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reporting child protection matters





## reporting **child protection** matters

This section provides information on the official and formal processes for the reporting of suspected cases child abuse and neglect in each State and Territory. It includes information on the varying laws and definitions relating to child abuse and neglect and outlines who is compelled to report possible cases under mandatory reporting requirements.

Suspected cases of child abuse and neglect should be reported and it is important that people making reports understand the child protection system. This includes how the system may impact upon the person making the report, the child or children involved and the families involved.

The Aboriginal and Islander Child Care Agencies in each State and Territory are a good source of advice on how the child protection system works in your State or Territory, (see Section E: Directory for contact details).

Finally if making a notification it is important to let the child protection authorities know if you believe the child or children concerned are Aboriginal or Torres Strait Islander. This is important to ensure the appropriate Indigenous organisations, communities and families are consulted about the best interests of the child or children involved.





## Aboriginal and Islander **Child Care Agencies, AICCAs**

### **Development of AICCAs**

The development of the first Aboriginal and Islander Child Care Agencies, AICCAs, commenced in the 1970's as Indigenous communities across Australia sought to prevent the ongoing removal of Aboriginal and Torres Strait Islander children by state welfare authorities and their placement with non-Aboriginal families.

Inspired by the success of Native Americans, in particular the Yakima Indian Nation, in reducing the rate of child removal, Mollie Dyer from the Victorian Aboriginal Legal Service returned to Australia to establish the Victorian Aboriginal Child Care Agency, VACCA. VACCA, the Aboriginal Children's Service in Redfern and South Australia's AICCA soon became models and a source of inspiration for a new way of caring for children at risk of abuse or neglect. The establishment of similar agencies in all other States and Territories soon followed.

There are now agencies operating across Australia, although in many parts of the country and throughout most of NSW there is a great need to develop new AICCAs for communities.

By 1979 the AICCAs, most still operating as voluntary associations, had decided to develop a national organisation to represent and pursue the rights, needs and aspirations of Aboriginal and Torres Strait Islander families and children.

SNAICC was established as an organisation with broad aims and objectives which go beyond child welfare to focus on the rights of Aboriginal and Torres Strait Islander children and families.

### **The role of AICCAs today**

The aim of the AICCAs has always been to support Aboriginal and Torres Strait Islander families to raise happy, healthy, proud, strong children – who will take pride in their cultural heritage and identity.

Whilst the AICCAs are community based organisations and are unique from one another, they typically provide a range of services for communities:

- recruitment and training of Aboriginal and Torres Strait Islander foster carers to support children who need to be placed in out of home care
- parenting and family support programs
- assisting families with referrals to other support services including health, education, domestic violence and legal services
- placement support and supervision for children in foster care, out of home care or kinship care



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- provision of support and assistance to families who have voluntarily taken on the care of other Aboriginal or Torres Strait Islander children from their community or kin
- link up programs for members of the Stolen Generations
- family reunification services for children with experience of out of home care
- court advocacy and support for families in relation to child protection matters in order to determine the best interests of children
- emergency relief and youth accommodation services
- family group homes and short term care for families and children in crisis
- community awareness campaigns on the rights and needs of children and families
- cultural activities and programs for children and families
- activities for NAIDOC and National Aboriginal and Islander Children's Day

Whilst AICCAs may work in all of these areas they are not necessarily funded for all services. Most of the funding provided to AICCAs is from State and Territory governments and the majority of their funding is focussed on the care of children after they have been removed - rather than supporting families to stay together. This includes funding for foster care programs and placement support. Very little funding is provided for general family support, parenting programs or family reunification.

The AICCAs and SNAICC believe that additional funding is required to provide AICCAs with the capacity and resources to assist families and prevent the need for children to be removed in the first place.

### **The role of AICCAs in child protection**

AICCAs are not responsible for investigating reported cases of child abuse or neglect or for making decisions in relation to the removal of Aboriginal and Torres Strait Islander from their families. These decisions are the responsibility of State and Territory community services, human services or welfare departments.

AICCAs main objective is to support families, keep families together, reduce the need for children to be removed and ensure that children are kept close to family – and within their Indigenous community – if they are removed.

The specific role and responsibilities of each AICCA in child protection varies from State to State but typically includes providing community and family input into decisions regarding the welfare of children.

This can include:

- being informed by the State/Territory department of any child abuse or neglect investigations involving Indigenous children and possibly being present to assist families when investigations take place
- providing advice to the relevant court on the best interests of the child before care and protection orders are issued

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- providing advice to the State/Territory department on the most appropriate options for placing a child or children if it has been decided they need to be removed from home for their protection. (Final decisions of where a child is placed is usually the responsibility of the Department.)
- assisting States and Territories to adhere to the Indigenous Child Placement Principle
- supervising and monitoring placements to ensure children are properly cared for when they are in out of home care
- administering foster care payments
- providing on-going advice to the Department on the long term interests of children in care and options for family reunification
- providing policy advice to governments on priorities for improving the child protection system

The role of AICCA does **not** include:

- acting as the contact point for formal notification of possible cases of child abuse or neglect
- investigating possible cases of child abuse or neglect
- issuing care and protection orders
- approving, endorsing or making decisions to remove children from their families





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### Indigenous Child Placement Principle

One of the first and most important changes the AICCAs and SNAICC secured in relation to child protection was the development and agreement by all States and Territories to the Aboriginal Child Placement Principle, now referred to as the Indigenous Child Placement Principle.

The principle ensures that if an indigenous child is removed from home then their placement must adhere to a set of priorities.

As was established during the Human Rights and Equal Opportunity Commission inquiry into the Stolen Generations, the forced removal of Indigenous children and their deliberate assimilation into another community was a form of genocide.

*"Genocide is not only the mass killing of a people. The essence of genocide is acting with the intention to destroy the group, not the extent to which that intention has been achieved. A major intention of forcibly removing Indigenous children was to absorb, merge or assimilate them, so Aborigines as a distinct group would disappear. Authorities sincerely believed assimilation would be in the best interests of the children, but this is irrelevant to a finding that their actions were genocidal."*

The aim of the Indigenous Child Placement Principle is to prevent the culturally destructive practice of Aboriginal and Torres Strait Islander children being removed from home and placed long term with non-Aboriginal families.

The principle replaced the racist policies which gave rise to the Stolen Generations and it sets out the following priorities for the placement of children who have been removed from their families.

Preferred placement of Indigenous children is to be:

- with the child's extended family
- within the child's Indigenous community or group
- with another Indigenous family, where culturally appropriate
- or where no other option is available, with a non-Indigenous family

Where an Aboriginal and Torres Strait Islander child is placed as a last resort with a non-Indigenous family an AICCA may be involved in supervising the placement to ensure that the child is able to maintain links with their people and culture.

All States and Territories have accepted the principle as either law or policy.



## child protection overview

### Legal responsibility for child protection

Child protection is the legal responsibility of the community services department in each State and Territory. Children who come into contact with the departments for protective reasons include those:

- who have been or are being abused, neglected or otherwise harmed; or
- whose parents cannot provide adequate care or protection

The community services departments provide assistance to these children and their families through the provision of – or referral to – a wide range of services. Some of these services are targeted specifically at children in need of protection (and their families); others are available to a wider section of the population and attempt to deal with a broad range of issues or problems.

### Reporting child abuse and neglect

Where people are aware of situations in which Indigenous children are being abused, neglected or may be the direct or indirect victims of family violence, they have an obligation to act. Not reporting or responding to possible cases of child abuse and neglect leaves children at risk of exposure to harm and abuse.

As outlined throughout this handbook there are many ways in which you may respond, including notifying the relevant State/Territory department. Refer to page 89 for a list of the contact details of the respective State and Territory child protection authorities.

Speaking in a confidential manner without identifying the actual individuals involved with an AICCA or trusted family and friends may be an important first step. Talking about your concerns is likely to be of benefit as it will assist you to make the right decision about how to respond. Refer to page 90 for a nation-wide list of AICCA services.

*Information for this section has been reproduced from the Australian Institute of Health and Welfare publication, 'Child Protection Australia 1999-00'; AIHW 2001, AIHW Cat no CWS 13*

*Full copies of the AIHW reports on child welfare and child protection are available from the AIHW website at <http://www.aihw.gov.au>*

*SNAICC gratefully acknowledges the AIHW*

Photo: SNAICC

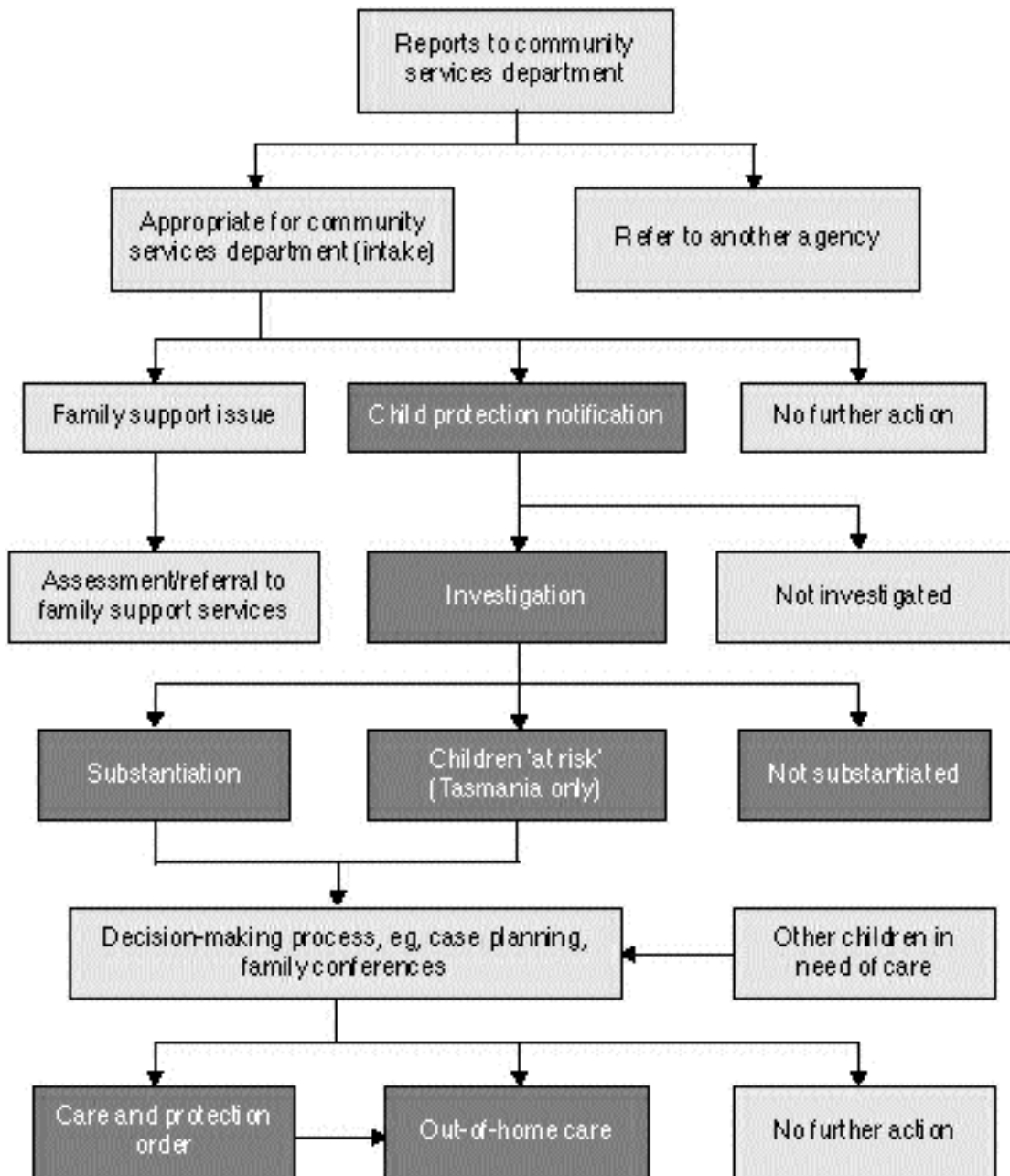


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## The Child Protection Process

Although each jurisdiction has its own legislation, policies and practices in relation to child protection, the processes used to protect children are broadly similar.

The following diagram illustrates a simplified version of the main processes in the child protection system (adapted from AIHW, 2001).



Note: Family support services can be provided at any point in the process. A child may also be placed on a care and protection order or be taken into out-of-home care at any point. Shaded boxes are items for which national data are collected.



## Reports to Departments

Children who are seen to be in need of protection can come into contact with the community services department through a number of avenues.

These include reports of concerns about a child made by someone in the community, by a professional mandated to report suspected abuse and neglect, or by an organisation that has contact with the family or child.

The child, his or hers parent(s) or another relative may also contact the department seeking assistance. These reports may relate to abuse or neglect or to broader family concerns such as economic problems or social isolation.

Reports to the department are assessed to determine if the matter they relate to should be dealt with by a community services department or referred to another agency. Those reports that are appropriate for the community services department are further assessed to determine if any further action is required.

Reports requiring further action will generally be classified as either a family support issue or a child protection notification, although how reports are classified varies across jurisdiction.

A range of factors are taken into account by departmental officers in deciding whether a report will be classified as a child protection notification. Those reports classified as a family support issue will be further assessed and may be referred to family support services.

Child protection notifications are dealt with through a separate process.

## Notifications, investigations and substantiations

A child protection notification is assessed by the department to determine whether it requires an investigation; whether it should be dealt with by other means, such as referral to other organisations or to a family support services; or whether no further protective action is necessary or possible.

An investigation is the process whereby the community services department obtains more detailed information about a child who is the subject of a notification, and makes an assessment of the degree of harm for the child.

After an investigation has been finalised, a notification is classified as **substantiated** or as **not substantiated**. A notification will be substantiated where it is concluded after investigation that the child has been, is being, or is likely to be abused, neglected or otherwise harmed.

States and Territories differ in what they actually substantiate. Some jurisdictions substantiate situations where child abuse and neglect has occurred or is likely to occur, while others substantiate situations where the child has been harmed or is at risk of harm and the parents have failed to act to protect the child.

In Tasmania the category **child at risk** is also used. This refers to situations where the notification is not substantiated, but where there are reasonable grounds for suspecting



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the possibility of previous or future abuse or neglect and it is considered that continued departmental involvement is warranted.

Before 1998/99, **child protection** notifications, investigations and substantiations were referred to as notifications, investigations and substantiations of **child abuse and neglect**. The new terms were adopted to recognise that the focus of child protection in most jurisdictions has shifted away from the identification and investigation of narrowly defined incidents referred to as child abuse and neglect towards the identification and investigation of actual harm to the child, and on the child's protective needs. The shift has been away from the actions of the parents or guardians to the outcomes for the child.

### **The role of the Children's Court**

In most States, and in the Australian Capital Territory, applications for care and protection orders by the relevant community services department are made to the Children's Court. In South Australia, applications are made to the Youth Court, and in the Northern Territory to the Family Matters Court.

At any point in the process the community services department has the authority to apply to the relevant Court to place the child on a care and protection order. Resource to the court is usually a last resort and is used in situations where supervision and counselling are resisted by the family, where other avenues for the resolution of the situation have been exhausted, or where removal of a child from home into out-of-home care requires legal authorisation. In some jurisdictions, for example, all children who are placed in out-of-home care must be on an order of some kind.

Children can also be placed on a care and protection order or in out-of-home care for reasons other than child abuse and neglect, for example, situations where conflict is such that 'time out' is needed, or a child is a danger to his or herself, or where the parents are ill and unable to care for the child.

### **Different types of care and protection orders**

There are a number of different types of care and protection orders and these have been grouped into the following three categories for this report.

#### **1. Finalised Guardianship or Custody Orders/ Administrative Arrangements**

Finalised Guardianship orders involve the transfer of legal guardianship to an authorised department, with the head of the State or Territory community services department usually becoming the guardian of the child.

By their nature, these orders involve considerable intervention in the child's life and that of the child's family, and are applied only as a last resort. Guardianship orders mean guardian responsibility for the long term welfare of the child (for example, regarding the child's education, health, religion, accommodation and financial matters). They do not necessarily grant the right to daily care and control of the child. These rights are granted under custody orders.



In most jurisdictions, however, guardianship orders involve the transfer of custody of the child as well as guardianship of the child to the State. For example, in New South Wales, under a guardianship order the State becomes Custodian of the child as well as guardian.

Custody orders refer to care and protection orders that place children in the custody of a third party, including an agency. These orders usually involve child protection staff (or the person who has been granted custody of the child) being responsible for the day-to-day requirements of the child while the parent retains guardianship. Custody alone does not bestow any responsibility regarding the long term welfare of the child.

This category also includes those administrative arrangements with the community services departments which have the same effect as a court order of transferring custody or guardianship. These are legal arrangements, but not all States and Territories have such provisions in their legislation.

## **2. Finalised Supervisory and Other Finalised Orders.**

This category includes finalised supervisory and other finalised court orders that give the department some responsibility for the child's welfare.

Under these types of orders the department supervises the level of care provided to the child. Such care is generally provided by parents, and the guardianship of the custody of the child is not affected. They are therefore less interventionist than guardianship or custody orders.

This category also includes undertakings which are voluntary orders regarding the care or conduct of the child. These orders must be agreed to by the child, and the child's parents or the person with whom the child is living.

## **3. Interim and Temporary Orders.**

Interim and Temporary orders generally provide for a limited period of supervision and/or placement of the child. These types of orders vary considerably between States and Territories.

## **State differences**

There are large variations across the States and Territories in the types of care and protection orders that can be issued.

Detailed information on the precise types of care and protection orders which are applicable in your State and Territory should be obtained from your local AICCA or your State/Territory community services/welfare department. Refer to the Directory section for contact details.



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### **mandatory reporting** of alleged child abuse or neglect

*The Information for this section has been primarily contributed by the National Children's and Youth Law Centre*

#### **The National Children's and Youth Law Centre**

The National Children's and Youth Law Centre (NCYLC) remains the only Australian national community legal centre working exclusively for, and with children and young people. It is a joint project of the University of New South Wales, the University of Sydney and the Public Interest Advocacy Centre, initially funded by the Australian Youth Foundation.

The intention of the centre is to provide advocacy, education and information services for Australia's children and young people. The touchstone of the centre's efforts is the United Nations Convention on the Rights of the Child, and its mandate in promoting understanding and adherence to children's rights as fundamental human rights. A natural

corollary to these developments is the ability to hold governments accountable in meeting both the spirit and the letter of Australia's commitment to the Convention.

The centre promotes the rights and interests of all Australian children and young people by advocacy, lobbying, test case litigation, information collection and dissemination, and research. Since its inception in 1993, the NCYLC has made over 150 public submissions on law and policy affecting children and young people and has handled over 10,000 inquiries.

The centre seeks to empower children and young people, providing them with the informational and support tools necessary to assist them to make informed personal choices. The NCYLC espouse that all levels of society realise that the views of children and young people are important, requiring protection and freedom.

As Australia's only national community legal centre for children and young people, the NCYLC is a frontline for children's issues. In response to this position, the NCYLC actively undertake community legal education, policy work, casework and test case litigation aimed at increasing young people's access to legal assistance and improving the legal status of children and young people in Australia.



Photo: Kenny Bedford



## Background to mandatory reporting

Mandatory refers to the legal obligation on certain professionals to report to either police or child protection authorities, concerns, suspicions or beliefs that certain children with whom they have contact may be suffering some form of abuse, mistreatment or neglect.

This section provides a brief guide to workers, who because of their professions may come into contact with children who may suffer some form of abuse or neglect, as to their legal obligations regarding mandatory reporting in each State and Territory.

Mandatory reporting has been the focus of significant debate in Australia. The argument to impose mandatory reporting requirements rests on the fact that some people, by virtue of their occupations, have special knowledge about the welfare of children. Advocates of mandatory reporting assert that it is likely to increase the protection available to children as part of the larger scheme of child abuse prevention.

All States and Territories except Western Australia have legislation mandating reporting of child maltreatment, abuse or neglect to community service departments. In most States and Territories, only a few professions involved with children are mandated to report, although in the Northern Territory anyone who has reason to believe that a child is being abused must report it to the authorities. Whilst Western Australia does not have any mandatory reporting, it has protocols or guidelines for certain types of professionals to report maltreatment.

Generally, those mandated to report are the people who, in the course of their profession, see children on a regular basis, such as teachers, doctors, health and welfare workers.



Photo: Hilary Veale

To lodge a report, the mandated person needs to either suspect, believe, or know that any form of violence is occurring, or is likely to occur. Then, they must share the details with the relevant government department. The necessary corollary to the reporting requirements is protection for those who share their fears. Those who divulge concerns of violence against children are protected from criminal and civil liability if the report is based on reasonable grounds. If a notifier's identity were disclosed automatically, the resultant lack of trust in that person would prevent mandated parties from being in a position to access information about children in the future. It is crucial to preserve an element of anonymity except in exceptional circumstances, in order to maintain an environment conducive to monitoring children's domestic situations.

Under no legislation is it necessary to prove that the abuse occurred, is occurring, or will occur. It is sufficient that the notifier entertain either suspicion or belief depending on the details of the reporting requirements of the State/Territory.



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## Who is mandated to report?

Reports of actual or alleged child maltreatment **must** be made by certain classes of people to their assigned child protection authority (listed page 89). However, if there is an immediate and life-threatening concern that cannot be dealt with in time by the respective authority **call 000 and report the situation as an emergency.**

STATE/TERRITORY	MANDATED PARTIES
AUSTRALIAN CAPITAL TERRITORY	Doctors, dentists, nurses, police officers, teachers, school counsellors, public servants working in the child welfare field and licensed child care providers
NEW SOUTH WALES	Medical practitioners, principals, deputy principals, teachers via their principals, school social workers and counsellors, police and Department of Health workers (the latter, under their own departmental guidelines)
NORTHERN TERRITORY	Any person
QUEENSLAND	Medical practitioners, school principals and teachers, authorised officer, officer or employee of the department involved in the administration of the Child Protection Act 1999, employee of a licensed care service
SOUTH AUSTRALIA	Medical practitioners, nurses, dentists, psychologists, police, probation officers, social workers, teachers, family day care providers, and employees of, or volunteers in, government departments, agencies or local government or non-government agencies that provide health, welfare, education, child care or residential services wholly or partly for children.
TASMANIA	Medical practitioners, registered nurses, probation officers, child welfare officers, school principals, kindergarten teachers, welfare officers appointed under the Drug and Alcohol Dependency Act 1968, guidance officers and psychologists.
VICTORIA	Doctors, nurses, police, primary and secondary school teachers, youth and welfare workers, and other workers in related community and welfare services fields
WESTERN AUSTRALIA	Any person may report their concern, although there are no mandatory reporting requirements for any professionals/individuals. The WA system is based on there being a duty of care owed by those involved in the provision of health, welfare and police services, which provides for a moral duty to report any concerns. There are no guidelines outlining the reporting requirements and protections. Assistance and advice is available from the Family and Children's Service section of the Department of Community Development.



Photo: Hilary Veale



## Do I tell the family?

There is no obligation to inform the child's family about the report. However, there are several reasons why this might be better for the child and your on-going relationship with the family.

- Many families are shocked when they first hear of the notification, and often respond by trying to guess the notifier. Whether they guess correctly or incorrectly, there is likely to be a sense of betrayal. It is found that the relationship with the client is more likely to be saved if the intention to notify and the reasons for doing so are discussed.
- Protection of the child is paramount. It is important to ensure the child is not exposed to an increased risk of harm by warning the offender or family members of the report. Also, notification might jeopardise your safety, which is clearly inadvisable.
- Not all matters will be investigated; it is pointless causing undue distress by telling the family, when no action is likely to be taken.
- If allegations are serious and possibly criminal, the evidence may become contaminated by your intervention in this way.

Therefore it is recommended that you contact the relevant community service department before making any decision to inform the family of the notification.

## When must I make a report?

- Reports of alleged child maltreatment must be made to the relevant department as soon as possible.
- The grounds differ between the States and Territories in their requirements either for **belief, suspicion** or **knowledge** of abuse.
- The basis for the report is the same in all States and Territories, in that they must all be founded on **reasonable grounds**<sup>2</sup>.
- In all States and Territories (except the Northern Territory) the suspicion, belief or knowledge to be reported is that which arises as a result of carrying out **official duties**, rather than information gathered from one's private life.
- In each case the circumstances justifying the report will be for the protection of the child based on maltreatment that has already occurred, is still occurring or is likely to occur in the future. There are also a range of penalties for failing to report concerns, or where concerns are not reported in good faith<sup>3</sup>.

<sup>2</sup> See page 77, **Reasonable Grounds**

<sup>3</sup> In Queensland, a mandated notifier is excused from the duty to report where it would be self-incriminating.



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STATE/TERRITORY	GROUNDINGS FOR NOTIFICATION	PENALTY FOR NOT REPORTING
<b>Australian Capital Territory</b>	Suspicion	50 penalty points and/or up to 6 months imprisonment
<b>New South Wales</b>	Suspicion	200 penalty units
<b>Northern Territory</b>	Belief	\$500 fine
<b>Queensland</b>	Suspicion (regarding children in residential care only)	20 penalty points
<b>South Australia</b>	Suspicion	\$2,500 fine
<b>Tasmania</b>	Belief / Suspicion / Knowledge	Fine not exceeding 20 penalty points
<b>Victoria</b>	Belief	\$1,000 fine

- Suspicion means that you think that it is more likely than not, that the child has been, or is likely to be maltreated.
- Belief means that you should conclude, based on reasonable grounds, that the child has been or is likely to be maltreated.
- Knowledge means you have first hand details from personal experience or information from the child that maltreatment has or is likely to occur.

## What must I report?

STATE/TERRITORY	MALTREATMENT TO BE REPORTED
Australian Capital Territory	Sexual abuse or non-accidental physical injury
New South Wales	Physical/psychological needs are not being met, medical care is not provided, physical or sexual abuse or ill-treatment, the child lives in a house where there has been domestic violence and as a result the child is at serious risk of physical/psychological harm
Northern Territory	Maltreatment
Queensland	Physical, psychological, emotional abuse or neglect, sexual abuse or exploitation
South Australia	Murder, manslaughter, injury, abuse, neglect and any statement of the observations, information, opinions upon which the suspicion is based
Tasmania	Abuse or neglect
Victoria	Sexual and physical abuse, although emotional abuse or neglect are only subject to voluntary reporting



Photo: Hilary Veale



## What are 'reasonable grounds'?

- Reasonable grounds relate to the foundation of the report made to the relevant department.
- The basis of any report must stem from information derived from your own observations of the child's physical condition or behaviour, something that the child might tell you, or information gained from any other person.
- In order to report any concerns you might have, there is a need to recognise and understand abuse and neglect. In most situations, abuse is not an isolated event, but a pattern of behaviour occurring over a period of time.
- Abuse falls into several categories: physical, emotional, sexual and neglect. Although each is independent, children may suffer a combination of these categories.
- There are an array of indicators providing insight into possible abuse. These are outlined in Sections A, B and C.

## What happens next?

### Investigations

Not every report will be investigated. The critical factors in deciding whether a matter will be investigated are that:

- the alleged incidents have caused serious harm to the child;
- the child is likely to suffer further harm without the intervention of the statutory authority; and
- there are sufficient resources available to ensure that the matter can be fully and properly investigated. Investigations may be delayed until such time as adequate resources become available.

## What protection do I have?

### Confidentiality and privacy

- Whilst confidentiality and privacy require protection, but they must not override the safety of children.
- It is no defence for failure to report that "it was more important to protect client confidentiality."
- However, it is necessary to respect the privacy of the child and family, so sharing of information should be strictly on a **need to know** basis.
- Notification made to the relevant department in compliance with the reasonable grounds for making the report in **good faith**<sup>4</sup>, and in all **honesty**<sup>5</sup>, will not incur civil or criminal liability, and will not amount to a breach of confidence, professional conduct, etiquette or ethics.

<sup>4</sup> Made with the intention that the child be protected from harm without ulterior motive

<sup>5</sup> required in Queensland



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## Disclosure of Notifier's Identity

- It is not standard practice of any State or Territory to seek the identity of the person who made the report, thereby providing anonymity to the notifier.
- However, there are certain circumstances in the States and Territories where the identity of the notifier may be disclosed, which are outlined below.

STATE/TERRITORY	GROUNDS FOR DISCLOSURE	PENALTY FOR UNAUTHORISED DISCLOSURE
Australian Capital Territory	Notifier gives permission  Court deems the identity to be of importance to proceedings.	No penalty provided
New South Wales	Reports may be made anonymously; thus there might not be an identity to disclose. However, if identity may be deduced it may be disclosed  Notifier consents  Court deems the evidence to be of critical importance to the proceedings and omission would prejudice the administration of justice	No penalty provided
Northern Territory	No legislative provision	No penalty provided
Queensland	In the course of another performing functions under the Act <sup>6</sup> /welfare law  To a Parliamentary Commission for Administrative Investigations  To a Commissioner under the Act <sup>7</sup>  Evidence given in legal proceedings with the prior permission of the court.  Permission will be granted if the identity is crucial to proceedings and there is a compelling reason in the public interest, or the notifier consents	No penalty provided

6 *Child Protection Act 1999*

7 *Commission for Child and Young Persons Act 2000*

8 *Children, Young Persons and their Families Act 1997*

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STATE/TERRITORY	GROUNDS FOR DISCLOSURE	PENALTY FOR UNAUTHORISED DISCLOSURE
South Australia	<p>In the course of official duties of another person performing official duties</p> <p>Notifier gives permission</p> <p>Evidence adduced with the court's permission, who must be satisfied that the evidence is critical to the administration of justice In the course of official duties under the Act to another person acting in the course of their official duties</p>	\$5,000
Tasmania	<p>Notifier gives permission</p> <p>Court deems the evidence to be of critical importance to the proceedings and omission would prejudice the administration of justice. Notifier chooses to inform the family</p>	Fine not exceeding 40 penalty points and/or for no longer than 12 months
Victoria	<p>Notifier gives permission in writing</p> <p>Court decides it is required to ensure the safety/well being of the child</p> <p>Court decides it is in the interests of justice.</p>	10 penalty units

## Note

- It is recommended that you ensure your clients are aware of the mandatory reporting requirements from the outset, so they understand the limits of your confidentiality and responsibilities.
- It is not defense to the mandatory reporting rules that it breaches client confidentiality, as protection is more important than confidence



## reporting child protection matters

### child protection and mandatory reporting legislation

#### List of applicable legislation from each State/Territory

##### **Commonwealth**

Family Law Act 1975

##### **Australian Capital Territory**

Children's Services Act 1986

Children and Young People Act 1999

##### **New South Wales**

Children (Care and Protection) Act 1987

Children and Young Persons (Care and Protection) Act 1998

##### **Northern Territory**

Community Welfare Act 1983

##### **Queensland**

Child Protection Act 1999

Health Act 1937

##### **South Australia**

Family and Community Services Act 1972

Children's Protection Act 1993

##### **Tasmania**

Child Welfare Act 1960

Child Protection Act 1974

Child Protection Amendments Act 1986, 1987, 1991

Alcohol and Drug Dependency Act 1968

##### **Victoria**

Children and Young Persons Act 1989

##### **Western Australia**

Child Welfare Act 1947

Community Services Act 1972

#### Legislative definitions of 'in need of care and protection'

Each State and Territory has legislation defining in what circumstances a child is considered to be 'in need of care and protection'.

The relevant section of legislation from each State and Territory is included below.

Readers are advised that legislation is almost constantly under review and as such subject to change. Amendments to legislation in NSW to add in additional requirements for the long term placement of children were under consideration at the time this material was going to print.

Up to date legislation for each State and Territory should be available from the website of the Department responsible for child protection in each State and Territory, see resource directory for details.





## **New South Wales**

In New South Wales, a child is defined under section 10, subsection (1) in the Children (Care and Protection) Act 1987 as being in need of care if:

- (a) adequate provision is not being made, or is not likely to be made, for the child's care; or
- (b) the child is being, or is likely to be, abused; or
- (c) there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

Section 10, subsection (2) of the Act also states that a child who is residing in a non-government children's home is in need of care if (without limiting the generality of subsection 1):

- (a) the child has been residing in the home for a period of 12 months or more; and
- (b) there has been no substantial contact during that period between the child and:
  - any of the child's parents; or
  - any person in whose care the child was immediately before the child began residing in the home.

Section 10, subsection (3) of the Act states that a child is in need of care if (without limiting the generality of subsection 1):

- (a) the child is under the age of 6 months; and
- (b) the child is in the care of a person who is fostering the child in contravention of Section 42 (which deals with unauthorised fostering); and
- (c) it appears that the person may continue to foster the child in contravention of that section.

## **Victoria**

In Victoria, section 63 of the Children and Young Persons Act 1989 indicates that a child is in need of protection if any of the following grounds exist:

- (a) the child has been abandoned and after reasonable inquiries the parent(s) cannot be found, and no other suitable person can be found who is willing and able to care for the child;
- (b) the child's parent(s) are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type;
- (d) the child has suffered, or is likely to suffer, emotional or psychological harm of such kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parent(s) have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange, or allow the provision of, basic care or effective medical, surgical or other remedial care.

## **Queensland**

In Queensland, sections 9 and 10 of the Child Protection Act 1999 (introduced in March 2000) define a child 'in need of protection' as a child who:

- (a) has suffered harm, is suffering harm or has an unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from harm.



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'Parent' is defined broadly to include persons 'having or exercising parental responsibility for the child' and includes a person who, under Aboriginal or Torres Strait Islander tradition or custom, is regarded as a parent of the child.

'Harm' is defined as 'any detrimental effect of significant nature on the child'.

### Western Australia

In Western Australia, a 'child in need of care and protection' is defined in the Child Welfare Act 1947 to include a child who:

- (a) has no sufficient means of subsistence apparent to the court and whose near relatives are, in the opinion of the court, in indigent circumstances or are otherwise unable or unwilling to support the child, or are dead, or are unknown, or cannot be found, or are out of the jurisdiction, or are in the custody of the law;
- (b) has been placed in a subsidised facility and whose near relatives have not contributed regularly towards the maintenance of the child;
- (c) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitually under the influence of alcohol or drugs;
- (d) is under the guardianship or in the custody of a person whom the court considers is unfit to have that guardianship or custody;
- (e) is not being maintained properly or at all by a near relative, or is deserted;
- (f) is found in a place where any drug or prohibited plant is used and is in the opinion of the court in need of care and protection by reason thereof;
- (g) being under the age of 14 years is employed or engaged in any circus, travelling show, acrobatic entertainment, or exhibition by which his life, health, welfare or safety is likely to be lost, prejudiced or endangered;
- (h) is unlawfully engaged in street trading;
- (i) is ill-treated, or suffers injuries apparently resulting from ill-treatment;
- (j) lives under conditions which indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
- (k) is living under such conditions, or is found in such circumstances, or behaves in such a manner, as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy.

### South Australia

In South Australia, under the Children's Protection Act 1993, an application may be made to the Youth Court when the Minister is of the opinion that:

- (a) the child is at risk and an order should be made to secure the child's care and protection; or
- (b) disruption of existing arrangements for the child would be likely to cause the child psychological injury and it would be in the best interest of the child for the arrangement to be the subject of a care and protection order.

For the purposes of the Act, a child is at risk if:

- (a) the child has been, or is being, abused or neglected; or
- (b) a person with whom the child resides (whether a guardian of the child or not):
  - (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (c) the guardians of the child:
  - (i) are unable to maintain the child, or are unable to exercise adequate supervision and control over the child; or
  - (ii) are unwilling to maintain the child, or are unwilling to exercise adequate supervision and control over the child; or

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- (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
- (d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
- (e) the child is under 15 years of age and of no fixed address.

The Children's Protection Act 1993 also covers the practice of female genital mutilation

For the purposes of the Act the following definitions of female genital mutilation are used: Under section 26A(1) female genital mutilation means:

- (a) clitoridectomy; or
- (b) excision of any other part of the female genital organs; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genital organs, but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose.

Under section 26B(1) on the protection of children at risk of genital mutilation: if the Court is satisfied that there are reasonable grounds to suspect that the child may be at risk of female genital mutilation, the Court may make orders for the protection of the child, for example, preventing a person from taking the child from the State, or requiring that the child's passport be held by the Court for a period specified in the order or until further order or providing for periodic examination of the child to ensure that the child is not subject to female genital mutilation.

Part 5 of the Children's Protection Act also states that family care meetings should be convened in respect of the child 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 cannot make an application for an order granting custody of the child or placing the child under guardianship, before a family care meeting has been held unless satisfied that:

- (a) it has not been possible to hold a meeting despite reasonable endeavours to do so; or
- (b) an order should be made without delay; or
- (c) the guardians of the child consent to the making of the application; or
- (d) there is another good reason to do so.

The department will consider taking court action for a care and protection order only when no other intervention can safely protect a child who is at risk by definition of the Act. There are powers which the Youth Court may exercise when it finds that a child is in need of care and protection.

New care and protection orders tend to be no longer than 12 months, although a second or subsequent order can be granted to complete a reunification process. The child may then be placed under the guardianship of the Minister or such other person or persons the Court thinks appropriate, until 18 years of age.

## Tasmania

In Tasmania, there are two Acts that are relevant to child protection.

The Child Welfare Act 1960 describes various circumstances in which a child may be in need of care and protection, as a result of neglect or being beyond the care or control of the parent with whom the child is living.

A neglected child is a child:

- (a) who, having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is in need of care and protection, to secure that they are properly cared for or that they are prevented from falling into bad associations or from being exposed to moral danger;
- (b) who is beyond the control of the parents or guardians with whom they are living;
- (c) who associates or lives with a person who is, or is reputed to be, an habitual thief, or a drunkard, or a prostitute or with a person who has no apparent lawful means of support;
- (d) who is found wandering without any settled place of abode, or without visible means of subsistence, or begging or receiving alms, or loitering for the purpose of so begging or receiving alms;



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- (e) who is found in a brothel or a place reputed to be used as a brothel or in a place where opium or any preparation thereof is smoked;
- (f) who, being a female, solicits, importunes, or accosts any person for immoral purposes;
- (g) who, being a child who has not attained the age of 16 years in respect of whom there have been at least two convictions under section 9 of the Education Act 1932 does not, without lawful excuse, attend school regularly;
- (h) who dwells with, or in the same house as, a person suffering from venereal disease or from tuberculosis in conditions that are dangerous to their health.

Proper care and guardianship shall be deemed not to be exercised in respect of the child if they are not provided with necessary food, lodging, clothing, medical aid, or nursing, or if they are neglected, ill-treated or exposed by their parent or guardian.

Under the Child Protection Act 1974 a child may be placed under a child protection order if it appears to a magistrate that the child may have suffered abuse or that there may be a substantial risk that the child will suffer abuse.

Under the Child Protection Amendment Act 1986, a magistrate who is not in a position to decide whether there may be a substantial risk that the child may suffer abuse can make a temporary child protection order.

A child is taken to suffer abuse if:

- (a) whether by act or omission, intentionally or by default, any person:
  - (i) inflicts on the child a physical injury causing temporary or permanent disfigurement or serious pain; or by any means subjects the child to an impairment, either temporary or permanent, of a bodily function or of the normal reserve or flexibility of a bodily function (for example, administering drugs or alcohol); or
  - (ii) neglects, or interferes with the physical, nutritional, mental or emotional wellbeing of the child to such an extent that the child suffers, or is likely to suffer, psychological damage or impairment; or the emotional or intellectual development of the child is, or is likely to be, endangered; or the child fails to grow at a rate that would otherwise be regarded as normal for that child;
- (b) any person causes the child to engage in, or be subjected to, sexual activity; or
- (c) the child is, with or without the consent of the child or of the parent, guardian or other person having the custody, care or control of the child, engaged in, or subjected to, sexual activity that is solely or principally for the sexual gratification of any other person; or is in whole or in part the subject of, or included among the matters portrayed in, any printed matter, photograph, recording, film, video tape, exhibition, or entertainment; or is in any other manner exploited.

In Tasmania all reports to the Department made as a result of concerns about abuse and neglect, as defined by the two Acts, are received by an Intake Officer and followed up with an initial assessment as to whether it is child harm/maltreatment or a child and family concern. The resultant classification determines any action.

### **Australian Capital Territory**

In the Australian Capital Territory the Children's Services Act 1986 states that a child is in need of care and protection if:

- (a) the child has been physically injured (other than by accident) or has been sexually abused by one of the child's parents or by a member of the household, or there is a likelihood that the child will suffer such physical injury or sexual abuse;
- (b) the child has been physically injured (other than by accident) or has been sexually abused by a person other than a parent or by a member of the household and there is a likelihood that the child will suffer such physical injury or sexual abuse and the parents are unable or unwilling to protect the child from the injury or abuse;
- (c) by reason of the circumstances in which the child is living, has lived or is reasonably likely to live, or in which the child is found, the health of the child has been, or is likely to be, impaired, or the child has suffered, or is likely to suffer, psychological damage of such a kind that their emotional or intellectual development is, or will be, endangered;

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- (d) the child is engaged in behaviour that is, or is likely to be, harmful and the parents or guardians are unable or unwilling to prevent the child from engaging in that behaviour;
- (e) there is no appropriate person to care for the child because the child has been abandoned; the child's parents or guardians cannot, after reasonable enquiries have been made, be found; or the child's parents are dead and the child has no guardians;
- (f) there is serious incompatibility between the child and one of their parents or guardians; or
- (g) the child is required by law to attend school and is persistently failing to do so and the failure is, or is likely to be, harmful to the child.

The Act states that in the application of the Act an authorised person, the Community Advocate or the Court shall have regard to the degree of injury, abuse, impairment, likelihood, incompatibility or failure and shall disregard any of those things that, in the circumstances, appears to be not sufficiently serious or substantial to justify action.

## Northern Territory

In the Northern Territory, section 4(2) of the Community Welfare Act 1983 states that a child is in need of care where:

- (a) the parents, guardian/person having the custody have abandoned the child and cannot, after reasonable inquiry, be found; or
- (b) the parents, guardian/person having the custody are unwilling or unable to maintain the child; or
- (c) the child has suffered maltreatment; or
- (d) the child is not subject to effective control and is engaging in conduct which constitutes a serious danger to their health or safety; or
- (e) being excused from criminal responsibility under section 38 of the Criminal Code (being under 10 years of age), the child has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community, measured by commonly accepted community standards, as to warrant action under this Act for the maintenance of those standards.

For the purpose of the Community Welfare Act 1983, a child shall be taken to have suffered maltreatment where they have suffered or are at substantial risk of suffering:

- (a) a physical injury causing temporary or permanent disfigurement or serious pain or impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of the child, or where there is substantial risk of the child suffering such an injury or impairment;
- (b) serious emotional or intellectual impairment evident by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which the child belongs, whether a result of physical surroundings, nutritional or other deprivation, or the emotional or social environment in which the child is living, or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;
- (c) serious physical impairment evidenced by severe bodily malfunctioning, whether a result of the child's physical surroundings, nutritional or other deprivation, or the emotional or social environment in which the child is living, or where there is a substantial risk that such surroundings, deprivation or environment will cause such impairment;
- (d) sexual abuse or exploitation, and the child's parents, guardians or persons having custody of the child are unable or unwilling to protect them from such abuse or exploitation; or
- (e) female genital mutilation, where a female child shall be taken to have suffered female genital mutilation where she:
  - (i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or
  - (ii) has been taken, or there is substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.



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## Age of Consent

There are considerable differences between States and Territories in relation to the age of consent for sex and for homosexual sex and heterosexual sex. The following is a summary of the laws in each State and Territory.

STATE/TERRITORY	HETEROSEXUAL		HOMOSEXUAL	
	FEMALES	MALES	FEMALES	MALES
Australian Capital Territory	16	16	16	16
	<b>Other Considerations:</b> The law in the ACT is the same for heterosexual sex and homosexual sex. People aged between 10 and 16 yrs can legally have sex with another person as long as both consent and there is not more than 2 yrs difference between them.			
New South Wales	16	16	16	18
	<b>Other Considerations:</b> Homosexual sex <b>Males:</b> Both males must be aged 18 yrs or over. <b>Females:</b> There is no law which applies specifically to sexual relationships between two females. The law would appear to be that both females have to be 16yrs or over.			
Northern Territory	16	16	-	18
	<b>Other Considerations:</b> Homosexual sex <b>Males:</b> Both males must be aged 18yrs or older. It is an offence for a male to have sex with another male under 18yrs. <b>Females:</b> There is no law which applies specifically to sexual relationships between two females.			
Queensland	16	16	-	18
	<b>Other Considerations:</b> Homosexual sex <b>Males:</b> Both males must be aged 18yrs or older. It is an offence for a male to have sex with another male under 18yrs. <b>Females:</b> There is no law which applies specifically to sexual relationships between two females.			
South Australia	17	17	17	17
	<b>Other Considerations:</b> In South Australia the law is the same for heterosexual sex and homosexual sex. The law says that two 16yrs olds who have sex together are not committing an offence.			
Tasmania	17	17	17	17
	<b>Other Considerations:</b> It is a crime to have sex with someone aged under 17yrs. This applies to both heterosexual sex and homosexual sex.			
Victoria	16	16	16	16
	<b>Other Considerations:</b> The law in Victoria is the same for heterosexual sex and homosexual sex. People aged between 10 and 16 yrs can legally have sex with another person as long as both consent and there is no more than 2 yrs age difference between them			
Western Australia	16	16	-	21
	<b>Other Considerations:</b> Homosexual sex: <b>Males:</b> The law in WA says that both males have to be 21 or older to have sex. However, Commonwealth law suggests that the age of consent for gay men is 18 and the conflict between these two sets of laws has not been clarified. In WA therefore it is still possible for a man who has sex with a man under 21 to be charged with a criminal offence. <b>Females:</b> There is no law which applies specifically to females.			