitting at any convenient venue, brought before a bail justice within a reasonable time of being taken into custody but not later than 24 hours after being taken into custody.</p>

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			[s346(3)]	<p>If a child in custody is brought before the Court under s346(2)(c), the Court may:</p> <p>(a) grant bail; or</p> <p>(b) refuse bail and remand the child in custody for a period not exceeding 21 days.</p>
			[s346(4)]	<p>If a child in custody is brought before a bail justice under s346(2)(d), the bail justice may only:</p> <p>(a) grant bail; or</p> <p>(b) refuse bail and remand the child in custody to appear before the Court on the next working day or, if the proper venue is in a prescribed region of the State, within 2 working days.</p>
			[s346(5)]	<p>When a child in custody is brought before the Court on the expiry of a period of remand in custody, the Court must not remand the child in custody for a further period longer than 21 days.</p>
			[s346(7)&(8)]	<p>If a member of the police force inquires into a case under s10 of the <i>Bail Act 1977</i>, a parent or guardian of the child in custody or an independent person must be present. Such independent person may take steps to facilitate the granting of bail, for example by arranging accommodation.</p>
			[s346(9)]	<p>Bail must not be refused to a child on the sole ground that the</p>

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				child does not have any, or any adequate, accommodation.
			[s346(10)]	If the child does not have the capacity or understanding to enter into an undertaking of bail, the child may be released on bail if the child's parent or some other person enters into an undertaking of bail to produce the child at the venue of the Court to which the case is adjourned or the court to which the child is committed for trial.
			[s347(1)]	and reg 19 & Sch.3 of the Children, Youth and Families Regulations 2007] If a child is remanded in custody by a court or a bail justice, that the child must be placed in a remand centre or in a prescribed region of the State, in a police gaol or other suitable place if the period of remand is not more than 2 working days.
			[s348]	Despite s.24(3) of the <i>Bail Act 1977</i> , the maximum period for which the Court may remand a child arrested pursuant to s.24(1) in relation to a breach or likely breach of bail is 21 days.
			[s420]	provides, in effect, that a person who:  <input type="checkbox"/> has been arrested in accordance with a warrant issued; or  <input type="checkbox"/> has appeared before the Court in answer to a notice to appear served in respect of an alleged breach of a Children's Court sentencing order may be remanded or bailed and the <i>Bail Act 1977 (Vic)</i> applies, subject to s.346 of the CYFA, as if the person was an accused person.

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			[s504]	<p>There continues to be a court called 'The Children's Court of Victoria' which has the following Divisions:</p> <ul style="list-style-type: none"> <li>• <b>The Family Division</b> which hears applications relating to the protection and care of children and young persons at risk, and applications for intervention orders</li> <li>• <b>The Criminal Division</b> which hears matters relating to <b>criminal offending</b> by children and young persons</li> <li>• <b>The Koori Court (Criminal Division)</b> aims for greater participation of the Aboriginal Community in the sentencing process of the Children's Court (Criminal Division) to the effect of achieving more culturally appropriate sentences for young Aboriginal people.</li> </ul> <p>(This summary does not deal with the Neighborhood Justice Division)</p> <p>Every proceeding in the Court must be commenced, heard and determined in one of those Divisions. The Court must not sit as more than one Division at the same time in the same room. Each Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.</p>
			[s1(c)]	<p>One of the main purposes of the Children's Court is to deal with children who have been charged with, or who have been found guilty of, offences.</p>
			[s344A]	<p>sets out the applicable time limits for commencing a proceeding against a child.</p>

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			[s585(1)]	<p>imposes an obligation on the Magistrates' Court to discontinue a proceeding for the hearing of a charge and order that the hearing be transferred to the Children's Court if before or during the proceeding it appears to the Children's Court that the accused is a 'child' or was a 'child' when the proceeding for the offence was commenced in the Magistrates' Court.</p> <p><u>Procedure - Generally</u></p>
			[s522]	<p>Procedural guidelines to be followed by Court</p> <p>(1) As far as practicable the Court must in any proceeding:</p> <p>(a) take steps to ensure that the proceeding is comprehensible to:</p> <p>(i) the child; and</p> <p>(ii) the child's parents; and</p> <p>(iii) all other parties who have a direct interest in the proceeding; and</p> <p>(b) seek to satisfy itself that the child understands the nature and implications of the proceeding and of any order made in the proceeding; and</p> <p>(c) allow:</p> <p>(i) the child; and</p>

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				<p>to participate fully in the proceeding; and</p> <p>(d) consider any wishes expressed by the child; and</p> <p>(e) respect the cultural identity and needs of:</p> <p>(i) the child; and</p> <p>(ii) the child's parents and other members of the child's family; and</p> <p>(f) minimise the stigma to the child and his or her family.</p>
			[ss.524 and 525]	concern the legal representation of a child before the Court.
			[s526]	prohibits the Court from hearing and determining a proceeding without an interpreter if the Court is satisfied that a child, a parent or any other party to the proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding or participating in the proceeding.
			[ss.527]	<p>If the Court makes an order, it must explain the meaning and effect of the order as plainly and simply as possible and in a way which it considers the child, the parents and the other parties to the proceeding will understand. The explanation must be given through an interpreter in the circumstances set out in s527(2). The explanation given of an order is neither part of the order nor part of the reasons for the order.</p> <p><u>Criminal Division</u></p>

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			[s516(1)]	<p>The Criminal Division of the Court has the following jurisdiction:</p> <p>(a) to hear and determine all charges against children for summary offences;</p> <p>(b) subject to s356, to hear and determine summarily all charges against children for indictable offences other than the following offences: murder; attempted murder; manslaughter; child homicide; defensive homicide; arson causing death [s197A of the <i>Crimes Act 1958</i>] and culpable driving causing death [s318 of the <i>Crimes Act 1958</i>];</p> <p>(c) to conduct committal proceedings into all charges against children for indictable offences;</p> <p>(d) to grant or refuse bail to, or extend, vary, or revoke the bail of, a child who is charged with an offence; and</p> <p>(e) subject to Chapter 5 of the CYFA, to deal with a breach of a sentencing order or variation of a sentencing order.</p>
			[s516(3)]	<p>The jurisdiction given by s516(1) is additional to any other jurisdiction given to the Criminal Division by or under the CYFA or any other Act.</p>
			[Under s20C(1) of the <i>Crimes Act 1914 (Cth)</i> ,	<p>a child or young person who is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State.]</p>

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				<u>Criminal Division procedure</u>
			[s528(2)]	Unless the contrary intention appears in the CYFA or any other Act, the <i>Criminal Procedure Act 2009</i> in relation to proceedings in the Magistrates' Court (other than s54(2), Division 2 of Part 2.3 and Chapter 6) applies with any necessary modifications to the Children's Court and proceedings in the Court and, without limiting the application of s419, to the issue of process in the same manner and to the same extent as they apply to the Magistrates' Court, the proceedings of that Court and the issue of process.
			[s528]	read in conjunction with s6(1) of the <i>Criminal Procedure Act</i> sets out how a criminal proceeding against a child is commenced.
			[ss. 356(3) & 356(4)]	<p>the Children's Court must hear and determine summarily any charge for an indictable offence other than one of the seven death offences (murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death, culpable driving causing death) unless:</p> <p>(a) before the hearing of any evidence the child objects or, if the child is under the age of 15 and is not legally represented, a parent objects on the child's behalf; or</p> <p>(b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be heard and determined summarily.</p> <p>In the event that the Court cannot or will not hear and determine an indictable offence summarily, s356(3) requires</p>

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				the Court to conduct a committal proceeding into the charge. See also s96 of the CPA.
			[s516(1)(c)]	<p>invests the Court with jurisdiction to conduct a committal proceeding into a charge against a child for an indictable offence and provides 2 alternative outcomes, namely the Court may either:</p> <p>(i) direct the accused be tried in the County Court or the Supreme Court and order that the accused be remanded in custody or released on bail until trial [an accused committed for trial for murder or attempted murder is tried in the Supreme Court; an accused committed for trial on any other charge may be tried in the County Court: see s36A <i>County Court Act</i>]; or</p> <p>(ii) discharge the accused.</p> <p>Section 100(1) of the CPA sets out 6 types of hearings that may be held in a committal proceeding in the Magistrates' Court. Read in conjunction with s.528(2) of the CYFA, these hearing types and the associated procedures are also applicable in the Children's Court.</p>
			[s516A(1)]	<p>provides that despite s505(3), the jurisdiction given by s516(c) may be exercised concurrently with the jurisdiction of the Magistrates' Court to conduct a committal proceeding if:</p> <p>(a) the charges against each accused could properly be joined in the same indictment; and</p>

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				<p>(b) the accused who is a child-</p> <p>(i) is of or over the age of 15 years at the time the criminal proceeding against the child for the offence is committed; and</p> <p>(ii) is charged with one of the seven death offences; and</p> <p>(c) the Children’s Court makes an order under s516A(2) to that effect in relation to the accused who is a child and the Magistrates’ Court makes an order under s25(4) of the <i>Magistrates’ Court Act</i> 1989 in relation to the other accused.</p>
			[s516A(2)]	sets out the factors to be considered by the Court in deciding whether or not to order a joint committal.
			[s516A(3)]	empowers the Children’s Court to make an order for a joint committal on the application of a party or on its own motion.
			[s516A(5)]	contemplates the Children’s Court making an order for joint committal proceedings prior to the Magistrates’ Court.
			[s516A(6)]	<p>provides that if a joint committal proceeding is conducted:</p> <p>(a) the CYFA applies as far as practicable to the child; and</p> <p>(b) the CPA as far as practicable to the adult with any necessary modifications to ensure that the joint committal proceedings are conducted fairly and efficiently.</p>
			[ss. 516(1)(a) &	read in conjunction with s536 – invest the Court with jurisdiction to hear and determine summarily all charges

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			516(1)(b)]	against a child for offences other than murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death, culpable driving causing death.
			[ss. 536(3)(a) & 563(4)]	<p>require the Court to hear and determine summarily any other indictable offence unless:</p> <p>(a) before the hearing of any evidence the child objects or, if the child is under the age of 15 and is not legally represented, a parent objects on the child's behalf; or</p> <p>(b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be heard and determined summarily.</p> <p><i>Contested Criminal Division cases</i></p> <p>The conduct of a contested summary hearing is the same as in the Magistrates' Court. The prosecution usually calls one or more witnesses in support of its case and each may be cross examined by the defendant or his or her legal representative. There is no obligation on the defendant to lead any evidence.</p> <p>The judicial officer has to be satisfied of the defendant's guilt on proof beyond reasonable doubt by relevant and admissible evidence: s357(1) of the CYFA. If the Court is not so satisfied, it must dismiss the charge: s357(2).</p> <p><i>Therapeutic treatment order</i></p> <p>If the Secretary reports to the Criminal Division under s351</p>

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				<p>of the CYFA that a therapeutic treatment order [‘TTO’] has been made in respect of a child and the Court has not yet made a finding in the criminal proceedings in which the child is an accused, s352 requires the Court to adjourn the criminal proceedings for a period not less than the period of the TTO.</p> <p>If criminal proceedings are adjourned under s.352, the Secretary is required by s353 to report to the Criminal Division on the completion or on the revocation of the TTO details of the child’s participation in and attendance at the therapeutic treatment program [‘TTP’]. The Court may direct the Secretary to provide a copy of the report to the child and to the prosecutor.</p> <p>If criminal proceedings against a child have been adjourned pending the completion by the child of a TTP under a TTO, s258(2) requires the Secretary to seek the advice of the Therapeutic Treatment Board before applying to the Family Division to revoke the TTO. If the TTO is revoked, s354(1) empowers the Court, on the application of the Secretary, to re-list the adjourned case at short notice if it considers it appropriate to do so.</p> <p>If the Court is satisfied that the child has attended and participated in a TTP under the TTO, s354(4) of the CYFA requires it to discharge the child without any further hearing of the criminal proceedings.</p> <p>Section 354(5) provides that if the child is not discharged under s354(4), the Court may determine what (if any) further proceedings in the Criminal Division in respect of the child</p>

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				<p>are appropriate.</p> <p>Section 251 of the CYFA provides that any statement made by a child when participating in a TTP under a TTO is not admissible in any criminal proceedings in relation to the child.</p>
			[s518 and s518A]	<p>The Koori Court (Criminal Division) has the following three areas of jurisdiction-</p> <p>(I) Jurisdiction to deal with a proceeding for an offence given to it by s.519, that is it has jurisdiction only if-</p> <p>(a) the child is Aboriginal; and</p> <p>(b) the offence is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in s.6B(1) of the <i>Sentencing Act 1991</i>; and</p> <p>(c) the child-</p> <p>(i) intends to plead guilty to the offence; or</p> <p>(ii) pleads guilty to the offence; or</p> <p>(iii) has been found guilty of the offence by the Criminal Division; and</p> <p>(d) the child consents to the proceeding being dealt with by the Koori Court (Criminal Division).</p> <p>(II) Jurisdiction to deal with a breach of a sentencing order</p>

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				<p>made by it (including any offence constituted by such a breach) or variation of such a sentencing order.</p> <p>(III) Any other jurisdiction given to it by or under the CYFA or any other Act.</p> <p>[s520] governs sentencing procedure in the Koori Court (Criminal Division).</p> <p><b>518A Circumstances in which Koori Court (Criminal Division) may deal with breach of a sentence imposed by it or by another Division of the Children's Court</b></p> <p>For the purposes of section 518(b) and (ba), the circumstances are—</p> <ul style="list-style-type: none"> <li>(a) the child is Aboriginal; and</li> <li>(b) the offence to which the sentence relates is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in section 6B(1) of the <b>Sentencing Act 1991</b>; and</li> <li>(c) in the case of an offence constituted by a breach of a sentence referred to in section 518(b) or (ba), the child—</li> </ul>

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			[s360]	<p>If the Court finds a child guilty of an offence, whether indictable or summary, the Court may:</p> <ul style="list-style-type: none"> <li>(a) without conviction, dismiss the charge; or</li> <li>(b) without conviction, dismiss the charge and order the giving of an undertaking under section 363; or</li> <li>(c) without conviction, dismiss the charge and order the giving of an accountable undertaking under section 365; or</li> <li>(d) without conviction, place the child on a good behaviour bond under section 367; or</li> <li>(e) with or without conviction, impose a fine under section 373; or</li> <li>(f) with or without conviction, place the child on probation under section 380; or</li> <li>(g) with or without conviction, release the child on a youth supervision order under section 387; or</li> <li>(h) convict the child and make a youth attendance order under section 397; or</li> <li>(i) convict the child and order that the child be detained in a youth residential centre under section 410; or</li> <li>(j) convict the child and order that the child be detained in a youth justice centre under section 412.</li> </ul>

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				<p>In addition to any other sentencing order, [s360(3)] empowers the Court to order a child:</p> <p>(a) to make restitution or pay compensation in accordance with s417;</p> <p>(b) to pay costs.</p>
			[s360(4)]	prohibits the Court from making an order referred to in s.360(3) a special condition of another sentencing order.
			[s361]	provides that the Court must not impose a sentence unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of s360(1).
			[s362]	<p>In determining which sentence to impose on a child, the Court must, as far as practicable, have regard to—</p> <p>(a) the need to strengthen and preserve the relationship between the child and the child's family; and</p> <p>(b) the desirability of allowing the child to live at home; and</p> <p>(c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and</p> <p>(d) the need to minimise the stigma to the child resulting from a court determination; and</p> <p>(e) the suitability of the sentence to the child; and</p>

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				<p>(f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and</p> <p>(g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.</p>
			[s362A]	<p>Sentence discount for guilty plea:</p> <p>(1) If:</p> <p>(a) in sentencing a child, the Court imposes a less severe sentence than it would otherwise have imposed because the child pleaded guilty to the offence; and</p> <p>(b) the sentence imposed on the child is or includes a youth attendance order, a youth residential centre order or a youth justice centre order the Court must state in respect of:</p> <p>(c) each offence; or</p> <p>(d) if an aggregate sentence is imposed in respect of two or more offences, those offences the sentence that it would have imposed but for the plea of guilty.</p> <p>(2) In the case of a sentence other than a sentence referred to in subsection (1)(b), the Court may state the sentence that it would have imposed but for the plea of guilty.</p> <p>(3) If the Court makes a statement under this section, it must cause to be noted in the records of the Court in respect of:</p>

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				<p>(a) each offence; or</p> <p>(b) if an aggregate sentence is imposed in respect of two or more offences, those offences the sentence that it would have imposed but for the plea of guilty.</p> <p>Three of the sentencing orders involve supervision of the child in the community by an officer of the Youth Justice Division of the Department of Human Services or alternatively, in the case of probation, by an assigned honorary youth justice officer [s3 of the CYFA].</p>
			[s 417]	<p>read in conjunction with ss.85H(1), 86(2) &amp; 87J(1) of the <i>Sentencing Act 1991 (Vic)</i>, requires the Court to take into account, among other things, the child's financial circumstances and the nature of the burden which would be imposed by an order under:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> s85B(1) to pay compensation for pain and suffering etc.;</li> <li><input type="checkbox"/> s86(2) to pay compensation for property loss, destruction or damage; or</li> <li><input type="checkbox"/> s87D(1) to pay costs reasonably incurred by an emergency service agency as a result of an offence of criminal contamination of goods or bomb hoax.</li> </ul>
			[s417(2)]	<p>provides that the maximum amount that the Court may order an offender to pay under Part 4 of the <i>Sentencing Act 1991</i> is \$1000.</p>

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			[s586]	<p>authorises the Supreme Court or County Court, in sentencing a child for an indictable offence, to exercise the power to make any sentencing order which the Children's Court may make under the CYFA save that an order that the child be detained in a YRC or YJC must be made in accordance with Subdivision (4) of Division 2 of Part 3 (ss.32-35) of the <i>Sentencing Act 1991 (Vic)</i>.</p> <p>In <i>DPP v TY (No 3)</i> [2007] VSC 489 at [47]-[51] Bell J discussed the relevance to the sentencing of child offenders of the United Nations Convention on the Rights of the Child. At [51] while holding that the Convention reinforces the existing principle of 'giving primary emphasis to youth and rehabilitation as a mitigating factor when sentencing children', Bell J also noted that-</p> <ul style="list-style-type: none"> <li>• 'the provisions of any relevant legislation... remain applicable and must be applied'; and</li> <li>• 'taking the Convention into account does not lead to the result that children can escape criminal responsibility and just punishment; where the crime is very serious, considerations other than youth and rehabilitation can become more pressing'</li> </ul> <p>[There are many cases in which principles relevant to the sentencing of young adults and a few cases in which principles relevant to the sentencing of children under the <i>Sentencing Act 1991</i> have been discussed by superior courts.]</p>
			[s478]	For the purposes of this Act the Governor in Council may, by notice published in the Government Gazette, establish or

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				<p>abolish:</p> <p>(a) remand centres for the detention of children awaiting trial or the hearing of a charge or awaiting sentence or in transit to or from a youth residential centre or youth justice centre; or</p> <p>(b) youth residential centres for the care and welfare of children ordered under this Act or the Sentencing Act 1991 to be placed in a youth residential centre and which provide special direction, support, educational opportunities and supervision; or</p> <p>(c) youth justice centres for the care and welfare of persons ordered to be detained in youth justice centres under this Act or the Sentencing Act 1991; or</p> <p>(d) youth justice units for persons:</p> <p>(i) referred to them as a condition of a probation order, youth supervision order, youth attendance order or other order made by the Court; or</p> <p>(ii) referred to them as a requirement of a parole order.</p>
			[s. 482]	<p>Form of care, custody or treatment</p> <p>(1) The Secretary of the relevant Department must:</p> <p>(a) determine the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth</p>

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				<p>justice centre; and</p> <p>(b) not detain in a community service or secure welfare service a person who is on remand or is serving a period of detention and is not released on parole; and</p> <p>(c) separate persons who are on remand from those who are serving a period of detention by accommodating them separately in some part set aside for the purpose unless:</p> <p>(i) the Secretary considers it appropriate not to separate them, having regard to the best interests, rights and entitlements of the persons on remand; and</p> <p>(ii) the persons on remand consent; and</p> <p>(d) separate persons held on remand who are under the age of 15 years from those held on remand who are of or above the age of 15 years unless exceptional circumstances exist.</p> <p>(2) Persons detained in remand centres, youth residential centres or youth justice centres:</p> <p>(a) are entitled to have their developmental needs catered for;</p> <p>(b) subject to section 501, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;</p> <p>(c) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of</p>

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				<p>Aboriginal children, their needs as members of the Aboriginal community;</p> <p>(d) are entitled to receive information on the rules of the centre in which they are detained that affect them and on their rights and responsibilities and those of the officer in charge of the centre and the other staff;</p> <p>(e) are entitled to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the centre;</p> <p>(f) are entitled to be advised of their entitlements under this subsection.</p> <p>(3) It is the responsibility of the Secretary to make sure that subsection (2) is complied with and he or she must, at least once each year, report to the Minister on the extent of compliance with subsection (2).</p> <p>Part 5.8 concerns the treatment of child in detention.</p>
			[s. 487]	<p>The following actions are prohibited in relation to a person detained in a remand centre, youth residential centre or youth justice centre or a child detained in a police gaol:</p> <p>(a) the use of isolation (within the meaning of section 488) as a punishment;</p> <p>(b) the use of physical force unless it is reasonable and:</p> <p>(i) is necessary to prevent the person or child from harming</p>

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				<p>himself or herself or anyone else or from damaging property; or</p> <p>(ii) is necessary for the security of the centre or police gaol; or</p> <p>(iii) is otherwise authorised by or under this or any other Act or at common law;</p> <p>(c) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the person or child as a punishment;</p> <p>(d) the use of any form of psychological pressure intended to intimidate or humiliate the person or child;</p> <p>(e) the use of any form of physical or emotional abuse;</p> <p>(f) the adoption of any kind of discriminatory treatment.</p>
			[s488]	<p>Isolation</p> <p>(1) The officer in charge of a remand centre, youth residential centre or youth justice centre may authorise the isolation of a person detained in the centre, that is, the placing of the person in a locked room separate from others and from the normal routine of the centre.</p> <p>(2) Isolation may only be authorised under subsection (1) if:</p> <p>(a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person</p>

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				<p>or from damaging property; and</p> <p>(b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.</p> <p>(3) The period of isolation must be approved by the Secretary.</p> <p>(4) If necessary, reasonable force may be used to place a person in isolation under this section.</p> <p>(5) A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.</p> <p>(6) The officer in charge of a remand centre, youth residential centre or youth justice centre must make sure that the prescribed particulars of every use of isolation under subsection (1) are recorded in a register established for the purpose.</p> <p>(7) In addition to his or her powers under this section, the officer in charge of a remand centre, youth residential centre or youth justice centre may cause a person detained in the centre to be isolated in the interests of the security of the centre.</p> <p>(8) This section (except subsection (4)) does not apply to the use of isolation under subsection (7).</p>
			[s488A]	<p>Search on entering or leaving a youth justice facility</p> <p>(1) A person (whether a detainee, an officer, a visitor or any</p>

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				<p>other person) who wishes to enter or leave a youth justice facility must, if asked, submit to:</p> <p>(a) a formal search; and</p> <p>(b) a search and examination of the person and of any thing in the person's possession or under the person's control, including a frisk search.</p> <p>(2) Subsection (1)(b) does not apply to a judge of the Supreme Court or County Court or a magistrate.</p> <p>(3) A person must not be asked under this section to submit to a strip search or a search of his or her body cavities.</p>
			[s488AB]	<p>Officer in charge may order search</p> <p>(1) The officer in charge may order at any time, if in his or her opinion it is necessary to do so in the interests of the security or good order of a youth justice facility or the detainees, that an officer:</p> <p>(a) search any part of the youth justice facility; or</p> <p>(b) search and examine any person in the youth justice facility other than a judge of the Supreme Court or County Court or a magistrate; or</p> <p>(c) search and examine anything in the youth justice facility.</p> <p>(2) A person must not be asked under this section to submit</p>

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				to a strip search or a search of his or her body cavities.
			[s488AC]	<p>Strip search of detainee</p> <p>(1) The officer in charge may cause a detainee to be subjected to a strip search if in his or her opinion it is necessary to do so:</p> <p>(a) in the interests of the security or good order of a youth justice facility; or</p> <p>(b) in the interests of the safety or security of the detainee or any other person in the facility.</p> <p>(2) A search under subsection (1) must not include a search of the detainee's body cavities.</p> <p>(3) If necessary, reasonable force may be used to carry out a search under subsection (1).</p>
			[s.488AD]	<p>Manner of conducting search</p> <p>(1) In the case of a frisk search or a strip search, the officer in charge must ensure that the search is conducted only by an officer of the same sex as the person being searched.</p> <p>(2) Before carrying out a search under this Division of a person other than a detainee, the officer who is to conduct the search must:</p> <p>(a) inform the person of his or her authority to conduct the</p>

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				<p>search; and</p> <p>(b) inform the person that he or she may refuse the search; and</p> <p>(c) inform the person of the consequences of refusal.</p> <p>(3) If a person consents to a search, the officer who is to conduct the search must:</p> <p>(a) ask the person if he or she has in his or her possession any article or thing which jeopardises or is likely to jeopardise the security of the youth justice facility or the safety of persons in the facility, including:</p> <p>(i) any firearm, offensive weapon or other article that is capable of being used as a weapon; or</p> <p>(ii) any form of drug without the consent of the Secretary; or</p> <p>(iii) any form of alcoholic liquor or beverage; or</p> <p>(iv) money; or</p> <p>(v) any other article or thing not allowed by the regulations; and</p> <p>(b) ask the person to produce any article or thing referred to in paragraph (a).</p> <p>(4) In the case of a strip search, the officer in charge must ensure that the search is conducted in the presence of another</p>

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				<p>officer.</p> <p>(5) The other officer referred to in subsection (4):</p> <p>(a) must be positioned in such a way that the detainee being searched is not in the view of that other officer;</p> <p>(b) must be of the same sex as the detainee being searched, unless:</p> <p>(i) the search is, in the opinion of the officer in charge, urgently required; and</p> <p>(ii) an officer of the same sex is not available.</p> <p>(6) An officer carrying out a search of a person under this Division must do so:</p> <p>(a) expeditiously; and</p> <p>(b) with regard to the decency and self-respect of the person searched; and</p> <p>(c) in compliance with any other prescribed requirement.</p>
	<b>Bail Act 1977</b>	Vic		<p>Section 346(6) of the CYFA provides that, to the extent that it is not inconsistent with s.346, the Bail Act applies to an application for bail by a child (see above).</p> <p>Section 4(1) of the Bail Act gives a person accused of an offence, whether adult or child, a <i>prima facie</i> entitlement to bail except in the limited circumstances referred to in</p>

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				<p>ss.4(1)(c), 4(2) &amp; 4(4).</p> <p>The prescribed form for a grant of bail is Form 1 (Bail Regulations 1977). The only difference between an adult's and a child's bail undertaking is that the latter contains a paragraph 1A which enables an undertaking to be given by an adult if the child does not have the capacity or understanding to enter the undertaking: see s346(10) of the CYFA.</p>
			[s26(2)]	<p>If a child who has been charged with or convicted of an offence has failed to appear before the Children's Court in accordance with his or her undertaking of bail, the Court may, without prejudice to any right of action arising out of the undertaking, issue a warrant for his or her apprehension.</p>
			[ss. 464A-H]	<p>regulate the conduct by an investigating official of questioning or an investigation under ss.464A(2) or 464B(5) of a person (including a child) in custody who is suspected of having committed an offence.</p>
			[s464C(1)]	<p>confers a general right on a suspect in custody to communicate with a friend or relative and with a legal practitioner prior to such questioning or investigation.</p>
			[s464E(1)]	<p>provides that if a person in custody is under the age of 18 years, an investigating official must not, save for urgent situations referred to in s.464E(2), question or carry out an investigation ss.464A(2) or 464B(5) unless-</p> <p>(a) a parent or guardian of the person in custody or, if a parent or guardian is not available, an independent person is</p>

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				<p>present; and</p> <p>(b) before the commencement of any questioning or investigation, the investigating official has allowed the person in custody to communicate with his or her parent or guardian or the independent person in circumstances in which as far as practicable the communication will not be overheard.</p>
			[s464K(1)]	<p>authorises a member of the police force to take, or cause to be taken by an authorised person, the fingerprints of a person of or above the age of 15 years who:</p> <p>(a) is believed on reasonable grounds to have committed; or</p> <p>(b) has been charged with; or</p> <p>(c) has been summonsed to answer a charge for an indictable offence or a summary offence referred to in Schedule 7.</p>
			[s464K(8)]	<p>If the person is a child aged 15, 16 or 17 years a parent or guardian or, if a parent or guardian cannot be located, an independent person must be present during the request for the fingerprints, the giving of the information referred to in s464K(2) and the taking of the fingerprints.</p>
			[s464L(1)]	<p>A child under the age of 10 must not be requested to give his or her fingerprints or have his or her fingerprints taken.</p> <p>By contrast with adults and children aged 15 or above, the taking of fingerprints from a child aged 14 or under requires:</p>

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				<p><input type="checkbox"/> consent of both the child and a parent or guardian; or</p> <p><input type="checkbox"/> a court order.</p> <p>Section 464L(2) of the Crimes Act 1958 (Vic) authorises a member of the police force to take, or cause to be taken by an authorised person, the fingerprints of a child aged 10 years or more but under 15 years who:</p> <p>(a) is believed on reasonable grounds to have committed; or</p> <p>(b) has been charged with; or</p> <p>(c) has been summonsed to answer a charge for an indictable offence or a summary offence referred to in Schedule 7 if-</p> <p>(d) both the child and a parent or guardian of the child consent; or</p> <p>(e) where consent is refused or the parent or guardian cannot be located, the Children's Court makes an order under s464M(5).</p>
			[s464L(3)]	<p>requires the member of the police force wishing to fingerprint a child aged 10-14 to inform the child and the parent or guardian of the child, in language likely to be understood by each of them:</p> <p>(a) of the purpose for which the fingerprints are required; and</p> <p>(b) of the offence which the child is believed to have</p>

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				<p>committed or with which he or she has been charged or summonsed; and</p> <p>(c) that the fingerprints may be used in evidence in court; and</p> <p>(d) that the child's parent or guardian may refuse consent to the child's fingerprints being taken; and</p> <p>(e) that if consent is refused an application may be made to the Children's Court for an order directing the child to give his or her fingerprints; and</p> <p>(f) that if the child is not charged with a relevant offence within 6 months or is so charged but the charge is not proceeded with or the child is found not guilty of the offence or any other relevant offence before the end of that period, the fingerprints will be destroyed.</p>
			[s464L(4)]	requires a parent or guardian of the child to be present during the request for fingerprints, the giving of the above information and the taking of fingerprints with consent.
			[s464M(1)]	provides that if the subject child or his or her parent or guardian refuses to consent to the taking of the child's fingerprints or the parent or guardian cannot be located, a member of the police force may apply to the Children's Court for an order under s464M(5).
			[s464M(2)]	requires that such application be in writing supported by evidence on oath or by affidavit. Section 464M(3) provides

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				<p>that notice of the application must be served on-</p> <p>(a) a parent or guardian of the child; and</p> <p>(b) the child if he or she is not in custody.</p>
			[s464M(4)]	permits service on a parent or guardian to be dispensed with by the Court if it is impracticable for the applicant to comply.
			[s464M(7)]	Though the subject child may be represented by a legal practitioner or, with the leave of the Court, a parent or guardian [s464M(8)], he or she is not a party, may not call or cross-examine any witnesses, and may not address the Court other than in respect of any matter referred to in ss.464M(5) or (6)
			[s464M(5)]	<p>provides that the Court may make an order directing a child aged 10 years or more but under 15 years to give his or her fingerprints if satisfied on the balance of probabilities that-</p> <p>(a) there are reasonable grounds to believe that the child has committed an indictable offence or a summary offender referred to in Schedule 7; and</p> <p>(b) in all the circumstances the making of the order is justified taking into account, amongst other things the matters set out in s464M(6):</p> <p><input type="checkbox"/> the seriousness of the circumstances surrounding the commission of the offence;</p>

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				<input type="checkbox"/> the alleged degree of participation by the child; and <input type="checkbox"/> the age of the child.
			[ss. 464M(9) to (11) & 464N]	regulate the taking of fingerprints pursuant to a Court order.
			[s464M(12)]	empowers the Court to issue a warrant to arrest a child the subject of an order under s464M(5) and take the child without delay to the nearest accessible police station for fingerprinting.
			[s464M(13)]	If the Court makes an order under s464M(5) or issues a warrant under s464M(12), it must give reasons for its decision and cause a note of the reasons to be entered in the records of the Court.
			[s464NA]	concerns finger scanning for identification purposes of an adult or a child aged 15 or above.
			[s464O]	concerns destruction of records.
			[s464P]	concerns records of juveniles.
			[s464Q]	concerns evidence of fingerprints.  <b>'Forensic procedure'</b> is defined in s.464(2) of the Crimes Act 1958 (Vic) as the taking of a sample from any part of the body, whether an intimate or a non-intimate sample or any other type of sample,  or the conduct of any procedure on or physical examination

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				<p>of the body but does not include the taking of a fingerprint.</p> <p><b>'Compulsory procedure'</b> is defined in s.464(2) as the taking of an intimate or non-intimate sample or the conduct of a physical examination.</p>
			[s464U(1)]	<p>A child under the age of 10 must not be requested to undergo a forensic procedure or ordered to undergo a compulsory procedure:</p>
			[s464U(2)]	<p>prohibits a member of the police force from requesting a child aged 10 years or more but under 18 years who-</p> <p>(a) is suspected of having committed; or</p> <p>(b) has been charged with; or</p> <p>(c) has been summonsed to answer a charge for an offence, whether indictable or summary, to undergo a forensic procedure or request that a compulsory procedure be conducted on the child unless the Children's Court has made an order under s464U(7) or s464V(5).</p>
			[ss. 464U(3) to (6)]	<p>regulate an application for an order that a child undergo a compulsory procedure. A member of the police force may apply to the Children's Court for an order that a child</p> <p>undergo a compulsory procedure if the child-</p> <p><input type="checkbox"/> is suspected on reasonable grounds of having committed or attempted to commit an indictable offence listed in</p>

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				s464U(3)(a); or  <input type="checkbox"/> has been charged with an indictable offence listed in s464U(3)(b).
			[s464U(4)]	Such application must be in writing supported by evidence on oath or by affidavit, must state the type of compulsory procedure sought to be conducted and must, if the child is a detained or protected person, state that fact and identify the place where the child is held or resides.
			[s464U(5)]	Notice of the application must be served on:  (a) a parent or guardian of the child; and  (b) the child if he or she is not in custody;
			[s464U(7)]	provides that the Children's Court may make an order directing a child to undergo a compulsory procedure if satisfied on the balance of probabilities that each the matters set out in sub-paragraphs (a) to (e) are met.
			[s464U(11)]	Except in relation to an interim order made under ss.464V or 464W, the Children's Court must not make an order under s464U(7) unless the child is present.
			[s464U(12)]	Though the subject child may be represented by a legal practitioner or, with the leave of the Court, a parent or guardian [s.464U(13)], he or she is not a party, may not call or cross-examine any witnesses, and may not address the Court other than in respect of any matter referred to in

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				ss.464U(7) or (8).
			[s464U(9)]	requires a court making an order under s464U(7) to: <ul style="list-style-type: none"> <li>(a) give reasons for its decision; and</li> <li>(b) state the evidence on which it is satisfied of the matters referred to in s.464U(7);</li> <li>(c) cause a note of the reasons to be entered in the records of the Court; and</li> <li>(d) inform the child that a member of the police force may use reasonable force to enable the procedure to be conducted.</li> </ul>
			[s464V(2)]	permits a member of the police force to apply, with or without notice to any other person, for an interim order directing a person to undergo a compulsory procedure (other than the taking of a blood sample), if the member believes on reasonable grounds that the sample or evidence sought to be obtained by the compulsory procedure is likely to be lost if the procedure is delayed until the final determination of the application.
			[s464X(1)]	empowers the Court to issue a warrant to arrest a child the subject of an application under ss.464U(3) or 464V(2) and bring the child before the Court for the hearing of the application for an order directing the child to undergo a compulsory procedure.
			[s464X(2)]	provides that if the Court issues a warrant under s.464X(1), it

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				<p>must-</p> <p>(a) give reasons for its decision; and</p> <p>(b) cause a note of the reasons to be entered in the records of the Court.</p>
			[ss.464Y, 464Z & 464ZA]	regulate the conduct of a forensic procedure or a compulsory procedure.
			[s464ZFB]	concerns retention of information following finding of guilt.
			[s464ZFC]	concerns destruction of information following finding of guilt
			[s464ZGA]	concerns forensic information from juveniles.
	<b>Criminal Procedure Act</b>	Vic		<p>This Act is applicable to the Children's Court subject to the CYFA (see above)</p> <p>The procedure for the summary hearing of a case in the Magistrates' Court is governed by ss.62-87 of the CPA. The majority of these sections are also applicable to the Children's Court by operation of s528(2) of the CYFA.</p> <p>In a summary hearing under s29(1) of the CPA, s76 of that Act, read in conjunction with s528(2) of the CYFA, gives the Children's Court the option of finding the accused guilty of having attempted to commit the offence charged if the court finds the accused not guilty of the offence charged.</p>
	<b>Education and Training Reform</b>	Vic	s2.4.60 &	Corporal punishment was banned in government schools in 1985. It was banned in non-government schools in 2006

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	<b>Act 2006 (Vic)</b>		s4.3.1(6)(a).	following the enactment of the <i>Education and Training Reform Act 2006</i> (Vic).
	<b>Charter of Charter of Human Rights and Responsibilities Act 2006 ('the Charter')</b>	Vic	ss. 1(2), 4(1)(j), 7(2), 9-27 (incl.), 32, 33, 36(2)	[Note: it is likely that the Charter will have general application to many Articles of the Convention -including Art. 37 and it might be preferable to have a stand alone section of the Charter in due course.]

**4. Queensland**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC) ARTICLE 37: TABLE OF RELEVANT QUEENSLAND LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence</p>	<p><b>Youth Justice Act 1992</b></p>	<p>Qld</p>	<p>Part 1</p>	<p>'child' means:</p> <p>(a) a person who has not turned 17 years; or</p> <p>(b) after a day fixed under section 6 - a person who has not turned 18 years.</p> <p>The principal objectives of this Act are:</p> <p>(a) to establish the basis for the administration of juvenile justice; and</p> <p>(b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and</p> <p>(c) to provide for the jurisdiction and proceedings of courts dealing with children; and</p> <p>(d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and</p> <p>(e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to:</p>

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<p>and visits, save in exceptional circumstances;</p> <p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'<sup>5</sup></p>			<p>Schedule 1</p> <p>Charter of youth justice principles</p>	<p>(i) rehabilitate children who commit offences; and</p> <p>(ii) reintegrate children who commit offences into the community.</p> <p>Schedule 1 of the <i>Youth Justice Act 1992</i> articulates the <u>Charter of youth justice principles</u> which underlies the operation of the Act. These principles outline the expectations for how young people, victims and families are dealt with by all youth justice responses and therefore should underpin all practice.</p> <p>1 The community should be protected from offences.</p> <p>2 The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.</p> <p>3 A child being dealt with under this Act should be:</p> <p>(a) treated with respect and dignity, including while the child is in custody; and</p> <p>(b) encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.</p> <p>4 Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special</p>

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				<p>protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.</p> <p>5 If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.</p> <p>6 A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.</p> <p>7 If a proceeding is started against a child for an offence:</p> <p>(a) the proceeding should be conducted in a fair, just and timely ay; and</p> <p>(b) the child should be given the opportunity to participate in and understand the proceeding.</p> <p>8 A child who commits an offence should be:</p> <p>(a) held accountable and encouraged to accept responsibility for the offending behaviour; and</p> <p>(b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and</p>

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				<p>(c) dealt with in a way that strengthens the child's family.</p> <p>9 A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.</p> <p>10 A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.</p> <p>11 A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.</p> <p>12 A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.</p> <p>13 If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.</p> <p>14 Programs and services established under this Act for children should:</p> <p>(a) be culturally appropriate; and</p> <p>(b) promote their health and self respect; and</p>

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				<p>(c) foster their sense of responsibility; and</p> <p>(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.</p> <p>15 A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.</p> <p>16 A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.</p> <p>17 A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.</p> <p>18 A child detained in custody should only be held in a facility suitable for children.</p> <p>19 While a child is in detention, contacts should be fostered between the child and the community.</p> <p>20 A child who is detained in a detention centre under this Act:</p> <p>(a) should be provided with a safe and stable living environment; and</p> <p>(b) should be helped to maintain relationships with the child's family and community; and</p>

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				<p>(c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—</p> <p>(i) the child's participation in programs at the detention centre; and</p> <p>(ii) contact with the child's family; and</p> <p>(iii) the child's health; and</p> <p>(iv) the child's schooling; and</p> <p>(d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property); and</p> <p>(e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and</p> <p>(f) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and</p> <p>(g) should have access to education appropriate to the child's age and development; and</p> <p>(h) should receive appropriate help in making the transition</p>

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				from being in detention to independence.
			s7	<p>In the Act, mention of a police officer '<b>starting a proceeding</b>' against a child for an offence includes:</p> <p>(a) obtaining a warrant for the arrest of a child on a charge for an offence; and</p> <p>(b) arresting a child for an offence without a warrant.</p>
			Part 2	<b><u>Special provisions about policing and children</u></b>
			[s11]	<p>Police officer to consider alternatives to proceeding against child including:</p> <p>(a) taking no action;</p> <p>(b) administering a caution to the child;</p> <p>(c) referring the offence to a conference;</p> <p>(d) if the offence is a minor drugs offence within the meaning of the <i>Police Powers and Responsibilities Act 2000</i> and the child may be offered an opportunity to attend a drug diversion assessment program under section 379 of that Act—offering the child that opportunity in accordance with that section.</p>
			[s12]	A police officer starting a proceeding against a child for an offence, other than a serious offence, must start the proceeding by way of complaint and summons or notice to

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				appear, unless otherwise provided under this Act.
			[s13]	<p>A police officer may use the police officer's power of arrest under the <i>Police Powers and Responsibilities Act 2000</i>, section 365(3), without a warrant, to arrest a child for an offence without regard to sections 11 and 12 only if the police officer believes on reasonable grounds that <i>inter alia</i>:</p> <p>(a) the arrest is necessary:</p> <p>(i) to prevent a continuation or a repetition of the offence or the commission of another offence; or</p> <p>(ii) to obtain or preserve, or prevent concealment, loss or destruction of, evidence relating to the offence; or</p> <p>(iii) to prevent the fabrication of evidence; or</p> <p>(iv) to ensure the child's appearance before a court.</p>
			[Div 2]	Concerns cautioning
			[Div 3]	Concerns reference by police officer to coordinator for a youth justice conference [see Part 3]
			[Div 4]	concerns an application by police officer to a Children's Court magistrate for permission to take child's identifying particulars, if a child has been charged, without being arrested, with an indictable offence or an offence against any of the following Acts that is an arrest offence:

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				<ul style="list-style-type: none"> <li>• Criminal Code</li> <li>• <i>Drugs Misuse Act 1986</i></li> <li>• <i>Police Service Administration Act 1990</i></li> <li>• <i>Regulatory Offences Act 1985</i></li> <li>• <i>Summary Offences Act 2005</i></li> <li>• <i>Weapons Act 1990</i>,</li> </ul> <p>as well as the steps that must be followed in taking such particulars.</p>
			[s29(1)]	In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied a support person was present with the child at the time and place the statement was made or given.
			Part 3	<b><u>Part 3 Concerns Youth Justice Conferences generally</u></b>
			[s.30]	<p>The object of Part 3 is to establish a youth justice conference process for a child who admits committing an offence to a police officer or after a finding of guilt for an offence is made against the child before a court.</p> <p>(2) The process allows the child, a victim of the offence and other concerned persons to consider or deal with the offence</p>

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				<p>in a way benefiting all concerned.</p> <p>(3) The process includes the following basic steps:</p> <p>(a) a police officer or court refers the offence to a youth justice conference;</p> <p>(b) a convenor convenes the conference between the child and other concerned persons;</p> <p>(c) at the conference the offence is discussed and an agreement made on what must be done because of the offence.</p>
			Part 4	<p><u>Part 4 concerns proceedings generally started by complaint and summons (including the procedures that must be followed - not all of which are summarised below).</u></p>
			[s42(1)]	<p>A proceeding against a child for an offence, other than a serious offence, must be started by way of complaint and summons. However, s42(1) does not affect:</p> <p>(a) the charging of a child under the <i>Justices Act 1886</i>, section 42(1A); or</p> <p>(b) the arrest of a child for escaping from lawful custody or who is unlawfully at large; or</p> <p>(c) a proceeding against a child on an indictment.</p>
			[s46(1)]	<p>Subject to subsection (2), a Childrens Court magistrate may hear and determine a proceeding against a child in relation to</p>

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				a complaint and summons for a simple offence in the absence of the child in the way set out in the <i>Justices Act 1886</i> , part 6.
			[s46(2)]	Under subsection (1), the only sentence order a Childrens Court magistrate may make against a child in the child's absence is an order imposing a fine, and then only if the child has indicated in writing to the court that the child has a capacity to pay a fine of a specified amount that is equal to or greater than the fine ordered to be paid.
			Part 5	<b><u>Part 5 concerns bail and custody of children</u></b>
			[s47(1)]	Subject to the Youth Justice Act, the <i>Bail Act 1980</i> applies in relation to a child charged with an offence.
			[s48(1)]	This section applies to a court or police officer in making any of the following decisions relating to a child in custody in connection with a charge of an offence:  (a) whether to release the child or keep the child in custody;  (b) if releasing the child, whether to release the child without bail or grant bail to the child;  (c) if the child is being, or has been, granted bail, the conditions that should apply to the grant of bail.
			[s48(2)]	The court or officer must consider the need to ensure that, if the child is released:  (a) the child will surrender into custody in accordance with the bail or the conditions of the release, whichever is

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				<p>relevant; and</p> <p>(b) while on release, the child will not:</p> <p>(i) commit an offence; or</p> <p>(ii) endanger anyone’s safety or welfare; or</p> <p>(iii) interfere with a witness or otherwise obstruct the course of justice, whether for the child or anyone else.</p>
			[s48(3)]	<p>The court or officer must have regard to any of the following matters of which the court or officer is aware:</p> <p>(a) the nature and seriousness of the offence;</p> <p>(b) the child’s character, criminal history and other relevant history, associations, home environment, employment and background;</p> <p>(c) the history of any previous grants of bail to the child;</p> <p>(d) the strength of the evidence against the child relating to the offence;</p> <p>(da) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child’s community, including, for example, about:</p> <p>(i) the child’s relationship to the child’s community; or</p>

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				<p>(ii) any cultural considerations; or</p> <p>(iii) any considerations relating to programs and services established for offenders in which the community justice group participates;</p> <p>(e) any other relevant matter.</p>
			[s49(1)]	Subject to the Act, a child who is arrested on a charge of an offence must be brought promptly before the Childrens Court to be dealt with according to law.
			[s54(1)]	<p>Until brought before a court, a child arrested on a charge of an offence or a warrant issued under this Act who is not released from custody must be held in the custody of:</p> <p>(a) the commissioner of the police service; or</p> <p>(b) the chief executive in accordance with arrangements mentioned in subsection (2).</p>
			[s54(2)]	The commissioner of the police service must make arrangements with the chief executive for an arrested child wherever practicable to be placed in a detention centre until brought before a court.
			[s59(1)]	<p>Subject to Part 5 of the Act, a Childrens Court judge may:</p> <p>(a) grant bail to a child held in custody on a charge of an offence; or</p> <p>(b) enlarge, vary or revoke bail granted to a child in, or in</p>

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				<p>connection with, a criminal proceeding within the meaning of the <i>Bail Act 1980</i>;</p> <p>whether or not the child has appeared before the Childrens Court judge in, or in connection with, the offence or criminal proceeding.</p>
			Part 6	<b><u>Part 6 Concerns jurisdiction and proceedings before a Court</u></b>
			[s60]	The Youth Justice Act does not affect the jurisdiction a court has apart from the Act in relation to a child charged with an offence, unless the Act otherwise provides.
			[s61]	The <i>Mental Health Act 2000</i> applies to a child charged with an offence as it applies to an adult.
			[s62]	sets out the jurisdiction of a Childrens Court judge.
			[s64]	All proceedings under the <i>Justices Act 1886</i> for the hearing and determination of charges against children for offences, including committal proceedings, must be heard and determined before a Childrens Court magistrate. A Childrens Court magistrate has jurisdiction to hear and determine the proceedings.
			[s66(1)]	<p>Subject to subsections 66(2) and 66(3), for the purposes of the powers and jurisdiction of a Childrens Court conferred by the Youth Justice Act, the provisions of the Criminal Code, <i>Justices Act 1886</i> and other Acts apply to:</p> <p>(a) the institution and conduct of a proceeding before a</p>

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				<p>Childrens Court; and</p> <p>(b) the exercise by a Childrens Court of its powers and jurisdiction; and</p> <p>(c) the enforcement of an order made by a Childrens Court.</p> <p>[s69] The presence of parent is generally required when the child appears before a court charged with an offence.</p>
			[s72(1)]	<p>In a proceeding before a court in which a child is charged with an offence, the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding.</p>
			[s79]	<p>If a child appears before a court charged with an indictable offence but is not represented by a lawyer, the court may proceed with a hearing and determination only if it is satisfied that the child:</p> <p>(a) has had reasonable opportunity to obtain representation by a lawyer; and</p> <p>(b) has decided not to be represented by a lawyer.</p>
			Part 7	<p><b><u>Part 7 concerns the sentencing of a child</u></b></p>
			[s149]	<p>A court that sentences a child for an offence <u>must</u> sentence the child under Part 7.</p>

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			[s150(1)]	<p>In sentencing a child for an offence, a court must have regard to:</p> <ul style="list-style-type: none"> <li>(a) subject to this Act, the general principles applying to the sentencing of all persons; and</li> <li>(b) the youth justice principles; and</li> <li>(c) the special considerations stated in subsection (2); and</li> <li>(d) the nature and seriousness of the offence; and</li> <li>(e) the child’s previous offending history; and</li> <li>(f) any information about the child, including a pre-sentence report, provided to assist the court in making a determination; and</li> <li>(g) if the child is an Aboriginal or Torres Strait Islander person - any submissions made by a representative of the community justice group in the child’s community that are relevant to sentencing the child, including, for example: <ul style="list-style-type: none"> <li>(i) the child’s relationship to the child’s community; or</li> <li>(ii) any cultural considerations; or</li> <li>(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and</li> </ul> </li> <li>(h) any impact of the offence on a victim, including harm</li> </ul>

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				<p>mentioned in information relating to the victim given to the court under the <i>Victims of Crime Assistance Act 2009</i>, section 15; and</p> <p>(i) a sentence imposed on the child that has not been completed; and</p> <p>(j) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and</p> <p>(k) the fitting proportion between the sentence and the offence.</p>
			[s150(2)]	<p>Special considerations are that:</p> <p>(a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and</p> <p>(b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and</p> <p>(c) the rehabilitation of a child found guilty of an offence is greatly assisted by:</p> <p>(i) the child's family; and</p> <p>(ii) opportunities to engage in educational programs and</p>

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				<p>employment; and</p> <p>(d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and</p> <p>(e) a detention order should be imposed only as a last resort and for the shortest appropriate period.</p>
			[s150(3)]	<p>In sentencing a child for an offence, a court may receive any information it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.</p>
			[s150(4)]	<p>If required by the court for subsection (1)(g), the representative must advise the court whether:</p> <p>(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or</p> <p>(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.</p>
			[s156]	<p>If a court sentencing a child for an offence considers:</p> <p>(a) that it is appropriate to make both of the orders that the child pay:</p>

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				<p>(i) an amount by way of compensation or restitution; and</p> <p>(ii) an amount by way of fine; and</p> <p>(b) that the child has insufficient resources to pay both amounts;</p> <p>the court must give preference to ordering the child to pay only the compensation or restitution amount.</p>
			[s158(1)]	<p>When making an order sentencing a child for an offence a court must take steps to ensure that the child understands:</p> <p>(a) the purpose and effect of the order; and</p> <p>(b) the consequences (if any) that may follow if the child fails to comply with the order.</p>
			[s175(1)]	<p>When a child is found guilty of an offence before a court, the court may—</p> <p>(a) reprimand the child; or</p> <p>(b) order the child to be of good behaviour for a period not longer than 1 year; or</p> <p>(c) order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or</p> <p>(d) subject to subsection (2), order the child to be placed on probation for a period not longer than:</p>

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				<p>(i) if the court is not constituted by a judge - 1 year; or</p> <p>(ii) if the court is constituted by a judge and section 176 does not apply - 2 years; or</p> <p>(e) subject to subsection (2), if the child has attained the age of 13 years at the time of sentence - order the child to perform unpaid community service for a period not longer than:</p> <p>(i) if the child has not attained the age of 15 years at the time of sentence - 100 hours; or</p> <p>(ii) if the child has attained the age of 15 years at the time of sentence- 200 hours; or</p> <p>(f) if the child has not attained the age of 13 years at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months; or</p> <p>(g) order that the child be detained for a period not more than:</p> <p>(i) if the court is not constituted by a judge—1 year; or</p> <p>(ii) if the court is constituted by a judge and section 176 does not apply - the shorter period of the following:</p> <p>(A) half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve;</p>

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				<p>(B) 5 years.</p> <p>(2) An order of the following type may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment:</p> <p>(a) a probation order under subsection (1)(d);</p> <p>(b) a community service order;</p> <p>(c) an intensive supervision order.</p> <p>(3) A court may make an order for a child’s detention under subsection (1)(g) with or without a conditional release order under section 220.</p> <p>(4) s175 has effect subject to the <i>Childrens Court Act 1992</i>.</p>
			[s181]	<p>A court that makes a sentence order against a child for an offence under section 175 or 176, in addition to the order, may make 1 or more of the following orders:</p> <p>(a) an order allowed by division 11 requiring the child:</p> <p>(i) to make restitution of property; or</p> <p>(ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or</p> <p>(iii) to pay compensation for injury suffered by another person;</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(b) an order allowed by division 13;</p> <p>(c) an order allowed by division 14.</p>
			[s183]	Other than under s183, a conviction is not to be recorded against a child who is found guilty of an offence.
			[s184(1)]	<p>In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including:</p> <p>(a) the nature of the offence; and</p> <p>(b) the child’s age and any previous convictions; and</p> <p>(c) the impact the recording of a conviction will have on the child’s chances of:</p> <p>(i) rehabilitation generally; or</p> <p>(ii) finding or retaining employment.</p>
			[s207(1)]	<p>In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including:</p> <p>(a) the nature of the offence; and</p> <p>(b) the child’s age and any previous convictions; and</p> <p>(c) the impact the recording of a conviction will have on the</p>

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				<p>child's chances of:</p> <p>(i) rehabilitation generally; or</p> <p>(ii) finding or retaining employment.</p>
			[s208]	<p>A court may make a detention order against a child only if the court, after:</p> <p>(a) considering all other available sentences; and</p> <p>(b) taking into account the desirability of not holding a child in detention;</p> <p>is satisfied that no other sentence is appropriate in the circumstances of the case.</p>
			[s210]	<p>Subject to this Act, a child who is sentenced to serve a period of detention must serve the period of detention in a detention centre.</p>
			[s227(1)]	<p>Unless a court makes an order, a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.</p>
			Part 8	<p><b><u>Part 8 is entitled 'Detention Administration'</u></b></p>
			[s261]	<p>The <i>Corrective Services Act 2006</i> does not apply to a child, unless the Youth Justice Act expressly applies that Act to a child in particular circumstances.</p>

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			[s262]	<p>The Governor in Council may, by regulation:</p> <ul style="list-style-type: none"> <li>(a) establish detention centres and other places for the purposes of this Act; and</li> <li>(b) determine the purpose for which a place (other than a detention centre) may be used; and</li> <li>(c) name a detention centre or other place.</li> </ul>
			[s263(3)]	<p>In relation to each detention centre, the chief executive is responsible for:</p> <ul style="list-style-type: none"> <li>(a) providing services that promote the health and wellbeing of children detained at the centre; and</li> <li>(b) promoting the social, cultural and educational development of children detained at the centre; and</li> <li>(c) maintaining discipline and good order in the centre; and</li> <li>(d) maintaining the security and management of the centre.</li> </ul>
			[s267(1)]	<p>The chief executive must ensure that, as soon as practicable after a child is admitted to a detention centre, the child is given a document containing the following information:</p> <ul style="list-style-type: none"> <li>(a) the rules governing the facility;</li> <li>(b) the child's rights and responsibilities under the youth justice principles;</li> </ul>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(c) how, and to whom, the child may make a complaint about a matter relating to the detention;</p> <p>(d) how the child can access legal services during the detention;</p> <p>(e) the obligation on a detention centre employee under section 268 to report any harm the child suffers during the detention;</p> <p>(f) any other information the chief executive considers appropriate.</p>
			[s275]	The chief executive must ensure that, if a child detained in a detention centre asks the chief executive or a detention centre employee for help in gaining access to a lawyer, the child is given the help that is reasonable in the circumstances.
	<b>Childrens Court Act 1992.</b>	Qld		This Act establishes the Childrens Court.
	<b>Bail Act 1980</b>	Qld	Various	<p>see Youth Justice Act s47(1)</p> <p><b>'child'</b> see the <i>Youth Justice Act 1992</i>, schedule 4.</p> <p>The orders that may be made under subsection 19B(6) and 19C(5) are limited by the <i>Youth Justice Act 1992</i>, section 48.</p>
			[s20(3)]	In the case of bail granted to a defendant requiring the defendant's appearance before a Magistrates Court, Childrens Court or, as the case may be, any justice or justices conducting an examination of witnesses in relation to an

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>indictable offence the undertaking shall be subject to:</p> <p>(a) the following conditions:</p> <p>(i) that the defendant must surrender into custody as required;</p> <p>(ii) that the defendant must not depart from the court unless the bail is enlarged;</p> <p>(iii) whether or not the defendant is represented, that the defendant must obey the directions of the court in relation to any further appearance, whether the directions are given to the defendant personally or to the defendant's lawyer; and</p> <p>(b) such further conditions:</p> <p>(i) as are imposed under section 11(2), (3), (6) or (9) or the <i>Youth Justice Act 1992</i>, section 52; and</p> <p>(ii) as the court thinks fit to impose.</p>
			[s20(6)]	<p>An undertaking in respect of which the conditions have been fixed may be entered into before:</p> <p>(a) a justice; or</p> <p>(b) a police officer authorised by this Act or the <i>Youth Justice Act 1992</i> to grant bail; or</p> <p>(c) where a party to the undertaking:</p>

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				<p>(i) is in prison, the chief executive (corrective services) or his or her delegate; or</p> <p>(ii) is a child detained in a place established under the <i>Youth Justice Act 1992</i>, part 8—a person for the time being in charge of the place.</p>
			[s29(1)]	<p>A defendant must not break any condition of the undertaking on which the defendant was granted bail requiring the defendant's appearance before a court.</p> <p>Maximum penalty - 40 penalty units or 2 years imprisonment.</p>
			[s29(2)]	<p>Subsection (1) does not apply to:</p> <p>(a) a defendant who is a child; or</p> <p>(b) a condition that the defendant surrender into custody; or</p> <p>(c) a condition that the defendant participate in a program prescribed under a regulation under section 11(9).</p>
	<p><b>Youth Offenders (Interstate Transfer) Act 1987</b></p>	Qld		<p><u>This Act facilitates the transfer to, from and through Queensland of young offenders who wish to be so transferred</u></p>
			[s5]	<p>The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders into or out of Queensland and for the transfer of young offenders through Queensland from one State to another.</p>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			[s7(1)]	<p>The permanent head shall not make an arrangement for the transfer of a young offender from Queensland to another State unless:</p> <p>(a) the young offender or the young offender’s parent or guardian applies for the transfer to be made; and</p> <p>(b) the permanent head is of the opinion that the transfer is appropriate in all the circumstances including:</p> <p>(i) the place or intended place of residence of the parents or other relatives or guardian; and</p> <p>(ii) the education, future education, training or employment; and</p> <p>(iii) the medical or other needs; of the young offender; and</p> <p>(c) the permanent head is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.</p>
			[s7(2)]	<p>For the purpose of deciding whether or not to arrange for the transfer of a young offender from Queensland to another State, the permanent head may ask:</p> <p>(a) the young offender; or</p> <p>(b) the parents or other relatives or the guardian of the young</p>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>offender;</p> <p>for any necessary information.</p> <p>(3) The young offender, parents, other relatives or guardian shall supply the information within the time specified by the permanent head.</p>
			[s8]	<p>The permanent head shall not make an arrangement for the transfer of a young offender from another State to Queensland unless the permanent head is satisfied that there are adequate facilities in Queensland for the young offender to be accepted and dealt with as provided in the arrangement.</p>
	<b>Penalties and Sentences Act 1992</b>	Qld	[s6]	<p>This Act does not apply to:</p> <p>(a) a child within the meaning of the <i>Youth Justice Act 1992</i>; or</p> <p>(b) a Childrens Court;</p> <p>except to the extent allowed by the <i>Youth Justice Act 1992</i>.</p>
<b>Evidence Act 1977</b>	Qld	[s9E]	<p>Principles for dealing with a child witness</p> <p>(1) Because a child tends to be vulnerable in dealings with a person in authority, it is the Parliament's intention that a child who is a witness in a proceeding should be given the benefit of special measures when giving the child's evidence.</p> <p>(2) The following general principles apply when dealing</p>	

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>with a child witness in a proceeding:</p> <p>(a) the child is to be treated with dignity, respect and compassion;</p> <p>(b) measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;</p> <p>(c) the child should not be intimidated in cross-examination;</p> <p>(d) the proceeding should be resolved as quickly as possible.</p> <p>(3) In this section:</p> <p><b>'child'</b> means a child under 16 years.</p>
	<p><b>Criminal Code Act 1899</b></p>	<p>Qld</p>	<p>[s280]</p>	<p>It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.</p> <p>{ At the beginning of the 1995 school year, corporal punishment in Queensland state schools was abolished. }</p>

**5. South Australia**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT SOUTH AUSTRALIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence</p>	<p><b>Bail Act (SA) 1985</b></p>	<p>SA</p>	<p>ss 3, 4, 6, 8, 13, 14</p>	<p><b>s3 - Interpretation</b></p> <p>'<b>child</b>' means a person who was, on the day on which an offence was allegedly committed by that person, under the age of 18 years.</p> <p><b>s4 - Eligibility for bail (s4(1)(a)(ii))</b></p> <p>A child who has been taken into custody on suspicion of having committed an offence is eligible for release on bail under this Act.</p> <p><b>s6 - Nature of bail agreement (s6(1) and (1a))</b></p> <p>(a) A child who has been arrested on suspicion of having committed an offence will, for so long as no charge is actually laid against the child, be taken to have been charged with that suspected offence so that a bail agreement could be entered into.</p> <p>(b) If the child is not charged with that suspected offence (referred to in (a) above) but with some other offence arising out of the same circumstances as that suspected offence, any bail agreement entered into by the child relates to that other offence.</p> <p><b>s8 - Form of application (i.e. applications for release on</b></p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p>and visits, save in exceptional circumstances;</p> <p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>				<p><b>bail) - (s8(2a))</b></p> <p>Where the eligible person is a child, a request may be made (on behalf of the child) by a guardian of the child to the person who has the custody of the child to:</p> <p>(a) afford such assistance as the child reasonably requires to complete a written application for release on bail; and</p> <p>(b) if the custodian is not a bail authority—transmit the application as soon as practicable to a bail authority.</p> <p><b>s13—Procedure on arrest (s13(1)(b) and (2))</b></p> <p>Where a member of the police force arrests a child who is, upon arrest, eligible to apply for release on bail, the member of the police force must ensure that the arrested child and any guardian who is present, receives—</p> <p>(i) a written statement, in the prescribed form, explaining how, and to what authorities, an application for release on bail may be made under this Act; and</p> <p>(ii) the appropriate form for making an application for release on bail.</p> <p>An eligible person who is a child and has applied unsuccessfully to a member of the police force for release on bail must, if the child or a guardian so requests, be brought as soon as practicable before the Youth Court of South Australia for the purpose of making an application for release on bail.</p>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p><b>s14—Review of decisions of bail authorities</b></p> <p>A decision of a bail authority (not being the Supreme Court) is subject to review. A review may be carried out on the application of (i) the Crown, (ii) the person applying for release on bail or, (iii) where the person applying for release on bail is a child, the child or a guardian of the child—</p> <p>(a) by the Supreme Court; or</p> <p>(b) where the decision subject to review is a decision of a member of the police force or a court constituted of justices—by a magistrate.</p>
	<p><b>Criminal Law (Sentencing) Act (SA) 1988</b></p>	<p>SA</p>	<p>ss 3, 3A, 20C, 23 31, 31A, 71, 71A and 71B</p>	<p><b>s3—Interpretation</b></p> <p>'youth' has the same meaning as in the <i>Young Offenders Act 1993</i> (see relevant row below).</p> <p><b>s3A—Application of Act to youths</b></p> <p>(1) Subject to any provision of this Act to the contrary, this Act applies in relation to the sentencing of a youth and the enforcement of a sentence against a youth.</p> <p>(2) However, in the event of conflict between a provision of this Act and a provision of the <i>Young Offenders Act 1993</i> or the <i>Youth Court Act 1993</i>, the latter provision prevails to the extent of that conflict.</p> <p>(3) In applying a provision of this Act to a youth who is</p>

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				<p>being or has been dealt with as a youth (ie, not as an adult)—</p> <p>(a) a reference to imprisonment is to be read as a reference to detention;</p> <p>(b) a reference to a warrant of commitment is to be read as an order for detention;</p> <p>(c) a reference to a prison is to be read as a reference to a training centre;</p> <p>(d) a reference to the CEO is to be read as a reference to the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the <i>Family and Community Services Act 1972</i>;</p> <p>(e) a reference to a community corrections officer is to be read as a reference to a person authorised (individually or by class) by the Minister for Family and Community Services to exercise the powers of a community corrections officer in relation to youths;</p> <p>(f) a reference to a bond, or to entering into a bond, is to be read as a reference to an order under section 26 of the <i>Young Offenders Act 1993</i>, or to becoming subject to such an order;</p> <p>(g) a reference to a probationer is to be read as a reference to a youth the subject of such an order.</p> <p><b>s20C—Declaration that youth is recidivist young offender</b></p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>A youth is liable to be declared a recidivist young offender if the following conditions apply:</p> <p>(a) the youth— (i) has committed on at least 3 separate occasions an offence (whether or not the same offence on each occasion); and (ii) has been convicted of those offences; or</p> <p>(b) the youth— (i) has committed on at least 2 separate occasions a serious sexual offence against a person or persons under the age of 14 years (whether or not the same offence on each occasion); and (ii) has been convicted of those offences.</p> <p>If a court convicts a youth of a serious offence, and the youth is declared (or has previously been declared) to be a recidivist young offender—</p> <p>(a) the court is not bound to ensure that the sentence it imposes for the offence is proportional to the offence (but, in the case of the Youth Court, the limitations relating to a sentence of detention under section 23 of the <i>Young Offenders Act 1993</i> apply to the sentence that may be imposed by the Youth Court on the recidivist young offender); and</p> <p>(b) any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.</p> <p><b>s23—Offenders incapable of controlling, or unwilling to control, sexual instincts</b></p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>The Supreme Court may exercise its powers under this section in relation to a youth who is sentenced as an adult pursuant to the Young Offenders Act 1993.</p> <p>The Supreme Court will direct at least 2 legally qualified medical practitioners nominated by the Court to inquire into the mental condition of a person to whom this section applies and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.</p> <p>The Court, after considering the medical practitioners' reports and any relevant evidence or representations that the person may desire to put to the Court, may be satisfied that the order for detention is appropriate. If the order of detention is in addition to a sentence of imprisonment, the detention will commence on the expiration of the term of imprisonment, or of all terms of imprisonment that the person is liable to serve.</p> <p>A person (under 18 years of age) detained in custody under this section will be detained in such institution (not being a prison) as the Minister for Family and Community Services from to time directs.</p> <p><b>s31—Cumulative sentences</b></p> <p>Cumulative sentences does not apply in relation to a youth unless the youth is sentenced as an adult.</p> <p><b>s31A—Application of Division (re Non-parole periods) to youths</b></p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>Non-parole periods does not apply in relation to a youth unless the youth is sentenced as an adult or is sentenced to detention to be served in a prison or is otherwise transferred to or ordered to serve a period of detention in a prison.</p> <p><b>s71—Community service orders may be enforced by imprisonment</b></p> <p>If the court is satisfied that the youth has failed to comply with the order requiring performance of community service the court may make an order for home detention.</p> <p><b>s71B—Detention in prison</b></p> <p>If the court issues an order for detention of a youth or sentences a youth to detention—</p> <p>(a) where the youth is already in custody in a prison, the youth will serve the detention in a prison; or</p> <p>(b) where the youth has previously served a sentence of imprisonment or detention in a prison, the court may direct that the youth serve the detention in a prison,</p> <p>and the <i>Correctional Services Act 1982</i> applies to and in relation to a youth serving detention in a prison under this section.</p>
	<p><b>Mental Health Act (SA) 2009</b></p>	<p>SA</p>	<p>ss 3, 4, 21, 25, 29, 47, 79.</p>	<p><b>s3—Interpretation</b></p> <p><b>'Board'</b> means the Guardianship Board established under the</p>

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				<p>Guardianship and Administration Act 1993.</p> <p>'<b>child</b>' means a person under 18 years of age.</p> <p><b>s4—Application of Act to children</b></p> <p>This Act applies to children in the same way as to persons of full age, subject to the following:</p> <p>(a) a right conferred on a person under this Act may, if the person is a child under 16 years of age, be exercised by a parent or guardian of the child on behalf of the child;</p> <p>(b) an obligation under this Act to give a document to a person is, if the person is a child under 16 years of age, to be treated as an obligation to give the document to a parent or guardian of the child, and operates to the exclusion of any further obligation under this Act to send or give the document to a guardian, medical agent, relative, carer or friend.</p> <p><b>s21—Level 1 detention and treatment orders</b></p> <p>A medical practitioner or authorised health professional may make an order that a person be detained and receive treatment in a treatment centre (a '<b>level 1 detention and treatment order</b>') if it appears to the medical practitioner or authorised health professional, after examining the person, that—</p> <p>(a) the person has a mental illness; and</p> <p>(b) because of the mental illness, the person requires treatment for the person's own protection from harm</p>

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				<p>(including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and</p> <p>(c) there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness.</p> <p><b>s25—Level 2 detention and treatment orders</b></p> <p>If a level 1 detention and treatment order has been made or confirmed by a psychiatrist or authorised medical practitioner, a psychiatrist or authorised medical practitioner may, after further examination of the patient carried out before the order expires, make a further order for the detention and treatment of the patient (a '<b>level 2 detention and treatment order</b>').</p> <p><b>s29—Level 3 detention and treatment orders</b></p> <p>(1) If the Board is satisfied that—</p> <p>(a) a person has a mental illness; and</p> <p>(b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and</p> <p>(c) there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the</p>

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				<p>person's illness,</p> <p>the Board may make an order that the person be detained and receive treatment in an approved treatment centre (a '<b>level 3 detention and treatment order</b>').</p> <p>A level 3 detention and treatment order relating to a child, unless earlier revoked, expires at a time fixed in the order which must be 2 pm on a business day not later than 6 calendar months after the day on which it is made.</p> <p><b>s47—Patients' right to be supported by guardian etc</b></p> <p>A patient (who is a child) is entitled to have a parent's or guardian's support, wherever practicable, in—</p> <p>(a) the exercise of a right under this Act; or</p> <p>(b) any communications between the patient and a medical practitioner examining or treating the patient or between the patient and the director or staff of a treatment centre in which the patient is treated or detained.</p> <p><b>s79—Reviews</b></p> <p>The Board must conduct a review of a level 3 detention and treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months).</p>

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	<p><b>Young Offenders Act (SA) 1993</b></p>	<p>SA</p>	<p>ss 3, 4, 14, 15, 23, 29, 36, 36A, 37, 37A, 48</p>	<p><b>s3—Objects and statutory policies</b></p> <p>(1) The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.</p> <p>(2) The powers conferred by this Act are to be directed towards that object with proper regard to the following statutory policies:</p> <p>(a) a youth should be made aware of his or her obligations under the law and of the consequences of breach of the law;</p> <p>(c) the community, and individual members of it, must be adequately protected against violent or wrongful acts.</p> <p>(2a) In imposing sanctions on a youth for illegal conduct—</p> <p>(a) regard should be had to the deterrent effect any proposed sanction may have on the youth; and</p> <p>(b) if the sanctions are imposed by a court on a youth who is being dealt with as an adult (whether because the youth's conduct is part of a pattern of repeated illegal conduct or for some other reason), regard should be had to—</p> <p>(i) the deterrent effect any proposed sanction may have on other youths; and</p> <p>(ii) the balance to be achieved between—(A) the protection</p>

# CLAYTON UTZ

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>of the community; and (B) the need to rehabilitate the youth.</p> <p>(3) Effect is to be given to the following statutory policies so far as the circumstances of the individual case allow:</p> <p>(a) compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;</p> <p>(b) family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;</p> <p>(c) a youth should not be withdrawn unnecessarily from the youth's family environment;</p> <p>(d) there should be no unnecessary interruption of a youth's education or employment;</p> <p>(e) a youth's sense of racial, ethnic or cultural identity should not be impaired.</p> <p><b>s4—Interpretation</b></p> <p>'youth' means a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, includes a person who was under the age of 18 years on the date of the alleged offence.</p> <p><b>s14 and 15: Arrest and custody of suspected offenders</b></p>

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				<p><b>s14—Application of general law</b></p> <p>(1) The law of the State relating to criminal investigation, arrest, bail, remand and custody before proceedings for an offence are finally determined applies, subject to this Act, to youths with necessary adaptations and any further adaptations and modifications that may be set out in the regulations.</p> <p>(2) If a youth is arrested on suspicion of having committed an offence, and the youth is to be dealt with under this Act for the offence, the officer responsible for the arrest and custody of the youth must, as soon as practicable after the arrest—</p> <p>(a) explain to the youth the nature of the allegations against him or her; and</p> <p>(b) inform the youth of his or her right to seek legal representation; and</p> <p>(c) take all reasonable steps to inform— (i) the guardian of the youth; (ii) if a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth, of the arrest and invite him or her to be present during any interrogation or investigation to which the youth is subjected while in custody.</p> <p><b>s15—How youth is to be dealt with if not granted bail</b></p> <p>(1) Subject to this section, if a youth is not granted bail under</p>

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				<p>the Bail Act 1985, the youth must be detained by the Chief Executive with a person (where practicable), or in a place (other than a prison), approved by the Minister.</p> <p>(1a) Subsection (1) does not apply in relation to a youth who is already in custody in a prison.</p> <p>(2) If a youth is arrested outside an area specified in the regulations and it is not reasonably practicable to detain the youth as provided by subsection (1), the youth may be detained— (a) in a police prison; or (b) in a police station, watch-house or lock-up approved by the Minister.</p> <p>(3) If a youth is detained in a police prison, police station, watch-house or lock-up in accordance with subsection (2), the person for the time being in charge of the police prison, police station, watch-house or lock-up must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult person detained in that place.</p> <p><b>s23—Limitation on power to impose custodial sentence</b></p> <p>(1) Subject to subsection (6), the Court cannot sentence a youth to imprisonment.</p> <p>(2) If an offence of which a youth is convicted, or found guilty, is punishable by imprisonment where committed by an adult, the Court may sentence the youth to—</p> <p>(a) detention in a training centre for a period not exceeding three years; or</p>

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				<p>(b) home detention for a period not exceeding six months, or for periods not exceeding 6 months in aggregate over one year or less; or</p> <p>(c) detention in a training centre for a period not exceeding two years to be followed by home detention for a period not exceeding six months or for periods not exceeding 6 months in aggregate over one year or less.</p> <p>(3) If, however, the maximum term of imprisonment prescribed for the offence is less than three years, the period of detention to which the youth is sentenced cannot exceed that maximum.</p> <p>(4) A sentence of detention must not be imposed for an offence unless—</p> <p>(a) the offender is a recidivist young offender; or</p> <p>(b) in any other case—the Court is satisfied that a sentence of a non-custodial nature would be inadequate— (i) because of the gravity or circumstances of the offence; or (ii) because the offence is part of a pattern of repeated offending.</p> <p>(5) A sentence of home detention—</p> <p>(a) must not be imposed unless the Court is satisfied that the residence the Court proposes to specify in its order is suitable and available for the detention of the youth and that the youth will be properly maintained and cared for while detained in that place; and</p>

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				<p>(b) should not be imposed if the Court is not satisfied that adequate resources exist for the proper monitoring of the youth while on home detention by a home detention officer.</p> <p>(6) If the Court sentences a youth to detention in respect of an offence and does not suspend the sentence—</p> <p>(a) where the youth is already in custody in a prison, the youth will serve the detention, or such part of it as the Court may direct, in a prison; or</p> <p>(b) where the youth has previously served a sentence of imprisonment or detention in a prison, the Court may direct that the youth serve the detention in a prison.</p> <p><b>s29—Sentencing youth as an adult</b></p> <p>This section prescribes different circumstances where a youth could be dealt as an adult for the purposes of sentencing. On sub-section states that a youth who is found guilty of murder must be sentenced to imprisonment for life (see section 37 below).</p> <p><b>s36—Detention of youth sentenced as adult</b></p> <p>Subject to any direction of the sentencing court to the contrary, a youth who has been dealt with as an adult and sentenced to imprisonment will serve that sentence in a training centre.</p> <p>If a youth is serving a sentence of imprisonment in a training centre, the sentencing court must, before the youth reaches 18</p>

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				<p>years of age, review the detention and either direct that the imprisonment in a training centre continue or that the youth be transferred to a prison.</p> <p><b>s36A—Transfer following imposition of concurrent prison sentence</b></p> <p>If a youth who is serving a sentence of detention or imprisonment in a training centre (the youth sentence) is sentenced to imprisonment for an offence committed after turning 18 years of age and that sentence is to be served concurrently with the youth sentence, the youth must, unless the sentencing court directs otherwise, be transferred to, and will serve those sentences in, a prison.</p> <p><b>s37—Release on licence of youths convicted of murder</b></p> <p>If a youth who has been sentenced to imprisonment for life is being detained in a training centre, the Supreme Court may, on the application of the youth, authorise the release of the youth from detention on licence.</p> <p><b>s37A—Conditions of home detention</b></p> <p>A sentence of home detention imposed on a youth by a court is subject to the following conditions:</p> <p>(a) the youth must remain at a residence specified by the court throughout the period of home detention and must not leave that residence at any time except for the following purposes: (i) remunerated employment; or (ii) urgent medical or dental treatment for the youth; or (iii) attendance</p>

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				<p>at a course of education, training or instruction or any other activity as required by the court or as approved or directed by the home detention officer to whom the youth is assigned; or (iv) any other purpose approved or directed by the home detention officer;</p> <p>(b) the youth must be of good behaviour throughout the period;</p> <p>(c) the youth must obey the lawful directions of the home detention officer throughout the period;</p> <p>(d) such other conditions as the Court may specify.</p> <p><b>s48—Escape from custody</b></p> <p>A youth who is subject to detention—</p> <p>(a) who escapes from a training centre or from any person who has the lawful custody of the youth; or</p> <p>(b) who is otherwise unlawfully at large,</p> <p>is guilty of an offence. (Maximum penalty: Detention for 6 months.)</p> <p>A term of detention to which a youth is sentenced for an offence against this section must be served immediately and any other detention or imprisonment to which the youth is liable is suspended while that term is being served.</p> <p>If the youth is in prison at the time at which a sentence</p>

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				<p>imposed under this section is due to commence, the sentence must be served in prison.</p> <p>A youth is not, while unlawfully at large, serving his or her sentence of detention.</p>
	<p><b>Youth Court Act (SA) 1993</b></p>	<p>SA</p>	<p>ss 3,4 and 7</p>	<p><b>s3—Interpretation</b></p> <p><b>Court or Youth Court</b> means the Youth Court of South Australia.</p> <p><b>s4—Establishment of Court</b></p> <p>The Youth Court of South Australia is established.</p> <p><b>s7—Jurisdiction</b></p> <p>The Court—</p> <p>(a) has jurisdiction to hear and determine proceedings under the <i>Children's Protection Act 1993</i>; and</p> <p>(b) has the civil and criminal jurisdiction conferred by the <i>Young Offenders Act 1993</i>; and</p> <p>(ba) has the same jurisdiction as the Magistrates Court to make a non-association or place restriction order under the Summary Procedure Act 1921 where the person who is to be subject to the order is a child or youth, and has power under that Act to vary or revoke such an order previously made by the Court; and</p>

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				<p>(c) has the same jurisdiction as the Magistrates Court to make a restraining order under the <i>Summary Procedure Act 1921</i> or an intervention order under the <i>Intervention Orders (Prevention of Abuse) Act 2009</i> if the person for or against whom protection is sought is a child or youth, and has power under those Acts to vary or revoke such an order previously made by the Court; and</p> <p>(d) has the powers conferred on a court or justice by the <i>Bail Act 1985</i>; and</p> <p>(e) has any other civil or criminal jurisdiction conferred by statute.</p>

**6. Western Australia**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence</p>	<p><b>Young Offenders Act (WA) 1994</b></p>	<p>WA</p>	<p>3, 4</p>	<p>A '<b>young person</b>' means a person who has not reached the age of 18 years or a person to whom the Act applies because of section 4.</p> <p>If the offence is committed before a person reaches the age of 18 years this Act will apply (section 4).</p>
			<p>20</p>	<p>Before a member of the Police Force questions a young person who has been apprehended for the commission of an offence they must ensure that a responsible adult has received notice of the intention to question the young person. That responsible adult is also to be given notice of any charge laid against that young person.</p> <p>A '<b>responsible adult</b>' means a parent, guardian or other person having responsibility for the day to day care of the young person.</p>
			<p>21</p>	<p>Subject to the <i>Bail Act 1982</i> a young person may be detained in a detention centre during the period for which the person has been remanded by a court or during the period of the person's detention on committal for trial in the Supreme Court or the District Court.</p> <p>If a young person reaches the age of 18 years while detained the court may, on application of the chief executive officer, direct that the person be transferred to a prison under the</p>

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<p>and visits, save in exceptional circumstances;</p> <p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>				<i>Prisons Act 1981</i> and treated as an adult prisoner on remand.
			Part 5 - Dealing with young offenders without taking court proceedings	<p>Part 5 outlines a number of ways in which young offenders can be dealt with without court proceedings including:</p> <ul style="list-style-type: none"> <li>• Division 1 - the purpose of this division is to set up a way of diverting a child who commits an offence from the court's criminal justice system by allowing a police officer to administer a caution instead of starting a proceeding for the offence. Cautions may be given for all offences other than Schedule 1 or Schedule 2 offences.</li> <li>• Division 2 - the prosecutor may refer the matter to a juvenile justice team instead of laying a charge and the court has a broad discretion to refer a matter to the juvenile justice team. A matter cannot be referred to a juvenile justice team if the offence is a Schedule 1 or Schedule 2 offence. A matter will only be referred if the alleged offender accepts responsibility for the offence and agrees to have the matter dealt with by the juvenile justice team rather than by a court and if a responsible adult participates.</li> </ul> <p>If a young person has been arrested for an offence and matter is referred to a juvenile justice team the young person is to be released as soon as is practicable.</p>
			Part 7 -	Section 46 sets out the principles and considerations to be

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			Sentencing and related matters	<p>applied to young offenders when they are sentenced. These include consideration of the seriousness of an offence, the age of the offender and the prospects of rehabilitation.</p> <p>The court is to dispose of the matter in a way that is in proportion to the seriousness of the offence and is consistent with the treatment of other young persons who commit offences.</p> <p>In deciding how to dispose of the matter the court is to consider how young the offender is as a mitigating factor.</p> <p>Section 46A provides that the <i>Sentencing Act 1995</i> applies to and in respect of the sentencing of a young person where the offender is aged 18 years or over at the time of sentencing, in certain circumstances where the offender is aged 17 or over but under 18 at the time of sentencing or where the court decides pursuant to section 118 to impose a custodial sentence or to the extent that this Act does not provide for a matter that it provided for in the <i>Sentencing Act 1995</i>.</p> <p>Part 5 of the <i>Sentencing Act 1995</i> (which provides for sentencing options) does not apply to the sentencing of a young person except for the purposes of deciding whether a community order can be imposed with respect to an offender who at the time of sentencing is at least 17 years old but under 18 years old or in a case to which section 50B applies, being the sentencing of an offender aged 18 or over at the time of sentencing.</p>
			50	A person found guilty of an offence who is at the time of being sentenced is under 17 years old will be dealt with in

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				<p>one of the ways provided for in Part 7, unless the court dealing with the offender is the Children's Court, in which case this is subject to section 21 of the <i>Children's Court of Western Australia Act 1988</i>. This ways include, subject to certain reservations, the imposition of community work orders, youth community based orders, an intensive youth supervisions order or conditional release order, the imposition of a fine, a decision to refrain from imposing any punishment or a custodial sentence.</p>
			118A, 120	<p>If a young person is under 18 years old at the time when they are to be imprisoned the young person is to serve that sentence in a detention centre and not in a prison.</p> <p>If a young person is 18 years old at the time of imprisonment then the young person is to serve that sentence in a prison.</p> <p>The court cannot impose a custodial sentence unless it is satisfied that there is no other appropriate way for it to dispose of the matter.</p>
			Part 8 - Supervised Release Orders	<p>If an offender is serving a sentence of detention the Supervised Release Review Board may order the release of an offender from custody subject to conditions, such as that the offender must remain at a specified place for specified periods subject to conditions allowing the offender to attend school etc.</p>
	<b>Bail Act 1982</b>		5	<p>An accused who is in custody for an offence awaiting his initial appearance before a court is entitled, subject to certain exceptions to have his case for bail considered as soon as</p>

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				possible or, if he is refused bail, to be brought before a court as soon as is practicable.
			7C, 15	Where an accused is a child and in custody for murder the power to grant bail shall be exercised only by a judge of the Children's Court, subject to certain exceptions, and the application for bail shall be considered as soon as practicable.  <b>'Child'</b> has the same meaning as <b>'young person'</b> in the <i>Young Offenders Act 1994</i> .
			9, 13A	Subject to section 26(2) of the <i>Young Offenders Act 1994</i> an officer who is called on to consider a case for bail may refer consideration of the case for a period not exceeding 30 days if he thinks it necessary. Section 26(2) provides that a young person who has been arrested for an offence is not to be held in custody by reason only of the need to decide whether or not to refer the matter to a juvenile justice team but the powers in regard to admission to bail may be exercised from time to time until the decision is made.  The judicial officer charged with making the determination with respect to bail may dispense with the requirement for bail.
			35,36	Where the accused to whom bail has been granted is a child, an authorised community services officer may decide whether an applicant should be approved as a surety.
			65	A bail undertaking entered into by a person who is under the age of 18 years shall bind him as if he were of full age.

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			Schedule 1, Part B, section 2	<p>A child accused who is in custody awaiting an appearance in court before conviction for an offence has a right, subject to certain exceptions, to be granted bail. This right is also subject to the provisions governing bail where a serious offence has been committed while the accused is on bail for another serious offence and bail in murder cases and is also subject to a responsible person providing an undertaking to ensure that the child complies with any requirement of his bail undertaking.</p> <p>Where a child accused is released on bail his right to be at liberty is subject to the exercise of the powers in section 17A (which relates to the cancelation of an undertaking by a responsible person and its replacement by an undertaking from another responsible person.)</p>
			Schedule 1, Part B, section 4	<p>A child accused who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the child accused has been convicted has the same right to be granted bail as a child accused referred to in section 2.</p> <p>A child accused who is in custody waiting for the disposal of appeal proceedings shall only be granted bail if the judicial officer is satisfied that it is proper to do so having regard to the relevant provisions.</p>
			Schedule 1, Part D, section 2	<p>The conditions which may be imposed on the grant of bail to a child accused include conditions as to any period in each day during which the child is to remain at a particular place and the attendance by the child at school.</p>

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	<b>Sentencing Act 1995</b>		3	<p>This Act applies to all persons convicted of an offence whether or not the offence was committed before this Act comes into operation. In the case of a person who is a young person as defined in the <i>Young Offenders Act 1994</i>, subsection (1) is subject to sections 46 and 46A of the <i>Young Offenders Act 1994</i>.</p> <p>Section 46 sets out the principles and considerations to be applied to young offenders when they are sentenced. These include consideration of the seriousness of an offence, the age of the offender and the prospects of rehabilitation.</p> <p>Section 46A provides that the <i>Sentencing Act 1995</i> applies to and in respect of the sentencing of a young person where the offender aged 18 years or over at the time of sentencing, in certain circumstances where the offender is aged 17 or over but under 18 at the time of sentencing or where the court decides pursuant to section 118 to impose a custodial sentence or to the extent that this Act does not provide for a matter that it provided for in the <i>Sentencing Act 1995</i>.</p> <p>Part 5 of the <i>Sentencing Act 1995</i> does not apply to the sentencing of a young person except for the purposes of deciding whether a community order can be imposed with respect to an offender who at the time of sentencing is at least 17 years old but under 18 years old or in a case to which section 50B applies, being the sentencing of an offender aged 18 or over at the time of sentencing.</p>
	<b>Children's Court of</b>		19, 19D	The Children's Court has exclusive jurisdiction to hear and

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	Western Australia 1988			<p>determine an offence alleged to have been committed by a child, including offences committed by a person before attaining the age of 18, notwithstanding that they have turned 18.</p> <p>In certain circumstances, such as where the person who is charged has attained the age of 18 years and having regard to the seriousness of the offence, the existence of an adult co-offender, the effluxion of time since the offence, the fact that the person is charged before the Magistrates Court with other offences or any other good cause, the Court can order the transfer of the matter to the Magistrates Court.</p>
			19B	<p>In certain circumstances, if a child is charged with an indictable offence the child may elect to be tried on indictment by the Supreme Court or the District Court (as the case requires) and the Children's Court shall so inform the child.</p>
			34	<p>In any proceedings before the Children's Court, the Court must satisfy itself that the child who is the subject of the proceedings understands the nature of those proceedings.</p>
			Part 5 - review and appeal	<p>Section 40 provides that where the Court, when constituted so as not to consist of or include a judge, makes a finding or order against a person the Court (when constituted by the President) may of its own motion or upon an application by the person, or if the person is a child by the CEO (young</p>

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				<p>offenders) or by the prosecutor , reconsider the order and confirm the order or discharge the order and substitute another order.</p> <p>Where an application has been made for reconsideration of a custodial sentence an application may be made to the Court under the <i>Bail Act 1982</i> by or on behalf of the child.</p> <p>Section 41 provides that an appeal against a decision of the Court when constituted so as not to consist of or include a judge may be made under and subject to Part 2 of the <i>Criminal Appeals Act 2004</i>.</p>
	<p><b>Criminal Code Act Compilation Act 1913</b></p>		<p>1</p>	<p>'<b>Child</b>' means any boy or girl under the age of 18 years and in the absence of positive evidence as to age any boy or girl apparently under the age of 18 years.</p> <p>Nothing in this Code affects the operation of the <i>Children's Court of Western Australia Act 1988</i> and in particular the jurisdiction of the Children's Court to deal with indictable offences.</p>
			<p>29</p>	<p>A person under the age of 10 years is not criminally responsible for any act or omission.</p> <p>A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at</p>

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				the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.
			279	A child who is guilty of murder is liable to either life imprisonment or detention in a place determined from time to time by the Governor or under another written law until released by order of the Governor.
			297	<p>If the offence of grievous bodily harm is committed in prescribed circumstances ( as defined in clause 297(8) ) , which includes an offence against a public officer such as a police officer or prison officer, by a person who has reached 16 but not 18 years of age, then notwithstanding the <i>Young Offenders Act 1994</i> and in particular section 46(5a) of it, the court sentencing the offender must sentence the offender either to a term of imprisonment of at least 3 months (notwithstanding section 86 of the <i>Sentencing Act 1995</i>) or to a term of detention of at least 3 months, as the court thinks fit, it must not suspend any term of imprisonment imposed and must record a conviction against the offender.</p> <p>This does not prevent a court from making a decision under the <i>Young Offenders Act 1994</i> section 118(4) (being a direction that the offender serve the sentence in a prison under the <i>Prisons Act 1981</i> ) or a special order under Part 7 Division 9 of that Act (dealing with young persons who repeatedly commit serious offences).</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			318	<p>If the offence of serious assault under this section is committed in prescribed circumstances ( as defined in clause 318(5) ) , which includes an offence against a public officer such as a police officer or prison officer and the officer suffers bodily harm, by a person who has reached 16 but not 18 years of age then notwithstanding the <i>Young Offenders Act 1994</i> and in particular section 46(5a) of it, the court sentencing the offender must sentence the offender either to a term of imprisonment of at least 3 months (notwithstanding section 86 of the <i>Sentencing Act 1995</i>) or to a term of detention of at least 3 months, as the court thinks fit, it must not suspend any term of imprisonment imposed and must record a conviction against the offender.</p> <p>This does not prevent a court from making a decision under the <i>Young Offenders Act 1994</i> section 118(4) (being a direction that the offender serve the sentence in a prison under the <i>Prisons Act 1981</i> ) or a special order under Part 7 Division 9 of that Act (dealing with young persons who repeatedly commit serious offences).</p>
			401	<p>If the person convicted of an offence under clause 401 (making it an offence to enter in the place of another person without consent with the intent to commit an offence or committing a offence in the place of another person when in that place without the consent of that other person) is a young person (as defined the <i>Young Offender Act 1994</i>) and a repeat offender the court shall sentence the offender to at least 12 months imprisonment or to a term of at least 12 months</p>

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				<p>detention, as the court thinks fit, notwithstanding section 46(5a) of that Act.</p> <p>The court shall not suspend a term of imprisonment imposed under the above provisions. This does not prevent a court from making a decision under the <i>Youth Offenders Act 1994</i> section 118(4) (being a direction that the offender serve the sentence in a prison under the <i>Prisons Act 1981</i> ) or a special order under Part 7 Division 9 of that Act (dealing with young persons who repeatedly commit serious offences).</p>
	<p><b>Prohibited Behaviour Orders Act 2010</b></p>		6	<p>A court may not make a PBO against a person unless the person has reached 16 years of age.</p>
10			<p>A PBO is of no effect to the extent that it conflicts with or duplicates a condition of a youth community based order or a condition of an intensive youth supervision order made under the <i>Youth Offenders Act 1994</i>.</p>	
17			<p>A PBO cannot be made against a youth if the related sentence involves the exercise of a power under the <i>Youth Offenders Act 1994</i> Part 7 Division 2 (no punishment and no conditions), Division 3 (no punishment but conditions) or Division 4 (no punishment but security or recognisance).</p>	
19			<p>When a court hears youth-related PBO proceedings, the <i>Youth Offenders Act 1994</i> section 46(1) and (2) (which set out the principles and considerations to be applied to young</p>	

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				offenders) apply.
			37	A person aggrieved by a decision of a court in PBO proceedings may appeal against that decision in accordance with this section.
	<b>Legal Aid Commission Act 1976</b>		33	The Commission may provide legal assistance by way of legal aid given by a legal practitioner acting as duty counsel at any court or legal advice to any person.
			34	Legal assistance may be provided free of charge or on the payment by the assisted person of a fixed charge determined by the Commission.
	<b>Police Act 1892, Police Force Regulations 1979, Western Australian Police Code of Conduct</b>		9	Section 9 of the <i>Police Act 1892</i> provides that the Commissioner of Police may, with the approval of the Minister, frame rules, orders and regulations for the general governance of the member of police force.
			609	Regulation 609 of the <i>Police Force Regulations 1979</i> provides that a member shall not make any unlawful arrest or use any unnecessary force on any prisoner or other person with whom he may be brought into contact in the performance of his duty.
			Code of Conduct	Under the heading 'Duty of Care' the Code of Conduct provides that a police officer must try to ensure that persons

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				in custody or care are prevented from suffering illness, injury or death and be alert to their duty of care as a result of their actions. Any use of force must be lawful and proportionate to any threat.

**7. Northern Territory**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence</p>	<p><b>Criminal Code Act</b></p>	<p>NT</p>	<p>43AP</p>	<p><b>Children under 10</b></p> <p>A child under 10 years old is not criminally responsible for an offence.</p>
			<p>43AQ</p>	<p><b>Children over 10 but under 14</b></p> <p>(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.</p> <p>(2) The question whether a child knows that his or her conduct is wrong is one of fact.</p> <p>(3) The burden of proving that a child knows that his or her conduct is wrong is on the prosecution.</p>
			<p>149</p>	<p><b>Duty of person in charge of child or others</b></p> <p>It is the duty of every person having charge of a child under the age of 16 years or having charge of any person who is unable to withdraw himself from such charge by reason of age, sickness, unsoundness of mind, detention or other cause and who is unable to provide himself with the necessaries of life:</p> <p>(a) to provide the necessaries of life for that child or other</p>

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<p>and visits, save in exceptional circumstances;</p> <p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>				<p>person; and</p> <p>(b) to use reasonable care and take reasonable precautions to avoid or prevent danger to the life, safety or health of the child or other person and to take all reasonable action to rescue such child or other person from such danger.</p>
			157	<p><b>Punishment for murder and conspiracy to murder</b></p> <p>(1) A person who is guilty of the crime of murder is liable to imprisonment for life.</p> <p>(2) The penalty mentioned in subsection (1) is mandatory.</p> <p>(3) A person who is guilty of the offence of conspiracy to commit the crime of murder is liable to imprisonment for 14 years.</p> <p><i>However, note, under section 82(3) of the Youth Justice Act, the Supreme Court may, despite this section, sentence a youth found guilty of murder to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.</i></p>
			196	<p><b>Deprivation of liberty</b></p> <p>(1) Any person who confines or detains another in any place against his will, or otherwise deprives another of his personal liberty, is guilty of a crime and is liable to imprisonment for 7 years.</p> <p>(2) It is lawful for a parent or guardian, or a person in the</p>

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				<p>place of a parent or guardian, or for a school teacher, by way of correction, to impose such confinement or detention, or to cause such deprivation of personal liberty of a child, as is reasonable under the circumstances.</p> <p>(3) A person is excused from criminal responsibility for an offence defined by this section if he believes, on reasonable grounds, that the person confined, detained or deprived of his personal liberty needs to be confined, detained or deprived of his personal liberty for his own protection or benefit.</p> <p><i>Note: There is otherwise, no specific provisions dealing with children under the Criminal Code Act.</i></p>
	<b>Bail Act</b>	NT	3	<i>child</i> means a person under the age of 18 years.
			4	<p><b>Application of Act</b></p> <p>(1) This Act applies to a person whether the person is an adult or child.</p> <p><i>Note: There is otherwise, no specific provisions dealing with children under the Bail Act.</i></p>
	<b>Youth Justice Act</b>	NT	1 in Division 1, Part 1	<i>child</i> means a person who is not an adult.
			6	<p><b>Meaning of youth</b></p> <p>(1) In this Act, a youth is:</p> <p>(a) a person under 18 years of age; or</p>

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				<p>(b) in the absence of proof as to age, a person apparently under 18 years of age.</p> <p>(2) If the context requires, a youth includes a person who committed an offence as a youth but has since turned 18 years of age.</p>
			24	<p><b>Detention of youth not admitted to bail</b></p> <p>(1) If a youth has been charged with an offence and is not admitted to bail, a police officer must, as soon as practicable, apply to the Court or a magistrate for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose.</p> <p>(2) A police officer may apply for an order under subsection (1) in person or, if it is not practicable to apply in person, the officer may apply by telephone to a magistrate.</p> <p>(3) If the Court or magistrate makes the order, it must:</p> <p>(a) be in writing; and</p> <p>(b) specify the detention centre or other place at which the youth is to be detained.</p> <p>(4) The Court or magistrate must give or send a copy of the order to the police officer as soon as practicable.</p> <p>(5) The police officer may take the youth to the detention centre or other place under the order despite not having received the copy if he or she is informed of the order by the Court or magistrate by telephone.</p>

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				<p>(6) The person in charge of the detention centre or place must detain the youth at the centre or place in accordance with the order or, if the order has been given by telephone, a version of the order signed by the police officer.</p> <p>(7) The police officer who charged the youth must take all reasonable steps to ensure that a responsible adult in respect of the youth is notified that the youth has been detained in custody and the place at which the youth is detained.</p>
			25	<p><b>Detained youth requiring medical attention</b></p> <p>(1) This section applies if:</p> <p>(a) a youth is to be detained in accordance with an order under section 24; and</p> <p>(b) the youth requires medical attention.</p> <p>(2) Instead of being taken to the detention centre or other place specified in the order under section 24, the youth may be taken to a hospital within the meaning of the Medical Services Act or a private hospital within the meaning of the Private Hospitals and Nursing Homes Act and, if the person in charge of the hospital or private hospital consents, be detained there.</p> <p>(3) If there is not a hospital available, the youth must be taken to a community health centre.</p> <p>(4) While in the hospital or health centre, the youth remains in the custody of the Police Force.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				(5) On being discharged from the hospital or health centre, the youth must be taken to the specified detention centre or other approved place unless he or she has in the meantime been admitted to bail.
			26	<p><b>Separation from adults where practicable</b></p> <p>If a youth is taken from the place at which he or she is detained to a court, or from a court to the place of detention, he or she must, as far as practicable, be kept apart from other persons under detention who are not youths.</p>
			27	<p><b>Arrested youth to be brought before Court promptly</b></p> <p>(1) If a youth is charged with an offence and is not released from custody, he or she must be brought before the Court as soon as practicable and in any case within 7 days after the arrest.</p> <p>(2) If the youth is not brought before the Court within 7 days after the arrest, the person in whose custody the youth is being held must immediately release the youth.</p>
			38	<p>Definitions</p> <p>In this Part:</p> <p><i>divert</i>, in relation to a youth, means to take an action under section 39.</p> <p><i>offence</i> does not include:</p> <p>(a) an offence in relation to which an infringement notice,</p>

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				<p>within the meaning of section 9 of the Fines and Penalties (Recovery) Act, has been issued; or</p> <p>(b) an offence against Part V or VI of the Traffic Act.</p>
			39	<p><b>Diversion of youth</b></p> <p>(1) This section applies if a police officer believes on reasonable grounds that:</p> <p>(a) a person has committed an offence; and</p> <p>(b) the person is a youth or was a youth when the offence was committed.</p> <p>(2) The officer must, instead of charging the youth with the offence, do one or more of the following as the officer considers appropriate:</p> <p>(a) give the youth a verbal warning;</p> <p>(b) give the youth a written warning;</p> <p>(c) cause a Youth Justice Conference involving the youth to be convened;</p> <p>(d) refer the youth to a diversion program.</p> <p>(3) Subsection (2) does not apply if:</p> <p>(a) the youth has left the Territory or the youth's whereabouts</p>

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				<p>is unknown; or</p> <p>(b) the alleged offence is a serious offence; or</p> <p>(c) the youth has, on 2 previous occasions, been dealt with by Youth Justice Conference or diversion program (or on one of the occasions by Youth Justice Conference and on the other by diversion program); or</p> <p>(d) the youth has some other history that makes diversion an unsuitable option (including a history of previous diversion or previous convictions).</p> <p>(4) However, the Commissioner of Police (or the Commissioner's delegate) may authorise or require a police officer to deal with a youth by Youth Justice Conference or by referring the youth to a diversion program despite the fact that the case is covered by subsection (3).</p> <p>(6) This section does not prevent the diversion of a youth in relation to an offence despite that he or she has been charged with the offence.</p> <p>(7) In this section:</p> <p><i>serious offence</i> means:</p> <p>(a) an offence prescribed by regulation; or</p> <p>(b) an offence against a law, or a repealed law, of the Territory or another jurisdiction (including a jurisdiction</p>

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				<p>outside Australia) that substantially corresponds to an offence mentioned in paragraph (a).</p> <p><b>Youth Justice Conference</b> includes:</p> <p>(a) a conference with the victim or victims of the offence the youth is believed to have committed; and</p> <p>(b) a conference with members of the youth's family.</p>
			40	<p><b>Youth and responsible adult must consent to diversion</b></p> <p>(1) A police officer must not divert a youth unless the youth and a responsible adult in respect of the youth consent to the youth being diverted.</p> <p>(2) If it is not possible or practicable for the police officer to obtain a responsible adult's consent to the youth being diverted, the officer may give the youth a verbal warning despite that the consent of a responsible adult has not been obtained.</p> <p>(3) If the youth, or a responsible adult in respect of the youth, does not consent to the youth being diverted, the police officer may charge the youth with the offence that the officer believes on reasonable grounds the youth committed and the youth may be prosecuted for the offence.</p>
			41	<p><b>Effect of diverting youth</b></p> <p>(1) If a youth is diverted in relation to an offence and the diversion is completed to the satisfaction of a police officer, no criminal investigation or criminal legal proceedings can be</p>

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				<p>commenced or continued against the youth in respect of the offence.</p> <p>(2) Any admission made or information given by a youth during the course of diversion in relation to an offence is not admissible in any subsequent criminal or civil proceedings in relation to the offence.</p> <p>(3) However, subsection (2) does not prevent the admission of evidence that has been properly obtained in accordance with the Police Administration Act and this Act.</p>
			62	<p><b>Legal representation of youth</b></p> <p>If a youth is not legally represented in proceedings for an offence and the Court considers the youth needs legal representation, the Court may require that legal representation be provided to the youth and may adjourn or stay the proceedings until satisfactory arrangements are made for the representation of the youth.</p>
			69	<p><b>Court must require pre-sentence report</b></p> <p>(1) If a youth has been found guilty of an offence and the Court is considering imposing a sentence of detention or imprisonment, the Court must ensure that it is informed as to the circumstances of the youth.</p> <p>(2) In order to be informed, the Court must require a pre-sentence report to be provided to it.</p> <p>(3) However, if the Court is satisfied that it has the information necessary to determine an appropriate sentence,</p>

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				<p>the Court may dispense with the need for a report.</p> <p>(4) The Court may require the report to address specific matters in relation to the youth that the Court wishes to be informed about.</p>
			81	<p><b>Principles and considerations to be applied to youth offenders</b></p> <p>(1) When sentencing a youth who has been found guilty of an offence, the Court must have regard to:</p> <p>(a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and</p> <p>(b) the general principles of youth justice set out in section 4.</p> <p>(2) The Court must consider any information about the youth or the offence that may assist the Court to decide how to dispose of the matter, and in particular must consider:</p> <p>(a) the nature and seriousness of the offence; and</p> <p>(b) any history of offences previously committed by the youth; and</p> <p>(c) the youth's cultural background; and</p> <p>(d) the age and maturity of the youth; and</p>

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				<p>(e) any previous order in relation to an offence that still applies to the youth, and any further order that is liable to be imposed if the youth has not complied with the terms of the previous order;</p> <p>(f) the extent to which any person was affected as a victim of the offence.</p> <p>(3) The Court must dispose of the matter in a way that is in proportion to the seriousness of the offence.</p> <p>(4) The Court must have regard to the fact that the rehabilitation of a youth may be facilitated by:</p> <p>(a) the participation of the youth's family; and</p> <p>(b) giving the youth opportunities to engage in educational programs and in employment,</p> <p>but the absence of such participation or opportunities must not result in the youth being dealt with more severely for the offence.</p> <p>(5) The Court must take into account whether the youth has taken steps to make amends with any of the victims of the offence.</p> <p>(6) The Court must impose a sentence of detention or imprisonment on a youth only as a last resort, and a sentence of imprisonment only if there is no appropriate alternative.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			82	<p><b>Powers of Supreme Court in sentencing</b></p> <p>(1) If a youth is found guilty before the Supreme Court of an offence, the Supreme Court may do any of the following:</p> <p>(a) exercise, in addition to its powers, the powers of the Youth Justice Court;</p> <p>(b) order that the youth be detained in a detention centre or imprisoned for a period not exceeding the period of imprisonment for which such an offence would be punishable if committed by an adult;</p> <p>(c) remit the case to the Youth Justice Court.</p> <p>(2) If the Supreme Court makes an order under subsection (1)(b), it may also make any order in relation to that detention or imprisonment that it could make in relation to a sentence of imprisonment under the Sentencing Act.</p> <p>(3) If the Supreme Court finds a youth guilty of murder, the Supreme Court may, despite section 157(2) of the Criminal Code, sentence the youth to life imprisonment or a shorter period of detention or imprisonment as it considers appropriate.</p>
			83	<p><b>Orders Court may make</b></p> <p>(2) If the Court orders that the youth serve a term of</p>

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				<p>detention or imprisonment, the term must not exceed the lesser of:</p> <p>(a) the maximum period that may be imposed under the relevant law in relation to the offence; or</p> <p>(b) for a youth who is:</p> <p>(i) 15 years of age or more – 2 years; or</p> <p>(ii) less than 15 years of age – 12 months.</p> <p>(3) The Court must not order the imprisonment of a youth who is less than 15 years of age.</p> <p>(4) If the Supreme Court remits a case to the Youth Justice Court under section 82(1)(c), the Youth Justice Court must deal with the youth as if the youth had been found guilty of the offence in that Court.</p>
	<p><b>Care and Protection of Children Act</b></p>	<p>NT</p>	<p>258</p>	<p><b>Object of Part</b></p> <p>(1) The object of this Part is to ensure:</p> <p>(a) the wellbeing of vulnerable children; and</p> <p>(b) the monitoring of the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse.</p> <p>(2) A '<b>vulnerable child</b>' is, amongst other things (b) a child who has been arrested or is on bail, or in relation to whom an order made under the Youth Justice Act is in force;</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			260	<p><b>Commissioner's functions and powers</b></p> <p>(1) The following are the Commissioner's functions:</p> <p>(a) to investigate:</p> <p>(i) a complaint about services required to be provided to vulnerable children by service providers (see sections 263 to 265); or</p> <p>(ii) on the Commissioner's own initiative, a matter that may form the grounds for making a complaint (irrespective of when the matter occurred and whether or not a complaint was made);</p> <p>(b) to monitor the ways in which service providers respond to reports made by the Commissioner;</p> <p>(c) to monitor the administration of this Act in so far as it relates to vulnerable children;</p> <p>(d) to monitor the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse;</p> <p>(e) to act in accordance with section 261 in relation to submissions received by the Commissioner about recommendations arising from the Board of Inquiry into the Child Protection System of the Northern Territory;</p> <p>(f) to report to the Minister on a matter relating to the Commissioner's functions as requested by the Minister.</p> <p>(2) The Commissioner has powers necessary to perform the Commissioner's functions.</p>

**8. Tasmania**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</p>	<p><b>Youth Justice Act 1997</b></p>	<p>Tas</p>	<p>3</p>	<p><b>'Youth'</b> means a person who is 10 or more years old but less than 18 years old at the time when the offence the person has committed, or is suspected of having committed, occurred.</p>
			<p>5</p>	<p>The general principles of youth justice include the following:</p> <ul style="list-style-type: none"> <li>• detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary;</li> <li>• punishment of a youth is to be appropriate to the age, maturity and cultural identity of the youth.</li> </ul>
			<p>Part 2 - Diverting youths from the court system</p>	<p>The purpose of this Part is to divert, in appropriate cases, youths who admit committing an offence from the court's criminal justice system. This includes the giving of informal cautions or formal cautions, convening a community conference to deal with the matter or filing a complaint for the offence before the Court (if, in the opinion of the police officer, the matter cannot adequately be dealt with by a formal caution or by a community conference in view of the seriousness or the nature of the offence).</p> <p>The explanation given to the youth, the signing of an admission, the agreement of the youth to be formally cautioned or to the convening of a community conference and the signing of an undertaking by the youth to attend the</p>

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<p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>				<p>conference must take place, if practicable, in the presence of a guardian or, if a guardian is not available, a responsible adult.</p> <p>A youth who signs a formal caution is not liable to be prosecuted for an offence if the youth enters into all undertakings the authorised police officer requires under section 10.</p> <p>Section 20 provides that a youth is not liable to be prosecuted for an offence in respect of which a community conference was convened if the community conference administers a caution against further offending but does not require the youth to enter into an undertaking or the youth enters into the undertaking required by the community conference and performs the obligations arising from those undertakings.</p>
			23	Subject to this Act, the law of the state relating to investigations, interrogation, arrest, bail, remand and custody applies to youth, with necessary adaptations.
			24	A police officer may only arrest a youth in relation to an offence if they believe the offence is serious enough to warrant an arrest and also believes, on reasonable grounds that one of the grounds set out in this clause, including that the arrest is necessary to prevent a continuation or repetition of the offence, the arrest is necessary to prevent concealment, loss or destruction of evidence relating to the offence or the youth is unlikely to appear before the Court in respect to a complaint or summons, is met.

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			25	If a youth is not admitted to bail under the <i>Justices Act 1959</i> or under the <i>Criminal Law (Detention and Interrogation) Act 1995</i> , the youth must be detained in a watch-house while waiting to be brought before a justice under the <i>Justices Act 1959</i> .
			26	If a youth is to be charged with an offence, proceedings are to be commenced by complaint in accordance with section 27 of the <i>Justices Act 1959</i> .
			27	A youth who is under 15 years of age may not be jointly charged with an adult.
			29	<p>The Court has a duty, as far as practicable, to ensure that the youth before the Court and the guardian, if present understand the nature and purpose of the proceedings, the rights of the youth to have legal representation, the rights of the youth in relation to entering a plea and the consequences of entering a plea, the rights of the youth to have a copy of any report relating to the youth and the right to make, and the importance of making , a plea in mitigation if the youth is guilty of the offence. The Court must also respect the cultural identity of the youth before the Court.</p> <p>In any proceedings under this Act, the Court has a duty to take into account the objectives specified in section 4 and the principles specified in section 5.</p>
			37	Instead of proceeding to sentence a youth under section 47 the Court may order the Secretary to convene a community conference and order the youth to attend a community

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				conference.
			41	<p>The charge against a youth in respect of which a community conference was convened is dismissed on the filing with the Court of a copy of a decision of the community conference not to require the youth to enter into an undertaking, on the filing of a certificate stating that the youth has fulfilled all undertakings entered into or at the end of the prescribed period or if a report has not been filed in respect of a contravention of an undertaking.</p>
			47	<p>If a youth is found guilty of an offence, the Court may do one or more of the following: dismiss the charge and impose no further sentence, dismiss the charge and reprimand the youth, dismiss the charge and require the youth to enter into an undertaking to be of good behaviour, release the youth and adjourn the proceedings on conditions, impose a fine, make a probation order, order that the youth perform community service, make a detention order or, in the case of a family violence offence, make a rehabilitation program order.</p> <p>In addition to imposing a sentence a Court may make a suspended detention order, a restitution order, a compensation order or another order made under another Act.</p> <p>In determining what orders to make the Court must have regard to all the circumstances of the case including the nature of the offence, the youth's age and any sentences previously imposed on the youth and the impact the sentence will have on the youth's chances of rehabilitation generally or finding or retaining employment.</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			48	The Court must not impose a sentence that is more severe than would be imposed on a adult who committed the same offence and it must obtain in certain circumstances a presentence report and a rehabilitation program assessment.
			80	The Court may only make a detention order if the Court has considered all other available sentences and is satisfied that no other sentence is appropriate in the circumstances of the case.
			81	A period of detention must not be imposed if an adult who committed the same offence could not be sentenced to imprisonment and must not exceed 2 years.
			103	<p>If an offence is committed by a person who was under 18 years of age at the time of commission of the offence but is 18 years of age when proceedings are commenced against the person for the offence those proceedings must be commenced under this Act and, if found guilty, the person must be sentenced under this Act as a youth.</p> <p>If an offence if committed by a person who was under 18 years of age at the time of the commission of the offence but who is 19 years of age or more when proceeding are commenced against the person the proceedings must be commenced and determined in the Magistrates Court (Youth Justice Division), if the person is found guilty the Court must proceed to sentence the person under this Act as a youth and a sentence of detention is taken to be a sentence to serve a term of imprisonment in a prison.</p>

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			104	If an investigation or proceedings are being taken under the <i>Children, Young Person and Their Families Act 1997</i> (which provides for the care and protection of children and related matters) in respect of the youth, the Court must not impose a sanction or make an order in respect of that youth until all matters under that Act have been determined and the Court has received a report of the determination of those matters.
			105	Proceedings may be adjoined in the circumstances set out in the clause if it appears to the Court that the youth may be suffering a mental illness or disability.
			109	A youth serving a period of detention under a detention order must be released from detention under a supervised release order on the earliest release date.
			118	A youth is entitled to appeal to the Court against the suspension or cancellation of a supervising release order.
			129	The detainee in a detention centre is entitled to have his or her developmental needs catered for, to receive visits, to have reasonable efforts made to meet his or her medical, religious and cultural needs and to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment he or she is receiving in the detention centre.
			132	The following actions are prohibited in relation to a detainee while in a detention centre: except in the specified circumstances the use of isolation, the use of physical force except in the specified circumstances including to prevent a detainee from harming himself or anyone else, the

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				administering of corporal punishment, the use of any form of psychological pressure intended to intimidate or humiliate the detainee, the use of physical or emotional abuse or the adoption of any kind of discriminatory treatment.
			Part 8	<p>There is to be established a division of the Magistrates Court to be known as the Magistrates Court (Youth Justices Division).</p> <p>The Courts jurisdiction includes to hear and determine a charge against a youth for an offence and to hear and determine proceedings under <i>Part VII of the Justices Act 1959</i> (which sets out the proceedings on indictable offences) where the defendant is a youth and has any other jurisdiction conferred by any Act.</p> <p>Except where inconsistent with the Act, the <i>Justices Act 1959</i> applies to the Court and proceedings in the Court.</p>
			Part VII	Under Part 8 of the <i>Youth Justices Act 1997</i> the Magistrates Court (Youth Justices Division) has the jurisdiction to hear and determine proceedings under this Part VII, which sets out the proceedings applicable to indictable offence.
			34	Where a person has been taken into custody for a simple offence a commissioned police officer or a police officer who is in charge of a police office or station must, unless there is reasonable grounds for believing that such a course would not be desirable in the interests of justice, admit that person to bail. See the provisions of the <i>Bail Act 1994</i> for the conditions that attach to bail granted under this section.

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				<p>Where a person who is taken into custody for an offence is brought before a justice the justice must determine whether to make an order for bail for the person as provided in section 35. See the provisions in Part 3 of the <i>Bail Act 1994</i> which apply to an order for, or with respect to, bail made by a judicial officer such as a justice.</p>
	<p><b>Criminal Law (Detention and Interrogation) Act 1995</b></p>		<p>4</p>	<p>Every person taken into custody must be brought before a magistrate or justice as soon as practicable after being taken into custody.</p> <p>Every person who has been taken into custody may be detained by a police officer for a reasonable time for the purposes of questioning the person or carrying out investigations in which the person participates and during the period reasonably required to arrange to bring the person in custody before a magistrate or justice.</p> <p>In determining what constitutes a reasonable period of time the criteria in subsection (4) must be considered including the time during which questioning is deferred or suspended to allow, in the case of a child, a person called by the police officer conducting the investigation to accompany the child and any time taken by, in the case of a child, a person called by the police officer conducting the investigation to accompany the child to arrive at the place where questioning or investigation is to take place.</p>
	<p>10</p>	<p>The Act does not confer a power to detain a person against his or her will who is not under arrest.</p>		

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
	<b>Police Offences Act 1935</b>		3	'child' means any person under the age of 18 years.  'youth' means a person who has not attained the age of 18 years.
			55	Any police officer may arrest, without warrant, any person found offending against the specified provisions of this Act, including the provision relating to drunkenness in public places. The power of a police officer to arrest a person under this section is subject to the limits imposed on the power of arrest under section 24 of the <i>Youth Justices Act 1997</i> .
	<b>Evidence (Children and Special Witnesses) Act 2001</b>		3	'child' means a person who is under the age of 17 years
			4	In giving evidence in any proceeding a child is entitled to have near him or her a person approved by the judge who may provide the child with support.
	<b>Corrections Act 1997</b>		83C	If a prisoner is serving a sentence of imprisonment, or part of a sentence of imprisonment, in a prescribed detention centre, (being a detention centre that is not also a prison and a detention centre that is also a prison but whose primary use is as a detention centre for the purposes of detaining youths serving sentences of detention under the <i>Youth Justices Act 1997</i> ), section 146A(3) of the <i>Youth Justices Act 1997</i> applies. Section 146A(3) provides that Part 6 of that Act applies as if the prisoner were a detainee serving a sentence of detention. Part 6 provides for the establishment and management of detention centre, admission procedures, the treatment of detainees, sets out a complaints procedure and the offences relating to detention.

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				If a person is serving a sentence of detention, or part of a sentence of detention, imposed under the <i>Youth Justices Act 1997</i> in a prescribed prison (being a prison that is not also a detention centre and a prison that is also a detention centre but whose primary use is as a prison for the purposes of incarcerating prisoners serving sentences of imprisonment) this Act, other than Part 8, which sets out the procedure for parole to be granted, applies as if the person were a prisoner serving a sentence of imprisonment unless, and except insofar as the Director determines that the <i>Youth Justices Act 1997</i> is to apply to that person.
	<b>Criminal Code Act 1924</b>		18	No act or omission done or made by a person under 10 years of age is an offence.  No act or omission done or made by a person under 14 years of age is an offence unless it be proved that he had sufficient capacity to know that the act or omission was one which he ought not to do or make.
			453	After the commencement of the <i>Criminal Code Act 1968</i> the sentence of punishment by death is no longer to be pronounced or recorded, and the punishment of death is no longer to be inflicted, in respect of crimes committed against the laws of the State.
	<b>Magistrates Court (Children's Division) Act 1998</b>		3	'child' means a person under 18 years of age.
			6	The Magistrates Court (Children's Division) jurisdiction includes any jurisdiction conferred on it by any other Act. Jurisdiction is conferred on this court by section 161 of the

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				<i>Youth Justice Act 1997.</i>
			7	The Court has a duty, as far as practicable, to ensure that parties to proceedings before the Court understand the nature and purpose of the proceedings, to respect the cultural identity of a child to whom proceedings before the Court relate and to consider the opinion of a child to whom proceedings before the Court relate if the Court considers the child able to understand the proceedings and their consequences and to form a rational opinion.
			15	The Court must not proceed to hear a matter unless the child is represented in the proceedings by a legal practitioner or the Court is not satisfied that the child has made an informed and independent decision not to be so represented. The Court can make such orders that it considers necessary and appropriate to secure legal representation for the child.
			20	A party to proceedings in the Court may appeal to the Supreme Court against any order made in the proceedings. At the hearing of an appeal the Supreme Court is to proceed as if the appeal were a notice of motion under section 107 of the <i>Justices Act 1959</i> .

**9. Australian Capital Territory**

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN CAPITAL TERRITORY LEGISLATION**

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 37:</b> States Parties shall ensure that:</p> <p>(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</p> <p>(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</p> <p>(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;</p>	<p><b>Bail Act (ACT) 1992</b></p>	<p>ACT</p>	<p>ss 2, 4, 23, 25A, 26</p>	<p><b>s4 - Act applies to children</b></p> <p>This Act applies to a person whether or not the person is an adult.</p> <p><b>s23 - Criteria for granting bail to children</b></p> <p>In making a decision about the grant of bail to a child in relation to an offence, a court or authorised officer must consider</p> <p>(a) all the criteria applicable for granting bail to adults, and</p> <p>(b) the principles in the <i>Children and Young People Act 2008</i>, section 94 (<b>Youth justice principles</b>); and</p> <p>(c) if the decision is being made by a court and a report has been given to the court under the <i>Court Procedures Act 2004</i>, section 74D (<b>Court may order report about young person</b>) in relation to the child, the report.</p> <p>In addition, the court or authorised officer must consider, as a primary consideration, the best interests of the child.</p> <p><b>s25A - Supervision condition when offence committed as young person</b></p> <p>If a supervision condition is imposed on the grant of bail to</p>

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<p>(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p><b>NB:</b> Please note that when Australia ratified the CRC they also made the following reservation:</p> <p>'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'</p>				<p>an accused person (and the accused person is a young person), the director-general responsible for this Act and the director-general responsible for the <i>Children and Young People Act 2008</i> must decide which of them is to be the responsible director-general for matters relating to the supervision of the accused person.</p> <p>If the responsible director-general for matters relating to the supervision of an accused person is the director-general responsible for the <i>Children and Young People Act 2008</i>, the accused person must be supervised as a person under 18 years old. However, if the responsible director-general for matters relating to the supervision of an accused person is the director-general responsible for this Act, the accused person must be supervised as an adult.</p> <p><b>s26 - Conditions on which bail may be granted to children</b></p> <p>The following conditions may be imposed on the grant of bail to a child—</p> <p>(a) the conditions applicable to bails granted to adults (other than the supervision requirement mentioned); and</p> <p>(b) any other conditions that the court or authorised officer considers appropriate—</p> <p>(i) having regard to the principles in the <i>Children and Young People Act 2008</i>, section 94; and</p> <p>(ii) considering, as a primary consideration, the best interests</p>

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				<p>of the child.</p> <p>Without limiting the conditions that may be imposed on the grant of bail, the requirements that a child may be required to comply with about his or her conduct while released on bail include a requirement that the child—</p> <p>(a) accept supervision by the director general under the <i>Children and Young People Act 2008</i>; and</p> <p>(b) comply with any reasonable direction of the director general.</p>
	<p><b>Children and Young People Act (ACT) 2008</b></p>	<p>ACT</p>	<p>ss7, 8, 9, 10, 11, 12, 94, 95, 100, Part 6.1, Part 6.5 - 6.6 and Chapter 7 to 8</p>	<p><b>adult</b> means an individual who is at least 18 years old.</p> <p><b>child</b> means a person who is under 12 years old (<b>section 11</b>).</p> <p><b>young person</b> means a person who is 12 years old or older, but not yet an adult (<b>section 12</b>).</p> <p><b>s94 - Youth justice principles</b></p> <p>For the criminal matters chapters of the Act, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant (the <i>youth justice principles</i>):</p> <p>(a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;</p> <p>(b) a child or young person should be dealt with in a way</p>

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				<p>that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;</p> <p>(c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;</p> <p>(d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;</p> <p>(e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;</p> <p>(f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;</p> <p>(g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;</p> <p>(h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;</p>

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				<p>(i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender’s offence and the interests of the community.</p> <p>The decision-maker may also consider any other relevant matter.</p> <p>The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence. (<i>Example: Convention on the Rights of the Child</i>)</p> <p>A reference to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when her or she was under 18 years old.</p> <p><b>s95 - Who is a young detainee?</b></p> <p>(1) A child or young person is a young detainee if—</p> <p>(a) the child or young person is— (i) in custody following arrest; or (ii) remanded in custody under the <i>Crimes (Sentence Administration) Act 2005</i>; or (iii) in detention under the <i>Crimes (Sentencing) Act 2005</i>; or (iv) otherwise in custody or detention under this Act or another territory law or a law of the Commonwealth or a State; and</p> <p>(b) the child or young person is required to be held in the director general’s custody.</p>

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				<p>(2) A person who is at least 18 years old but under 21 years old is a young detainee if any of the following apply to the person and the person is required to be held in the director general’s custody:</p> <p>(a) the person is— (i) in custody following arrest; or (ii) remanded in custody under the <i>Crimes (Sentence Administration) Act 2005</i>; or (iii) in detention under the <i>Crimes (Sentencing) Act 2005</i>; for an offence committed, or allegedly committed, when the person was under 18 years old;</p> <p>(b) the person is— (i) in custody following arrest; or (ii) remanded in custody under the <i>Crimes (Sentence Administration) Act 2005</i>; for a breach, or alleged breach, of a sentencing order that is supervised by the director general;</p> <p>(c) the person is otherwise in custody or detention under this Act or another territory law or a law of the Commonwealth or a State.</p> <p><b>s100 - Detaining young detainees at court—young detainees to be kept separate from adult detainees</b></p> <p>(1) This section applies if a young detainee who is under 18 years old has been transported— (a) from a detention place to a court; or (b) from a court to a detention place.</p> <p>(2) The young detainee may be detained at the court— (a) before a hearing relating to the young detainee; or (b) after a hearing relating to the young detainee but before the young</p>

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				<p>detainee is transported to the detention place.</p> <p>(3) However, the young detainee must not be placed in a room with an adult who is under detention.</p> <p><b>Part 6.1 - Detention places generally</b></p> <p>This part governs how detention places should be generally. It prescribes:</p> <ul style="list-style-type: none"> <li>(a) treatment of young detainees generally (section 138);</li> <li>(b) treatment of young remandees (section 139);</li> <li>(c) treatment of certain young detainees (section 140);</li> <li>(d) minimum living conditions in detention places (section 141); and (amongst other things)</li> <li>(e) Youth detention policies and operating procedures (section 143).</li> </ul> <p><b>Part 6.5 - Living conditions at detention places</b></p> <p>This part elaborates on the requirements relating to the living conditions at detention places.</p> <p><b>Part 6.6 Management and security</b></p> <p>This part elaborates on the requirements relating to the management and security of detention places.</p> <p><b>Chapter 7 - Criminal matters—search and seizure at</b></p>

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				<p><b>detention places</b></p> <p>This chapter elaborates on the search and seizure process at detention places.</p> <p><b>Chapter 8 - Criminal matters—discipline at detention places</b></p> <p>This chapter elaborates on the discipline process at detention places.</p>
	<p><b>Crimes Act (ACT) 1900</b></p>	<p>ACT</p>	<p>ss252A, 252B, 252C, 252G, 252H, 252I, 252J, 252K</p>	<p><b>s252A - Warrant for arrest of child under 10 years old</b></p> <p>(1) An issuing officer may issue a warrant for the arrest of a child under 10 years old only if the issuing officer believes on reasonable grounds that the child has carried out, or is carrying out, conduct that— (a) makes up the physical elements of an offence; or (b) poses a risk to community safety or the child.</p> <p>(2) However, the issuing officer must not issue a warrant unless a police officer has given the issuing officer an affidavit setting out— (a) the reasons why the warrant is sought; and (b) any evidence the police officer believes supports the warrant’s issue.</p> <p>(3) If the issuing officer issues a warrant, the issuing officer must write on the warrant which of the reasons stated in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.</p> <p><b>s252B - Arrest of child under 10 years old—without</b></p>

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				<p><b>warrant</b></p> <p>(1) A police officer may, without a warrant, arrest a child under 10 years old if the police officer believes on reasonable grounds—</p> <p>(a) that— (i) conduct that makes up the physical elements of an offence or a breach of the peace is being or is likely to be carried out by the child; or (ii) a person has suffered physical injury because of the child’s conduct; or (iii) there is imminent danger of injury to a person or serious damage to property because of the child’s conduct; and</p> <p>(b) that it is necessary to arrest the child immediately— (i) to prevent the conduct or a repetition of the conduct; or (ii) to protect life or property.</p> <p>(2) If the police officer believes on reasonable grounds that the child is on premises, the police officer may, with reasonable and necessary force, enter the premises to arrest the child.</p> <p><b>s252C - Police action after arresting child under 10 years old</b></p> <p>(1) If a police officer arrests a child under 10 years old (whether under a warrant or under section 252B), the police officer must—</p> <p>(a) do the minimum necessary to prevent or stop the conduct for which the warrant was issued or the arrest was made; and</p>

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				<p>(b) take the child to— (i) a parent of the child; or (ii) someone else who has daily care responsibility, or long term care responsibility, for the child; or (iii) if it is not practicable or appropriate to take the child to someone mentioned in subparagraph (i) or (ii)—another appropriate person or agency.</p> <p>(2) Before deciding whether another person or agency is appropriate, the police officer must consult with the director general responsible for the <i>Children and Young People Act 2008</i>.</p> <p><b>s252E - Meaning of under restraint</b></p> <p>A child or young person is under restraint if—</p> <p>(a) the child or young person is under restraint as a result of having been lawfully arrested or detained; or</p> <p>(b) the child or young person is under restraint in relation to an offence and a police officer suspects on reasonable grounds that— (i) the child or young person committed the offence; or (ii) the police officer would be authorised under a law in force in the Territory to arrest the child or young person for the offence; or</p> <p>(c) the child or young person is in the company of a police officer in connection with the investigation of an offence or possible offence.</p> <p><b>s252G - Interviewing children and young people about</b></p>

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				<p><b>offences</b></p> <p>A police officer must not interview the child or young person about an offence, or cause the child or young person to do anything in relation to the investigation of an offence, unless—</p> <p>(a) one of the following people (who is an adult and who the police officer does not believe on reasonable grounds to be an accomplice of the child or young person in relation to the offence) is present: (i) a parent of the child or young person; (ii) someone else who has daily care responsibility, or long term care responsibility, for the child or young person; (iii) a family member of the child or young person who is acceptable to the child or young person; (iv) a lawyer acting for the child or young person; (v) another suitable person who is acceptable to the child or young person; or</p> <p>(b) if the police officer has taken reasonable steps to have a person mentioned in paragraph (a) present but it was not practicable for such a person to be present within 2 hours after being asked to be present—someone else who is not a police officer and has not been involved with the investigation of the offence.</p> <p><b>s252H - Interviewing children and young people about offences—urgent circumstances</b></p> <p>A police officer may interview a child or young person if—</p> <p>(a) the police officer— (i) suspects on reasonable grounds that the child or young person may have committed, or be</p>

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				<p>implicated in the commission of, an offence; or (ii) is holding the child or young person under restraint; and</p> <p>(b) the police officer believes on reasonable grounds that it is necessary to interview the child or young person without delay to avoid— (i) a risk of death or serious injury of a person; or (ii) serious damage to property.</p> <p><b>s252I - Parents etc to be told if children and young people under restraint</b></p> <p>If a police officer takes a child or young person under restraint, the police officer must promptly take all reasonable steps to tell a responsible person about the restraint (whether or not the person lives in the ACT).</p> <p><i>responsible person</i> means—</p> <p>(a) a parent of the child or young person; or</p> <p>(b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.</p> <p><b>s252J - Police to summons children and young people unless ineffective</b></p> <p>A police officer must not charge a child or young person with an offence at a police station unless satisfied that proceeding by summons would not achieve the same purpose.</p>

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				<p><b>s252K - Parents etc to be told if children and young people charged</b></p> <p>If a child or young person is charged with an offence at a police station, the person who charged the child or young person must promptly take all reasonable steps to tell 1 of the following people the relevant information in relation to the charge (whether or not the person lives in the ACT):</p> <ul style="list-style-type: none"> <li>(a) a parent of the child or young person;</li> <li>(b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.</li> </ul> <p><i>relevant information</i>, for a charge, means—</p> <ul style="list-style-type: none"> <li>(i) the terms of the charge; and</li> <li>(ii) where the child or young person is; and</li> <li>(iii) when the child or young person will be brought before the Childrens Court.</li> </ul>
	<p><b>Crimes (Sentence Administration) Act (ACT) 2005</b></p>	<p>ACT</p>	<p>Chapter 18</p>	<p><b>Chapter 18: Transitional—Children and Young People Act 2008</b></p> <p>This chapter provides for some transitional provision for: conditional discharge orders, fines, reparation or compensation orders, probation orders, community service orders, attendance centre orders, residential orders,</p>

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CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>applications for revocation, committal orders or orders referring to mental health tribunal following conviction which applies to children or young persons and were in force before the commencement of the <i>Children and Young People Act 2008</i>.</p>
	<p><b>Crimes (Sentencing) Act 2005</b></p>	<p>ACT</p>	<p>ss38 and 133A - 133ZD (Chapter 8A)</p>	<p><b>s38 - Sentences of imprisonment and uncompleted young offender orders</b></p> <p>(1) This section applies in relation to an adult offender if, at the time of sentencing—</p> <p>(a) the adult offender is serving a sentence that was imposed on the person as a young offender (the previous sentence); and</p> <p>(b) the court is imposing a sentence that would be likely to bring the offender into contact with other adult offenders.</p> <p>(2) The court—</p> <p>(a) must, in deciding the term of the sentence, consider any remaining period during which the previous sentence would remain in force if not discharged under paragraph (b); and</p> <p>(b) may, if appropriate, discharge the previous sentence.</p> <p><b>Chapter 8A - Sentencing Young Offenders</b></p> <p><i>young offender</i> means a person who—</p> <p>(a) has been convicted or found guilty of an offence by a</p>

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				<p>court; and</p> <p>(b) was under 18 years old when the offence was committed.</p> <p><b>s133C - Young offenders—purposes of sentencing</b></p> <p>In sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes. Also, in sentencing a young offender, a court must have particular regard to the common law principle of individualised justice.</p> <p><b>s133D - Young offenders—sentencing—additional relevant considerations</b></p> <p>In deciding how a young offender should be sentenced (if at all) for an offence, a court must consider the following matters:</p> <p>(a) the young offender’s culpability for the offence having regard to his or her maturity;</p> <p>(b) the young offender’s state of development;</p> <p>(c) the past and present family circumstances of the young offender.</p> <p><b>s133G - Young offenders—sentences of imprisonment</b></p> <p>(1) This section applies if a court is sentencing a young offender to imprisonment under section 10. (Note: Section</p>

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				<p>10 allows a court to sentence an offender to imprisonment if satisfied that no other penalty is appropriate.)</p> <p>(2) The sentence of imprisonment must be a last resort and for the shortest appropriate term.</p> <p>(3) The court must consider making a combination sentence consisting of— (a) the sentence of imprisonment; and (b) a good behaviour order with a supervision condition.</p> <p>(4) The court must not sentence the young offender to imprisonment for life.</p> <p><b>s133H - Young offenders—imprisonment to be at detention place</b></p> <p>(1) This section applies if a court sentences a young offender to imprisonment and the young offender is under 21 years old when the sentence is imposed.</p> <p>(2) The sentence must be served by full-time detention at a detention place unless the young offender is— (a) released from full-time detention under this Act or another territory law; or (b) transferred to a correctional centre under the <i>Children and Young People Act 2008</i>.</p> <p><b>s133I - Young offenders—non-association and place restriction orders</b></p> <p>A court must not make a non-association order or place restriction order for a young offender unless satisfied that the</p>

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				<p>order would not—</p> <p>(a) interfere with the young offender’s access to appropriate education or training; or</p> <p>(b) disproportionately interfere with the young offender’s access to public transport or accommodation.</p> <p><b>s133J - Young offenders—notice of orders to parent</b></p> <p>If the young offender is under 18 years old, the court must ensure that the notice and a copy of the order is also given to a parent of the young offender and anyone else who has parental responsibility for the young offender under the Children and Young People Act 2008.</p> <p><b>s133Z - Accommodation orders—for young offenders convicted or found guilty</b></p> <p>If a young offender has been convicted or found guilty of an offence, the court may make an accommodation order for the young offender.</p> <p><i>accommodation order</i>, in relation to a young offender, means an order made by a court requiring the young offender to live at the place or with the person, whether within or outside the ACT— (a) stated in the order; or (b) that the director general from time to time directs.</p> <p><b>s133ZA - Accommodation orders—eligibility</b></p> <p>The court must not make an accommodation order for a</p>

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				<p>young offender unless satisfied that—</p> <p>(a) the order would be suitable for the young offender; and</p> <p>(b) if the order states that the young offender is to live at a place—the person in charge of the place agrees to accommodate the young offender at the place; and</p> <p>(c) if the order states that the child is to live with a person—</p> <p>(i) the person is a suitable person to accommodate the young offender; and (ii) the person agrees to the young offender living with the person.</p>
	<p><b>Humans Rights Act (ACT) 2004</b></p>	<p>ACT</p>	<p>ss 11(2), 20, 22(3)</p>	<p><b>s11(2) - Protection of the family and children</b></p> <p>Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.</p> <p><b>s20 - Children in the criminal process</b></p> <p>(1) An accused child must be segregated from accused adults.</p> <p>(2) An accused child must be treated in a way that is appropriate for a person of the child’s age who has not been convicted.</p> <p>(3) A child must be brought to trial as quickly as possible.</p> <p>(4) A convicted child must be treated in a way that is appropriate for a person of the child’s age who has been</p>

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				<p>convicted.</p> <p><b>s22(3) - Rights in criminal proceedings</b></p> <p>A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.</p>
	<p><b>Mental Health (Treatment and Care) Act 1994</b></p>	<p>ACT</p>	<p>ss 6, 25(1)(a), 70A, 79(2)(b) and 81</p>	<p><b>s6 - Proceeding relating to children</b></p> <p>In determining whether a person who is the subject of a proceeding is a child, regard shall be had to the age of the person at the commencement of the proceeding.</p> <p><b>s25(1)(a) - Consultation by ACAT</b></p> <p>Before making a mental health order in relation to a child, the ACAT must, as far as practicable, consult the people with parental responsibility for the child under the <i>Children and Young People Act 2008</i>, division 1.3.2.</p> <p><b>ACAT</b> means Aged Care Assessment Team.</p> <p><b>s70A - Recommendations about people with mental illness or mental dysfunction</b></p> <p>This section applies if the Childrens Court makes a care and protection order, interim care and protection order with a mental health ACAT provision or interim therapeutic protection order, under the <i>Children and Young People Act 2008</i> requiring a person to submit to the jurisdiction of the</p>

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				<p>ACAT to enable the ACAT—</p> <p>(a) to determine whether the person has a mental illness or mental dysfunction; and</p> <p>(b) if the ACAT determines that the person has a mental illness or mental dysfunction—to make recommendations to the court about how the person should be dealt with.</p> <p><b>s79 - Applications</b></p> <p>This section applies to an application to the ACAT under this Act. The ACAT must, as soon as practicable and not longer than 24 hours after the application is lodged, give a copy of the application to— if the subject person is a child—the CYP director general.</p>
	<p><b>Public Advocate Act (ACT) 2005</b></p>	<p>ACT</p>	<p>ss10(d),(e), (f) and (j) and 11</p>	<p><b>s10 - Functions of public advocate</b></p> <p>The public advocate has the following functions:</p> <p>....</p> <p>(d) acting as advocate for the rights of children and young people and, as part of acting as advocate for those rights, doing the following: (i) fostering the provision of services and facilities for children and young people; (ii) supporting the establishment of organisations that support children and young people; (iii) promoting the protection of children and young people from abuse and exploitation;</p> <p>(e) monitoring the provision of services for the protection of</p>

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				<p>children and young people;</p> <p>(f) dealing, on behalf of people with a disability and children and young people, with entities providing services;</p> <p>...</p> <p>(j) exercising the functions given to the public advocate under the <i>Children and Young People Act 2008</i>, the <i>Guardianship and Management of Property Act 1991</i> and the <i>Mental Health (Treatment and Care) Act 1994</i>.</p> <p><b>s11 - Investigations</b></p> <p>(1) The public advocate may—</p> <p>(a) listen to concerns from children and young people about the provision of services for the protection of children and young people; or</p> <p>(b) investigate concerns raised under paragraph (a); or</p> <p>(c) investigate complaints and allegations about— (i) matters in relation to which the public advocate has a function; or (ii) the actions of a guardian or manager or a person acting or purporting to act under an enduring power of attorney.</p> <p>(2) The public advocate must refer systemic matters relating to people with a disability and children and young people to the human rights commission for consideration.</p>

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				(3) The public advocate must report to the ACAT about a matter before the ACAT if asked by the ACAT.