

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>ARTICLE 39:</p> <p>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Australian Human Rights Commission Act 1986</p>	<p>Cth</p>	<p>3</p>	<p>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.</p> <p>The term 'human rights' is defined to include the rights and freedoms declared by the Declarations.</p>
			<p>11</p>	<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> <p>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 (ICCPR), <u>the Declarations annexed to the Act</u> or any relevant international instrument declared under the Act (section 11(1)(k)).</p>
			<p>Schedule 3 - Declaration of the Rights of the Child</p>	<p>Principles 8 and 9 reflect Article 39:</p> <p><i>Principle 8</i></p> <p>The child shall in all circumstances be among the first to receive protection and relief.</p>

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				<p><i>Principle 9</i></p> <p>The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.</p>
	<p>Family Law Act 1975</p>	<p>Cth</p>	<p>10D and 10H</p>	<p>Section 10D provides that any communication with a family counsellor is confidential unless disclosure is required or authorised by the section.</p> <p>Section 10H provides that any communication with a family dispute resolution practitioner is confidential unless disclosure is required or authorised by the section.</p> <p>Under subsection 10D(4) and subsection 10H(4) a family counsellor or family dispute resolution practitioner may disclose a communication for a number of purposes including if disclosure is necessary for the purposes of protecting a child from the risk of harm (whether physical or psychological).</p>
			<p>10E and 10J</p>	<p>Communication with a family counsellor or family dispute resolution practitioner is not admissible in any court or proceedings, except where the communication is:</p> <p>(2)(a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or</p> <p>(b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse; or</p> <p>unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from</p>

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				other sources.
			11C	<p>Section 11C provides that any communications with family consultants performing the function of a family consultant, or a person to whom a family consultant refers a person for medical or other professional consultation is admissible in proceedings under the Act, unless the person making the admission has not been informed of this fact.</p> <p>However, subsection (3) provides that a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if:</p> <p>(a) it is an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or</p> <p>(b) it is a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse; or</p> <p>unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.</p>

2. New South Wales

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	<p>Children and Young Persons (Care and Protection) Act 1998</p>	<p>NSW</p>	<p>8</p>	<p>Sets out the objects of the Act, which are to provide:</p> <p>(a) that children and young person's receive such care and protection as is necessary for their safety, welfare and well-being, having regard to the capacity of their parents or other</p>

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				<p>persons responsible for them, and</p> <p>(b) that all institutions, services and facilities responsible for the care and protection of children and young person's provide an environment for them that is free of violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity; and</p> <p>(c) that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.</p>
			34	<p>The Director-General can take action necessary to safeguard or promote the safety, welfare and well-being of a child, such as arranging for the provision of support services, if the Director-General forms the opinion, on reasonable grounds, that the child is in need of care and protection.</p>
			71	<p>The Children's' Court may make a care order in relation to a child if it is satisfied that the child is in need of care and protection for any reason, including (amongst others):</p> <p>(a) the child has been, or is likely to be, physically or sexually abused or ill-treated (subsection 71(1)(c));</p> <p>(b) the child's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents or primary care-givers (subsection 71(1)(d);</p> <p>(c) the child is suffering or is likely to suffer serious</p>

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				developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living (subsection 71(1)(e).
			Chapter 7 - Part 1	<p>Deals with support for children in crisis where there is serious or persistent conflict. Section 110 sets out the objects of this Part of the Act as:</p> <p>(a) to ensure, so far as possible, that conflicts between children and their parents are resolved without recourse to legal proceedings, and</p> <p>(b) to enable proper access to services where breakdowns in relationships occur between children and their parents, and</p> <p>(c) to enable the Children’s Court to make appropriate orders in circumstances where the differences between a child and his or her parents are so serious that it is no longer possible for the child to continue living with his or her parents.</p>
			Chapter 7 - Part 2	Deals with support for children in crisis where homeless. Under section 120 the Director-General may provide or arrange for the provision of services, including residential accommodation, for a homeless child.
	Children (Protection and Parental Responsibility) Act 1997 No 78			<p>Part 2</p> <p>The Act is concerned with the responsibility of parents for the behaviour of their children; to enable police to escort certain children from public places to their parents’ residences and other places and to make provision for local crime prevention plans.</p> <p>Part 2 deals with parental responsibility. Under section 10,</p>

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				<p>the court may require a child that it finds guilty of an offence and the child's parent to undergo such counselling as the courts considers would be beneficial in assisting the progress of the child.</p> <p>Under section 11, the courts may require a parent convicted of contributing to the commission of an offence by the child to undergo counselling or do such other things that would in the opinion of the court advance the welfare and best interests of the child instead of, or in addition to, imposing a penalty.</p>

3. Victoria

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			<p>12</p>	<p>Sets out that the Court shall not make an order for the adoption of a child in favour of a relative of the child unless the Court is satisfied that, amongst other factors:</p> <p>(a) the making of an order in relation to the guardianship or custody of the child under <i>the Family Law Act 1975</i> of the Commonwealth in relation to the child would not make adequate provision for the welfare and interests of the child; and</p> <p>(b) the order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to above.</p>
			<p>14</p>	<p>Further provides that an order for the adoption of a child shall not be made unless the Court is satisfied that:</p> <p>(a) at least 28 days before the day on which the adoption order is to be made the child received counselling from an approved counsellor as to the effects of the adoption; and</p> <p>(b) as far as practicable, the wishes of the child have been ascertained and due consideration is given to them, having</p>

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				regard to the age and understanding of the child.
			15	<p>The Court shall not make an order for the adoption of a child unless the Court has received a report in writing on behalf of the Secretary or the principal officer of an approved agency concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that, amongst other things:</p> <p>(a) the welfare and interests of the child will be promoted by the adoption.</p>
			19	<p>Section 19 provides for circumstances when an adoption order may be discharged, with section 19 (5A) providing that:</p> <p><i>"The Court shall not make an order for the discharge of an adoption order unless the Court is satisfied that the welfare and interests of the child would be promoted by the discharge of the adoption order."</i></p>
			Part II Division 3	<p>Division 3 of the Act sets out requirements in relation to consents to adoptions (as a general principle consents to adoptions are required).</p> <p>Under section 43 the Court may dispense with the consent to the adoption of a child where the Court is satisfied that (amongst other things):</p> <p>(a) the person has abandoned, deserted, persistently neglected or ill-treated the child;</p> <p>(b) the person has seriously ill-treated the child to the extent</p>

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				<p>that it is unlikely that the child would accept, or be accepted by the person within, the family of that person;</p> <p>(c) the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent of the child;</p> <p>(d) there are any other special circumstances by reason of which, in the interests of the welfare of the child, the consent may properly be dispensed with.</p>
	Charter of Human Rights and Responsibilities Act 2006	VIC	17	Section 17 provides that "Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child".
			23	<p>Section 23 concerns children in the criminal process and provides that:</p> <p>(1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.</p> <p>(2) An accused child must be brought to trial as quickly as possible.</p> <p>(3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.</p>
			25	<p>Section 25 addresses rights in criminal proceedings and provides that:</p> <p><i>"A child charged with a criminal offence has the right to a</i></p>

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				<i>procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation."</i>
	Child Wellbeing and Safety Act 2005	VIC	5	<p>Section 5 sets out the principles for protecting the rights of children.</p> <p>Subsection 5(1) provides that the development and provision of services for children and families should be based upon the fundamental principles that:</p> <ul style="list-style-type: none"> (a) society as a whole shares responsibility for promoting the wellbeing and safety of children; (b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background; (c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing; (d) parents are the primary nurturers of a child and Government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing, however, it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection. <p>Subsections 5(2) and 5(3) set out further principles regarding designing and developing services for children and ensuring that providers of services to children and families protect the</p>

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				rights of children.
	Children, Youth and Families Act 2005	VIC	1	In addition to providing for community services to support children and families and making provision in relation to children charged with an offence, the Act provides for the protection of children.
			10	Sets out the best interest principles guiding the Act stating that the best interests of the child must always be paramount, and that determining whether a decision or action is in the best interests of the 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.
			16	Chapter 2 sets out the powers and functions of the Secretary. Under section 16 the Secretary has a number of responsibilities, including: (a) to assist children who have suffered abuse and neglect and to provide services to their families to prevent further abuse and neglect from occurring; and (b) to conduct research on child development, abuse and neglect and to evaluate the effectiveness of community based and protective interventions in protecting children from harm, protecting their rights and promoting their development.
			22	Under section 22 community-based child and family service are established to:

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				<p>(a) receive reports about vulnerable children and families where there are significant concerns about their wellbeing;</p> <p>(b) make referrals to other relevant agencies if this is necessary to assist vulnerable children and families; and</p> <p>(c) provide on-going services to support vulnerable children and families.</p>
			174	<p>Part 4.3 concerns the responsibilities of the Secretary to prepare a case plan (a plan concerning the wellbeing of a child, including the placement of, and access to, the child). A case plan includes any stability plan (a plan for the long term out of home care for the child) prepared for the child.</p> <p>Under section 174 the Secretary's duties in place a child include:</p> <p>(a) having regard to the best interests of the child as the first and paramount consideration; and</p> <p>(b) making provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and</p> <p>(c) having regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service; and</p> <p>(d) having regard to the treatment needs of the child.</p>

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			176	Section 176 requires the Secretary to prepare a cultural plan for each Aboriginal child placed in out of home care, and requires the cultural plan to set out how the Aboriginal child placed in out of home care is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture.
	Evidence (Audio Visual and Audio Linking) Act 1997	VIC	42F	<p>Sets out special provisions applicable to certain proceedings involving children.</p> <p>A court must not make a direction to appear by audio visual link or audio link unless it is satisfied that the making of the direction is in the best interests of the child; and consistent with the interests of justice.</p> <p>Under subsection (4), in determining whether the making of a direction is in the best interests of a child, the court:</p> <p>(a) may have regard to the appropriateness of the direction in terms of the security and protection of the child; and</p> <p>(b) may consider whether physical appearance before the court would cause the child to suffer emotional distress to an unacceptable level; and</p> <p>(c) must consider any wishes expressed by the child.</p>
	Family Violence Protection Act 2008	VIC	Preamble	<p>The Preamble states that in enacting the Act, the Parliament recognises the following features of family violence:</p> <p>(a) that while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men</p>

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				<p>against women, children and other vulnerable persons;</p> <p>(b) that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;</p> <p>(c) that family violence:</p> <p>(i) affects the entire community; and</p> <p>(ii) occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;</p> <p>(d) that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse;</p> <p>(e) that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.</p>
			1	<p>Provides that the purpose of the Act is to:</p> <p>(a) maximise safety for children and adults who have experienced family violence; and</p> <p>(b) prevent and reduce family violence to the greatest extent possible; and</p> <p>(c) promote the accountability of perpetrators of family</p>

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				<p>violence for their actions.</p> <p>Section 2 further provides that the Act aims to achieve its purpose by:</p> <p>(a) providing an effective and accessible system of family violence intervention orders and family violence safety notices; and</p> <p>(b) creating offences for contraventions of family violence intervention orders and family violence safety notices.</p>
			26	<p>Under section 26 a police officer of the rank of Sergeant or a higher rank who receives an application for a family violence safety notice may issue a family violence safety notice if (amongst other reasons) the police officer believes on reasonable grounds that issuing the notice is necessary to protect a child who has been subjected to family violence committed by the respondent.</p>
			47	<p>An application for a family violence intervention order for an affected family member who is a child may be included in an application for the protection of the child's parent if the applications arise out of the same or similar circumstances.</p>
			50	<p>Sets out that the Magistrate or registrar may issue a warrant on certain applications for family violence intervention orders including to protect a child who has been subjected to family violence committed by the respondent.</p>
			67	<p>A child, other than a child who is an applicant for a family violence intervention order or a respondent, must not give</p>

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				<p>evidence for the purposes of a proceeding under this Act unless the court grants leave for the child to do so.</p> <p>Further, in deciding whether to grant leave the court must have regard to the following:</p> <p>(a) the desirability of protecting children from unnecessary exposure to the court system; and</p> <p>(b) the harm that could occur to the child and to family relationships if the child gives evidence.</p>
			80	Regarding conditions to be included in a family violence intervention order, the safety of affected person and children is paramount in deciding conditions.
			82	<p>If the court decides to make a family violence intervention order, the court must consider whether to include a condition (an exclusion condition) excluding the respondent from the protected person's residence.</p> <p>In making a decision about whether to include an exclusion condition in the family violence intervention order, the court must have regard to all the circumstances of the case, including the following:</p> <p>(a) the desirability of minimising disruption to the protected person and any child living with the protected person and the importance of maintaining social networks and support which may be lost if the protected person and the child were required to leave the residence or were unable to return to or</p>

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				<p>move into the residence;</p> <p>(b) the desirability of continuity and stability in the care of any child living with the protected person;</p> <p>(c) the desirability of allowing any childcare arrangements, education, training or employment of the protected person or any child living with the protected person to continue without interruption or disturbance.</p>
			83	<p>This section applies if the court decides to make a family violence intervention order against a respondent who is a child.</p> <p>In addition to the matters to which the court must have regard under section 82 in deciding whether to include an exclusion condition in the family violence intervention order, the court must consider the following:</p> <p>(a) the desirability of the child being supported to gain access to appropriate educational services and health services;</p> <p>(b) the desirability of allowing the education, training or employment of the child to continue without interruption.</p>
			91	<p>If the court decides to make a family violence intervention order and the protected person or the respondent is the parent of a child, the court must decide whether or not it will jeopardise the safety of the protected person or child for the child to live with, spend time with or communicate with</p>

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				<p>the respondent.</p> <p>For the purposes of making such a decision, a previous lack of violence by the respondent towards the child is not on its own sufficient reason to decide that the child's safety will not be jeopardised by living with, spending time with or communicating with the respondent.</p>
	<p>Mental Health Act 1986</p>	<p>VIC</p>	<p>6</p>	<p>Sets out the functions of the Secretary under the Act, which include to facilitate the provision of care, protection, treatment and rehabilitation of people (including children) with a mental disorder.</p>

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			<p>7</p>	<p>Section 7 provides that “because adoption (as provided for in this Act) is not part of Aboriginal tradition or Island custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child’s need for long-term stable care only if there is no better available option”.</p> <p>Section 7 further provides that “as far as is reasonably practicable, the chief executive and other officers of the department must try to conduct consultations, counselling, negotiations and other proceedings involving an Aboriginal person or Torres Strait Islander in a way and in a place that is appropriate to Aboriginal tradition or Island custom”.</p>
	<p>Child Care Act 2002</p>	<p>QLD</p>	<p>9</p>	<p>Section 9 provides that the Act is to be administered, and</p>

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				<p>licensed services are to be conducted, under a number of principles, including:</p> <ul style="list-style-type: none"> (a) the best interests of a child are the paramount concern; and (b) child care should be provided to a child in a way that: <ul style="list-style-type: none"> (i) protects the child from harm; and (ii) respects the child’s dignity and privacy; and (iii) promotes the child’s wellbeing; and (iv) provides positive experiences to the child; and (c) licensed child care should be provided to a child in a way that stimulates and develops the child’s creative, emotional, intellectual, lingual, physical, recreational and social potential.
	<p>Child Protection Act 1999</p>	<p>QLD</p>	<p>5B</p>	<p>Sets out the general principles for ensuring the safety, wellbeing and best interests of a child, which includes:</p> <ul style="list-style-type: none"> (a) a child has a right to be protected from harm or risk of harm; and (b) a child’s family has the primary responsibility for the child’s upbringing, protection and development; and (c) the preferred way of ensuring a child’s safety and

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				<p>wellbeing is through supporting the child’s family; and</p> <p>(d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child; and</p> <p>(e) a child should have stable living arrangements, including arrangements that provide:</p> <p>(i) for a stable connection with the child’s family and community, to the extent that is in the child’s best interests; and</p> <p>(ii) for the child’s developmental, educational, emotional, health, intellectual and physical needs to be met.</p>
			7	<p>Sets out the functions of the chief executive, which amongst others includes:</p> <p>(a) providing, or helping provide, information for parents and other members of the community about the development of children and their safety needs; and</p> <p>(b) providing, or helping provide, preventative and support services to strengthen and support families and to reduce the incidence of harm to children; and</p> <p>(c) providing, or helping provide, services to families to protect their children if a risk of harm has been identified; and</p> <p>(d) providing, or helping provide, services for the protection of children and responding to allegations of harm to children;</p>

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				<p>and</p> <p>(e) promoting a partnership between the State, local government, non-government agencies and families in taking responsibility for, and dealing with the problem of, harm to children; and</p> <p>(f) promoting and helping in developing coordinated responses to allegations of harm to children and responses to domestic violence; and</p> <p>(g) cooperating with government entities that have a function relating to the protection of children or provide services to children in need of protection or their families; and</p> <p>(h) ensuring access by children in care to advocacy services and cooperating with the services to help ensure that the children's concerns are dealt with.</p>
			51B	<p>The Act provides for the chief executive to require case plans are developed for children in need of protection and in need of ongoing help under this Act.</p> <p>A case plan is a written plan for meeting the child's protection and care needs. A case plan may include services to be provided to meet the child's protection and care needs and promote the child's future wellbeing.</p>
			Division 2	<p>Establishes the procedure and requirements for the making of child protection orders.</p> <p>Section 59 provides that the Children's Court may make a</p>

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				<p>child protection order only if it is satisfied that the child is a child in need of protection and the order is appropriate and desirable for the child’s protection; and there is a case plan for the child that:</p> <p>(a) has been developed or revised under part 3A; and</p> <p>(b) is appropriate for meeting the child’s assessed protection and care needs.</p> <p>Further, before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court must have regard to the child’s need for emotional security and stability.</p>
			74	<p>If the chief executive has custody or guardianship of a child under a child protection order; or has custody of a child under a care agreement, as far as reasonably practicable, the chief executive must ensure the charter of rights for a child in care in schedule 1 is complied with in relation to the child.</p> <p>The Charter of rights for a child in care in Schedule 1 establishes the following rights for the child:</p> <p>(a) to be provided with a safe and stable living environment;</p> <p>(b) to be placed in care that best meets the child’s needs and is most culturally appropriate;</p> <p>(c) to maintain relationships with the child’s family and community;</p>

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				<p>(d) to be consulted about, and 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 where the child is living, contact with the child's family and the child's health and schooling;</p> <p>(e) to be given information about decisions and plans concerning the child's future and personal history, having regard to the child's age or ability to understand;</p> <p>(f) to privacy, including, for example, in relation to the child's personal information;</p> <p>(g) if the child is under the long-term guardianship of the chief executive, to regular review of the child's care arrangements;</p> <p>(h) to have access to dental, medical and therapeutic services, necessary to meet the child's needs;</p> <p>(i) to have access to education appropriate to the child's age and development;</p> <p>(j) to have access to job training opportunities and help in finding appropriate employment;</p> <p>(k) to receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support and training and education.</p>

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			122	<p>The chief executive must take reasonable steps to ensure a child placed in care under the Act is cared for in a way that meets a number of standards including:</p> <p>(a) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child’s positive self-regard; and</p> <p>(b) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour; the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age.</p>
	<p>Commission for Children and Young People and Child Guardian Act 2000</p>	QLD	14 and 17	<p>The Act establishes a Commissioner for Children and Young People and Child Guardian.</p> <p>Under section 17 the commissioner’s functions include:</p> <p>(a) to receive, seek to resolve, monitor and investigate complaints about services provided to certain children by service providers;</p> <p>(b) to monitor and review the way in which service providers respond to complaints about services provided by them to certain children;</p> <p>(c) to encourage, facilitate and support the development and coordination of advocacy and other support services for children; and</p> <p>(d) to promote awareness among children about advocacy</p>

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				entities, complaints agencies and other relevant entities.
			Chapter 5	<p>Provides for community visitors to promote and protect the rights, interests and wellbeing of:</p> <p>(a) a child residing at a residential facility or detention centre, or at an authorised mental health service under the <i>Mental Health Act 2000</i>;</p> <p>(b) a child in the custody or guardianship of the chief executive (child safety) under the <i>Child Protection Act 1999</i> who, under section 82 of that Act, has been placed in the care of an approved carer or someone else other than a parent of the child;</p> <p>(c) a child who, under a care agreement under the <i>Child Protection Act 1999</i>, has been placed in the care of someone other than a parent of the child.</p> <p>Under section 93 a community visitor has a number of functions relating to children residing at visitable sites and visitable homes, including:</p> <p>(a) to advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances;</p> <p>(b) to seek information about, and facilitate access by the children to, support services appropriate to their needs provided by service providers;</p> <p>(c) to assess the physical and emotional wellbeing of the</p>

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				children; to observe the treatment of the children, including the extent to which their needs are met by persons caring for them.
	Domestic and Family Violence Protection Act 2012	QLD	81A	Provides that subject to an order of a court, a person must not: (a) call a child as a witness in the proceedings; or (b) ask a child to remain in a court during the proceedings; or (c) ask a child to swear an affidavit for the proceedings; and if a court orders a child may be called as a witness, the court must consider whether the child's evidence should be given by way of video or other electronic means and may make an order accordingly.
	Evidence Act 1977	QLD	21AA	Division 4A of the Act aims to: (a) to preserve, to the greatest extent practicable, the integrity of an affected child's evidence; and (b) to require, wherever practicable, that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence. An ' affected child ' is a child who is a witness in a relevant proceeding and who is not a defendant in the proceeding.

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			21AV	Provides that an affected child, while he or she is giving evidence in a relevant proceeding, is entitled to have near to him or her a person who may provide the child with support.
	Family Responsibilities Commission Act 2008	QLD	4	<p>The main objects of the Act are to:</p> <p>(a) support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas; and</p> <p>(b) help people in welfare reform community areas to resume primary responsibility for the wellbeing of their community and the individuals and families of the community.</p> <p>The objects of the Act are to be achieved mainly by establishing the Family Responsibilities Commission which will:</p> <p>(a) hold conferences about agency notices; and</p> <p>(b) deal with the matters to which the notices relate in a way that:</p> <p>(i) encourages community members the subject of a conference to engage in socially responsible standards of behaviour; and</p> <p>(ii) promotes the interests, rights and wellbeing of children and other vulnerable persons living in a welfare reform community area.</p> <p>A 'welfare reform community area' is one of the following</p>

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				<p>areas:</p> <ul style="list-style-type: none"> (a) Aurukun area; (b) Coen area; (c) Hope Vale area; (d) Mossman Gorge area; (e) another area prescribed under a regulation.
	Public Health Act 2005	QLD	Part 3, Chapter 5	<p>Deals with child abuse and neglect.</p> <p>Section 185 provides that every child has a right to protection from harm; and families have the primary responsibility for the physical, psychological and emotional wellbeing of their children.</p>
			195	<p>If a designated medical officer becomes aware, or reasonably suspects, that a child at a health service facility has been harmed or is at risk of harm; and is likely to leave or be taken from the facility and suffer harm if the designated medical officer does not take immediate action, the designated medical officer may order that the child be held at the facility (a care and treatment order).</p> <p>Under section 201, the designated medical officer may extend the care and treatment order.</p>
			209	<p>Under a care and treatment order, a child may be medically examined or treated at the facility or another facility to which</p>

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				the child is transferred.
	Youth Justice Act 1992	QLD	2	<p>The objectives of the Act include (amongst others) 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> <p>(a) rehabilitate children who commit offences; and</p> <p>(b) reintegrate children who commit offences into the community.</p>
			184	<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>
			302	<p>Under section 302, the chief executive must establish:</p> <p>(a) programs and services necessary to give effect to any</p>

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				<p>order or direction under this Act; and</p> <p>(b) programs and services to support, help, and reintegrate into the community children who have committed offences.</p> <p>The chief executive must also decide the activities that are to comprise community service for every community service order.</p> <p>The chief executive may establish any other programs and services for children who have committed offences.</p>
			Schedule 1	<p>Schedule 1 sets out a charter of youth justice principles, and includes:</p> <p>The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.</p> <p>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> <p>(c) dealt with in a way that strengthens the child’s family.</p> <p>A parent of a child should be encouraged to fulfil the parent’s responsibility for the care and supervision of the child, and</p>

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				<p>supported in the parent’s efforts to fulfil this responsibility.</p> <p>A child should be dealt with under this Act in a way that allows the child to be reintegrated into the community.</p> <p>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>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 have access to dental, medical and therapeutic services necessary to meet the child’s needs; and</p> <p>(c) should receive appropriate help in making the transition from being in detention to independence.</p>

5. South 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>ARTICLE 39:</p> <p>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Children's Protection Act 1993</p>	<p>SA</p>	<p>3</p>	<p>The objects of the Act include:</p> <p>(a) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and</p> <p>(b) to recognise the family as the primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to children.</p>
			<p>8</p>	<p>Sets out the functions of the Minister, which include to further the objects of the Act and to:</p> <p>(a) promote a partnership approach between the Government, local government, non-government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect;</p> <p>(b) promote and assist in the development of co-ordinated strategies for dealing with the problem of child abuse and neglect;</p>

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				<p>(c) provide, or assist in the provision of, services for dealing with the problem of child abuse and neglect and for the care and protection of children;</p> <p>(d) provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the well-being of children generally; and</p> <p>(e) assist the Aboriginal community to establish its own programmes for preventing or reducing the incidence of abuse or neglect of children within the Aboriginal community.</p> <p>Further, the Minister must assist in the provision of:</p> <p>(a) services directed at enhancing the quality of care of children and family life by strengthening and supporting families, and thus preventing or reducing the incidence of child abuse and neglect; and</p> <p>(b) support services to children who have been abused or neglected and their families; and</p> <p>(c) ensure that those support services are offered to children who are known by the Department to have been abused or neglected and their families and that genuine efforts are made to encourage such children and their families to avail themselves of the services.</p>
			8A	Sets out the functions of the chief executive, which amongst

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				<p>others includes:</p> <p>(a) to provide guidance on how to deal with cases involving the bullying or harassment of a child;</p> <p>(b) to provide guidance on how to deal with cases involving the suspected abuse or neglect of a child.</p>
			27	<p>If the Minister believes that a child is at risk and that arrangements should be made to secure the child's care and protection, the Minister can require a family care meeting to be convened in respect of the child.</p> <p>The purpose of a family care meeting is to provide a proper opportunity for a child's family, in conjunction with a Care and Protection Co-ordinator to make informed decisions as to the arrangements for best securing the care and protection of the child, and to review those arrangements from time to time (section 28).</p>
			38	<p>Under section 38 the Court may exercise 1 or more of the following powers:</p> <p>(a) the Court may require a parent, guardian or other person who has the care of the child, or the child, to enter into a written undertaking (for a specified period not exceeding 12 months) to do any specified thing, or to refrain from doing any specified thing and, if the Court thinks fit, require the child to be under the supervision of the Chief Executive or some other specified person or authority for the duration of the undertaking;</p>

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				(b) the Court may grant custody of the child, for a specified period not exceeding 12 months, to one of a list of specified persons.
	<p>Young Offenders Act 1993</p>	SA	3	<p>Provides that 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>(c) the deterrent effect any proposed sanction may have on other youths; and</p> <p>(d) the balance to be achieved between (i) the protection of the community; and (ii) the need to rehabilitate the youth.</p> <p>Further, effect is to be given to a number of statutory policies so far as the circumstances of the individual case allow, including:</p> <p>(a) family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;</p> <p>(b) a youth should not be withdrawn unnecessarily from the youth's family environment;</p>

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				(c) there should be no unnecessary interruption of a youth's education or employment; (d) a youth's sense of racial, ethnic or cultural identity should not be impaired.

6. Western Australia

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION - for WESTERN AUSTRALIA

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions	Summary/Description of Relevant Provision
<p>ARTICLE 39 (rehabilitation of child victims)</p> <p>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Child Welfare Amendment Act 1990</p>	<p>WA</p>	<p>Section 8</p>	<p>Section 8 inserts Section 108 into the principal Act, to provide that a person shall not employ a child; cause or procure a child to be employed or being a person who has custody or guardianship of a child allow that child to be employed for the purpose of performing in an indecent, obscene or pornographic manner of taking part in an entertainment or exhibition or the making of an advertisement.</p> <p>Section 108 imposes a penalty of \$20,000.00 or imprisonment for 3 years or both.</p>
	<p>Children and Community Services Act 2004</p>	<p>WA</p>	<p>Section 3</p>	<p>Section 3 defines a "child" as a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age.</p>
	<p>Section 6</p>	<p>Section 6 lists the objects of the Act as:</p> <ul style="list-style-type: none"> (a) to promote the wellbeing of children, other individuals, families and communities; and (b) to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children; and (c) to encourage and support parents, families and communities in carrying out that role; and (d) to provide for the protection and care of children in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care; and 		

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				(e) to protect children from exploitation in employment.
			Section 7	Section 7 provides that in performing a function or exercising a power under this Act in relation to a child, a person, the Court or the State Administrative Tribunal must regard the best interests of the child as the paramount consideration.
			Section 8	<p>Section 8 details the elements of what constitutes "best interests;"</p> <ul style="list-style-type: none"> (a) the need to protect the child from harm; (b) the capacity of the child's parents to protect the child from harm; (c) the capacity of the child's parents, or of any other person, to provide for the child's needs; (d) the nature of the child's relationship with the child's parents, siblings and other relatives and with any other people who are significant in the child's life; (e) the attitude to the child, and to parental responsibility, demonstrated by the child's parents; (f) any wishes or views expressed by the child, having regard to the child's age and level of understanding in determining the weight to be given to those wishes or views; (g) the importance of continuity and stability in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from (i) the child's parents; or (ii) a sibling or other relative of the child; or (iii) a carer or any other person (including a child) with whom the child is, or has recently been, living; or (iv) any other person who is significant in the child's life;

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				<p>(h) the need for the child to maintain contact with the child’s parents, siblings and other relatives and with any other people who are significant in the child’s life;</p> <p>(i) the child’s age, maturity, sex, sexuality, background and language;</p> <p>(j) the child’s cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);</p> <p>(k) the child’s physical, emotional, intellectual, spiritual, developmental and educational needs;</p> <p>(l) any other relevant characteristics of the child;</p> <p>(m) the likely effect on the child of any change in the child’s circumstances.</p>
			Section 9	<p>Section 9 lists the principles to be observed in the administration of the Act, including:</p> <p>(a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child’s wellbeing;</p> <p>(b) the principle that the preferred way of safeguarding and promoting a child’s wellbeing is to support the child’s parents, family and community in the care of the child;</p> <p>(c) the principle that every child should be cared for and protected from harm;</p> <p>(d) the principle that every child should live in an environment free from violence;</p>

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				<p>(e) the principle that every child should have stable, secure and safe relationships and living arrangements;</p> <p>(f) the principle that intervention action (as defined in section 32(2)) should be taken only in circumstances where there is no other reasonable way to safeguard and promote the child’s wellbeing;</p> <p>(g) the principle that if a child is removed from the child’s family then, so far as is consistent with the child’s best interests, the child should be given encouragement and support in maintaining contact with the child’s parents, siblings and other relatives and with any other people who are significant in the child’s life;</p> <p>(ha) the principle that if a child is removed from the child’s family then, so far as is consistent with the child’s best interests, planning for the child’s care should occur as soon as possible in order to ensure long-term stability for the child;</p> <p>(h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;</p> <p>(i) the principle that decisions about a child should be consistent with cultural, ethnic and religious values and traditions relevant to the child;</p> <p>(j) the principle that a child’s parents and any other people who are significant in the child’s life should be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child’s life;</p> <p>(k) the principle that a child’s parents and any other people who are significant in the child’s life should be given adequate information, in a manner and language that they can understand, about:</p>

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				<p>(i) decision-making processes under this Act that are likely to have a significant impact on the child’s life; and</p> <p>(ii) the outcome of any decision about the child, including an explanation of the reasons for the decision; and</p> <p>(iii) any relevant complaint or review procedures;</p> <p>(l) the principle set out in section 10(1).</p>
			Section 28	<p>Section 28 provides that a child is in need of protection if:</p> <p>(a) the child has been abandoned by his or her parents and, after reasonable inquiries:</p> <p>(i) the parents cannot be found; and</p> <p>(ii) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or</p> <p>(b) the child’s parents are dead or incapacitated and, after reasonable inquiries, no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or</p> <p>(c) the child has suffered, or is likely to suffer, harm as a result of any one or more of the following:</p> <p>(i) physical abuse;</p> <p>(ii) sexual abuse;</p> <p>(iii) emotional abuse;</p> <p>(iv) psychological abuse;</p>

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				<p>(v) neglect,</p> <p>and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind; or</p> <p>(d) the child has suffered, or is likely to suffer, harm as a result of:</p> <p>(i) the child's parents being unable to provide, or arrange the provision of, adequate care for the child; or</p> <p>(ii) the child's parents being unable to provide, or arrange the provision of, effective medical, therapeutic or other remedial treatment for the child.</p>
			Sections 44-73	<p>Sections 44-73 sets out the procedural framework for applying for a protection order (which can only be applied for by the CEO).</p> <p>A protection order can be of several types:</p> <ul style="list-style-type: none"> - Sections 47-53 sets out the process to obtain a supervision protection order. - Sections 54-56 sets out the process to obtain a time-limited protection order. - Sections 57-59 sets out the process to obtain a "until 18" protection order. - Sections 60-67 sets out the process to obtain a special guardianship protection order.
			Sections 74-77	<p>Sections 74-77 sets out the procedural framework in relation to negotiated placement agreements, to be entered into where the parents of a child are unable to care for the child, the parents acting together and the CEO may enter into an agreement under which the CEO is required to make a</p>

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				placement arrangement for the child.
			Section 101	<p>Section 101 provides that a person who has the care or control of a child and who engages in conduct:</p> <p>(a) knowing that the conduct may result in the child suffering harm as a result of any one or more of the following"</p> <p>(i) physical abuse; or</p> <p>(ii) sexual abuse; or</p> <p>(iii) emotional abuse; or</p> <p>(iv) psychological abuse; or</p> <p>(v) neglect as defined in section 28(1); or</p> <p>(b) reckless as to whether the conduct may have that result,</p> <p>is guilty of a crime, and is liable to imprisonment for 10 years.</p>
			Section 107	<p>Section 107(2) provides that a person must not without lawful authority remove a child from the child's place of residence. A maximum fine of \$12,000.00 and imprisonment for one year may be imposed.</p> <p>Section 107(3) provides that a person must not without lawful authority counsel, induce or assist a child to leave the child's place of residence. A maximum fine of \$12,000.00 and imprisonment for one year may be imposed.</p>
Section 108	Section 108 provides that a person must not harbour a child if the person knows that the child has left, or has been removed from, the child's place of residence without lawful authority. A maximum fine of \$12 000 and			

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				imprisonment for one year may be imposed.
			Section 109	Section 109 provides that a person must not prevent the return of a child to the child’s place of residence if the person knows that the child has left, or has been removed from, the child’s place of residence without lawful authority. A maximum fine of \$12 000 and imprisonment for one year may be imposed.
			Sections 124A-124H	<p>Sections 124A-12H set out the procedural framework for mandatory reporting of child sexual abuse.</p> <p>Section 124B imposes the duty to report on certain classes of citizens, including a doctor, nurse, midwife, police officer or teacher; who believes on reasonable grounds that a child (i) has been the subject of sexual abuse that occurred on or after commencement day; or (ii) is the subject of ongoing sexual abuse; and forms the belief (i) in the course of the person’s work (whether paid or unpaid) as a doctor, nurse, midwife, police officer or teacher; and (ii) on or after commencement day, must report the belief as soon as practicable after forming the belief. Failure to report may attract a fine of \$6000.00.</p> <p>Section 124C governs the content of that report.</p> <p>Section 124D requires the CEO to forward each report to the police authorities.</p> <p>Section 124E provides that the time limit for prosecution must be commenced within 36 months after the date on which the offence was allegedly committed; or with the consent of the Attorney General, may be commenced at a later time.</p> <p>Section 124F provides for the maintenance of confidentiality of the reporter's identity.</p>

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				<p>Section 124G sets out the procedural rules that will govern a prosecution proceeding arising from the report.</p> <p>Section 124H provides that in relation to the identity of the reporter and/or the content of the report (of suspected/alleged child abuse) A court or tribunal must not make an order or grant leave unless:</p> <p>(a) it is satisfied that to safeguard and promote the wellbeing of the child about whom the report was made it is necessary for the order to be made or for the leave to be given; or</p> <p>(b) it is satisfied that (i) the identifying information, or the content of the report (as is relevant in the case) is of critical importance in the proceedings; and (ii) there is compelling reason in the public interest for disclosure of the identifying information, or disclosure, production or adducing of the report or evidence (as is relevant in the case);</p> <p>(c) in a case concerning the disclosure of identifying information in relation to a reporter, the reporter consents to the disclosure.</p>
	<p>Young Offenders Act 1994</p>	<p>WA</p>	<p>Section 3</p>	<p>Section 3 defines a "young person" as</p> <p>(a) a person who has not reached the age of 18 years; or</p> <p>(b) a person to whom this Act applies because of section 4.</p>
			<p>Section 6</p>	<p>Section 6 lists the main objects of the Act as (*principles relevant to Art 39 are underlined):</p> <p>(a) to provide for the administration of juvenile justice; and</p> <p>(b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have,</p>

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				<p>committed offences; and</p> <p>(c) to ensure that the legal rights of young persons involved with the criminal justice system are observed; and</p> <p>(d) to enhance and reinforce the roles of responsible adults, families, and communities in:</p> <p>(i) minimising the incidence of juvenile crime; and</p> <p>(ii) punishing and managing young persons who have committed offences; and</p> <p><u>(iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens; and</u></p> <p><u>(e) to integrate young persons who have committed offences into the community; and</u></p> <p>(f) to ensure that young persons are dealt with in a manner that is culturally appropriate and which recognises and enhances their cultural identity.</p>
			Section 7	<p>Section 7 lists the general principles of juvenile justice as (*principles relevant to Art 39 are underlined):</p> <p>(a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences; and</p> <p>(b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct; and</p> <p>(c) a young person who commits an offence is not to be treated more</p>

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				<p>severely because of the offence than the person would have been treated if an adult; and</p> <p>(d) the community must be protected from illegal behaviour; and</p> <p><u>(e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so; and</u></p> <p>(f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so; and</p> <p>(g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardise the protection of the community to do so; and</p> <p>(h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary; and</p> <p>(i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner; and</p> <p>(j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially</p>

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				<p>acceptable ways; and</p> <p>(k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and</p> <p>(l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and</p> <p><u>(m) a young person who commits an offence is to be dealt with in a way that:</u></p> <p><u>(i) strengthens the family and family group of the young person; and</u></p> <p><u>(ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and</u></p> <p><u>(iii) recognises the right of the young person to belong to a family.</u></p>
			Section 46	<p>Section 46 provides in detail:</p> <p>(1) When dealing with a young person who has been found guilty of an offence, the court, in disposing of the matter, is to apply:</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 juvenile justice.</p> <p>(2) The court is to consider any information about the offender or the offence that may assist the court to decide how to dispose of the matter, and in particular:</p> <p>(a) the nature and seriousness of the offence; and</p>

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				<p>(b) any history of offences previously committed by the offender; and</p> <p>(c) the cultural background of the offender; and</p> <p>(d) any order previously made by a court when disposing of a charge of an offence that still applies to the offender, and any further order that is liable to be imposed if the offender does not comply with the terms of any such order; and</p> <p>(e) the extent, if any, to which any person was affected as a victim of the offence.</p> <p>(3) 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>(4) In deciding how to dispose of the matter, which includes deciding the appropriate degree of severity to be used, the court is to consider how young the offender is as a mitigating factor.</p> <p>(5) The court is to have regard to the fact that the rehabilitation of an offender is facilitated by:</p> <p>(a) the participation of the offender’s family; and</p> <p>(b) giving the offender opportunities to engage in educational programmes and in employment, but the absence of such participation or opportunities is not to result in the offender being dealt with more severely for the offence.</p> <p>(5a) Subject to section 106 of the <i>Road Traffic Act 1974</i> but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose</p>

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				such a penalty. (6) The operation of this section is affected by section 125.

7. Northern Territory

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION - for Northern Territory (NT)

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions	Summary/Description of Relevant Provision
<p>ARTICLE 39 (rehabilitation of child victims)</p> <p>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Adoption of Children Act 1994</p>	<p>NT</p>	<p>Section 3</p>	<p>Section 3 defines "child" as a person who is or was available for adoption in respect of whom an order for adoption is yet to be made or has been made.</p>
			<p>Section 8</p>	<p>Section 8 provides that an adoption shall be regarded as a service for the child concerned and the welfare and interests of the child shall be the paramount consideration.</p>
			<p>Section 10</p>	<p>Section 10 provides that the court must have regard to the wishes and feeling of the child, to ascertain these and give due consideration to this, in making an adoption order. Where the child has attained the age of 12 years, the court must be satisfied that the child has consented and that there are special reasons related to the welfare and interests of the child why the adoption should be ordered.</p>
			<p>Section 68</p>	<p>Section 68 provides that a person who was a parent or guardian of a child and who has ceased to be so, shall not take, lead, entice or decoy the child away or detain with the intent to deprive the adoptive parent/s of the child or of the care and custody of the child. A person shall not receive or harbour a child on behalf of another person where he knows or could with reasonable diligence ascertain the above contravention. The maximum penalty is 40 penalty units.</p>
	<p>Care and Protection of Children Act</p>	<p>NT</p>	<p>Section 4</p>	<p>Section 4 stipulates that the objects of the Act are:</p> <ul style="list-style-type: none"> (a) to promote the wellbeing of children, including: <ul style="list-style-type: none"> (i) to protect children from harm and exploitation; and (ii) to maximise the opportunities for children to realise their full

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				<p>potential; and</p> <p>(b) to assist families to achieve the object in paragraph (a); and</p> <p>(c) to ensure anyone having responsibilities for children have regard to the objects in paragraphs (a) and (b) in fulfilling those responsibilities.</p>
			Section 8	<p>Section 8 recognises the importance of the role of the family in a child's wellbeing. Section 8 states:</p> <p>(1) The family of a child has the primary responsibility for the care, upbringing and development of the child.</p> <p>(2) In fulfilling that responsibility, the family should be able to bring up the child in any language or tradition and foster in the child any cultural, ethnic or religious values.</p> <p>(3) A child may be removed from the child's family only if there is no other reasonable way to safeguard the wellbeing of the child.</p> <p>(4) As far as practicable, and consistent with section 10, if a child is removed from the child's family:</p> <p>(a) contact between the child and the family should be encouraged and supported; and</p> <p>(b) the child should eventually be returned to the family.</p>
			Section 9	<p>Section 9 articulates that each child is a valued member of society and is entitled to be treated in a way that respects the child's dignity and privacy. Further, decisions involving a child should be made (a) promptly having regard to the child's circumstances; and (b) in a way that is consistent with the cultural, ethnic and religious values and</p>

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				<p>traditions relevant to the child; and with the informed participation of the child, the child's family and other people who are significant in the child's life</p>
			Section 10	<p>Section 10 stipulates that when a decision involving a child is made, the best interests of the child are the paramount concern. Section 10(2) details the definition of "best interests" as:</p> <ul style="list-style-type: none"> (a) the need to protect the child from harm and exploitation; (b) the capacity and willingness of the child's parents or other family members to care for the child; (c) the nature of the child's relationship with the child's family and other persons who are significant in the child's life; (d) the wishes and views of the child, having regard to the maturity and understanding of the child; (e) the child's need for permanency in the child's living arrangements; (f) the child's need for stable and nurturing relationships; (g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs; (h) the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds; (i) other special characteristics of the child; (j) the likely effect on the child of any changes in the child's circumstances.

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			Section 11	<p>Section 11 details what constitutes the informed consent of the child. It states that when a decision involving a child is made:</p> <ul style="list-style-type: none"> (a) the child: <ul style="list-style-type: none"> (i) should be given adequate information and explanation in a way that the child can understand; and (ii) should be given the opportunity to respond to the proposed decision; and (iii) should be given the opportunity to express the child's wishes and views freely; and (iv) should be given assistance in expressing those wishes and views; and (b) those wishes and views should be taken into account, having regard to the child's maturity and understanding.
			Section 13	<p>Section 13 defines a "child" as:</p> <ul style="list-style-type: none"> (a) a person less than 18 years of age; or (b) a person apparently less than 18 years of age if the person's age cannot be proved.
			Section 15	<p>Section 15 defines "harm" as any significant detrimental effect caused by any act, omission or circumstance on:</p> <ul style="list-style-type: none"> (a) the physical, psychological or emotional wellbeing of the child; or (b) the physical, psychological or emotional development of the child. <p>and which may be caused by physical, psychological, or emotional</p>

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				abuse of neglect of the child; sexual abuse or other exploitation of the child; and exposure to physical violence.
			Section 16	Section 16 defines "exploitation" as includes sexual and any other forms of exploitation of the child, and in turn, including any sexual abuse of the child; and involving the child as a participant or spectator in any of an act of a sexual nature; prostitution; or a pornographic performance.
			Sections 66-86	Sections 66-86 outline the framework when the child or young person is under the care and protection of the CEO. The framework involves the device of a "care plan" which may include a "placement arrangement (ss77-85).
			Sections 103-110	Sections 103-110 empowers the CEO to apply to the Court for a temporary protection order where it believes that the proposed order is "urgently needed to safeguard the wellbeing of the child." Section 107 states that the effect of the order is to give the daily care and control of the child to the CEO for the duration of the order.
			Sections 121-137	Sections 12-137 empowers the CEO to apply to the Court for a protection order where it believes that the child is in need or would be in need of protection but for the fact that the child is currently in the CEO's care.
			Section 184	<p>Incorporated in a Chapter titled "Prevention of Harm and Exploitation," section 184 states that the object of this Part is to ensure individuals who pose an unacceptable risk of harm or exploitation to children are prevented from contacting children through their employment.</p> <p>Section 184(2) states that this object is to be achieved by:</p> <p>(a) prohibiting such individuals from being engaged in child-related</p>

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				<p>employment (ss185-197); and</p> <p>(b) imposing related obligations on people:</p> <p>(i) who are engaged in child-related employment (ss198-206); or</p> <p>(ii) who engage others in child-related employment.</p>
	<p>Domestic and Family Violence Act 2007</p>	<p>NT</p>	<p>Section 29</p>	<p>Section 29 provides that a police or child protection officer must apply for a Domestic Violence Order (DVO) for the protection of a child if the officer reasonable believes that :</p> <p>(a) domestic violence has been committed or is being committed, or is likely to be committed; and</p> <p>(b) the child's wellbeing has or is likely to be adversely affected by the violence.</p>
			<p>Section 107</p>	<p>Section 107 stipulates that when a child is to be give evidence pertaining to a Domestic Violence Order (DVO) application, the child is to give the evidence by written or recorded statement, and when making the statement, that child is entitled to be accompanied by a person (relative, adult friend or someone else whom the child asks to accompany him) to "provide emotional support."</p>
			<p>Section 123</p>	<p>Section 123 makes it an offence to publish the name of a child who is a protected person named in a DVO, or who appears or is reasonably likely to appear as a witness in a proceeding, or who is or is reasonably likely to be mentioned or otherwise involved in a proceeding.</p> <p>The maximum penalty is 200 penalty units or imprisonment for 1 year.</p>
<p>Evidence Act 1939</p>	<p>NT</p>	<p>Section 21D</p>	<p>Section 21D outlines a number of principles relating to child</p>	

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				<p>witnesses.</p> <p>Section 21D(1) states that it is the intention of the Legislative Assembly that as children tend to be vulnerable in dealings with persons in authority (including courts and lawyers), child witnesses be given the benefit of special measures.</p> <p>Section 21D(2) lists the principles that the Court must have regard to if a child is called as a witness:</p> <p><u>(a) the Court must take measures to limit, to the greatest extent practicable, the distress or trauma suffered (or likely to be suffered) by the child when giving evidence;</u></p> <p>(b) the child must be treated with dignity, respect and compassion;</p> <p>(c) the child must not be intimidated when giving evidence;</p> <p>(d) proceedings in which a child is a witness should be resolved as quickly as possible.</p> <p>Section 21D(3) provides that if the Court is satisfied that a child witness is able, and wants, to give evidence in the presence of the defendant, special measures are not to be taken, contrary to the wishes of the child, to protect the child from the apprehended distress or trauma of giving evidence in the presence of the defendant.</p>
	<p>Mental Health and Related Services Act 1998</p>	<p>NT</p>	<p>Section 110(8A)</p>	<p>Section 110 sets a mechanism of complaint in relation to treatment received at an approved treatment facility or by an approved treatment agency. The complaint may relate to the failure of the approved treatment facility or approved treatment agency to recognise the right of the person under this Act, or failure to consider the health interests and needs of the person.</p>

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				Section 110(8A) specifically provides that if the complaint is about a matter that could be the subject of a complaint under the <i>Care and Protection of Children Act</i> , the person-in-charge (may refer the complaint to the Children's Commissioner; or if the complaint is to be dealt with under this Act – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.
	Youth Justice Act 2005	NT	Section 3	<p>Section 3 lists the objects of the Act as (*underlined are the sub-provisions relevant to Art 39):</p> <ul style="list-style-type: none"> (a) to specify the general principles of justice in respect of youth; (b) to provide for the administration of justice in respect of youth; (c) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; (d) to ensure that a youth who has committed an offence is made aware of his or her obligations (and rights) under the law and of the consequences of contravening the law; <u>(e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation;</u> (f) to continue in existence the Juvenile Court, established by the repealed Act, as the Youth Justice Court; (g) to establish the Youth Justice Advisory Committee.
			Section 4	<p>Section 4 lists the principles that should form the underlying basis of decisions taken under this Act. (*Underlined are the sub-provisions relevant for Art 39).</p> <ul style="list-style-type: none"> (a) if a youth commits an offence, he or she must be held accountable

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				<p>and encouraged to accept responsibility for the behaviour;</p> <p>(b) the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways;</p> <p>(c) a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time;</p> <p>(d) a youth must be dealt with in the criminal law system in a manner consistent with his or her age and maturity and have the same rights and protection before the law as would an adult in similar circumstances;</p> <p>(e) a youth should be made aware of his or her obligations under the law and of the consequences of contravening the law;</p> <p><u>(f) a youth who commits an offence should be dealt with in a way that allows him or her to be re-integrated into the community;</u></p> <p><u>(g) a balanced approach must be taken between the needs of the youth, the rights of any victim of the youth's offence and the interests of the community;</u></p> <p><u>(h) family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened;</u></p> <p><u>(i) a youth should not be withdrawn unnecessarily from his or her family environment and there should be no unnecessary interruption of a youth's education or employment;</u></p> <p><u>(j) a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain</u></p>

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				<p><u>it</u>;</p> <p>(k) a victim of an offence committed by a youth should be given the opportunity to participate in the process of dealing with the youth for the offence encouraged to fulfil his or her responsibility for the care and supervision of the youth;</p> <p>(m) a decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time;</p> <p>(n) <u>punishment of a youth must be designed to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways</u>;</p> <p>(o) if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community;</p> <p>(p) <u>programs and services established under this Act for youth should be culturally appropriate; and</u></p> <p><u>(ii) promote their health and self-respect; and</u></p> <p><u>(iii) foster their sense of responsibility; and</u></p> <p><u>(iv) encourage attitudes and the development of skills that will help them to develop their potential as members of society;</u></p> <p>(q) unless the public interest requires otherwise, criminal proceedings should not be instituted or continued against a youth if there are alternative means of dealing with the matter;</p> <p>(r) as far as practicable, proceedings in relation to youth offenders must be conducted separately from proceedings in relation to adult</p>

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				offenders.
			Section 6	<p>Section 6 defines a "youth" as follows:</p> <p>(a) a person under 18 years of age; or</p> <p>(b) in the absence of proof as to age, a person apparently under 18 years of age.</p> <p>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>
			Section 51	<p>Section 51 provides that this Section (being the constitution of the Youth Justice Court) will apply if the Court believes that a youth who is charged with an offence is or may be a child in need of protection or there is a risk to the wellbeing of the youth.</p> <p>Section 51(2) provides that the Court must require the CEO to investigate the circumstances of the youth and to take appropriate action to promote the wellbeing of the youth.</p>
Section 81	<p>Section 81 provides that when sentencing a youth who has been found guilty of an offence, the Court must have regard to the following:</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>And further, 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>			

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				<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> <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; and 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 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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			Section 83	<p>Section 83 confers a wide power on the Court in sentencing the youth offender. Orders that the Court may make include (*underlined are relevant to Art 39):</p> <p>(1) If the Court finds a charge proven against a youth it may, whether or not it proceeds to conviction, do one or more of the following:</p> <p>(a) dismiss the charge for the offence;</p> <p>(b) discharge the youth without penalty;</p> <p>(c) adjourn the matter for a period not exceeding 6 months and, if during that period the youth does not commit a further offence, discharge the youth without penalty;</p> <p>(d) adjourn the matter to a specified date not more than 12 months from the date of the finding of guilt, and grant bail to the youth in accordance with the <i>Bail Act</i>:</p> <p><u>(i) for the purpose of assessing the youth's capacity and prospects for rehabilitation; or</u></p> <p><u>(ii) for the purpose of allowing the youth to demonstrate that rehabilitation has taken place; or</u></p> <p>(iii) for any other purpose the Court considers appropriate in the circumstances;</p> <p><u>(e) order the youth to participate in a program approved by the Minister, as specified in the order, and adjourn the matter for that purpose (see Division 3);</u></p> <p><u>(f) order that the youth be released on his or her giving such security</u></p>

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				<p>as the Court considers appropriate that he or she will:</p> <p>(i) appear before the Court if called on to do so during the period, not exceeding 2 years, specified in the order; and</p> <p>(ii) be of good behaviour for the period of the order; and</p> <p>(iii) observe any conditions imposed by the Court (see Division 4);</p> <p><u>(g) fine the youth not more than the maximum penalty that may be imposed under the relevant law in relation to the offence (see Division 5);</u></p> <p><u>(h) make a community work order that the youth participate in an approved project for the number of hours, not exceeding 480 hours, specified in the order (see Division 6);</u></p> <p><u>(i) order that the youth serve a term of detention or imprisonment that is suspended wholly or partly (see Division 7);</u></p> <p>(j) order that the youth serve a term of detention or imprisonment that is suspended on the youth entering into an alternative detention order (see Division 8);</p> <p>(k) order that the youth serve a term of detention or imprisonment that is to be served periodically under a periodic detention order (see Division 9);</p> <p>(l) order that the youth serve a term of detention or imprisonment;</p> <p>(m) make any other order in respect of the youth that another court could make if the youth were an adult convicted of that offence other than a community based order or community custody order under the</p>

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				<i>Sentencing Act.</i>
			Section 90	Section 90 governs the making of an order for an approved program. If the Court is satisfied that the youth has satisfactorily completed the program, the Court may make an order discharging the youth without penalty. If the Court is satisfied that the youth has failed to satisfactorily complete the program, the Court must revoke the order (if it is still in force); and deal with the youth for the relevant offence or offences in any manner in which the Court could deal with the youth if it had just found the youth guilty of the offence or those offences.
			Sections 93-97	<p>Sections 93-97 governs the imposition of community work orders.</p> <p>Of particular relevance to Art 39:</p> <p>Section 93(2) states that the purpose of a community work order is to reflect the public interest in ensuring that a youth who commits an offence makes amends to the community by performing work that is of benefit to the community.</p> <p>Section 95 details the duties of the youth offender while on a community work order, including:</p> <p>(a) must participate, for the number of hours specified in the order, in an approved project as directed by a probation officer; and</p> <p>(b) must participate in the project to the satisfaction of a probation officer or the project supervisor; and</p> <p>(c) must, while participating in the project, comply with any reasonable directions of a probation officer or the project supervisor; and</p>

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				<p>(d) must inform a probation officer of any change in his or her residential address within 48 hours after the change; and</p> <p>(e) must not commit an offence while the order is in force.</p>
			Section 98	Section 98 governs the imposition of a suspended sentence.
			Sections 99-104	Sections 99-104 govern the imposition of an alternative detention arrangement.
			Section 140B	<p>Section 140B stipulates that the best interests of the youth are to be treated as the paramount consideration, and further, agencies with responsibilities related to the welfare of a youth must work together cooperatively and effectively to help parents:</p> <p>(a) safeguard and promote the wellbeing of the youth; and</p> <p>(b) exercise appropriate control over the behaviour of the youth; and</p> <p>(c) comply with any relevant family responsibility agreement or order.</p>
			Sections 140D-F	<p>Sections 140D-F governs the making of a family responsibility arrangement.</p> <p>Section 140D grants power to an appropriate agency to enter into a family responsibility arrangement with the parent/s of a youth if:</p> <p>(a) the youth has demonstrated behavioural problems; and</p> <p>Examples</p> <p>1 Criminal behaviour.</p> <p>2 Persistent truancy.</p>

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				<p>3 Anti-social behaviour.</p> <p>(b) the youth's family circumstances may have caused, or contributed to, the behavioural problems; and</p> <p>(c) the Agency is of the opinion that the agreement may assist to resolve the problems.</p> <p>Section 140E outlines what a family responsibility arrangement may entail:</p> <p>(a) it may require a parent to undertake counselling or therapy directed at helping the parent to overcome addictive, destructive or damaging behaviour;</p> <p>(b) it may require a parent to (i) undertake counselling to provide guidance in the effective discharge of the parent's parental responsibilities; or (ii) join and participate in the activities of an appropriate support group; or (iii) undertake any other relevant course or program of personal development (including, if appropriate, a residential course or program);</p> <p>(c) it may require a parent to exercise proper care and supervision of the youth and, in particular, to take all reasonable steps to ensure that (i) the youth attends school; and (ii) the youth keeps away from, and avoids contact with, persons named or described in the agreement; and (iii) the youth keeps away from places described in the agreement;</p> <p>(d) it may contain any other provisions, relevant to the effective care and supervision of the youth, that are agreed between the parties.</p> <p>Section 140E(2) provides that a family responsibility agreement cannot remain longer than 12 months or extend beyond the date on</p>

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				which the youth turns 18.
			Sections 140G-M	Sections 140G-M governs the imposition of a family responsibility order to put into place a family responsibility arrangement in ss 140D-F.

8. Tasmania

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION - for TASMANIA

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions	Summary/Description of Relevant Provision
<p>ARTICLE 39 (rehabilitation of child victims) States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Adoption Act 1988</p>	<p>TAS</p>	<p>Section 3</p>	<p>Section 3 defines a "child" as a person who has not attained the age of 18 years; or a person who has attained that age in respect of whom an adoption order is sought.</p>
			<p>Section 8</p>	<p>Section 8 states that in the administration of this Act, the welfare and interests of the child or adopted person concerned shall be regarded as the paramount consideration at all times.</p>
	<p>Anti-discrimination Act 1988</p>	<p>TAS</p>	<p>Section 3</p>	<p>Section 3 defines a "child" as a natural child, adopted child, stepchild, foster child or an ex-nuptial child.</p>
			<p>Section 50</p>	<p>Section 50 states that a person may discrimination against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to the relevant circumstances.</p>
	<p>Child Protection (International Measures) Act 2003</p>	<p>TAS</p>	<p>Section 3</p>	<p>Section 3 lists the main purposes of the Act as:</p> <ul style="list-style-type: none"> (a) the importance of international co-operation for the protection of children; and (b) the need to avoid conflict between the legal systems of different countries about the jurisdiction, applicable law, recognition and enforcement of measures for the protection of children; and (c) that a child's best interests are a primary consideration in relation to a measure for protecting the person of the child or a measure for protecting the child's property.

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	Child, Young Persons and Their Families Act 1997	TAS	Section 4	Section 4 defines a "child" as an individual who is under 18 years.
			Schedule 1	Schedule 1 incorporates the Convention on Jurisdiction , Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children
			Section 3	Section 3 defines a "child" as a person under 18 years of age.
			Section 7	<p>Section 7 lists the objects of the Act as follows (*relevant objects to Art 39 are underlined):</p> <p>(1) The object of this Act is to provide for the care and protection of children in a manner that <u>maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.</u></p> <p>(2) The Minister must seek to further the object of this Act and, to that end, should endeavour –</p> <p>(a) <u>to promote, and assist in the development of, a partnership approach between the Government, local government, non-Government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect; and</u></p> <p>(b) <u>to promote and assist in the development of coordinated strategies for dealing with the problem of child abuse and neglect; and</u></p> <p>(c) <u>to provide, or assist in the provision of, services for dealing with the problem of child abuse and neglect and for the care and protection of children; and</u></p> <p>(d) to provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect; and</p> <p>(e) to assist recognised Aboriginal organisations to establish and provide</p>

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				<p>preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect within the Aboriginal community; and</p> <p>(f) to provide, or assist in the provision of, information or education services for guardians, prospective guardians and other members of the community in relation to the developmental, social and safety requirements of children; and</p> <p>(g) to provide, or assist in the provision of, education to persons who are required to notify the Secretary if they know or reasonably believe or suspect that a child is being, or is likely to be, abused or neglected; and</p> <p>(h) to provide, or assist in the provision of, services to help persons who have been under the guardianship or in the custody of the Secretary during childhood to make a successful transition to adulthood; and</p> <p>(i) to collect and publish relevant data or statistics or to assist in their collection or publication; and</p> <p>(j) <u>to promote, encourage and undertake research into child abuse and neglect; and</u></p> <p>(k) <u>to encourage the provision, by educational institutions, of courses offering instruction about child abuse and neglect and its prevention and treatment; and</u></p> <p>(l) generally to do such other things which the Minister believes will further the object of this Act.</p>
			Section 8	<p>Section 8 lists the underlying principles to be considered in the administration of this Act, and include (*relevant principles to Art 39 are underlined):</p> <p>(a) <u>the primary responsibility for a child's care and protection lies with the</u></p>

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				<p><u>child's family;</u></p> <p>(b) a high priority is to be given to supporting and assisting the family to carry out that primary responsibility in preference to commencing proceedings under Division 2 of Part 5;</p> <p>(c) <u>if a family is not able to meet its responsibilities to the child and the child is at risk, the Secretary may accept those responsibilities.</u></p> <p>Section 8(2) states that in any exercise of powers under this Act in relation to a child:</p> <p>(a) the best interests of the child must be the paramount consideration; and</p> <p>(b) serious consideration must be given to the desirability of:</p> <p>(i) keeping the child within his or her family; and</p> <p>(ii) preserving and strengthening family relationships between the child and the child's guardians and other family members, whether or not the child is to reside within his or her family; and</p> <p>(iii) not withdrawing the child unnecessarily from the child's familiar environment, culture or neighbourhood; and</p> <p>(iv) not interrupting unnecessarily the child's education or employment; and</p> <p>(v) preserving and enhancing the child's sense of ethnic, religious or cultural identity, and making decisions and orders that are consistent with ethnic traditions or religious or cultural values; and</p> <p>(vi) preserving the child's name; and</p> <p>(vii) not subjecting the child to unnecessary, intrusive or repeated assessments; and</p>

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				(c) the powers, wherever practicable and reasonable, must be exercised in a manner that takes into account the views of all persons concerned with the welfare of the child.
			Section 13	<p>Section 13 imposes a duty on an adult who knows, or believes or suspects on reasonable grounds that a child is suffering, has suffered or is likely to suffer abuse or neglect, to take steps to prevent the occurrence or further occurrence of the abuse or neglect.</p> <p>Section 13(2) stipulates that one step the adult may take to prevent the occurrence of abuse or neglect of a child is to inform the Secretary or a Community Based Intake Service of his knowledge, belief or suspicion, and the basis of that knowledge, belief or suspicion.</p>
			Section 14	Section 14 imposes a duty to inform of a knowledge, belief or suspicion of abuse or neglect of a child on certain categories of persons.
			Section 30	Section 30 provides that the Secretary may cause a family group conference to be convened in respect of a child if the Secretary is of the opinion that the child is at risk and the arrangements should be made to secure the child's care and protection.
			Section 31	<p>Section 31 details that the purpose of the family group conference is to provide an opportunity for a child's family and other persons attending the conference to:</p> <p>(a) to make informed recommendations as to the arrangements for best securing the care and protection of the child; or</p> <p>(b) to review those arrangements and make further recommendations in respect of those arrangements from time to time.</p>
			Section 42	Section 42 provides that on application of the Secretary, the Court may make a "care and protection order" if the Court is satisfied that the child is at risk and that a "care and protection order" should be made to secure the care and

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				<p>protection of the child; or that arrangements exist and the child would be likely to suffer significant psychological harm if the arrangements were to be disturbed and it is in the best interest of the child for the arrangements to be incorporated into a "care and protection order."</p> <p>Section 42(4) provides that a "care and protection order" may contain one or more of the following orders:</p> <p>(a) an order requiring the child or a guardian of the child, for a specified period not exceeding 12 months, to do any specified thing or to refrain from doing any specified thing;</p> <p>(b) an order granting custody of the child, for a specified period not exceeding 12 months, to one of a guardian of the child; a member of the child's family; the chief executive officer of a non-Government organisation that provides facilities for the residential care of children, or a person who holds a position similar in nature to that of chief executive officer in such an organisation;</p> <p>(c) an order placing the child, for a specified period not exceeding 12 months, under the guardianship of the Secretary; or one or 2 other persons;</p> <p>(d) an order placing the child, until the child attains 18 years of age, under the guardianship of the Secretary; or one or 2 other persons;</p> <p>(e) an order providing for access to the child;</p> <p>(f) an order providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child;</p> <p>(g) any other order the Court considers appropriate.</p>
			Section 44	Section 44 permits an extension of a "care and protection order" but only for

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			Section 55	<p>up to 3 years.</p> <p>Section 55 provides a list of matters to be taken into consideration when determining what is in the best interest of the child.</p> <p>(a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court considers relevant to the weight it should give to the child's wishes;</p> <p>(b) the nature of the relationship of the child with each of the child's guardians and with other persons;</p> <p>(c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:</p> <p>(i) either of his or her guardians; and</p> <p>(ii) any other child, or other person, with whom he or she has been living;</p> <p>(d) the practical difficulty and expense of a child having contact with a guardian and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with each guardian on a regular basis;</p> <p>(e) the capacity of each guardian, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;</p> <p>(f) the child's maturity, sex, background and culture (including any need to maintain a connection with the lifestyle, culture and traditions of the Aboriginal community) and any other characteristics of the child that the Court considers relevant;</p> <p>(g) the need to protect the child from physical or psychological harm;</p> <p>(h) the attitude to the child, and to the responsibilities of parenthood,</p>

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				<p>demonstrated by each of the child's guardians;</p> <p>(i) any other fact or circumstance that the Court considers relevant.</p>
	<p>Classification (Publication, Films and Computer Games) Enforcement Act 1995</p>	TAS	Section 91	<p>Section 91 makes it an offence if a person has a duty of care in respect of that child and intentionally takes, or fail to take action that could reasonably be expected to result in the child suffering significant harm as a result of physical injury or sexual abuse or the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or the child's physical development or health being significantly harmed.</p> <p>The maximum penalty imposed is a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.</p> <p>Section 91(2) states that proceedings for an offence under <u>subsection (1)</u> may only be brought after consultation with the Secretary.</p>
			Section 71	<p>Section 71 defines a "child" as a person under 18 years of age.</p> <p>Section 71 defines "child exploitation material" as material that describes or depicts, in a way that a reasonable person would regard as being, in all the circumstances, offensive, a person who is or who appears to be under the age of 18 years (a) engaged in sexual activity; or (b) in a sexual context; or (c) as the subject of torture, cruelty or abuse (whether or not in a sexual context);</p>
			Section 72A	<p>Section 72A makes it an offence to make or reproduce child exploitation material; or cause or permit child exploitation material to be made or reproduce or be in any way involved in the making or reproduction of child exploitation material.</p> <p>The maximum penalty is a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 3 years, or both.</p>
			Section 73	<p>Section 73 makes it an offence to procure or invite or attempt to procure or</p>

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				<p>invite a child to be involved in the making of child exploitation material.</p> <p>The maximum penalty is a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 3 years, or both.</p>
			Section 73A	<p>Section 73A makes it an offence to distribute or do anything to facilitate the distribution of child exploitation material.</p> <p>The maximum penalty is a fine not exceeding 300 penalty units or imprisonment for a term not exceeding 3 years, or both.</p>
			Section 74A	<p>Section 74A makes it an offence to possess or with intent, access or attempt to access child exploitation material.</p> <p>The maximum penalty is a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.</p>
	Corrections Act 1997	TAS	Section 25	<p>Section 25 provides that at the request of a prisoner who is a child's parent or guardian, the Director may permit the prisoner's child to live with the prisoner in the prison if the Director is satisfied that –</p> <p>(a) it is in the best interests of the child to live with his or her parent or guardian in the prison; and</p> <p>(b) the management, good order or security of the prison will not be threatened by the child living in the prison.</p> <p>Section 25(2) states that the prisoner is responsible for the safety and care of the prisoner's child while the child lives in the prison.</p> <p>Section 25(3) states that if the Director considers that the child's behaviour is threatening the security or good order of the prison or the child's safety is threatened, the Director may cause the child to be removed from the prison.</p>
Criminal Code Act	TAS	Section 178	Section 178 makes it an offence where any person over the age of 14 years	

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	1924			who, having the custody, care, or control of a child under the age of 14 years, wilfully ill-treats, neglects, abandons, or exposes such child, or causes such child to be ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering or injury to health, is guilty of a crime.
	Family Violence Act 2004	TAS	Section 3	Section 3 defines an "affected child" as a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence
			Section 14	<p>Section 14 provides that a police officer of sergeant rank and above may make a Police Family Violence Order and issue it to a person if the officer is satisfied that the person has committed or is likely to commit a family violence offence.</p> <p>Section 14(3) may require the person to whom it is issued to do any or all of the following:</p> <p>(a) vacate any premises, whether or not that person has a legal or equitable interest in the premises;</p> <p>(b) not enter any premises or only enter premises on certain conditions, whether or not that person has a legal or equitable interest in the premises;</p> <p>(c) surrender any firearm or other weapon;</p> <p>(d) refrain from harassing, threatening, verbally abusing or assaulting an affected person, affected child or other person named in the order;</p> <p><u>(e) not approach, within a specified distance, an affected person, an affected child, other person named in the order or certain premises;</u></p> <p><u>(f) refrain from contacting an affected person, affected child or other person named in the order directly or indirectly or otherwise than under specified conditions.</u></p>

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			Section 15	<p>Section 15 provides that sets out the process of applying for a Family Violence Order to be made to the Court.</p> <p>Section 15(2) provides that such an application may be made by a police officer; an affected person; affected child if the court is satisfied that the child is capable of understanding the nature of the proceedings or any other person to whom leave to apply is granted by a court.</p>
			Section 18	<p>Section 18 sets out the matters to be considered in making a Family Violence Order. In making an FVO, a court –</p> <p>(a) must consider the safety and interests of the person for whose benefit the order is sought and any affected child to be of paramount importance; and</p> <p>(b) must consider whether contact between the person for whose benefit the order is sought, or the person against whom the FVO is to be made, and any child who is a member of the family of either of those persons is relevant to the making of the FVO; and</p> <p>(c) must consider any relevant Family Court order of which the court has been informed.</p>
	Youth Justice Act 1997	TAS	Section 3	Section 3 defines a "youth" as 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.
			Section 4	<p>Section 4 outlines the main objects of the Act as:</p> <p>(a) to provide for the administration of youth justice; and</p> <p>(b) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; and</p> <p>(c) to specify the general principles of youth justice; and</p>

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				<p>(d) to ensure that a youth who has committed an offence is made aware of his or her rights and obligations under the law and of the consequences of contravening the law; and</p> <p>(e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation; and</p> <p>(f) to enhance and reinforce the roles of guardians, families and communities in –</p> <p>(i) minimising the incidence of youth crime; and</p> <p>(ii) punishing and managing youths who have committed offences; and</p> <p>(iii) rehabilitating youths who have committed offences and directing them towards the goal of becoming responsible citizens; and</p> <p>(g) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that is culturally appropriate and recognises and enhances his or her cultural identity; and</p> <p>(h) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that takes into account the youth's social and family background and that enhances the youth's capacity to accept personal responsibility for his or her behaviour.</p>
			Section 5	<p>Section 5 outlines the underlying principles of youth justice as:</p> <p>(1) The powers conferred by this Act are to be directed towards the objectives mentioned in section 4 with proper regard to the following principles:</p> <p>(a) that the youth is to be dealt with, either formally or informally, in a way</p>

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				<p>that encourages the youth to accept responsibility for his or her behaviour;</p> <p>(b) that the youth is not to be treated more severely than an adult would be;</p> <p>(c) that the community is to be protected from illegal behaviour;</p> <p>(d) that the victim of the offence is to be given the opportunity to participate in the process of dealing with the youth as allowed by this Act;</p> <p>(e) guardians are to be encouraged to fulfil their responsibility for the care and supervision of the youth and should be supported in their efforts to fulfil this responsibility;</p> <p>(f) guardians should be involved in determining the appropriate sanction as allowed by this Act;</p> <p>(g) 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;</p> <p>(h) punishment of a youth is to be designed so as to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;</p> <p>(i) punishment of a youth is to be appropriate to the age, maturity and cultural identity of the youth;</p> <p>(j) punishment of a youth is to be appropriate to the previous offending history of the youth.</p> <p>(2) Effect is to be given to the following principles 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>

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				<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 his or her 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>Part 2 - Diverting youths from court system (ss 7 -20)</p>	<p>Section 7 stipulates that the purpose of Part 2 is to "divert, in an appropriate case, a youth who admits committing an offence from the courts' criminal justice system."</p> <p>Sections 8-10 sets out a diversionary procedure to be used by the police, from an informal caution, moral formal proceedings to formal caution.</p> <p>Sections 13 - governs the establishment of a community conference.</p> <p>Section 15 sets out that a community conference will consist of a facilitator, the youth and police, and other invitees to the conference.</p> <p>Section 16 empowers the community conference to impose one or more of the following sanctions:</p> <p>(a) administer a caution against further offending;</p> <p>(b) require the youth to enter into an undertaking to pay compensation for injury suffered by the victim or any other person by reason of the commission of the offence;</p> <p>(c) require the youth to enter into an undertaking to pay compensation for</p>

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				<p>loss or destruction of, or damage to, offence-affected property;</p> <p>(d) require the youth to enter into an undertaking to make restitution of offence-affected property;</p> <p>(e) require the youth to enter into an undertaking to perform a specified period, not exceeding 70 hours, of community service;</p> <p>(f) with the agreement of the victim of the offence, require the youth to enter into an undertaking to apologise to the victim;</p> <p>(g) require the youth to enter into an undertaking to do anything else that may be appropriate in the circumstances of the case.</p> <p>Section 16(2) states that an undertaking may have a duration not exceeding 12 months.</p> <p>Sections 17-19 sets out the procedure of the conference.</p> <p>Section 20 states that the youth may be liable for formal prosecution in certain circumstances.</p> <p>Section 20(1) states that a youth is not liable to be prosecuted for an offence in respect of which a community conference was convened if –</p> <p>(a) the community conference administers a caution against further offending but does not require the youth to enter into an undertaking; or</p> <p>(b) the youth enters into the undertakings required by the community conference and performs the obligations arising from those undertakings.</p> <p>Section 20(2) empowers a police officer to file a complaint before the Court for an offence in respect of which a community conference is convened if –</p> <p>(a) the youth fails to attend the community conference; or</p>

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				<p>(b) the community conference fails to reach a decision; or</p> <p>(c) the youth fails to enter into an undertaking as required by the community conference; or</p> <p>(d) the youth fails to perform the obligations arising from undertakings entered into as required by the community conference.</p> <p>Section 20(3) permits a complaint to be filed under subsection (2) even though a period of limitation relating to the commencement of proceedings for the relevant offence has expired, but the complaint must be filed –</p> <p>(a) if the youth fails to attend the community conference, not more than 2 months after that failure to attend; or</p> <p>(b) if the community conference fails to reach a decision, not more than 2 months after the community conference ends; or</p> <p>(c) if the youth fails to enter into an undertaking as required by the community conference, not more than 2 months after that failure to enter into the undertaking; or</p> <p>(d) if the youth fails to perform an obligation arising from an undertaking, not more than 6 months after the end of the period of the undertaking.</p>
			Section 33A	<p>Section 33A provides that in any proceedings under this Part in relation to a family violence offence the Court may, in addition to the matters referred to in section 33 –</p> <p>(a) order a rehabilitation program assessment of a youth; and</p> <p>(b) direct the youth to submit to that assessment.</p>
			Section 47	Section 47 lists the sentencing options open to the court.

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				<p>Section 47(4) provides that in determining what orders to make under s47(1), the court must have regard to all the circumstance of the cases including:</p> <ul style="list-style-type: none"> (a) the nature of the offence; and (b) the youth's age and any sentences or sanctions previously imposed on the youth by any court or a community conference; and (c) the impact the sentence will have on the youth's chances of rehabilitation generally or finding or retaining employment.
			Section 49	<p>Section 49 stipulates the circumstances in which a conviction must or may or recorded by the Court.</p> <p>Section 49(4) states that in determining whether or not to record a conviction, the Court must have regard to all the circumstances of the case, including:</p> <ul style="list-style-type: none"> (a) the nature of the offence; and (b) the youth's age; and (c) any sentences or sanctions previously imposed on the youth by any court or community conference and any formal cautions previously administered to the youth; and (d) the impact the recording of a conviction will have on the youth's chances of rehabilitation generally or finding or retaining employment.
			Section 99A	<p>Section 99A sets up a process by which the court may invoke to make a youth comply with a rehabilitation program order.</p> <p>Section 99A(1) states that a prescribed person may apply to the Court for an order under subsection (4) if it appears to the prescribed person that a youth</p>

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				<p>has contravened a rehabilitation program order.</p> <p>Section 99A(2) states that a copy of the application and notice of the time and place of the hearing of the application is to be served by the applicant not less than 7 days before the hearing on (a) the youth; and (b) a guardian unless one cannot be found after reasonable inquiry.</p> <p>Section 99A(3) states that the Court may issue a warrant to arrest the youth if –</p> <ul style="list-style-type: none"> (a) the youth fails to appear at the hearing of the application; or (b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful. <p>Section 99A(4) states that if the Court is satisfied that a youth has contravened a rehabilitation program order, the Court may do one or more of the following:</p> <ul style="list-style-type: none"> (a) order the youth to resume undertaking the program; (b) revoke the rehabilitation program order and, where appropriate, any other order made under section 47 and make another order under that section in respect of the offence. <p>Section 99A(5) provides that in determining what order to make under subsection (4), the Court must consider –</p> <ul style="list-style-type: none"> (a) any report on the youth provided by the prescribed person; and (b) the extent to which, and the manner in which, the youth has undertaken the rehabilitation program.

9. Australian Capital Territory

CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION - for ACT

CRC Article Number & Description	Relevant Australian Legislation	Cth/State	Relevant Provisions	Summary/Description of Relevant Provision
<p>ARTICLE 39 (rehabilitation of child victims) States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>	<p>Adoption Act 1993</p>	<p>ACT</p>	<p>Section 5</p>	<p>Section 5 provides that decisions made under this Act in relation to a child or young person, must regard the best interests of the child or young person as the paramount consideration. Considerations as to whether a decisions is in the best interests of the child include, the likely effect of the decision on the child; the views of the child; the physical/emotional/educational needs of the child; the suitability and capacity of the adoptive parents to meet the child's or young person's needs.</p>
			<p>Section 89</p>	<p>Section 89 provides that person who was a parent or guardian of a child but gave their child for adoption, must not take, lead, entice or decoy the child or young person away, or detain the child or young person with intent to deprive the adoptive parents of the custody of the child or young person. The maximum penalty is 500 penalty units or imprisonment for 5 years or both.</p>
			<p>Section 91</p>	<p>Section 91 provides that a person who was a parent or guardian of a child or young person who gave their child up for adoption must not interfere in or influence the upbringing of the child or the relationship between the child or young person and the adoptive parents. The maximum penalty is 500 penalty units or imprisonment for 5 years or both.</p>
	<p>Children and Young People Act 2008</p>	<p>ACT</p>	<p>Section 7</p>	<p>Section 7 provides a comprehensive list of objectives of the Act that includes (*relevant objectives to Art 39 are underlined):</p>

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				<p><u>(a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that:</u></p> <p><u>(i) recognises their right to grow in a safe and stable environment; and</u></p> <p><u>(ii) takes into account the responsibilities of parents, families, the community and the whole of government for them; and</u></p> <p><u>(b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection; and</u></p> <p><u>(c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and</u></p> <p>(d) ensuring that Aboriginal and Torres Strait Islander people are included and participate in:</p> <p>(i) providing for, and promoting, the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people; and</p> <p>(ii) preventing the abuse and neglect of Aboriginal and Torres Strait Islander children and young people; and</p> <p>(iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander young offenders; and</p> <p>(e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people:</p>

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				<p>(i) are centred on the needs of children and young people; and</p> <p>(ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and</p> <p>(iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and</p> <p>(iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and</p> <p>(f) ensuring that young offenders:</p> <p>(i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and</p> <p>(ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and</p> <p>(g) imposing standards that must be complied with for the delivery of services to children and young people; and</p> <p>(h) ensuring the protection of children and young people in employment.</p>
			Section 8	Section 8 provides that decisions made under this Act in relation to a child or young person, must regard the best interests of the child or young person as the paramount consideration.
			Section 11	Section 11 defines a "child" as a person who is under 12 years old.

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			Section 12	Section 12 defines a "young person" as a person who is 12 years old or older, but not yet an adult.
			Section 94	<p>Section 94 outlines the "principles" pertaining to the notion of youth justice. This section states that for the criminal matters chapters, 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:</p> <ul style="list-style-type: none"> 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; b) A child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways 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; 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; 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; f) A child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as

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				<p>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> <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>
			Section 97	Section 97 provides for doctors to be available to youth detainees on at least one occasion a week.
			Sections 99 and 100	Sections 99 and 100 provides that youth detainees to be separated from adult detainees when transported to and from the court and detention centre.
			Section 138	<p>Section 138 provides that detention of children or young persons shall be in accordance with the following principles:</p> <p>(a) to respect and protect the young detainee's human rights;</p> <p>(b) to ensure the young detainee's decent, humane and just treatment;</p> <p>(c) to preclude torture or cruel, inhuman or degrading treatment;</p> <p>(d) to ensure the young detainee is not subject to further punishment (in addition to deprivation of liberty) only because</p>

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				<p>of the conditions of detention;</p> <p>(e) to ensure the young detainee's conditions in detention comply with section 141 (Detention places - minimum living conditions);</p> <p>(f) to promote, as far as practicable, the young detainee's reintegration into society;</p> <p>(g) for a young detainee who is a young offender - to promote, as far as practicable, the young detainee's rehabilitation.</p>
			Section 139	Section 139 extends provisions of s 138 to young remandees.
			Section 144	<p>Section 144 provides expressly the minimum conditions of detention that must be provided to young detainees. To protect the human rights of young detainees in detention at detention places, the director-general must ensure, as far as practicable that conditions at detention places meet at least the following minimum standards:</p> <p>(a) young detainees must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment;</p> <p>(b) young detainees must have access to sufficient suitable clothing that does not degrade or humiliate young detainees;</p> <p>(c) young detainees must have access to suitable facilities for personal hygiene;</p> <p>(d) young detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;</p> <p>(e) young detainees must have reasonable access to the open air</p>

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				<p>and exercise;</p> <p>(f) young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;</p> <p>(g) young detainees must have reasonable opportunities to receive visits from family members, significant people and accredited people;</p> <p>(h) young detainees must have reasonable opportunities to communicate with their lawyers;</p> <p>(i) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;</p> <p>(j) young detainees must have access to suitable health services and health facilities;</p> <p>(k) young detainees must have reasonable opportunities for religious, spiritual and cultural observances.</p>
			Section 171	Section 171 provides that the director-general must make a youth detention policy or operating procedure providing for different treatment of convicted young detainees and non-convicted young detainees. This is focused on the perceived higher rehabilitative chances of young detainees.
			Section 336	<p>Section 336 outlines the "Care and Protection" provisions as follows:</p> <p>(a) Chapter 10 (Care and protection - general);</p> <p>(b) Chapter 11 (Care and protection - reporting, investigating</p>

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				<p>and appraising abuse and neglect);</p> <p>(c) Chapter 12 (Care and protection - voluntary agreements to transfer or share parental responsibility);</p> <p>(d) Chapter 13 (Care and protection and therapeutic protection - emergency situations);</p> <p>(e) Chapter 14 (Care and protection - care and protection orders);</p> <p>(f) Chapter 15 (Care and Protection - director-general has aspect of parental responsibility);</p> <p>(g) Chapter 16 (Care and protection - therapeutic protection of children and young people);</p> <p>(h) Chapter 17 (Care and protection - interstate transfer of orders and proceedings);</p> <p>(i) Chapter 18 (Care and protection - police assistance);</p> <p>(j) Chapter 19 (Care and protection - applying to all proceeding under this Section)</p>
			Section 337-340	Sections 337-350 detail that the "Care and Protection Chapters" will only apply if the person is a child and up until the child becomes an adult.
			Sections 340-348	Sections 340-348 provides definitions and explanations and examples to the words, "neglect," "abuse," "caregiver," and circumstance when there is a risk of neglect or abuse.
			Section 350	Section 350 provides that in making an order under the "Care and Protection Chapters," the decision maker must apply the

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				<p>following principles:</p> <p>(a) the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other family members;</p> <p>(b) priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person;</p> <p>(c) if the child or young person does not live with his or her family because of the operation of this Act - contact with his or her family, and significant people, must be encouraged, if practicable and appropriate;</p> <p>(d) if the child or young person is in need of care and protection and the child's or young person's parents and other family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently) - it is the responsibility of the government to share or take over their responsibility;</p> <p>(e) if the child or young person does not live with the child's or young person's parents because of the operation of this Act - the safety and wellbeing of the child are more important than the interests of the parents;</p> <p>(f) a court should make an order for a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.</p> <p>(2) The care and protection principles must be applied in addition to the principles under section 9 (Principles applying to</p>

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				Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle).
			Section 354-358	Sections 354-358 sets up a framework of mandatory reporting of child abuse, neglect or potential of either, on certain persons, and also a framework of voluntary reporting.
			Part 16.2 - Therapeutic Protection Order	<p>Part 16.2 permits a therapeutic protection order be granted to direct a child or young person to be confined for a period of time and for implementation of a therapeutic protection plan, and to impose any other conditions that the Children Court considers necessary to prevent the child or young person from engaging in harmful conduct. The therapeutic order cannot be longer than 8 weeks in duration (s 550), with a review to be taken every 4 weeks of the order (ss 553-558). An order can be extended for up to 6 months (ss 559-563)</p> <p>Sections 539-542 deals with the application process for such an order; ss 543-548 allows for interim protection orders.</p>
			Part 16.3 - children and young adults in protection order Sections 572-583	<p>A child or young person under a therapeutic protection order must be monitored and supervised (ss 574-575).</p> <p>Managing the child or young person by use of force must be applied only as a last resort, and if it is applied, a medical examination and report must be conducted (ss 579-583)</p>
	Crimes Act 1900	ACT	Section 39	Section 39(1) makes an offence, the ill-treatment or abuse of a child who is in the person's care or the neglect of such a child. The maximum penalty is imprisonment for 2 years or 200 penalty units, or both. Section 39(3) makes an offence, when a person knowingly or recklessly, leaves a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

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	Crimes (Sentence Administration) Act 2005	ACT	Section 320B	Section 320B provides that in sentencing a young offender, regard must be had to youth justice principles as contained in s 94 of the <i>Children and Young People Act 2008</i> .
	Criminal (Sentencing) Act 2005	ACT	Section 133B	Section 133 B defines a young offender as a person who has been convicted or found guilty of an offence by a court and was under 18 years old when the offence was committed.
			Section 133C	Section 133C provides that in sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of that offender and may give more weight to that purpose than it gives to any of the other purposes. Further, when sentencing a young offender, the court must have particular regard to the common law principle of individualised justice.
			Section 133D	Section 133D states that when deciding how a young offender should be sentenced, a court <i>must</i> consider a number of matters, including that offender's culpability; state of development; and past and present family circumstances.
			Section 133G	Section 133G states that when sentencing a young offender the court must ensure that imprisonment is a last resort and for the shortest appropriate term; and must consider making a "combination sentence (imprisonment sentence with a good behaviour order). The court must not sentence a young offender for life.
			Section 133L-133M	Sections 133K-133M allows for the imposition of a good behaviour order on the young offender, and may specify the undertaking of community service work not more than 200 hours.
			Sections 133N-133T	Sections 133N-133T sets out the framework for the imposition of a good behaviour order on the young offender, and for the

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				<p>attachment of education and training conditions to that order.</p> <p>Section 133S states that the education and training condition cannot run more than 3 years.</p>
			Sections 133U-133X	<p>Sections 133N-133T sets out the framework for the imposition of a good behaviour order on the young offender, and for the attachment of supervision conditions.</p> <p>Section 133V provides that the court must include a supervision condition in a good behaviour order for a young offender if the good behaviour order includes a community service condition; rehabilitation program condition or education and training condition.</p> <p>Section 133W states that the supervision conditions cannot run more than 3 years.</p>
			Sections 133Y-133ZD	<p>Sections 133Y-133ZD sets out the framework for accommodation orders (orders that the young offender live a person for a time).</p> <p>Section 133ZC states that an accommodation order cannot run more than 3 years.</p>
			Section 11	Section 11 stipulates that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind
			Section 22	Section 22(3) provides that 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
			Human Rights Act 2005	ACT