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Brief review of contemporary sexual offence and child sexual abuse legislation in Australia

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for the Royal Commission into Institutional
Responses to Child Sexual Abuse

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Disclaimer

The findings and opinions contained in this report are those of the authors and not the Royal Commission. Any errors are the author's responsibility. The law as stated in this report is current to 31 December 2013.

Introduction

At the end of 2013, the Australian Institute of Criminology was contracted by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Commission) to undertake a review of sexual offence legislation in Australia, particularly as it related to children, and enacted as at 31 December 2013. It is important to note that any legislative changes that have been made after this date are not included in this review.

Structure and scope of this report

The following report provides a brief overview of the offences that an individual who sexually abuses a child in an institutional setting may be charged with at the end of 2013. Information provided for each of the identified offences includes:

- the location of the offence in the respective state or territory's legislation;
- the age of the victim (where relevant);
- aggravating factors—for the purpose of this review, restricted to factors relating to:
 - the age of the child;
 - the relationship between the offender and victim; and

- whether the victim has an intellectual impairment, physical disability or mental illness;
- the maximum penalty.

The offences included in this review have been divided into a six sections:

- contact sexual offences where the child is below the legal age of consent (16, 17 or 18 years old depending on the jurisdiction and nature of the sexual act);
- contact sexual offences where the child is above the legal age of consent;
- contact sexual offences where the age of the victim is not specified;
- non-contact sexual offences;
- child pornography offences (production); and
- offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged.

Only offences relating to individuals located within Australia are included in this review. Further, while there are other defences that may be used to refute charges brought under sexual offence or child sexual abuse legislation (for example, honest and reasonable belief that a person was over a certain age and similarity in age between the victim and offender), the only defence that is considered in this report is consent.

Definitions

For the purpose of this review, child sexual abuse was defined as the:

...involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend, to which they are unable to give informed consent, or that violate the social taboos of family roles (Kempe & Kempe 1978: 60).

This definition was chosen for a number of reasons. First, it acknowledges the child's limited ability to give informed consent. Second, the definition

encompasses both contact offences (eg fondling of genitals and/or breasts, masturbation, oral sex, vaginal or anal penetration etc) and non-contact offences (eg exposing the child to pornography, grooming and sexual self-manipulation).

The definition of 'child' used in this review was taken from the Commission's Terms of Reference, which was in turn taken from the *United Nations Convention on the Rights of the Child 1989*. In this report, *child* is defined as a human being who is below the age of 18 years.

Contact offences

This section of the report provides an overview of the offences for which a person who has unlawful sexual contact with a child may be charged in Australia. For the purpose of this review, contact offences were defined as those involving actual physical contact between the victim and offender for the purpose of achieving sexual gratification. Contact offences include penetrative acts (ie sexual intercourse—typically defined as penetration of the vagina or anus to any extent and oral sex; see Table

1) and non-penetrative acts (indecent assault eg masturbation).

This section of the report is divided into three parts:

- contact offences involving a child below the legal age of consent (Table 2);
- contact offences involving a child above the legal age of consent (Table 3); and
- contact offences where the age of the victim is not specified (Table 4).

Table 1 The age of consent and definition of sexual intercourse, by jurisdiction

Jurisdiction	Relevant legislation	Definition of sexual intercourse	Age of consent
Australian Capital Territory	<i>Crimes Act 1900</i>	<p>a) The penetration, to any extent, of the genitalia (includes surgically constructed or altered genitalia) or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law;</p> <p>b) the penetration, to any extent, of the genitalia (includes surgically constructed or altered genitalia) or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law;</p> <p>c) the introduction of any part of the penis of a person into the mouth of another person;</p> <p>d) fellatio;</p> <p>e) cunnilingus; or</p> <p>f) the continuation of sexual intercourse as defined in paragraph (a), (b), (c), (d) or (e).</p>	16 years old

Table 1 The age of consent and definition of sexual intercourse, by jurisdiction

Jurisdiction	Relevant legislation	Definition of sexual intercourse	Age of consent
New South Wales	<i>Crimes Act 1900</i>	<p>a) The penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:</p> <ul style="list-style-type: none"> i. any part of the body of another person; or ii. any object manipulated by another person, except where the penetration is carried out for proper medical purposes; <p>b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person;</p> <p>c) cunnilingus; or</p> <p>d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).</p>	16 years old
Northern Territory	<i>Criminal Code Act 1983</i>	<p>a) The insertion to any extent by a person of his penis into the vagina, anus or mouth of another person;</p> <p>b) the insertion to any extent by a person of any part of the person's body or an object into the vagina or anus of another person, except for the purpose of performing a medical examination or administering medical treatment; or</p> <p>c) cunnilingus or fellatio; and</p> <p>d) continues until the withdrawal of the part of the body or object from the mouth, vagina or anus into which it was inserted or the cessation of cunnilingus or fellatio, as the case may be.</p> <p>'Vagina' means the internal and external female genitalia and includes a surgically constructed vagina.</p>	16 years old
Queensland	<i>Criminal Code Act 1899</i>	<p>a) If carnal knowledge is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent.</p> <p>b) Carnal knowledge includes sodomy.</p> <p>Genitalia includes surgically constructed genitalia.</p>	16 years (all other sexual acts) 18 years (for anal sex)
South Australia	<i>Criminal Law Consolidation Act 1935</i>	<p>Any activity (whether of a heterosexual or homosexual nature) consisting of or involving:</p> <ul style="list-style-type: none"> a) penetration of a person's vagina, labia majora or anus (includes surgically constructed or altered) by any part of the body of another person or by any object; or b) fellatio; or c) cunnilingus <p>and includes a continuation of such activity.</p>	17 years old
Tasmania	<i>Criminal Code Act 1924</i>	<p>The penetration to the least degree of the vagina, genitalia, anus, or mouth by the penis and includes the continuation of sexual intercourse after such penetration. Vagina includes a surgically constructed vagina.</p> <p>The definition of sexual intercourse is different for the offence of indecent assault—the penetration to the least degree of the vagina, genitalia or anus of that other person by:</p> <ul style="list-style-type: none"> a) any part of the human body other than the penis; or b) an inanimate object. 	17 years old

Table 1 The age of consent and definition of sexual intercourse, by jurisdiction

Jurisdiction	Relevant legislation	Definition of sexual intercourse	Age of consent
Victoria	<i>Crimes Act 1958</i>	<ul style="list-style-type: none"> a) The introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen; or b) the introduction (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes; <ul style="list-style-type: none"> i. the external genitalia; and ii. a surgically constructed vagina. 	16 years old
Western Australia	<i>The Criminal Code Act Compilation Act 1913</i>	<ul style="list-style-type: none"> a) To penetrate the vagina (which term includes the labia majora), the anus, or the urethra of any person with: <ul style="list-style-type: none"> i. any part of the body of another person; or ii. an object manipulated by another person, <p>except where the penetration is carried out for proper medical purposes;</p> b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the labia majora), the anus, or the urethra of the offender by part of the other person's body; c) to introduce any part of the penis of a person into the mouth of another person; or d) to engage in cunnilingus or fellatio; e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d). 	16 years old
Commonwealth	<i>Criminal Code Act 1995</i>	<ul style="list-style-type: none"> a) To penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; b) penetrate (to any extent) the mouth of a person by the penis of another person; or c) continue to sexually penetrate as defined in paragraph (a) or (b). <p>Genitalia or others parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.</p>	16 years old

Source: Lamont 2012

Contact offences involving a child below the legal age of consent

Every Australian jurisdiction has enacted legislation that criminalises sexual acts involving a child who, at the time of the offence, was below the legal age of consent (see Table 1). Generally speaking, if at the time of the offence the victim was below the age of consent, their consent to engage in the sexual act may not be used as a defence. However, a number of jurisdictions (for example, Victoria, Tasmania, Western

Australia and South Australia) have enacted legislation which stipulates that, if at the time of the offence:

- the accused person was a similar age to the child (defined as a 1, 2, 3 or 5 years older depending on the jurisdiction);
- the child consented to the sexual activity; and
- the child was over a specific age (typically 10 or 15 years old depending on the jurisdiction);
- consent may be used as a defence.

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
Australian Capital Territory ^a	<i>Crimes Act 1900</i>	55(1)	Sexual intercourse with young person		<10 years old	MP: 17 years imprisonment
		55(2)	Sexual intercourse with young person		<16 years old	MP: 14 years imprisonment
		56(2)	Maintaining a sexual relationship with young person (engaged in sexual acts on 3 or more occasions)		<16 years old	MP: 7 years imprisonment MP: 14 years (if during the course of the relationship offender is found to have committed another offence under this section of the Act and this other offence is punishable by a term of imprisonment for less than 14 years) MP: Life imprisonment (if during the course of the relationship offender is found to have committed another offence under this section of the Act and this other offence is punishable by a term of imprisonment for 14 years or more years)
		61(1)	Acts of indecency with young people		<10 years old	MP: 12 years imprisonment
		61(2)	Acts of indecency with young people		<16 years old	MP: 10 years imprisonment
		62(1)	Incest		<10 years old	MP: 20 years imprisonment
		62(2)	Incest		<16 years old	MP: 15 years imprisonment

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
New South Wales ^b	<i>Crimes Act 1900</i>	61M(2)	Aggravated indecent assault		<16 years old	MP: 10 years imprisonment SNPP: 8 years imprisonment
		61N(1)	Act of indecency		<16 years old	MP: 2 years imprisonment
		61O(1)	Aggravated act of indecency	Victim is under authority of offender (generally or at time of offence) Victim has a serious physical disability or cognitive impairment	<16 years old	MP: 5 years imprisonment
		61O(2)	Aggravated act of indecency		<10 years old	MP: 7 years imprisonment
		61O(2A)	Aggravated act of indecency (involves filming the indecent act)		<16 years old	MP: 10 years imprisonment
		61P	Attempt to commit offence under ss 61I—61O	Dependent on offence	Dependent on offence	MP: Offender is liable to the penalty for the commission of the offence
		66A(1)	Sexual intercourse—child under 10		<10 years old	MP: 25 years imprisonment SNPP: 15 years imprisonment
		66A(2)	Aggravated sexual intercourse—child under 10	Victim is under authority of offender (generally or at time of offence) Victim has a serious physical disability or cognitive impairment	<10 years old	MP: Life imprisonment SNPP: 15 years imprisonment
		66B	Attempting, or assaulting with intent, to have sexual intercourse with child under 10		<10 years old	MP: 25 years imprisonment
		66C(1)	Sexual intercourse—child between 10 and 16		10–13 years old	MP: 16 years imprisonment

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
		66C(2)	Aggravated sexual intercourse—child between 10 and 16	Victim is under authority of offender (generally or at time of offence) Victim has a serious physical disability or cognitive impairment	10–13 years old	MP: 20 years imprisonment
		66C(3)	Sexual intercourse—child between 10 and 16		14–15 years old	MP: 10 years imprisonment
		66C(4)	Aggravated sexual intercourse—child between 10 and 16	Victim is under authority of offender (generally or at time of offence) Victim has a serious physical disability or cognitive impairment	14–15 years old	MP: 12 years imprisonment
		66D	Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16 (attempts offence under s 66C)	Dependent on offence	Dependent on offence	MP: Offender is liable to the penalty for the commission of the offence
		66EA(1)	Persistent sexual abuse of a child (3 or more separate occasions)		<18 years old	MP: 25 years imprisonment
Northern Territory ^c	<i>Criminal Code Act 1983</i>	127(1)	Sexual intercourse or gross indecency involving child under 16 years	Victim <11 years old Victim is (whether generally or at the time of the commission of the offence) under the care of the offender Child has a serious physical/ intellectual disability	<16 years old	MP: 16 years imprisonment MP: 20 years imprisonment (if child is 10–15 years old and other aggravating features present) MP: 25 years imprisonment (if child is <10 years old) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
		130(3A)	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person		<16 years	MP: 20 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		130(3B)	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person		<10 years	MP: 25 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		131A(2)	Sexual relationship with a child (3 or more occasions)		<16 years old	MP: 7 years imprisonment MP: 20 years imprisonment (If in the course of the relationship the offender committed an offence of a sexual nature for which the offender is liable to imprisonment for 7–20 years other than offences against s 192(8) or s 192B) MP: Life imprisonment (if in the course of the relationship the offender committed an offence against s 192(8) or s 192B or an offence of a sexual nature for which the offender is liable to imprisonment for more than 20 years) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		132(2)(a)	Indecent dealing with child under 16 years (indecently dealing with a child)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (if victim <10 years old) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
		132(2) (c)	Indecent dealing with child under 16 years (permits themselves to be indecently dealt with by a child)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (if victim <10 years old) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		134(2)	Incest		10–16 years old	MP: 20 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		134(3)	Incest		<10 years old	MP: 25 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^c
		192(6)	Attempted sexual intercourse and gross indecency without consent		<16 years old	MP: 14 years imprisonment
Queensland ^d	<i>Criminal Code Act 1899</i>	208(1)(a)	Unlawful sodomy (sodomises a person)	Victim <12 years old Victim <18 years old or a person with an impairment of mind who is to the knowledge of the offender their lineal descendant or under their guardianship or care	<18 years old	MP: 14 years imprisonment MP: Life imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		208(1)(b)	Unlawful sodomy (permits a person <18 years old to sodomise them)	Victim <12 years old Victim <18 years old or a person with an impairment of mind who is to the knowledge of the offender their lineal descendant or under their guardianship or care	<18 years old	MP: 14 years imprisonment MP: Life imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
		210(1)(a)	Indecent treatment of children under 16	<12 years old Offender is the child's guardian, or for the time being, has the child under the offender's care	<16 years old	MP: 14 years imprisonment MP: 20 years imprisonment (if victim is <12 years old or offender is the guardian of the child or for the time being has the child under their care) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		210(1)(c)	Indecent treatment of children under 16 (permitting child to indecently deal with them)	Victim <12 years old Offender is the child's guardian, or for the time being, has the child under the offender's care	<16 years old	MP: 14 years imprisonment MP: 20 years (if victim is <12 years old or offender is the guardian of the child or for the time being has the child under their care) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		215(1)	Carnal knowledge with or of children under 16 (does not include sodomy; includes attempts)	Victim <12 years old Offender is the child's guardian, or for the time being, has the child under the offender's care	<16 years old	MP: 14 years imprisonment (if victim is 12-15 years old, or the offence constituted an attempt and the victim was <12 years old, or the offence constituted an attempt and the offender is the guardian of the child or for the time being has the child under their care) MP: Life imprisonment (if victim was <12 years old, or offender is the guardian of the child or for the time being has the child under their care, or child has an impairment of the mind) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		229B(1)	Maintaining a sexual relationship with a child (more than 1 unlawful sexual act over any period)		<16 years old (does not include sodomy) <18 years old (sodomy)	MP: Life imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
South Australia ^e	<i>Criminal Law Consolidation Act 1935</i>	49(1)	Unlawful sexual intercourse		<14 years old	MP: Life imprisonment
		49(3)	Unlawful sexual intercourse		<17 years old	MP: 10 years imprisonment
		50(1)	Persistent sexual exploitation of a child (over a period of no less than 3 days commits more than 1 act of sexual exploitation)		<17 years old (if accused is not in a position of authority in relation to the child) <18 years old if the accused is in a position of authority in relation to the child	MP: Life imprisonment
		58(1)(a)	Acts of gross indecency		<16 years old	MP: 3 years imprisonment (1st offence) MP: 5 years imprisonment (each subsequent offence)
Tasmania ^f	<i>Criminal Code Act 1924</i>	124(1)	Sexual intercourse with young person		<17 years old	MP: 21 years imprisonment
		125A(2)	Maintaining sexual relationship with young person (3 or more occasions)		<17 years old	MP: 21 years imprisonment
		125B(1)	Indecent act with young person		<17 years old	MP: 21 years imprisonment
Victoria ^{g, h}	<i>Crimes Act 1958</i>	45(1)	Sexual penetration of child under the age of 16	Victim <12 years old Victim 12–16 years old and under the care, supervision or authority of offender	<16 years old	MP: 10 years imprisonment MP: 15 years imprisonment (if victim 12–15 years old) MP: 25 years imprisonment (if victim <12 years old)
		47(1)	Indecent act with child under the age of 16		<16 years old	MP: 10 years imprisonment
		47A(1)	Persistent sexual abuse of child under the age of 16		<16 years old	MP: 25 years imprisonment

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
Western Australia ¹	<i>The Criminal Code Act Compilation Act 1913</i>	320(2)	Child under 13, sexual offences against (sexual penetration)		<13 years old	MP: 20 years imprisonment
		320(4)	Child under 13, sexual offences against (indecent dealing)		<13 years old	MP: 10 years imprisonment
		321(2)	Child of or over 13 and under 16, sexual offences against (sexual penetration)	Victim is under the care, supervision or authority of the offender	13–15 years old	MP: 7 years imprisonment (where offender is <18 years old and child is not under the care, supervision or authority of the offender) MP: 14 years imprisonment MP: 20 years imprisonment (where the child is under the care, supervision or authority of the offender)
		321(4)	Child of or over 13 and under 16, sexual offences against (indecent dealing)	Victim is under the care, supervision or authority of the offender	13–15 years old	MP: 4 years imprisonment (where offender is <18 years old and child is not under the care, supervision or authority of the offender) MP: 7 years imprisonment MP: 10 years imprisonment (where the child is under the care, supervision or authority of the offender)
		321A(4)	Child under 16, persistent sexual conduct with (3 or more occasions)		<16 years old	MP: 20 years imprisonment
		329(2)	Incest (sexual penetration)	Victim <16 years old	<18 years old	MP: 10 years imprisonment MP: 20 years imprisonment (aggravated)
		329(3)	Incest (sexual behaviour)	Victim <16 years old	<18 years old	MP: 10 years imprisonment MP: 20 years imprisonment (aggravated)
		329(4)	Incest (indecent dealing)	Victim <16 years old	<18 years old	MP: 5 years imprisonment MP: 10 years imprisonment (aggravated)
		329(5)	Incest (procures, incites etc to do an indecent act)	Victim <16 years old	<18 years old	MP: 5 years imprisonment MP: 10 years imprisonment (aggravated)

Table 2 Contact offences involving a child below the legal age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Relevant aggravating factors	Age of victim	Maximum penalty (MP) & standard non-parole period (SNPP; if applicable)
Commonwealth ⁱ	<i>Criminal Code Act 1995</i>	474.25A(1)	Engaging in sexual activity with child using a carriage service		<16 years old	MP: 15 years imprisonment
		474.25B	Aggravated offence (under s 474.25A(1); child has mental impairment and/or is under care, supervision or authority of defendant)		<16 years old	MP: 25 years imprisonment

a: s44 of the *Criminal Code Act 2002* (ACT) stipulates that the offence of attempting to commit an offence is punishable as if the offence attempted had been committed. b: s344A of the *Crimes Act 1900* (NSW) stipulates that any person who attempts to commit any offence for which a penalty is provided under the Act shall be liable to that penalty.

c: s43BF of the *Criminal Code Act* (NT) stipulates that a person who attempts to commit an offence is guilty of an offence and is punishable as if the offence attempted had been committed.

d: s536 of the *Criminal Code Act 1899* (Qld) stipulates that a person who attempts to commit an indictable offence punishable by life imprisonment (but not mandatory life imprisonment) is liable to 14 years imprisonment. A person who attempts to commit any other indictable offence is liable to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

e: s270A of the *Criminal Law Consolidation Act 1935* (SA) stipulates that where the penalty or maximum penalty for the principal offence (not being treason or murder) is life imprisonment, the penalty for the attempt shall be imprisonment for a term not exceeding twelve years. In any other case, the penalty for the attempt shall be a penalty not exceeding a maximum of two-thirds of the maximum penalty prescribed for the principal offence.

f: s342 of the *Criminal Code Act 1924* (Tas) stipulates that where a person is charged with an attempt to commit a crime he may be convicted of that full crime.

g: s321P of the *Crimes Act 1958* (Vic) stipulates that a person convicted of an attempt is liable to the punishment identified under s321P(a) of the Act (eg if the principal offence is punishable by lifetime imprisonment, an attempt may be punished by 25 years imprisonment). If the penalty for the relevant offence is not set out in s321P(a), the offender may be subject to a penalty not exceeding 60 percent of the maximum penalty fixed or prescribed by law for the relevant offence.

h: s11 of the *Sentencing Act 1991* (Vic) stipulates that if a court sentences a prisoner to be imprisoned for the term of their natural life or a term of two years or more, the court *must* as part of the sentence fix a non-parole period unless they determine that doing so is inappropriate. If the court sentences an offender to be imprisoned for a term of less than two years (but more than one year), the court *may*, as part of the sentence fix a non-parole period. The non-parole period must be at least six months less than the term of the sentence.

i: s552 of the *Criminal Code Act Compilation Act 1913* (WA) stipulates that if the principal offence is punishable on indictment with imprisonment for life, an offender who attempts to commit the offence may be punished by imprisonment for 14 years. In any other case an offender could be punished by half of the penalty with which the principal offence is punishable on indictment.

j: s11.1 of the *Criminal Code Act 1995* (Cth) stipulates that a person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

Contact offences involving a child above the legal age of consent

With the exception of Queensland, Tasmania and the Commonwealth, every Australian jurisdiction has legislation in place prohibiting sexual acts involving a child who, at the time of the offence, was over the age of consent (see Table 1) and a person who at the time of the offence (or generally) was responsible for their care or supervision or was in a position of authority relative to them (see Table 3). Individuals who are responsible for the care and supervision of a child, or are in a position of authority relative to them, include (but are not limited to):

- the child's teacher;
- the child's guardian or foster carer;

- a religious official with pastoral responsibility for the child;
- the child's employer;
- the child's youth/social worker;
- an individual who has an established relationship with the child in connection with the provision of instruction to them (eg sport's coach, music teacher);
- the child's psychologist/counsellor/doctor;
- a police officer acting in the course of their duty in respect to the child; and
- a custodial officer of an institution of which the child is an inmate (eg remand centre, youth residential centre etc).

Table 3 Contact offences involving a child above the age of consent, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Australian Capital Territory	<i>Crimes Act 1900</i>	55A(1)	Sexual intercourse with young person under special care		16–17 years old	MP: 10 years imprisonment
		61A(1)	Act of indecency with young person under special care		16–17 years old	MP: 7 years imprisonment
New South Wales	<i>Crimes Act 1900</i>	61N(2)	Act of indecency		>15 years old	MP: 2 years imprisonment
		610(1A)	Aggravated act of indecency	Victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender Victim has a serious physical disability or cognitive impairment	>15 years old	MP: 3 years imprisonment
		66EA(1)	Persistent sexual abuse of a child (3 or more occasions)		<18 years old	MP: 25 years imprisonment
		73(1)	Sexual intercourse with child between 16 and 18 under special care (includes attempts)		16 years old	MP: 8 years imprisonment

Table 3 Contact offences involving a child above the age of consent, by jurisdiction

		73(2)	Sexual intercourse with child between 16 and 18 under special care (includes attempts)	17 years old	MP: 4 years imprisonment
		78A	Incest	>15 years old	MP: 8 years imprisonment
		78B	Attempts (of s 78A)	>15 years old	MP: 2 years imprisonment
Northern Territory	<i>Criminal Code Act 1983</i>	128(1)	Sexual intercourse or gross indecency involving child over 16 years under special care	16–17 years old	MP: 4 years imprisonment MP: 8 years imprisonment (if child 16–17 years old)
South Australia	<i>Criminal Law Consolidation Act 1935</i>	49(5)	Unlawful sexual intercourse (accused is in a position of authority relative to the alleged victim)	<18 years old	MP: 10 years imprisonment
		56(1) ^a	Indecent assault	<18 years old	MP: 8 years imprisonment MP: 10 years imprisonment (if victim <12 years old and/or the offender abused a position of authority, or a position of trust, in committing the offence)
Victoria	<i>Crimes Act 1958</i>	44(2)	Incest (child, lineal descendent or step-child of de facto spouse)	<18 years old	MP: 25 years imprisonment
		48(1)	Sexual penetration of 16 or 17 year old child (who is under the care, supervision or authority of the offender)	16–17 years old	MP: 10 years imprisonment
		49(1)	Indecent act with 16 or 17 year old child (who is under the care, supervision or authority of the offender)	16–17 years old	MP: 5 years imprisonment
Western Australia	<i>The Criminal Code Act Compilation Act 1913</i>	322(2)	Child of or over 16, sexual offences against by person in authority etc. (sexual penetration)	16–17 years old	MP: 10 years imprisonment
		322(4)	Child of or over 16, sexual offences against by person in authority etc. (indecent dealing)	16–17 years old	MP: 5 years imprisonment

a: Under s 57(1) of the *Criminal Law Consolidation Act 1935* (South Australia), 'a person under the age of 18 years will be taken not to be capable of consenting to an indecent assault committed by a person who is in a position of authority in relation to the person'

Contact sexual offences where the age of the victim is not specified

In addition to the previously described offences that specifically criminalise acts involving sexual contact with a child, each Australian jurisdiction has also enacted legislation prohibiting non-consensual and unlawful sexual contact with any person, regardless of their age (see Table 4). The relevant sexual offences provided under Commonwealth legislature are not described in this section of the report as they concern to sexual acts perpetrated overseas and/or against United Nations officials and so were beyond the scope of the review.

A key point of difference between the offences described in Table 4 and Tables 2 and 3 is that individuals charged with offences outlined in Table 4 may use the consent of the victim as a defence except in certain circumstances (eg the victim was mentally ill or intellectually handicapped and the offender was aware of this fact). Australian criminal law defines 'consent' as someone freely and voluntarily agreeing to participate in the sexual act. However, Australian criminal law also specifies that consent may be vitiated in situations where:

- the offender inflicts violence or uses force on the child or a third person;
- the offender threatens to inflict violence or force on the child or a third person;
- the offender threatens to publically humiliate, harass the child or a third person;
- the child is sleeping, unconscious, intoxicated or under the influence of a drug;
- the child mistakenly believes the offender was someone else;
- the child is provided with fraudulent information as to the nature and purpose of the act;
- the child is unlawfully detained; and
- the child does not have the capacity to consent to the activity by virtue of their age or mental incapacity.

Further, four Australian jurisdictions (Australian Capital Territory, New South Wales, Tasmania and Queensland) have introduced legislation that stipulates that consent may be vitiated in situations where the offender is in a position of authority or trust over the victim. Persons in a position of authority or trust may include teachers, health professionals, foster carers, religious officials etc.

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
Australian Capital Territory	<i>Crimes Act 1900</i>	51(1)	Sexual assault in the first degree (inflicts grievous bodily harm (GBH) with intent to engage in sexual intercourse)		MP: 17 years imprisonment
		52(1)	Sexual assault in the second degree (inflicts actual bodily harm (ABH) with intent to engage in sexual intercourse)		MP: 14 years imprisonment
		53(1)	Sexual assault in the third degree (unlawful assaults or threatens to inflict GBH or ABH with intent to engage in sexual intercourse)		MP: 12 years imprisonment

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		54(1)	Sexual intercourse without consent		MP: 12 years imprisonment
		54(2)	Sexual intercourse without consent (offender acting in company)		MP: 14 years imprisonment
		57	Act of indecency in the first degree (inflicts GHB with intent to commit an act of indecency)		MP: 15 years imprisonment
		58	Act of indecency in the second degree (inflicts ABH with intent to commit an act of indecency)		MP: 12 years imprisonment
		59	Act of indecency in the third degree (unlawfully assaults or threatens to inflict GHB or ABH with intent to commit an act of indecency)		MP: 10 years imprisonment
		60(1)	Act of indecency without consent		MP: 7 years imprisonment
		60(2)	Act of indecency without consent (in company)		MP: 9 years imprisonment
New South Wales	<i>Crimes Act 1900</i>	61I	Sexual assault		MP: 14 years imprisonment SNPP: 7 years imprisonment
		61J(1)	Aggravated sexual assault	Victim is <16 years old Victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender Victim has a serious physical disability or cognitive impairment	MP: 20 years imprisonment SNPP: 10 years imprisonment
		61JA(1)	Aggravated sexual assault in company		MP: Life imprisonment SNPP: 15 years imprisonment
		61K	Assault with intent to have sexual intercourse		MP: 20 years imprisonment
		61L	Indecent assault		MP: 5 years imprisonment

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		61M(1)	Aggravated indecent assault	Victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender Victim has a serious physical disability or cognitive impairment	MP: 7 years imprisonment SNPP: 5 years imprisonment
		61P	Attempt to commit offence under ss 61I—61O	Dependent on the offence	MP: Offender is liable to the penalty for the commission of the offence
		66F(2)	Sexual intercourse: person responsible for care (cognitive impairment)		MP: 10 years imprisonment
		66F(3)	Sexual intercourse: taking advantage of impairment		MP: 8 years imprisonment
		66F(4)	Attempts of s 66F(1) or s 66F(2)		MP: Offender is liable to the penalty for the commission of the offence
Northern Territory	<i>Criminal Code Act 1983</i>	130(2)	Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person		MP: 8 years imprisonment
		134(1)	Incest		MP: 14 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ⁹
		192(3)	Sexual intercourse and gross indecency without consent (sexual intercourse)	Victim <16 years old	MP: 14 years imprisonment (if proscribed act is attempted with a victim who is <16 years old or during the course of the attempt harms the victim) MP: 17 years imprisonment (if proscribed act is attempted and during the course of the attempt they seriously harm the victim) MP: Life imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ⁹

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		192(4)	Sexual intercourse and gross indecency without consent (gross indecency)		MP: 14 years imprisonment SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^b
		192(5)	Attempted sexual intercourse and gross indecency without consent		MP: 7 years imprisonment
		192(7)	Attempted sexual intercourse and gross indecency without consent (offender causes harm to victim during course of offence)		MP: 14 years imprisonment
		192(8)	Attempted sexual intercourse and gross indecency without consent (offender causes serious harm to victim during course of offence)		MP: 17 years imprisonment
Queensland	<i>Criminal Code Act 1899</i>	208(1)(c)	Unlawful sodomy (sodomises a person with an impairment of the mind)	Victim <12 years old Victim <18 years old or a person with an impairment of mind who is to the knowledge of the offender their lineal descendant or under their guardianship or care	MP: 14 years imprisonment MP: Life imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		208(1)(d)	Unlawful sodomy (permits a person with an impairment of the mind to sodomise them)	Victim <12 years old Victim <18 years old or a person with an impairment of mind who is to the knowledge of the offender their lineal descendant or under their guardianship or care	MP: 14 years imprisonment MP: Life imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		216(1)	Abuse of persons with an impairment of the mind (carnal knowledge)		MP: 14 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		216(2) (a-e)	Abuse of persons with an impairment of the mind (indecent dealing)		MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		216(3)	Abuse of persons with an impairment of the mind (by guardian or person responsible for care)		MP: 14 years imprisonment MP: Life imprisonment (for constituted and attempted carnal knowledge) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		222(1)	Incest (carnal knowledge)		MP: Life imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		222(2)	Incest (attempts)		MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		349(1)	Rape		MP: Life imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		350	Attempt to commit rape		MP: 14 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		351	Assault with attempt to commit rape		MP: 14 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		352(1)(a)	Sexual assaults (unlawful and indecent assault)		MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
South Australia	<i>Criminal Law Consolidation Act 1935</i>	48(1)	Rape (offender engages in non-consensual sexual intercourse with victim)		MP: Life imprisonment
		48(2)(a)	Rape (offender compels victim to engage in sexual intercourse with another person)		MP: Life imprisonment

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		48A(1)(a)	Compelled sexual manipulation	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	MP: 10 years imprisonment MP: 15 years imprisonment (aggravated)
		56(1)	Indecent assault	Victim <14 years old The offender abused a position of authority, or a position of trust, in committing the offence	MP: 8 years imprisonment MP: 10 years imprisonment (aggravated)
		72(1)	Incest		MP: 10 years imprisonment
Tasmania	<i>Criminal Code Act 1924</i>	126(1)	Sexual intercourse with person with mental impairment (by person responsible for their care)		MP: 21 years imprisonment
		127(1)	Indecent assault		MP: 21 years imprisonment
		127A(1)	Aggravated sexual assault		MP: 21 years imprisonment
		129	Procuring by threats, fraud, or drugs		MP: 21 years imprisonment
		133(1)	Incest		MP: 21 years imprisonment
		185(1)	Rape		MP: 21 years imprisonment
Victoria	<i>Crimes Act 1958</i>	38(1)	Rape		MP: 25 years imprisonment
		38A(1)	Compelling sexual penetration		MP: 25 years imprisonment
		39(1)	Indecent assault		MP: 10 years imprisonment
		40(1)	Assault with intent to rape		MP: 10 years imprisonment
		44(1)	Incest		MP: 25 years imprisonment
		44(2)	Incest (sister, brother, half-sibling)		MP: 5 years imprisonment
		51(1)	Sexual offences against persons with a cognitive impairment by providers of medical and therapeutic services (sexual penetration)		MP: 10 years imprisonment

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		51(2)	Sexual offences against persons with a cognitive impairment by providers of medical and therapeutic services (indecent act)		MP: 5 years imprisonment
		52(1)	Sexual offences against persons with a cognitive impairment by providers of special programs (sexual penetration)		MP: 10 years imprisonment
		52(2)	Sexual offences against persons with a cognitive impairment by providers of special programs (indecent act)		MP: 5 years imprisonment
		60A(1)	Sexual offence while armed with an offensive weapon		MP: 2 years imprisonment
Western Australia	<i>The Criminal Code Act Compilation Act 1913</i>	323	Indecent assault		MP: 5 years imprisonment MP: \$24,000 fine and 2 years imprisonment (summary conviction penalty)
		324	Aggravated indecent assault	Victim 13–15 years old	MP: 7 years imprisonment MP: \$36,000 fine and 3 years imprisonment (summary conviction penalty)
		325	Sexual penetration without consent		MP: 14 years imprisonment
		326	Aggravated sexual penetration without consent	Victim 13–15 years old	MP: 20 years imprisonment
		327	Sexual coercion		MP: 14 years imprisonment
		328	Aggravated sexual coercion	Victim 13–15 years old	MP: 20 years imprisonment
		329(7)	Incest (sexual penetration of person >18 years old)		MP: 3 years imprisonment
		330(2)	Incapable person, sexual offences against (sexual penetration)	Incapable person is under the care, supervision, or authority of the offender	MP: 14 years imprisonment MP: 20 years imprisonment (aggravated)
		330(3)	Incapable person, sexual offences against (procurement for the purpose of sexual penetration)	Incapable person is under the care, supervision, or authority of the offender	MP: 14 years imprisonment MP: 20 years imprisonment (aggravated)

Table 4 Contact offences where the age of the victim is not specified, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Maximum penalty & standard non-parole period (if applicable)
		330(4)	Incapable person, sexual offences against (indecent dealing)	Incapable person is under the care, supervision, or authority of the offender	MP: 7 years imprisonment MP: 10 years imprisonment (aggravated)
		330(5)	Incapable person, sexual offences against (procurement for the purpose of indecent dealing)	Incapable person is under the care, supervision, or authority of the offender	MP: 7 years imprisonment MP: 10 years imprisonment (aggravated)

a: Unless deemed inappropriate by the court or the sentence is suspended in part of whole

Non-contact offences

There are a range of sexually abusive behaviours that may not involve physical contact between the offender and victim, but still constitutes an offence under Australian law. Non-contact sexual offences include:

- facilitation offences—offences that make sexual assault/abuse occur/possible;
 - procuring children for sexual purposes;
 - ‘grooming’ children (eg exposing them to indecent material);
 - abduction for sexual purposes; and
- drugging etc victim for sexual purpose;
 - compelling persons to engage in sexual self-manipulation behaviours;
 - compelling persons to engage in sexual activities with a third person (not the offender);
 - voyeurism (not including acts that involve unlawfully recording the victim);
 - sexual servitude;
 - loitering in places frequented by children by convicted sex offenders; and
 - indecent exposure and indecent/offensive behaviour (see Table 5).

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Australian Capital Territory	<i>Crimes Act 1900</i>	51(2)	Sexual assault in the first degree (person who acting in company with another person inflicts GBH on victim to facilitate sexual intercourse between victim and another person)			MP: 20 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		52(2)	Sexual assault in the second degree (person who acting in company with another person inflicts ABH on victim to facilitate sexual intercourse between victim and another person)			MP: 17 years imprisonment
		52(3)	Sexual assault in the third degree (person who acting in company with another person unlawfully assaults or threatens to inflict GHB or ABH on victims to facilitate sexual intercourse between victim and another person)			MP: 14 years imprisonment
		63	Abduction (with intention of engaging in sexual intercourse)			MP: 10 years imprisonment
		66(1)	Using the Internet etc to deprave young people (using electronic means to suggest that a child commit or take part in an act of sexual nature)		<16 years old	MP: 7 years imprisonment (1st offence) MP: 10 years imprisonment (2nd offence)
		66(2)	Using the Internet etc to deprave young people (using electronic means to make pornographic material available to a child)		<16 years old	MP: 700 penalty units or 7 years imprisonment or both
		79(1)	Sexual servitude	Victim is <18 years old		MP: 15 years imprisonment MP: 19 years imprisonment (aggravated)

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		79(2)	Sexual servitude (business)	Victim is <18 years old		MP: 15 years imprisonment MP: 19 years imprisonment (aggravated)
		80	Deceptive recruiting for sexual services			MP: 7 years imprisonment MP: 9 years imprisonment (aggravated)
		392	Offensive behaviour			MP: \$1,000 fine
		393	Indecent exposure			MP: 20 penalty units or 12 months imprisonment or both
New South Wales	<i>Crimes Act 1900</i>	66EB(2)	Procuring or grooming child under 16 for unlawful sexual activity	Victim <14 years old	<16 years old	MP: 12 years imprisonment MP: 15 years imprisonment (aggravated)
		66EB(2A)	Procuring or grooming child under 16 for unlawful sexual activity (meeting child following grooming)	Victim <14 years old	<16 years old	MP: 12 years imprisonment MP: 15 years imprisonment (aggravated)
		66EB(3)	Grooming children	Victim <14 years old	<16 years old	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)
		80A(2)	Sexual assault by forced self-manipulation			MP: 14 years imprisonment
		80A(2A)	Aggravated sexual assault by forced self-manipulation	Victim <16 years old Victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender Victim has a serious physical disability or cognitive impairment		MP: 14 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		80D(1)	Causing sexual servitude			MP: 15 years imprisonment
		80D(2)	Causing sexual servitude (aggravated)	Victim <18 years old Victim has a cognitive impairment		MP: 20 years imprisonment
		80E(1)	Conduct of business involving sexual servitude			MP: 15 years imprisonment
		80E(2)	Conduct of business involving sexual servitude (aggravated)	Victim is <18 years old Victim has a cognitive impairment		MP: 19 years imprisonment
		91J(1)	Voyeurism			MP: 100 penalty units or 2 years imprisonment or both
		91J(3)	Voyeurism (aggravated)	Victim <16 years Offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence		MP: 5 years imprisonment
		91J(6)	Voyeurism (attempts)	Dependent on offence		MP: Offender is liable to the penalty provided for the commission of the offence
		547C	Peeping or prying			MP: 2 penalty units or 3 months imprisonment
	<i>Summary Offences Act 1988</i>	4(1)	Offensive conduct (within view or hearing from a public place or a school)			MP: 6 penalty units or 3 months imprisonment
		5	Obscene exposure			MP: 10 penalty units or 6 months imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		11G(1)	Loitering by convicted child sexual offenders near premises frequented by children			MP: 100 penalty units or 2 years imprisonment
Northern Territory	<i>Criminal Code Act 1983</i>	131(1)	Attempts to procure a child under 16 years		<16 years old	MP: 3 years imprisonment MP: 5 years imprisonment (if offender was an adult) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^b
		132(1)(b)	Indecent dealing with child under 16 (exposes child to an indecent act)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (aggravated) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^b
		132(1)(d)	Indecent dealing with child under 16 (procures child to perform an indecent act)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (aggravated) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^b

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		132(1)(e)	Indecent dealing with child under 16 (exposes child to an indecent object or indecent film, video tape, audio tape, photograph or book)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (aggravated) SNPP: 70% of the period of imprisonment that the offender is to serve under the sentence ^b
		133	Gross indecency in public			MP: 2 years imprisonment
		192B(2)	Coerced sexual self-manipulation			MP: 17 years imprisonment
		201	Abduction, enticement or detention of child under 16 years for immoral purpose (sexual intercourse or indecent dealing)		<16 years old	MP: 7 years imprisonment
		202B(1)	Sexual servitude		>17 years old	MP: 15 years imprisonment
		202B(2)	Sexual servitude		12–17 years old	MP: 20 years imprisonment
		202B(3)	Sexual servitude		<12 years old	MP: Life imprisonment
		202C(1)	Conducting business involving sexual servitude		>17 years old	MP: 15 years imprisonment
		202C(2)	Conducting business involving sexual servitude		12–17 years old	MP: 20 years imprisonment
		202C(3)	Conducting business involving sexual servitude		<12 years old	MP: Life imprisonment
		202D(1)	Deceptive recruiting for sexual services			MP: 10 years imprisonment
		202D(2)	Deceptive recruiting for sexual services		<18 years old	MP: 15 years imprisonment
	<i>Summary Offences Act</i>	47	Offensive, etc, conduct			MP: \$2,000 fine or 6 months imprisonment or both

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		47AC(2)	Loitering by sexual offender			MP: \$5,000 fine or 12 months imprisonment
		50	Indecent exposure of the person			MP: \$2,000 fine or 6 months imprisonment or both
Queensland	<i>Criminal Code Act 1899</i>	210(1)(b)	Indecent treatment of children under 16 (unlawfully procures child to commit an indecent act)	Victim <12 years old Offender was the victim's guardian or was responsible for their care at time of offence	<16 years old	MP: 14 years imprisonment MP: 20 years imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		210(1)(d)	Indecent treatment of children under 16 (exposes a child to an indecent act by the offender or other person)	Victim <12 years old Offender was the victim's guardian or was responsible for their care at time of offence	<16 years old	MP: 14 years imprisonment MP: 20 years imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		210(1)(e)	Indecent treatment of children under 16 (exposes child to any indecent object, film, videotape, audiotape, picture, photography or printed or written matter)	Victim <12 years old Offender was the victim's guardian or was responsible for their care at time of offence	<16 years old	MP: 14 years imprisonment MP: 20 years imprisonment (aggravated) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		217(1)	Procuring young person etc for carnal knowledge		<18 years old (no age requirement if victim has an impairment of the mind)	MP: 14 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		218(1)	Procuring sexual acts by coercion etc			MP: 14 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		218A(1)	Using internet etc. to procure children under 16	Victim <12 years old Offence involves the adult going to meet the child	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (aggravated)
		218B(1)(a)	Grooming children under 16 (facilitate procurement of child to engage in a sexual act)	Victim <12 years old	<16 years old	MP: 5 years imprisonment MP: 10 years imprisonment (aggravated)
		218B(1)(b)	Grooming children under 16 (expose child to any indecent matter)	Victim <12 years old	<16 years old	MP: 5 years imprisonment MP: 10 years imprisonment (aggravated)
		219(1)	Taking child for immoral purposes	Victim <12 years old	<16 years old <18 years old (if proscribed act involves sodomy)	MP: 10 years imprisonment MP: 14 years imprisonment (if victim <12 years old) MP: Life imprisonment (if victim <12 years old and proscribed act involves sodomy or sexual intercourse) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		221	Conspiracy to defile (conspires to induce any person by any false pretence or other fraudulent means to permit any person to have unlawful sexual intercourse)			MP: 10 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		227	Indecent acts			MP: 2 years imprisonment
		228(1)	Obscene publications and exhibitions	Person depicted/ appearing in the material/show <12 years old		MP: 2 years imprisonment MP: 5 years imprisonment (if person represented/ appearing is <16 years old) MP: 10 years imprisonment (if person represented/ appearing is <12 years old)
		228A(1)	Involving child in making child exploitation material		<16 years old	MP: 14 years imprisonment
		228B(1)	Making child exploitation material		<16 years old	MP: 14 years imprisonment
		352(1)(b)	Sexual assault (procures another person to commit an act of gross indecency or witness an act of gross indecency)		<16 years old	MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
	<i>Summary Offences Act 2005</i>	9(1)	Wilful exposure (in public place)	Purpose of act was to offend or embarrass another person		MP: 2 penalty units MP: 40 penalty units or 1 year imprisonment (aggravated)
		9(2)	Wilful exposure (to be seen by a person in a public place)	Purpose of act was to offend or embarrass another person		MP: 2 penalty units MP: 40 penalty units or 1 year imprisonment (aggravated)
South Australia	<i>Criminal Law Consolidation Act 1935</i>	48(2)(b)	Rape (act of sexual self-penetration)			MP: Life imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		48A(1)(b)	Compelled sexual manipulation (sexual manipulation of someone other than the offender)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence		MP: 10 years imprisonment MP: 15 years imprisonment (aggravated)
		48A(1)(c)	Compelled sexual manipulation (sexual self-manipulation)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence		MP: 10 years imprisonment MP: 15 years imprisonment (aggravated)
		58(1)(b)	Acts of gross indecency (incites or procures act of gross indecency)			MP: 3 years imprisonment (1st offence) MP: 5 years imprisonment (2nd offence)
		58(1)(c)	Acts of gross indecency (party to the commission of an act of gross indecency)			MP: 3 years imprisonment (1st offence) MP: 5 years imprisonment (2nd offence)
		59	Abduction of male or female person (with intent to marry or have sexual intercourse)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence		MP: 14 years imprisonment MP: 18 years imprisonment (aggravated)
		60	Procuring sexual intercourse	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence		MP: 7 years imprisonment MP: 10 years imprisonment (aggravated)

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		63B(1)(a)	Procuring child to commit indecent act etc (procures child for commission of an indecent act in relation to offender)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old <18 years old (if offender is in a position of authority over the victim)	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)
		63B(1)(b)(i)	Procuring child to commit indecent act etc (acting for prurient purposes causes/ induces child to expose any part of their body)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old <18 years old (if offender is in a position of authority over the victim)	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)
		63B(3)(a)	Procuring child to commit indecent act etc (communication with intention to procure a child to engage in, or submit to, a sexual activity)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old <18 years old (if offender is in a position of authority over the victim)	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)
		63B(3)(b)	Procuring child to commit indecent act etc. (communication for a prurient purpose with the intention of making a child amenable to a sexual activity)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old <18 years old (if offender is in a position of authority over the victim)	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)
		66(1)	Sexual servitude and related offences (person who compels another to provide or to continue to provide commercial sexual services)	Victim is <18 years old		MP: 15 years imprisonment MP: 19 years imprisonment (if victim <18 years) MP: Life imprisonment (if victim is <14 years old)

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		66(2)	Sexual servitude and related offences (person who by undue influence gets another to provide or to continue to provide commercial sexual services)	Victim is <18 years old		MP: 7 years imprisonment MP: 12 years imprisonment (if victim <18 years) MP: Life imprisonment (if victim is <14 years old)
		67	Deceptive recruiting for commercial sexual services	Victim is <18 years old		MP: 7 years imprisonment MP: 12 years imprisonment (aggravated)
		68(1)	Use of children in commercial sexual services (person must not employ, engage, cause or permit a child to provide or continue to provide commercial sexual services)	Victim is <14 years old	<18 years old	MP: 9 years imprisonment MP: Life imprisonment (aggravated)
		68(2)	Use of children in commercial sexual services (person must not ask child to provide commercial sexual services)	Victim is <14 years old	<18 years old	MP: 3 years imprisonment MP: 9 years imprisonment (aggravated)
		68(3)	Use of children in commercial sexual services (proceeds of commercial sexual services)	Victim is <14 years old	<18 years old	MP: 2 years imprisonment MP: 5 years imprisonment (aggravated)
	<i>Summary Offences Act 1953</i>	23(1)	Indecent behaviour			MP: \$1,250 or 3 months imprisonment
		23(2)	Gross indecency			MP: \$2,500 or 6 months imprisonment
		26D(3)	Humiliating or degrading filming (person who takes part in humiliating or degrading act being filmed)			MP: 2 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Tasmania	<i>Criminal Code Act 1924</i>	125C(2)	Procuring unlawful sexual intercourse with person under 17 years etc. (sexual intercourse)		<17 years old	MP: 21 years imprisonment
		125C(3)	Procuring unlawful sexual intercourse with person under 17 years etc. (indecent act)		<17 years old	MP: 21 years imprisonment
		125D(1)	Communications with intent to procure person under 17 years etc. (unlawful sexual act)		<17 years old	MP: 21 years imprisonment
		125D(3)	Communications with intent to procure person under 17 years etc (to expose child to indecent material)		<17 years old	MP: 21 years imprisonment
		137	Indecency			MP: 21 years imprisonment
		186(1)	Forcible abduction (for the purpose of marriage or sexual intercourse)			MP: 21 years imprisonment
		186(2)	Abduction (for the purpose of marriage or sexual intercourse)			MP: 21 years imprisonment
	<i>Police Offences Act 1935</i>	14A(1)	Peering into dwelling-houses etc			MP: 5 penalty units or 6 months imprisonment
		7A(2)	Loitering near children (by a person found guilty of a sexual offence)			MP: 50 penalty units or 2 years imprisonment or both
	Victoria	<i>Crimes Act 1958</i>	49A(1)	Facilitating sexual offences against children		<16 years old

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		53(1)	Administration of drugs etc (with the intention rendering a person incapable of resistance and thereby enabling themselves or another person to take part in an act of sexual penetration)			MP: 10 years imprisonment
		53(2)	Administration of drugs etc (with the intention rendering a person incapable of resistance and thereby enabling themselves or another person to take part in an indecent act)			MP: 5 years imprisonment
		55(a)	Abduction or detention (with the intention of getting married to or taking part in an act of sexual penetration)			MP: 10 years imprisonment
		55(b)	Abduction or detention (with the intention that that person should marry or take part in an act of sexual penetration with another person)			MP: 10 years imprisonment
		56(1)	Abduction of child under the age of 16 (with the intention that the child should take part in an act of sexual penetration)		<16 years old	MP: 5 years imprisonment
		57(1)	Procuring sexual penetration by threats or fraud			MP: 10 years imprisonment
		57(2)	Procuring sexual penetration by fraudulent means			MP: 5 years imprisonment
		58(1)	Procuring sexual penetration of a child (includes indecent acts)		<16 years old	MP: 10 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		58(2)	Procuring another person to engage in sexual penetration/ indecent act with child		<16 years old	MP: 10 years imprisonment
		58(3)	Procuring sexual penetration of a child (child 16–17 years old under the authority of the offender)		16–17 years old	MP: 10 years imprisonment
		60AB(2)	Sexual servitude: causing another person to provide or to continue to provide commercial sexual services through fraud, threats etc.			MP: 15 years imprisonment
		60AB(3)	Sexual servitude: causing another person to provide or to continue to provide commercial sexual services through fraud, threats etc.			MP: 15 years imprisonment
		60AB(4)	Sexual servitude: business that involves the provision of commercial sexual services			MP: 15 years imprisonment
		60AC(2)	Aggravated sexual servitude		<18 years old	MP: 20 years imprisonment
		60AD(1)	Deceptive recruiting for commercial sexual services			MP: 5 years imprisonment
		60AE(1)	Aggravated deceptive recruiting for commercial sexual services		<18 years old	MP: 10 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		60B(2)	Loitering near schools etc (by convicted sexual offender)			MP: 240 penalty units or 2 years imprisonment MP: 600 penalty units or 5 years imprisonment (if offender had previously been sentenced as a serious sexual offender)
		70AC	Sexual performance involving a minor		<18 years old	MP: 10 years imprisonment
	<i>Summary Offences Act 1966</i>	17(1)	Obscene, indecent, threatening language and behaviour etc. in public			MP: 10 penalty units or 2 months imprisonment (1st offence) MP: 15 penalty units of 3 months imprisonment (2nd offence) MP: 25 penalty units or 6 months imprisonment (3rd offence)
		19	Obscene exposure			MP: 2 years imprisonment
		41A	Observation of genital or anal region			MP: 3 months imprisonment
Western Australia	<i>Criminal Code Act Compilation Act 1913</i>	202(1)	Obscene act in public			MP: 3 years imprisonment MP: \$12,000 fine and 12 months imprisonment (summary conviction penalty)
		202(2)	Obscene act in public (business owner permitting)			MP: 3 years imprisonment MP: \$12,000 fine and 12 months imprisonment (summary conviction penalty)

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		203(1)	Indecent act in public			MP: 2 years imprisonment MP: \$9,000 fine and 9 months imprisonment (summary conviction penalty)
		203(2)	Indecent act in public (business owner permitting)			MP: 2 years imprisonment MP: \$9,000 fine and 9 months imprisonment (summary conviction penalty)
		204	Indecent act with intent to offend			MP: 3 years imprisonment MP: \$12,000 fine and 12 months imprisonment (summary conviction penalty)
		204A	Showing offensive material to child under 16		<16 years old	MP: 5 years imprisonment
		204B(2)	Using electronic communication to procure, or expose to indecent matter, child under 16		<16 years old	MP: 5 years imprisonment
		204B(3)	Using electronic communication to procure, or expose to indecent matter, child under 13		<13 years old	MP: 10 years imprisonment
		320(3)	Child under 13, sexual offences against (procures, incites or encourages child to engage in sexual behaviour)		<13 years old	MP: 20 years imprisonment
		320(5)	Child under 13, sexual offences against (procures, incites or encourages child to engage in an indecent act)		<13 years old	MP: 10 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		321(3)	Child of or over 13 and under 16, sexual offences against (procures, incites or encourages child to engage in sexual behaviour)		13–15 years old	MP: 7 years imprisonment (where the offender is under the age of 18 years and the child is not under the care, supervision or authority of the offender) MP: 14 years imprisonment MP: 20 years imprisonment (where the child is under the care, supervision or authority of the offender)
		321(5)	Child of or over 13 and under 16, sexual offences against (procures, incites or encourages child to engage in an indecent act)		13–15 years old	MP: 4 years imprisonment (where the offender is under the age of 18 years and the child is not under the care, supervision or authority of the offender) MP: 7 years imprisonment MP: 10 years imprisonment (where the child is under the care, supervision or authority of the offender)
		322(3)	Child of or over 16, sexual offences against by person in authority etc (procures, incites or encourages child to engage in sexual behaviour)		16–17 years old	MP: 10 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		322(5)	Child of or over 16, sexual offences against by person in authority etc (procures, incites or encourages child to engage in an indecent act)		16–17 years old	MP: 5 years imprisonment
		331B	Sexual servitude	Victim is <18 years old or an incapable person (so mentally impaired as to be incapable of understanding the nature of the act or guarding themselves against sexual exploitation)		MP: 14 years imprisonment MP: 20 years imprisonment (aggravated)
		331C(2)	Conducting business involving sexual servitude	Victim is <18 years old or an incapable person (so mentally impaired as to be incapable of understanding the nature of the act or guarding themselves against sexual exploitation)		MP: 14 years imprisonment MP: 20 years imprisonment (aggravated)
		331D(1)	Deceptive recruiting for commercial sexual service			MP: 7 years imprisonment
		331D(2)	Deceptive recruiting for commercial sexual service (child or incapable person)		<18 years old if victim is not an incapable person	MP: 20 years imprisonment

Table 5 Non-contact offences, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Commonwealth	<i>Criminal Code Act 1995</i>	471.24a	Using a postal or similar service to procure persons under 16		<16 years old	MP: 15 years imprisonment
		471.25	Using a postal or similar service to 'groom' persons under 16		<16 years old	MP: 12 years imprisonment
		471.26	Using a postal or similar service to send indecent material to person under 16		<16 years old	MP: 7 years imprisonment
		474.25A(2)	Causing child to engage in sexual activity with another person		<16 years old	MP: 15 years imprisonment
		474.25B	Aggravated offence (under s 474.25A(2); child has mental impairment and/or is under care, supervision or authority of defendant)		<16 years old	MP: 25 years imprisonment
		474.26	Using a carriage service to procure persons under 16 years of age		<16 years old	MP: 15 years imprisonment
		474.27	Using a carriage service to 'groom' persons under 16 years of age		<16 years old	MP: 12 years imprisonment
		474.27A	Using a carriage service to transmit indecent communication to person under 16 years of age		<16 years old	MP: 7 years imprisonment

a: An attempt to commit an offence under s417.24 and 471.25 is not an offence (s471.28(3) *Criminal Code Act 1995*)

Child pornography offences: Production

Every Australian jurisdiction has enacted legislation criminalising the production, dissemination and/or possession of child pornography. However, only offences that involved the actual *production* of child pornography were considered as part of this review (see Table 7). The definition of child pornography and the age of the child represented in the materials for each Australian jurisdiction is provided in Table 6.

This section of the report also includes a description of ‘upskirt’ offences, which involve the unlawful recording of another person’s anal or genital region (whether covered with underwear or not) and offences involving the recording of persons without their consent in situations where they would expect to have privacy. However, offences relating to the production of ‘Refused Classification’ (RC) materials are not included in this section as they were beyond the scope of the review.

Table 6 Definition of child pornography, by jurisdiction

Jurisdiction	Relevant legislation	Definition of child pornography	Age of child represented
Australian Capital Territory	<i>Crimes Act 1900</i>	Anything that represents: <ul style="list-style-type: none"> a) the sexual parts of a child, or b) a child engaged in an activity of a sexual nature; or c) someone else engaged in an activity of a sexual nature in the presence of the child: substantially for the sexual arousal or sexual gratification of someone other than the child.	<16 years old

Table 6 Definition of child pornography, by jurisdiction

Jurisdiction	Relevant legislation	Definition of child pornography	Age of child represented
New South Wales	<i>Crimes Act 1900</i>	Materials that depicts or describes, in a way that reasonable persons would regard as being, in all circumstances, offensive: <ol style="list-style-type: none"> a) a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse, or b) a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons), or c) a person who is, appears to be or is implied to be, a child in the presence of another person who is engaged or apparently engaged in a sexual pose or sexual activity, or d) the private parts of a person who is, appears to be or is implied to be, a child. 	<16 years old
Northern Territory	<i>Criminal Code Act 1983</i>	Material that depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult, a person who is a child or who appears to be a child: <ol style="list-style-type: none"> a) engaging in sexual activity; b) in a sexual, offensive or demeaning context; or c) being subjected to torture, cruelty or abuse. 	<18 years old
Queensland	<i>Criminal Code Act 1899</i>	Material that, in a way likely to cause offence to a reasonable adult, describes or depicts a person, or a representation of a person, who is, or apparently is, a child under 16 years: <ol style="list-style-type: none"> a) in a sexual context, including for example, engaging in a b) sexual activity; or c) in an offensive or demeaning context; or d) being subjected to abuse, cruelty or torture. 	<16 years old
South Australia	<i>Criminal Law Consolidation Act 1935</i>	Material that: <ol style="list-style-type: none"> a) describes or depicts a child under, or apparently under, the age of 17 years engaging in sexual activity or consists of, or contains, the image of (or what appears to be the image of) a child under, or apparently under, the age of 17 years, or of the bodily parts of such a child, or in the production of which such a child has been or appears to have been involved; and b) that is intended or apparently intended: <ol style="list-style-type: none"> i. to excite or gratify sexual interest; or ii. to excite or gratify a sadistic or other perverted interest in violence or cruelty 	<17 years old
Tasmania	<i>Criminal Code Act 1924</i>	Material (film, printed matter, electronic data and any other thing of any kind (including any computer image or other depiction) 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– <ol style="list-style-type: none"> 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). 	<18 years old

Table 6 Definition of child pornography, by jurisdiction

Jurisdiction	Relevant legislation	Definition of child pornography	Age of child represented
Victoria	<i>Crimes Act 1958</i>	A film, photograph, publication of computer game that describes or depicts a person who is, or appears to be, a minor engaging in sexual activity or depicted in an indecent sexual manner.	<18 years old
Western Australia	<i>The Criminal Code Act Compilation Act 1913</i>	<p>a) material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child engaging in sexual activity or in a sexual context) or;</p> <p>b) material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be, a child:</p> <p>i. in an offensive or demeaning context; or</p> <p>ii. being subjected to abuse, cruelty or torture</p> <p>iii. (whether or not in a sexual context).</p>	<16 years old
Commonwealth	<i>Criminal Code Act 1995</i>	<p>Child abuse materials:</p> <p>a) Material that depicts a person, or a representation of a person, who:</p> <p>i. is, or appears to be, under 18 years of age; and</p> <p>ii. is, or appears to be, a victim of torture, cruelty or physical abuse; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <p>b) material that describes a person who:</p> <p>iii. is, or is implied to be, under 18 years of age; and</p> <p>iv. is, or is implied to be, a victim of torture, cruelty or physical abuse;</p> <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.</p>	<18 years old

Table 6 Definition of child pornography, by jurisdiction

Jurisdiction	Relevant legislation	Definition of child pornography	Age of child represented
		<p>Child pornography material:</p> <ul style="list-style-type: none"> a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who: <ul style="list-style-type: none"> i. is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or ii. is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity; <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <ul style="list-style-type: none"> b) material the dominant characteristic of which is the depiction, for a sexual purpose, of: <ul style="list-style-type: none"> i. a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or ii. a representation of such a sexual organ or anal region; or iii. the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age; <p>in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <ul style="list-style-type: none"> c) material that describes a person who is, or is implied to be, under 18 years of age and who: <ul style="list-style-type: none"> i. is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or ii. is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity; <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or</p> <ul style="list-style-type: none"> (d) material that describes: <ul style="list-style-type: none"> i. a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or ii. the breasts of a female person who is, or is implied to be, under 18 years of age; <p>and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.</p>	

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Australian Capital Territory	<i>Crimes Act 1900</i>	64(1)	Using child for production of child pornography etc		<12 years old	MP: 1,500 penalty units or 15 years imprisonment or both
		64(3)	Using child for production of child pornography etc		12–16 years old	MP: 1,000 penalty units or 10 years imprisonment or both
		64A(1)	Trading in child pornography (includes production)		<16 years old	MP: 1,200 penalty units or 12 years imprisonment
New South Wales	<i>Crimes Act 1900</i>	91G(1)	Children not to be used for the production of child abuse material		<14 years old	MP: 14 years imprisonment
		91G(2)	Children not to be used for the production of child abuse material		14–15 years old	MP: 10 years imprisonment
		91H(2)	Production, dissemination or possession of child abuse material		<16 years old	MP: 10 years imprisonment
		91K(1)	Filming a person engaged in a private act			MP: 100 penalty units or 2 years imprisonment or both
		91K(3)	Filming a person engaged in a private act (aggravated)	Victim <16 years Offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence		MP: 5 years imprisonment
		91K(6)	Filming a person engaged in a private act (attempts)	Dependent on offence		MP: Offender is liable to the penalty provided for the commission of the offence
		91L(1)	Filming a person's private parts			MP: 100 penalty units or 2 years imprisonment or both

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		91L(3)	Filming a person's private parts (aggravated)	Victim <16 years Offender constructed or adapted the fabric of any building for the purpose of facilitating the commission of the offence		MP: 5 years imprisonment
		91L(6)	Filming a person's private parts (attempts)	Dependent on offence		MP: Offender is liable to the penalty provided for the commission of the offence
		91M(1)	Installing device to facilitate observation or filming (facilitating offence against s 91J—91L)			MP: 100 penalty units or 2 years imprisonment or both
Northern Territory	<i>Criminal Code Act 1983</i>	125B(1)	Possession of child abuse material (includes production)		<16 years old	MP: 10 years imprisonment
		125E	Using child for production of child abuse material or pornographic or abusive performance		<16 years old	MP: 14 years imprisonment
		132(1)(f)	Indecent dealing with child under 16 (takes or records an indecent visual image of a child)	Victim <10 years old	<16 years old	MP: 10 years imprisonment MP: 14 years imprisonment (aggravated)
Queensland	<i>Criminal Code Act 1899</i>	210(1)(f)	Indecent treatment of children under 16 (takes indecent photograph or records any indecent visual image of a child)	Victim <12 years old Offender was the victim's guardian or was responsible for their care at time of offence	<16 years old	MP: 14 years imprisonment MP: 20 years imprisonment (if victim is <12 years old and/or offender is the guardian of the child or the child is for the time being under their care) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		216(2)(f)	Abuse of persons with an impairment of the mind (indecent recording)			MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		227A(1)	Observations or recordings in breach of privacy			MP: 2 years imprisonment
		227A(1)	Observations or recordings in breach of privacy (genital or anal region)			MP: 2 years imprisonment
		228A(1)	Involving child in making child exploitation material		<16 years old	MP: 14 years imprisonment
		228B(1)	Making child exploitation material		<16 years old	MP: 14 years imprisonment
	<i>Classification of Publications Act 1991</i>	17(1)	Producing prohibited publication (including child abuse publication)		<16 years old	MP: 800 penalty units or 3 months imprisonment
		18	Procurement of minor for RC publication or child abuse photograph		<16 years old	MP: 1,000 units or 3 years imprisonment
	<i>Classification of Films Act 1991</i>	42(3)	Making child abuse films includes attempts)		<16 years old	MP: 1,000 penalty units or 5 years imprisonment
		43	Procurement of minor for objectionable film		<16 years old	MP: 800 penalty units or 3 years imprisonment
	<i>Classification of Computer Games and Images Act 1995</i>	27(3)	Making child abuse computer game		<16 years old	MP: 1,000 penalty units or 3 years imprisonment
		28	Obtaining minor for objectionable computer game		<16 years old	MP: 800 penalty units or 3 years imprisonment

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)	
South Australia	<i>Criminal Law Consolidation Act 1935</i>	63(a)	Production or dissemination of child pornography	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)	
		63B(1)(b)(ii)	Procuring child to commit indecent act etc (acting for prurient purposes makes a record for which the image of a child engaged in a private act may be reproduced)	Victim <12 years old The offender abused a position of authority, or a position of trust, in committing the offence	<17 years old <18 years old (if offender is in a position of authority over the victim)	MP: 10 years imprisonment MP: 12 years imprisonment (aggravated)	
	<i>Summary Offences Act 1953</i>	26B(1)	Humiliating or degrading filming				MP: 12 months imprisonment
		26D(1)	Indecent filming	Victim <18 years old			MP: \$10,000 fine or 2 years imprisonment MP: \$20,000 fine or 4 years imprisonment (aggravated)
							MP: \$20,000 fine or 6 months imprisonment
	33(2)(a)	Indecent or offensive material (production)				MP: \$20,000 fine or 6 months imprisonment	
Tasmania	<i>Criminal Code Act 1924</i>	130	Involving persons under 18 years in production of child exploitation materials		<18 years old	MP: 21 years imprisonment	
		130A	Production of child exploitation material		<18 years old	MP: 21 years imprisonment	
	<i>Police Offences Act 1935</i>	13A(1)	Observation or recording in breach of privacy				MP: 50 penalty units or 12 months imprisonment or both
		13A(2)	Observation or recording in breach of privacy (recording a person's genital or anal region)				MP: 50 penalty units or 12 months imprisonment or both

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
	<i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>	72A	Offence to make or reproduce child exploitation material		<18 years old	MP: 300 penalty units or 3 years imprisonment or both
		73	Offence to procure child to be involved in making child exploitation material		<18 years old	MP: 300 penalty units or 3 years imprisonment or both
Victoria	<i>Crimes Act 1958</i>	68(1)	Production of child pornography		<18 years old	MP: 10 years imprisonment
		69(1)	Procurement of minor for child pornography		<18 years old	MP: 10 years imprisonment
	<i>Summary Offences Act 1966</i>	41B	Visually capturing genital or anal region			MP: 2 years imprisonment
	<i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i>	24(1)	Making objectionable film			MP: 240 penalty units or 2 years imprisonment
		32(1)	Producing objectionable publications			MP: 240 penalty units or 2 years imprisonment
Western Australia	<i>Criminal Code Act Compilation Act 1913</i>	217(2)	Involving child in child exploitation		<16 years old	MP: 10 years imprisonment
		218	Producing child exploitation material		<16 years old	MP: 10 years imprisonment
		320(6)	Child under 13, sexual offences against (indecently records a child)		<13 years old	MP: 10 years imprisonment
		321(6)	Child of or over 13 and under 16, sexual offences against (indecently records a child)		13–15 years old	MP: 4 years imprisonment (where the offender is under the age of 18 years and the child is not under the care, supervision or authority of the offender) MP: 7 years imprisonment MP: 10 years imprisonment (where the child is under the care, supervision or authority of the offender)

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		322(6)	Child of or over 16, sexual offences against by person in authority etc (indecently records)		16–17 years old	MP: 5 years imprisonment
		329(6)	Incest (indecently recording)	Victim <16 years old	<18 years old	MP: 5 years imprisonment MP: 10 years imprisonment (aggravated)
		330(6)	Incapable person, sexual offences against (indecent recording)	Incapable person is under the care, supervision, or authority of the offender		MP: 7 years imprisonment MP: 10 years imprisonment (aggravated)
Commonwealth	<i>Criminal Code Act 1995</i>	471.17	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service		<18 years old	MP: 15 years imprisonment
		471.20	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service		<18 years old	MP: 15 years imprisonment
		471.22	Aggravated offence (offence under s 471.17 or s 471.20 conducted on 3 or more occasions and involved 2 or more people)		<18 years old	MP: 25 years imprisonment
		474.20	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service		<18 years old	MP: 15 years imprisonment
		474.23	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service		<18 years old	MP: 15 years imprisonment

Table 7 Child pornography offences (production), by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		474.24A	Aggravated offence (offence under s 474.20 or s 474.23 conducted on 3 or more occasions and involved 2 or more people)		<18 years old	MP: 25 years imprisonment

Offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged. The final group of offences considered as part of this review were those that could potentially be used to bring charges against institutions and their representatives who:

- had some knowledge that staff/representatives were sexually abusing children under their care; and
- failed to report their suspicions to the institution's governing body (including the Chief Executive Officer), the police and/or the relevant statutory child protection agency.

Each Australian jurisdiction has enacted mandatory reporting laws that require specific individuals (or in the case of the Northern Territory, any person) to make a formal report to the relevant authorities if they have reasonable grounds to believe that a child is being sexually abused (for a review see Mathews & Scott 2013). Depending on the jurisdiction, mandatory reporters may include:

- health professionals;
- individuals working at a school and/or in an education role;
- police officers;

- child care centre staff;
- public servants who during the course of their duties work with children; and
- persons who hold a management position at an organisation that provide services to children.

Further, under the *Family Law Act 1975 (Cth)*, persons employed by the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia are also mandatory reporters.

Mandatory reporters who fail to make an oral or written report to the relevant authorities in relation to the sexual abuse of a child may be charged with an offence. These offences, and others that may be used to bring charges against institutions and/or their representatives, are outlined in Table 8. To date, there have been very few attempts to charge those persons mandated to report suspected child abuse and neglect, and most of these attempts have ultimately been unsuccessful. For example, in 2011 charges were unsuccessfully brought against a NT youth worker who failed to report a five year old child's sexualised behaviour until after she had witnessed it for a second time (Bolton 2011).

Table 8 Offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
Australian Capital Territory	<i>Children and Young People Act 2008</i>	356(1)	Offence-mandatory reporting of abuse		<18 years old	MP: 50 penalty units, imprisonment for 6 months or both
New South Wales	<i>Crimes Act 1900</i>	316(1)	Concealing serious indictable offence			MP: 2 years imprisonment
		316(2)	Concealing serious indictable offence (person solicits, accepts or agrees to accept any benefit in consideration for doing anything that would be an offence under 316(1))			MP: 5 years imprisonment
	<i>Children and Young Persons (Care and Protection) Act 1998</i>	27(2)	Mandatory reporting			MP: Not specified
	227	Child and young person abuse (person intentionally takes action that has resulted in or appears likely to result in)	<18 years old	MP: 200 penalty units		
Northern Territory	<i>Criminal Code Act 1983</i>	104(1)	Compounding crimes			MP: 3 years imprisonment MP: 7 years imprisonment (If the crime is such that a person found guilty of it is liable to be sentenced to imprisonment for life)
		<i>Care and Protection of Children Act 2007</i>	26(1)	Reporting obligations	<18 years old	MP: 200 penalty units
	26(2)	Reporting obligations (child 14–15 years old victim of sexual abuse)	14–15 years old	MP: 200 penalty units		
Queensland	<i>Criminal Code Act 1899</i>	133(1)	Compounding an indictable offence			MP: 3 years imprisonment MP: 7 years imprisonment (If the indictable offence is such that a person convicted of it is liable to be sentenced to imprisonment for life)

Table 8 Offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		213(2)	Owner etc permitting abuse of children on premises		12–15 years old (for an offence defined in s208) 12–17 years old (for an offence defined in s 210 or 215)	MP: 10 years imprisonment SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
		213(3)	Owner etc permitting abuse of children on premises		<12 years old	MP: 14 years imprisonment MP: Life imprisonment (where the proscribed act is one defined to constitute an offence in s 208 or s 215) SNPP: 80% of imprisonment term or 15 years (whichever occurs first)
	<i>Public Health Act 2005</i>	193	Offence (professional who fails to give notice under s191 or 192- mandatory reporting)		<18 years old	MP: 50 penalty units
	<i>Education (General Provisions) Act 2006</i>	365(2)	Obligation to report sexual abuse of person under 18 years at State school (provision of written report to school's principal)		<18 years old	MP: 20 penalty units
		365(2A)	Obligation to report sexual abuse of person under 18 years at State school (provision of written report by school principal to the police)		<18 years old	MP: 20 penalty units
		365(4)	Obligation to report sexual abuse of person under 18 years at State school (principal provides of written report to chief executive's nominated party)		<18 years old	MP: 20 penalty units

Table 8 Offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)
		365(5)	Obligation to report sexual abuse of person under 18 years at State school (chief executive's nominated party provides report to police)		<18 years old	MP: 20 penalty units
		366(2)	Obligation to report sexual abuse of person under 18 years at non-State school (provision of written report to school's principal/school's governing body)		<18 years old	MP: 20 penalty units
		366(2A)	Obligation to report sexual abuse of person under 18 years at non-State school (provision of written report by principal to police)		<18 years old	MP: 20 penalty units
		366(2B)	Obligation to report sexual abuse of person under 18 years at non-State school (provision of written report by school's principal to director of school's governing body)		<18 years old	MP: 20 penalty units
		366(4)	Obligation to report sexual abuse of person under 18 years at non-State school (provision of written report to police by school's principal/director of school governing body to police officer)		<18 years old	MP: 20 penalty units
	<i>Child Protection Act 1999</i>	148(1)	Obligation to report harm to children in departmental and licensed care services		<18 years old	MP: 20 penalty units
South Australia	<i>Criminal Law Consolidation Act 1935</i>	61	Householder etc not to permit unlawful sexual intercourse on premises		<17 years old	MP: 7 years imprisonment
	<i>Children's Protection Act 1993</i>	11(1)	Notification of abuse or neglect		<18 years old	MP: \$10,000 fine
Tasmania	<i>Criminal Code Act 1924</i>	102(1)	Compounding crimes			MP: 21 years imprisonment
		125	Person permitting unlawful sexual intercourse with young person on premises		<17 years old	MP: 21 years imprisonment

Table 8 Offences for which institutions and/or their representatives that were aware of child sexual abuse may be charged, by jurisdiction

Jurisdiction	Relevant legislation	Section	Offence	Aggravating factors	Age of victim	Maximum penalty & standard non-parole period (if applicable)	
	<i>Children, Young Persons and their Families Act 1997</i>	14(2)	Informing of concern about abuse or neglect or certain behaviour		<18 years old	MP: 20 penalty units	
		91(1)	Offence to fail to protect child from harm (person who has duty of care)		<18 years old	MP: 50 penalty units, 2 years imprisonment or both	
Victoria	<i>Crimes Act 1958</i>	54	Occupier etc. permitting unlawful sexual penetration	Victim <13 years old	<17 years old	MP: 10 years imprisonment MP: 15 years imprisonment (aggravated)	
		326(1)	Concealing offences for benefit			MP: 12 months imprisonment	
	<i>Children, Youth and Families Act 2005</i>	184(1)	Mandatory reporting			<18 years old	MP: 10 penalty units
		493(1)	Offence to fail to protect child from harm (person who has duty of care)			<18 years old	MP: Not specified
Western Australia	<i>Criminal Code Act Compilation Act 1913</i>	136(2)	Compounding or concealing offence			MP: 7 years imprisonment	
		186(1)	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge	Victim <13 years old	<16 years old	MP: 2 years imprisonment MP: 20 years imprisonment (aggravated)	
	<i>Children and Community Services Act 2004</i>	101(1)	Failing to protect child from harm (person who has care and control of a child)				MP: 10 years imprisonment
		124B(1)	Duty of certain people to report sexual abuse of children			<18 years old	MP: \$6,000 fine
	<i>Family Court Act 1997</i>	160(2)	Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.				MP: Not specified
Commonwealth	<i>Family Law Act 1975</i>	67Z	Where interested person makes allegation of child abuse			MP: Not specified	

a: ss 191–192 mandatory reporting of suspected harm being caused to a child



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All URLs correct at February 2014

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Appendix A: Online access to current sexual offence legislature

Table A1 Hyperlinks for online access to current legislature, by jurisdiction

Jurisdiction	Hyperlink
Australian Capital Territory	http://www.austlii.edu.au/au/legis/act/consol_act/
New South Wales	http://www.austlii.edu.au/au/legis/nsw/consol_act/
Northern Territory	http://www.austlii.edu.au/au/legis/nt/consol_act/
Queensland	http://www.austlii.edu.au/au/legis/qld/consol_act/
South Australia	http://www.austlii.edu.au/au/legis/sa/consol_act/
Tasmania	http://www.austlii.edu.au/au/legis/tas/consol_act/
Victoria	http://www.austlii.edu.au/au/legis/vic/consol_act/
Western Australia	http://www.austlii.edu.au/au/legis/wa/consol_act/
Commonwealth	http://www.austlii.edu.au/au/legis/cth/consol_act/

Appendix B: Penalty units conversion

Table B1 Conversion of penalty units as at 31 December 2013, by jurisdiction

Jurisdiction	Penalty unit conversion	Relevant legislation
Australian Capital Territory	One penalty unit = \$140 (for an offence committed by an individual) One penalty unit = \$700 (for an offence committed by a corporation)	<i>Legislation Act 2001</i>
New South Wales	One penalty unit = \$110	<i>Crimes (Sentencing Procedure) Act 1999</i>
Northern Territory	One penalty unit = \$144	<i>Penalty Units Act 2009</i>
Queensland	One penalty unit = \$110	<i>Penalties and Sentences Act 1992</i>
South Australia	N/A	
Tasmania	One penalty unit = \$130	<i>Penalty Units and Other Penalties Act 1987</i>
Victoria	One penalty unit = \$144.36	<i>Monetary Units Act 2004</i>
Western Australia	N/A	
Commonwealth	One penalty unit = \$170	<i>Crimes Act 1914</i>

AIC Reports

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