Australian Government

Australian Institute of Criminology

Historical review of sexual offence and child sexual abuse legislation in Australia: 1788–2013

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Prepared by the Australian Institute of Criminology for the Royal Commission into Institutional Responses to Child Sexual Abuse

AIC Reports
Special report

ISBN 978 1 922009 77 7 (Print)
978 1 922009 78 4 (Online)

Published by the Australian Institute of Criminology
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Edited and typeset by the Australian Institute of Criminology

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Introduction

At the end of 2013, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Commission) contracted the Australian Institute of Criminology (AIC) to undertake a historical review of sexual offence legislation in Australia, particularly as it related to children, from British colonisation in 1788 to the present. The project involved a comprehensive review of literature and legislation (current and past) that was available online and in hardcopy.

The review's two purposes were to:

1. develop an understanding of the socio-political context within which child sexual abuse legislation has developed in Australia and internationally; and
2. provide an overview of the offences with which a person who sexually abused a child may have been charged during 1950–2013.

Scope and structure of this report

The report has two main sections. The first is an overview of the socio-political factors and events linked to the development of Australia's awareness and understanding of child sexual abuse, statutory child protection systems and child sexual abuse legislation from 1788 (when Australia was first colonised) until the end of 2013.

The second section is an overview of the different offences with which a person who sexually abused a child during 1950–2013 may have been charged within the nine Australian jurisdictions. This review does not include legislative changes that occurred after 31 December 2013.

Section two sets out for each jurisdiction:

- an overview of the sexual offence legislation at 'point-in-time'—1950;
- a timeline detailing key legislative changes during 1950–2013 (eg definitional changes, inclusion of new offences and repeal of pre-existing offences etc); and
- a brief discussion of the sexual offence legislation focussing on the following key themes:
  - the use of gendered language;
  - the definition of sexual penetration/intercourse/carnal knowledge;
  - the decriminalisation of homosexual sexual acts;
  - offences where the accused is in a position of authority or trust;
  - child abuse materials/child pornography/child exploitation materials; and
  - mandatory reporting laws.

A range of offences were included in the legislative review including:

- contact sexual offences where the child is below the legal age of consent;
- 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;
- child pornography offences; and
- non-contact sexual offences, including:
  - facilitation offences—offences that increase the likelihood of the sexual offence occurring (eg procuring children for sexual purposes and 'grooming' children);
  - compelling persons to engage in sexual self-manipulation;
  - compelling persons to engage in sexual activities with a third person (not the offender);
  - loitering near places frequented by children by convicted sex offenders;
  - voyeurism (eg 'upskirt' and peeping offences);
  - sexual servitude; and
  - indecent exposure and obscene/offensive behaviour in public.

The offences included in the review were identified in consultation with the Commission. They included offences relating to producing, disseminating and/or possessing child exploitation materials/child pornography. However, offences relating to the distribution, production and similar of 'Refused Classification' (RC) materials were excluded as being beyond the scope of the project. Offences relating to acts and individuals located outside Australia were also excluded. Finally, while reference is made to incest offences throughout this document, this report focuses predominantly on non-familial offences.

The period 1950–2013 was selected for logistical and conceptual reasons. First, at the time of conducting the review the research team encountered some issues accessing primary resources (ie legislation) for a number of jurisdictions (eg Tasmania and the Northern Territory) that were enacted before 1950. Second, the relatively limited legislative changes to sex offences prior to 1950. Third, the timeframes and resources allocated to this project were similarly restrictive, making a review of legislation prior to 1950 unfeasible. Finally, it was decided, in consultation with the Commission, that the period of most interest and relevance to the Commissioners was 1950–2013.

Definitions

Child sexual abuse is a nebulous phenomenon that has been defined in different ways at different points in western history. However, for the purpose of this report, child sexual abuse is 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). Finally, the definition was selected because it encompasses sexual acts involving two children or adolescents who may be below the legal age of consent.

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, unless noted otherwise.

Finally, the term 'homosexual sexual intercourse', unless otherwise specified, is used in this report to refer to anal sexual intercourse involving males.

History of child sexual abuse in Australia: 1788–2013

Whether the law is designed to reflect societal attitudes and mores or to facilitate and encourage social change, a jurisdiction's legislature is the product of its socio-political context. Consequently, to understand the history of child abuse and sexual offence legislation in Australia it is necessary to analyse the socio-political context within which it was developed.

This section gives a brief overview of some of the factors that appeared to influence the implementation, revision and amendment of Australian sexual offence legislation during 1788–2013. Key themes include social/cultural understandings of childhood and child sexuality, the role of government in child protection systems, and societal awareness of child sexual abuse.

Eighteenth century

In the eighteenth century, little demarcation existed between children and adults. 'Childhood' did not exist—children were seen as extensions of their parents and as 'little adults' (deMause 1974). Consequently, children were believed to be born into original sin and as such were perceived as innately immoral, sinful and deviant. This perception, facilitated and encouraged by Victorian evangelicalism, meant that children were subject to strict and often harsh and brutal disciplinary methods and structures. Parents and educators were encouraged to use regular corporal punishment to 'beat the evil' out of children and evidence suggests that this practice started at a very young age (Tower 1989; deMause 1974; Flegel 2009; Lamont & Bromfield 2010; Radbill 1980).

Parenting practices of the time, referred to as 'intrusive' by historians such as deMause (1974), focused on controlling the child and their perceived 'immoral' urges. For example, the practice of swaddling was used to control children who, untethered, were presumed to attempt to tear their eyes out. In particular, it was believed that left to their own devices, children would touch their genitals and engage in other 'deviant' sexual practices.

At this point in history (as was the case until the twentieth century) children had very few rights. They were seen as the chattels of their fathers, a view that was enshrined in English canon law (Boss 1980). For example, under English law, rape was the theft of a girl's virginity that could be rectified through providing compensation to the father (Ames & Houston 1990; Petrie 2000). This perception of children as chattels may offer some explanation for why, during the early stages of Australia's settlement, the government of the time did not provide services to protect those children who had arrived or had

been born in the colony from harm. It has been suggested that protecting children from harm inflicted by parents and caregivers was not perceived as a role for government who were reluctant to interfere in how children were raised, as they were the property of their parents (Lamont & Bromfield 2010).

Considering the use of corporal punishment was widespread, socially accepted and that children were, legally, the chattels of their parents, it is unsurprising that throughout the 1700s awareness and understanding of child abuse, maltreatment and neglect was limited. That said, even during the initial period of British colonisation, concern grew within the colony for orphaned and neglected children. Children who were orphaned or whose parents were perceived as being 'inadequate' were boarded out with approved families, or later, lived in orphanages, the first of which was established on Norfolk Island in 1795 (Liddell 1993; Tomison 2001).

Awareness and understanding of child sexual abuse was particularly limited in the eighteenth century. Correspondingly, only a handful of child sexual offences under English law were adopted in Australia during early settlement (see Kercher 1995 for an overview of the history of Australian law and legal principles). These included the forced sodomy of boys and the forcible rape of girls under the age of ten years old. It was the enactment of these latter offences in the sixteenth century in England that began the process of protecting children from sexual abuse under law.

By the end of the 1700s, societal perceptions of children had shifted drastically to a point where childhood was now being seen as a separate state from adulthood and was characterised by innocence, purity and naïveté (Ames & Houston 1990; Ennew 1986; Flegel 2009; Kincaid 1992). This was particularly the case among the middle and upper class. At the same time, Victorian conservatism and moral puritanism denied children's sexuality as a phenomenon (Tower 1989; Egan & Hawkes 2008). It emphasised the importance of protecting children from harm (including sexual harm) from others and from themselves (Ennew 1986; Petrie 2000). Some educators had started to encourage parents to supervise their children at all times and to ensure they were never naked in front of other adults. This, it was suggested, 'constituted one of the first indications that society at large recognised the potential for children to be sexually abused' (Conte & Shore 1982, cited in Tomison 2001:48).

Box 1 Cultural perceptions of childhood and child sexuality in western society

- Prior to the twelfth century no notion of 'childhood' existed. Children were 'small adults'
- Fourteenth–seventeenth century—children viewed with 'indifference'. High child death rates meant that parents emotionally distanced themselves from their children. Children seen as another source of income for the family, particularly within poor families
- Eighteenth century—children perceived as innately immoral, requiring strict discipline and religious instruction. Children seen as needing to be controlled through a range of means, including corporal punishment
- Nineteenth century—contemporary notions of purity and naiveté closely aligned. Children were brought into the centre of family life and viewed as innocents, untainted and precious. Children needed to be protected from adults and themselves, particularly in relation to 'self-harm', ie masturbation

Source: Adapted from deMause 1974; Flegel 2009; Goldman & Ronken 2000

Box 2 Mary Ellen

In 1873, a Methodist social worker discovered nine year old Mary Ellen badly beaten in her home. The social worker approached the police to assist the child but they were unable to intervene. Despite a scarcity of broader understanding around how to deal with matters of this kind, after some time the social worker approached the American Society for the Prevention of Cruelty to Animals (ASPCA) which agreed to intervene on behalf of the child. The case, which was prosecuted by the ASPCA's lawyers, was successful, resulting in the removal of Mary Ellen from her home and her guardian mother being charged with assault.

Source: Boss 1980; Flegel 2009; Tomison 2001

Nineteenth century

By the mid-1800s, awareness of child sexual abuse was increasing in Australia and overseas. A series of government inquiries had found that child prostitution, incest and sexual abuse were common in some Australian settlements, particularly Sydney. The reports from these inquiries described high levels of 'sexual immorality', which were largely attributed to entrenched poverty and overcrowded living quarters. In particular, it was noted that many families still allowed children to sleep in the same bed as adults, creating situations where sexual abuse was more likely to occur. It was also suggested that these sleeping arrangements made it more likely that children would witness their parents having sex, which in turn created 'promiscuous' and 'seductive' children (Finch 1991).

At the same time, social welfare organisations operating in Australia and overseas were raising awareness of child prostitution. Despite evidence of a booming male prostitution industry in areas such as London and Sydney, the awareness-raising efforts of these social welfare agencies were focused on female children (Flegel 2009). However, not all child prostitutes were seen as victims and worthy of protection. Some children were described by commentators as 'wanton' and 'lustful', sexual aggressors and complicit in the sexual activities. Rather than victims, these children were viewed as a corrupting influence, a threat to society and other children (Flegel 2009).

Despite the findings of government inquiries and the efforts of social welfare groups, the government continued to be ambivalent about assuming full responsibility for providing child welfare and 'protection' services. For example in NSW, voluntary committees continued to be responsible for running orphanages and reformatories, funded by government subsidies (Liddell 1993). As a consequence of the gold rushes and subsequent population increases in the mid1800s, jurisdictions such as NSW and Victoria experienced a significant increase in the number of abandoned and neglected children (Gandevia 1978: Liddell 1993). This led to several jurisdictions introducing child protection legislation, which included provisions for children to be sent to 'reformatory and training' schools (Liddell 1993; Markiewicz 1996a). However, concern increased over the conditions that institutionalised children were exposed to, and the deprivation they suffered as a result of having no family life (Mendelsohn 1979; Liddell 1993).

The end of the nineteenth century was characterised by social upheaval and campaigning by organisations and activists concerned with a range of social welfare issues, including child welfare and elements of child abuse, as it is now defined. During this time voluntary child protection bodies emerged in the United States, the United Kingdom and Australia (Lamont & Bromfield 2010). The establishment of these new organisations was in part influenced by the highly publicised case of an abused nine year old girl in New York (see Box 2). The 'child rescue' movement of the latter part of the 1800s also led to the development of interventionist policies designed to facilitate the state's regulation of Indigenous persons and their childrearing practices (Liddell 1993).

However, while many of these fledgling social welfare and child protection agencies identified 'imperilled morality' as a form of child abuse, they rarely chose to engage in matters involving sexual abuse unless there were compounding issues associated with physical abuse or neglect (Olafson, Corwin & Summit 1993). Scott and Swain (2002) suggest that the reluctance of these groups to intervene in cases of child sexual abuse may have been because it was more difficult to detect and prove (unless brought to the attention of neighbours or as a result of an unexplained pregnancy).

> There was also a sense in which nineteenth-century child-savers had difficulty in seeing the victim of sexual abuse as a child. The idealised version of childhood that they were seeking to construct was an innocent one which had no space for a sexualised child. The place of such victims was in a reformatory…there was certainly no place for them within the redemptive circle of the substitute family where their mere presence would serve to contaminate (Scott & Swain 2002:17).

Awareness of child sexual abuse was also increasing within the psychoanalytical community, primarily because of the work of Sigmund Freud. At the end of the 1800s, Freud, noticing that most of his female patients had histories of sexual contact with male

adults as children, posited that one of the underlying causes of hysteria was inappropriate sexual relations with adults during childhood (so-called Seduction Theory).

The second half of the nineteenth century was also notable due to the efforts of early feminist and moral purity groups who campaigned in Australia, the United States and England to have the age of consent raised from 13 to 16 years (Phillips 2002; Scutt 1991). New South Wales, Western Australia and Queensland subsequently raised the age of consent to 14 years in 1883 (Criminal Law Amendment Act 1883), 1892 (Criminal Law Amendment Act 1892) and 1899 (Criminal Code Act 1899) respectively. Meanwhile, South Australia and Victoria raised the age of consent to 16 years in 1885 (Criminal Law Act 1885) and 1891 (Crimes Act 1891) respectively. At the same time, many Australian jurisdictions started introducing new legislation that expanded substantially the pre-existing sexual offence laws. For example, for the first time a number of jurisdictions made it an offence to procure a child for sexual purposes and for male teachers to have sexual relationships with their female students.

Twentieth century

The 1900s saw significant change in several areas relating to sexual offence legislation in Australia. The following section examines:

- 1900–1930s;
- 1940s–1960s; and
- 1970s–2013.

1900–1930s

By the end of the 1800s, societal awareness and concern regarding child sexual abuse was increasing in Australia and overseas. This led to a suite of new offences being included in Australian sexual offence legislation across jurisdictions, and the age of consent increasing from 13 to 14 or 16 years (depending on the jurisdiction). However, the early 1900s did not continue this trend. At the start of the twentieth century, under significant pressure from his peers, Freud released a series of new papers contradicting his previous work on Seduction Theory. In his revised work, Freud posited that his female clients who had recalled experiences of child sexual abuse had either fantasised the events because of unresolved sexual feelings towards their parents (Oedipal Complex), or had been the sexual aggressors in the first place (NSW Government 1985). Freud continued to deny the occurrence of child sexual abuse throughout the 1900s, and even took concerted efforts to repress the research of his peers, which appeared to contradict his now revised theory. In the early 1930s, another psychoanalyst, Sándor Ferenczi, released a paper in which he argued that child sexual abuse was a major source of trauma. Upon releasing the paper, Freneczi's colleagues including Freud, strongly urged him to retract his findings, which he refused to do (Olafson, Corwin & Summit 1993). When he died in 1933, the psychoanalyst community suppressed Ferenczi's work.

Further, Tomison notes that the first half of the 1900s was 'not notable for changes to child welfare practice, but it did see the state taking greater responsibility for looking after children's welfare [through the increased provision of institutional care] and the increased use of legislation to enforce appropriate standards of care' (2001:50). For example, in response to concerns raised in relation to the standard of care received by children living in institutions, a number of jurisdictions introduced legislation to monitor standards (Markiewicz 1996; Tomison 2001).

This period was also notable because some Australian jurisdictions increased the age of consent to sexual intercourse from 14 to 16 years (eg Western Australia via the *Criminal Law Amendment Act 1892 Amendment* which was assented to in 1900, and NSW via the *Crimes (Girl's Protection) Act 1910)*, and introduced legislation which made it an offence to produce, distribute and the like, indecent materials. These new laws may have been used to prosecute individuals producing child pornography.

Finally, on a much larger scale, in the 1920s the League of Nations introduced *The Declaration of the Rights of the Child 1924 (the Declaration)* which

identified five principles to protect children (see Table 1). Although the Declaration was not enforceable under international law, it was the first international document which identified that children had rights separate from their parents/caregivers, and connected child welfare principles with child rights (Van Bueren 1998).

Table 1 History of international child rights—the role of the League of Nations and United Nations

The Declaration of the Rights of the Child 1924	5 core principles: • The child must be given the means requisite for its normal development, both materially and spiritually • The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured • The child must be the first to receive relief in times of distress • The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation • The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men These principles were not legally enforceable, rather a series of guidelines
The Universal Declaration of Human Rights 1948	Applies to all 'members of the human family' including children, and includes a small number of Articles that refer specifically to children: • Article 25 (2) 'Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection' • Article 26 (3) Parents have a prior right to choose the kind of education that shall be given to their children
The Declaration of the Rights of the Child 1959	10 principles focusing on: • providing children with adequate nutrition, education, housing etc; • prohibiting childhood employment that interferes with the child's development; and • protections against neglect and harm Special consideration is given to handicapped children (physically, mentally and socially) Places special duty on voluntary organisations and local authorities to observe the principles but does not place an obligation on signatory states
International Covenant on Economic, Social and Cultural Rights 1966	Applies to all men and women and therefore children and there are a small number of Articles that specifically refer to children: • Article 10 (3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation • Article 12 (2)(a) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child Signatory states are obligated to, within their available resources, implement the rights outlined in the Covenant

Table 1 History of international child rights—the role of the League of Nations and United Nations	
The International Covenant on Civil and Cultural Rights 1966	Applies to all human beings, including children. Article 24 also refers specifically to children: • Every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State • Every child shall be registered immediately after birth and shall have a name • Every child has the right to acquire a nationality Signatory states obligated to implement the document immediately, regardless of available resources
The Convention of the Rights of the Child 1989	Focuses on the: • Participation of children in decisions affecting them • Protection of children against discrimination all forms of neglect and exploitation • Prevention of harm to children • Provision of assistance to meet the needs of children Includes Article 34, which provides that parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: • The inducement or coercion of a child to engage in any unlawful sexual activity • The exploitative use of children in prostitution or other unlawful sexual practices • The exploitative use of children in pornographic performances and materials Signatory states are subject to binding obligations under the Convention

Source: Van Bueren 1998

1940s–1960s

Most commentators agree that it was between the 1940s and 1960s that child abuse was 're-discovered' and that western democracies recognised child maltreatment as a societal-level concern rather than cases that occurred in isolation (Breckenridge 1992; Liddell 1993; Scott & Swain 2002). The rediscovery (or modern discovery) of child abuse has largely been attributed to the work of radiologists and paediatricians in western democracies (in particular C Henry Kempe and colleagues; see Kempe et al. 1962). Kempe and his colleagues proposed the 'battered-child syndrome' as an interpretation of medical evidence (radiological surveys of children that revealed untreated broken and fractured bones) caused by physical abuse perpetrated typically by parents or caregivers. This paper is seen as initiating modern professional and societal interest in child abuse in the United States and subsequently around the world (Boss 1980; Jones et al. 1987; Lamont & Bromfield 2010).

After the publication of Kempe's work, child abuse was also 'discovered' in other countries. In Australia, Wurfel and Maxwell (1965) investigated the 'battered child syndrome' in 26 children from 18 families presenting at the Adelaide Children's Hospital. Particularly disturbing were the young ages of the physically abused children (half were aged six months or younger), and the severity of the abuse (eight of the children had subsequently died of their injuries). This contributed to a reinvigoration of public interest and concern about child abuse that coincided with many Australian state and territory governments taking greater responsibility for child welfare services, resulting in the establishment of statutory child protection and welfare departments in a number of jurisdictions (eg the Victorian Social Welfare Department in 1961).

While awareness and concern regarding physical abuse and neglect were increasing during this period, the same cannot be said for child sexual abuse. Although it is unclear why physical abuse was 'discovered' earlier than sexual abuse, Goddard

notes that physical abuse could be detected using the technology of the time (eg X-rays and photographs). This 'gave the diagnosis of physical abuse a scientific edge that is generally lacking in cases of child sexual abuse' (1996:152). Goddard (1996) and others have also suggested that child sexual abuse was slower to be recognised because of the general discomfort and difficulties associated with discussing sexual matters of any kind (Scott 1995).

Further, between the 1930s and 1970s, the prevalence and impact of child sexual abuse was in various ways marginalised, hidden and minimised. For example, in the 1940s and 1950s sexologist Alfred Kinsey released a number of books and papers suggesting that feelings of fear and confusion experienced by many child sexual abuse victims was culturally based, and that the reaction of society (ie the parents and family) to the incident was the traumatising factor, not the assault itself (Olafson, Corwin & Summit 1993). Also, child sexual abuse research in the 1950s shifted the focus from the child to the family unit, the hypothesis being that child abuse was a symptom of family dysfunction (Scott 1995; Tomison 2001). While applying 'family systems theory' to child abuse is useful in so far as it focuses on addressing the family unit as a whole in resolving issues, which in turn translates into holistic treatment options (Petrie 2000), it may also be seen as minimising the responsibility of individual offenders and sidelining the experiences of the child. Finally, the new wave of 'sexual modernists' argued that sexual relations between children and adults may not be harmful or traumatic, but may actually be positive and a sought out experience by the children (NSW Government 1985).

While the prevalence and impact of child sexual abuse was continually minimised and denied during this period, Breckenridge notes that 'government records and independent research continued to confirm rather than deny the frequent occurrence of the event' (1992:21). For example, the analysis of administrative data collected by Australian government agencies during the 1900s consistently identified high levels of underage pregnancy, particularly among Indigenous populations (Breckenridge 1992).

1970s–2013

It was only in the late 1960s and particularly the 1970s that sexual violence, including child sexual abuse, emerged as significant social and political issues in Australia and overseas (Scott & Swain 2002). The new focus on child sexual abuse grew particularly out of the feminist women's rights movement and its advocacy for adult victims/survivors of rape and other sexual and physical assaults. Feminist groups contradicted historical understandings of child sexual abuse as infrequent acts perpetrated by sexual deviants. They posited that sexual violence was indicative and symptomatic of patriarchal societal attitudes towards women and children and the unequal distribution of power. These groups sought to raise awareness and understanding of sexual violence, and were openly critical of government and criminal justice system responses to victims of violence.

In addition to their advocacy work, the women's rights movement established a number of sexual assault and domestic violence services in Australia targeted at adult women and children (Breckenridge 1992). Although these services were initially volunteer-run and funded largely through community donations, by the late 1980s they had become increasingly professional and subsidised by state and federal government grants.

Awareness of child sexual abuse was also increasing during this period due to a number of other interrelated factors and events. For example, in 1975 Victoria's Child Protection Service presented child sexual abuse information in its annual reports for the first time. Three years later in 1978, the final report from the Commission on Human Relationships identified that about 14,000 children were abused (including sexual victimisation) every year by their parents. During the same year, a phone-in organised by Western Australia's Women Against Rape group resulted in 50 percent of callers disclosing histories of child sexual abuse. Five years later the Adelaide Rape Centre encouraged victims of child sexual abuse to contact the service and received more than 300 calls (Breckenridge 1992). In 1985 the final reports from two major child sexual abuse inquiries were finalised in New South Wales and Queensland (see Table 3), while four years later the United

Nations General Assembly adopted *The Convention of the Rights of the Child 1989 (the Convention)* with Australia becoming a signatory state. The Convention included for the first time, an explicit obligation for states to implement measures to protect children against sexual abuse (see Table 1).

As awareness of child sexual abuse increased, so too did reporting. For example, in its final report, the New South Wales Child Abuse Task Force noted that between 1980 and 1985 the number of suspected sexual abuse reports made to the state's Child Protection Services had increased substantially, a finding which was attributed more so to an increase in awareness than occurrence (NSW Government 1985). As reporting increased so too did the number of child sexual abuse victims (both adults and children) who sought assistance from government and non-government agencies.

From the 1980s onwards, state governments were commissioning inquiries into child sexual abuse, sexual violence more broadly and statutory child protection services. A number of these inquiries specifically focused on Indigenous communities and populations, and the experiences of victims of sexual violence when they interact with the criminal justice system. A brief overview of a small number of key inquiries from this period is provided in Table 2. The findings from these inquiries have prompted both small and large-scale changes to the child protection system and legislation in a number of Australian jurisdictions (Tomison 2013).

All of these interrelated socio-political developments and movements led to significant amendments and revisions to Australia's sexual offences legislation. In the 1970s and 1980s, all Australian jurisdictions began making significant amendments to their sexual offence and child sexual abuse legislation in relation to:

- the use of gendered language;
- the definition of sexual penetration/intercourse/carnal knowledge;
- the decriminalisation of homosexual sexual acts (notable exception being Tasmania);
- offences where the accused is in a position of authority or trust;
- child abuse materials/child pornography/child exploitation materials; and
- mandatory reporting laws (notable exceptions being Western Australia and Victoria).

In particular, between the 1970s and 1980s most of the jurisdictions decriminalised homosexual sexual acts (with the exception of Tasmania, Queensland and Western Australia), expanded the definition of sexual intercourse to encompass non-penetrative acts, and introduced legislation specifically criminalising the production, sale and so on of child pornography (with the exception of Western Australia). Several jurisdictions (with the exception of Western Australia and Victoria) also introduced mandatory reporting legislation during this time.

Some jurisdictions also significantly revised the ways in which victims of sexual violence engaged with the criminal justice system. For example, they piloted specialist courts that only handled sexual assault matters, introduced forensic interviewing training for police officers investigating suspected cases of child sexual abuse, and introduced a series of regulations around the way in which medical examinations of sexual assault victims are conducted (see Anderson, Richards & Willis 2013).

Table 2 Key Australian inquiries into child sexual abuse 1985–2014

Year and Inquiry	Jurisdiction	Description
1985 NSW Child Sexual Abuse Taskforce	NSW	Established in June 1984, the NSW Child Sexual Abuse Task Force was established to examine and make recommendations about services involved in supporting, investigating and responding to victims of child sexual assault and the state's child sexual assault laws. The inquiry involved extensive consultation, including a series of public hearings and the consideration of written and oral submissions from victims and their families, the community, health services, academic, criminal justice and other relevant sectors. The final report prepared by the task force included 65 recommendations aimed at improving responses to victims of child sexual abuse. Recommendations included the need to implement a community child sexual abuse education program; to ensure that representatives of services involved with victims of child sexual abuse have the necessary skill sets and education, and to expand mandatory reporting laws to include additional professions.
1999 Commission of inquiry into the abuse of children in Queensland institutions	Queensland	In 1998 the Queensland Government asked a Commission of Inquiry to determine whether, for the period 1911–99, there had been any unsafe, improper or unlawful care or treatment of children in any government or nongovernment institutions or detention centres established or licensed under the *State Children Act 1911*, *Children's Services Act 1965* or the *Juvenile Justice Act 1992*. More than 150 orphanages and detention centres were considered as part of the inquiry, which involved private and public hearings and written submissions. The inquiry found overwhelming evidence that unsafe, improper and unlawful care or treatment of children, including sexual abuse, had occurred in such institutions and centres, The final report from the inquiry made a number of recommendations including: • implementing mandatory reporting provisions for employees working in institutions; • regularly inspecting institutions; and • implementing an information management system recording incidents of alleged child abuse in institutional settings.
2002 Inquiry into response by government agencies to complaints of family violence and child abuse in Aboriginal communities	Western Australia	In response to the death of a 15 year old Indigenous girl who was known to a range of statutory and non-government support services and agencies, at the end of 2001 the Western Australian Government announced a special inquiry into the agency responses to complaints of family violence and child abuse (including sexual) in Indigenous communities. One of the tasks of the inquiry was to examine how state government agencies responded to evidence of family violence and child sexual abuse that may be occurring in Indigenous communities. Within the six-month timeframe, the inquiry met a range of stakeholder groups, including the Indigenous community. The inquiry found that child sexual abuse was occurring at higher rates in Indigenous communities compared with non-Indigenous. Evidence also showed a lack of suitable and appropriate sexual assault services available in Indigenous communities, particularly in regional and remote areas. Recommendations from the inquiry's final report included implementing a needs based resource model, and involving the Indigenous community in designing services.

Table 2 Key Australian inquiries into child sexual abuse 1985–2014		
Year and Inquiry	**Jurisdiction**	**Description**
2006 Aboriginal Child Sexual Assault Taskforce	NSW	The NSW Government asked the Aboriginal Child Sexual Assault Task Force to conduct a review into how state government agencies had previously responded to evidence of child sexual abuse occurring in Indigenous communities. Evidence presented to the task force suggested that while Indigenous communities perceived child sexual assault as a significant problem, understanding of the issue was low. This meant that incidents of child sexual abuse occurring in Indigenous communities were rarely reported. The final report outlined a number of recommendations aimed at improving state government agency responses to child sexual abuse occurring in Indigenous communities. They included establishing an Aboriginal Child Sexual Assault Coordination Unit, developing partnerships between state government and peak bodies to address child sexual assault, and obtaining additional funding to develop regional/remote child sexual abuse initiatives.
2007 Inquiry into the Protection of Aboriginal Children from Sexual Abuse	Northern Territory	Established in August 2006, the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse examined the extent and nature of, and factors contributing to, the sexual abuse of Aboriginal children in the Northern Territory. During its operation (about nine months), the inquiry visited 45 communities, held a series of consultations and considered more than 50 submissions. The final 'Little children are sacred' report from the inquiry made 97 recommendations, one of which was that 'Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse' (NT Government 2007:22). Other recommendations included: • introducing a Commissioner for Children and Young People; • establishing employee screening processes; and • expanding and improving sexual assault referral services.
2013 Inquiry into the Handling of Child Abuse by Religious and Other Organisations	Victoria	The Commission was asked to consider the systems and processes used by non-government organisations (including religious organisations) to respond to the criminal abuse of children by their employees, associates or others engaged in their activities. Evidence provided to the inquiry suggested that between the 1950s and 1980s, a range of institutions had known of, and covered up, allegations of emotional, physical and sexual abuse and neglect. Further, the responses of these institutions to allegations of child abuse were characterised as inappropriate and inadequate. The final report made 15 recommendations, including establishing more rigorous employee recruitment processes, requiring institutions responsible for the care or supervision of children to establish child safe policies, and implementing an independent statutory board tasked with overseeing child abuse allegations raised in institutional contexts. A review of the relevant legislation was also recommended to ensure that persons who are aware of child abuse occurring in institutional contexts and fail to report it are guilty of an offence.

Source: ACSAT 2006; Family and Community Development Committee 2013; Gordon, Hallahan & Henry 2002; NSW Government 1985; NT Government 2007; Queensland Government 1999

The second part of this report provides an overview of the different offences with which a person who sexually abused a child during 1950–2013 may have been charged in the nine Australian jurisdictions. Legislative changes after 31 December 2013 are not included in this review. Key developments in sexual offences over time and across each jurisdiction are highlighted, including:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual (ie same-sex) sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- child abuse mandatory reporting laws.

The period 1950–2013 was selected after considering factors including the availability of primary resources (ie legislation) for some jurisdictions (eg Tasmania and the Northern Territory) prior to 1950, the relatively limited legislative changes to sex offences before 1950 and the time-frames and resources associated with the project. This decision was made in consultation with the Royal Commission.

Australian Capital Territory

This section gives an overview and briefly discusses the offences with which an individual, who sexually abused a child in an institutional setting in the Australian Capital Territory (ACT), may have been charged during 1950–2013.

In 1950, the ACT had legislation criminalising a range of sexually abusive behaviours. Offences included:

- carnal knowledge of a girl under the age of 16 years;
- carnal knowledge of idiot or imbecile;
- obscene exposure;
- incest; and
- buggery.

However, in 1950 some sexually abusive behaviours were not criminalised, including procuring persons for sexual purposes, sexual servitude, voyeurism or grooming. Also no laws existed requiring individuals working in specific professions to report suspected child sexual abuse matters to delegated bodies.

The age of consent for heterosexual sexual acts in 1950 was 16 years. This remained unchanged at the end of 2013.

Table 3 Sexual offence legislation operating in the ACT at the start of 1950

Offences and section	Aggravating factors	Victim age/ gender	Offender age/ gender	Max penalty	Notes
Crimes Act 1900					
63 Rape				Death	
65 Assault with intent to rape				14 years imprisonment	
66 Carnal knowledge by false pretence or representation		Female		14 years imprisonment	
67 Carnally know girl under 10 years		<10 years Female	Male	Death	
68 Attempt to know girl between 10 and 16 years		<10 years Female	Male	14 years imprisonment	

Table 3 Sexual offence legislation operating in the ACT at the start of 1950					
Offences and section	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
71 Carnally know girl between 10 and 16 years		10–15 years Female	Male	10 years imprisonment	
72 Attempt, or assault with intent to carnally know girl between 10 and 16 years		10–15 years Female	Male	5 years imprisonment	
72A Carnal knowledge of idiot or imbecile		Female	Male	5 years imprisonment	Victim is an idiot or imbecile Includes attempts
73 Carnal knowledge by teacher, father, stepfather with girl 10 years or over and under 17 years who is pupil, daughter, stepdaughter		10–16 years Female	Male	14 years imprisonment	Includes half-brothers etc
74 Attempted carnal knowledge by teacher, father, stepfather with girl 10 years or over and under 17 years who is pupil, daughter, stepdaughter		10–16 years Female	Male	7 years imprisonment	
76 Indecent assault—female under 16 years		<16 years Female	Male	5 years imprisonment	
78A Incest: carnal knowledge by male of mother, sister, daughter or granddaughter.		Female	Male	7 years imprisonment	
78B Incest, attempts		Female	Male	2 years imprisonment	
79 Buggery		Male	Male	14 years imprisonment	
80 Attempted buggery		Male	Male	5 years imprisonment	
81 Indecent assault upon a male person		Male	Male	5 years imprisonment	
Police Offences Ordinance 1930					
14 Indecent exposure of the person			Male	50 pounds or 6 months imprisonment	
17(d) Offensive behaviour				5 pounds	
19 Letting house for use as disorderly house				20 pounds	
23(h) Wilful exposure to the public any obscene book, print etc				3 months imprisonment	
23(j) Solicitation in public place for immoral purposes by male person			Male	3 months imprisonment	
Obscene and Indecent Publications Act 1901					
15 Possession				20 pounds or 6 months imprisonment	

Table 3 Sexual offence legislation operating in the ACT at the start of 1950					
Offences and section	Aggravating factors	Victim age/ gender	Offender age/ gender	Max penalty	Notes
16(a) Printing or publishing obscene publications				20 pounds or 6 months imprisonment	
16(b) Publishing indecent advertisements or reports in newspaper				20 pounds or 6 months imprisonment	
16(c) Delivering such advertisements for publication in newspaper				20 pounds or 6 months imprisonment	
16(d) Affixing indecent or obscene pictures or writings				20 pounds or 6 months imprisonment	
16(f) Posting indecent pictures and printed matter				20 pounds or 6 months imprisonment	
16(g) Printing indecent pictures or printed matter				20 pounds or 6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, ACT sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 18 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 4 Timeline of key amendments to ACT's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1951	Section 76 of the *Crimes Act 1900* expanded to apply to a female victim of any age, with a harsher penalty applied where the victim is under the age of 16	*Crimes Ordinance 1951*
	New offences (*Crimes Act 1900)* • Procuring etc female under 21 (s91A) • Procuring female by drugs etc (s91B)	
1958	Application of the *Obscene and Indecent Publications Act 1901* to the ACT is repealed	*Objectionable Publications Ordinance 1958*
	New offences (*Objectionable Publications Ordinances 1958*): • Sell, publish for gain objectionable publications (s 6(1((a)) • Possession of objectionable publications with intent to publish/sell for gain (s 6(1((b)) • Occupier of premises suffering objectionable publication to be kept for the purpose of selling/ publishing for gain (s 6(1((c)) • Expose the public to objectionable publication (s 6(1((d)) • Deposit or throw objectionable publication (s 6(1((e)) • Print, make or produce objectionable publication for purpose of gain (s 6(1((f))	
1968	Death penalty removed from the ACT. Sentence for charges brought under ss 63 and 67 of the *Crimes Act 1900* commuted to life imprisonment	*Crimes Ordinance 1968*
1970	Section 91A-B of the *Crimes Act 1900* amended by replacing '21 years' with 'female of any age'	*Crimes Ordinance 1970*
	Section 19(d) of the *Police Offences Ordinance 1930* is repealed	*Police Offences Ordinance 1970*
	New offence (*Police Offences Act 1930)*—Solicitation in public place for immoral purposes by male person (s 23(ja))	
1976	Homosexual sexual intercourse in private decriminalised—age of consent set at 18 years	*Law Reform (Sexual Behaviour) Ordinance 1976*
1983	*Objectionable Publications Ordinance 1958* repealed	*Classification of Publications Ordinance 1983*
	New offences (*Classification of Publications Ordinance 1983*): • Sale etc of objectionable publications (s 38) • Possession of objectionable publications (for the purpose of selling or publishing; s 39) • Keeping objectionable publications at premises (for the purpose of selling or publishing; s 40) • Publishing objectionable publications in a public place (s 41) • Depositing objectionable publications in a public place (s 42) • Making objectionable publications (for the purpose of selling or publishing; s 43)	
	New offences (*Crimes Act 1900)*: • Offensive behaviour (s 546A renumbered as s 392) • Indecent exposure (s 546B renumbered as s 393)	*Crimes (Amendment) Ordinance (No. 3) 1983*

Table 4 Timeline of key amendments to ACT's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1985	Definition of sexual intercourse expanded	*Crimes (Amendment) Ordinance (No. 5) 1985*
	'Carnal knowledge' replaced with 'sexual intercourse'	
	Homosexual intercourse decriminalised with the abolition of ss 79–81	
	Common law offences of rape and attempted rape are abolished	
	Sections 63–81 and 91A–B of the *Crimes Act 1900* repealed	
	New offences (*Crimes Act 1900)*: • Sexual assault in the first degree (s 92A) • Sexual assault in the second degree (s 92B) • Sexual assault in the third degree (s 92C) • Sexual intercourse without consent (s 92D) • Sexual intercourse with young person—under the age of 10 (s 92E(1)) • Sexual intercourse with young person—10–15 (s 92E(2)) • Acts of indecency in the first degree (s 92F) • Acts of indecency in the second degree (s 92G) • Acts of indecency in the third degree (s 92H) • Act of indecency with consent (s 92J) • Act of indecency with young persons—under the age of 10 (s 92K(1)) • Act of indecency with young persons—10–15 (s 92K(2)) • Incest and similar offences (s 92L) • Abduction (s 92M) • Employment of young person for prostitution (s 92N)	
1986	Introduction of mandatory reporting laws for the first time (but not enacted)	*Children's Services Ordinance 1986*
1987	New offence (*Crimes Act 1900)*—Employment of young persons for pornographic purposes (s 92NA)	*Crimes (Amendment) Ordinance 1987*
1991	New offence (*Crimes Act 1900)*—Possession of child pornography (s 92NA)	*Crimes (Amendment) Act 1991*
1994	Expansion of child pornography laws to encompass computer games	*Classification of Publications (Amendment) Ordinance 1994*
1995	Removal of the age requirement from s 92L of the *Crimes Act 1900*	*Crimes (Amendment) Act 1995 (Cwth)*
	Classification of Publications Ordinance 1983 repealed	*Classification (Publications, Films and Computer Games) Act 1995*
1996	*Police Offences Act 1930* repealed	*Law Reform (Abolitions and Repeals) Act 1996*
1999	Mandatory reporting laws enacted, list of mandatory reporters expanded	*Children and Young People Act 1999*

Table 4 Timeline of key amendments to ACT's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2001	Sexual servitude laws introduced	*Crimes Amendment Act 2001*
	New offences (*Crimes Act 1900*): • Sexual servitude offences (s 92ZB) • Deceptive recruiting for sexual services (s 92ZC) • Aggravated offence—victim <18 years	
	New offence (*Crimes Act 1900*)—Using the internet etc to deprave young people	*Crimes Amendment Act 2001 (No. 2)*
2004	Section 92NA of the *Crimes Act 1900* repealed	*Crimes Legislation Amendment Act 2004*
	Definition of child pornography amended	
	New offences (*Crimes Act 1900*): • Using child for production of child pornography etc—under 12 (s 64(1)) • Using child for production of child pornography etc—12–15 (s 64(2)) • Trading in child pornography (s 64A) • Possessing child pornography (s 65)	
2008	Mandatory laws expanded	*Children and Young People Act 2008*
2013	Definition of sexual intercourse expanded	*Crimes Legislation Amendment Act 2013*
	New offences (*Crimes Act 1900*): • Sexual intercourse with young person under special care (s 55A) • Act of indecency with young person under special care (s 61A)	

Gendered language of sexual offence legislation

Like the other jurisdictions, between 1950 and the mid-1980s, the ACT's sexual offence legislation was largely biased towards female victims and male offenders. In 1950 only three offences applied to male victims—buggery, attempted buggery and indecent assault (eg oral sex). The passage of the *Crimes (Amendment) Ordinance (No. 5) 1985* led to the repeal of most of the pre-existing sexual offences, which were replaced with a suite of offences that used gender neutral language (eg 'young person' and 'child' instead of 'male' or 'female'). Further, the offence of solicitation in public places for immoral purposes by male persons was repealed in 1996 when the *Police Offences Act 1930* was itself repealed (*Law Reform (Abolitions and Repeals) Act 1996*).

Definition of sexual intercourse

Prior to 1985, the ACT used the definition of sexual intercourse (or carnal knowledge as it was then called) provided by the *Crimes Act 1900 (NSW)*—'proved' upon penetration. This very narrow definition remained unchanged until the *Crimes (Amendment) Ordinance (No. 5) 1985* expanded the definition of sexual intercourse to include:

- the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person (eg fingers, penis etc);
- the penetration, to any extent, of the vagina or anus of a person by an object, where the penetration is being carried out by another person;
- the introduction of any part of the penis of a person into the mouth of another person (ie fellatio); or
- cunnilingus.

By expanding the definition of sexual intercourse, offences that previously may have been prosecuted as indecent assaults now met the threshold for offences involving sexual intercourse (ACT LRC 2001). In 2013 the definition of sexual intercourse was again revised by substituting the term 'vagina' for the more generic term 'genitalia' (*Crimes Legislation Amendment Act 2013*). The Act subsequently defined genitalia as including surgically constructed or altered genitalia.

Decriminalisation of homosexual sexual acts

Until the mid-1970s, homosexual sexual acts or 'buggery' between male persons of any age (regardless of consent) was a criminal offence in the ACT. The *Law Reform (Sexual Behaviour) Ordinance 1976* effectively decriminalised homosexual sexual acts between consenting male persons (who were over the age of 18 years) conducted in private. However, it was still an offence for males of any age to engage in homosexual sexual acts in public spaces. The passage of the *Crimes (Amendment) Ordinance 1985* led to the repeal of all offences relating to sexual activities between consenting males, and the age of consent was lowered to 16 years. This equalised the age of consent for heterosexual and homosexual sexual acts.

Offences where the accused is in a position of authority or trust

In 1950 (until the mid-1980s), it was a criminal offence in the ACT for a male teacher to have carnal knowledge (or attempt to have carnal knowledge) of a female student who was, at the time of offence, under the age of 18. These quite narrow offences were repealed in 1985 (*Crimes (Amendment) Ordinance 1985*) and it was more than 25 years before similar offences were included again in the *Crimes Act 1900*. However, the Act also amended substantially the definition of consent to refer to a series of circumstances under which consent may be vitiated. According to the Act, consent may be vitiated when the offender abuses a 'position of authority over, or professional or trust in relation to, the person' (victim). The legislation did not seek to define terms such as 'position of authority', leaving its application potentially quite broad.

It was only in 2013 that the ACT again included specific offences regarding sexual contact between children and persons in a position of authority or trust. *The Crimes Legislation Amendment Act 2013* led to the enactment of two new offences criminalising sexual contact or acts of indecency with a young person (16–17 years) under 'special care'. The Act specified that a young person is under the offender's 'special care' if they are:

- a teacher at a school, or a person with responsibility for students at a school, and the young person is a student at the school;
- a step-parent, foster carer or legal guardian of the young person;
- a person whoprovides religious instruction to the young person;
- the young person's employer;
- the young person's sports coach;
- a person who provides professional counselling to the young person;
- a health professional and the young person is the person's patient; or
- a custodial officer and the young person is a young detainee in the officer's care, custody or control.

Child pornography

Between 1950 and 1983 no laws in the ACT specifically criminalised the sale, production, possession etc of child pornography. However, historically, charges may have been brought against individuals under the objectionable/obscene publications offences included within the:

- *Police Offences Act 1930* (prior to 1996);
- *Obscene and Indecent Publications Act 1901* (prior to 1958); or
- *Objectionable Publications Ordinance 1958* (prior to 1983).

The definition of obscene or objectionable publications changed significantly between 1950 and 1983. In its first use, the *Obscene and Indecent Publications Act 1901* defined 'obscene' in very broad terms to include any materials the court believed encouraged 'depravity, or would tend to injure the morals of the public or of any class or section thereof'. The *Objectionable Publications*

Ordinances 1958 subsequently expanded the definition of obscene to include publications 'unduly emphasising matter of sex' and objectionable publications as obscene or unduly emphasising horror, gross cruelty or crimes of violence.

The *Classification of Publications Ordinance 1983* was the first piece of ACT legislation to refer specifically to publications involving the sexual exploitation of children. The new legislation defined an objectionable publication as:

- describing, depicting, expressing or otherwise dealing with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person;
- depicting in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
- promoting, inciting or encouraging terrorism.

Child pornography laws were first introduced into the *Crimes Act 1900* in the late 1980s when the *Crimes (Amendment) Ordinance 1987* made it an offence to employ a child for pornographic purposes. While employment was not defined in the Act, the offence specified that the child did not have to receive a reward in order for the offence to occur. At this point, child pornography was defined as 'an act of a sexual nature, being an act that would, in the circumstances, offend a reasonable adult person, or a film, photograph, drawing, audio tape, video tape or any other means that depicts a young person as being engaged in, or as being in the presence of another person engaged in, an act of a sexual nature where the depiction or other representation of the young person in those circumstances would offend a reasonable adult person'.

The ACT's child pornography laws were amended on a number of occasions between 1991 and 2013. First, in 1991, the possession of child pornography was included as an offence in the *Crimes Act 1900* (by way of the *Crimes (Amendment) Act 1991*). In 2004 the laws were again revised to create age-disaggregated offences and to include a new offence prohibiting 'trading' in child pornography (*Crimes Legislation Amendment Act 2004*). The Act also expanded the definition of child pornography to refer to anything that represents:

- the sexual parts of a child;
- a child engaged in an activity of a sexual nature; or
- someone else engaged in an activity of a sexual nature in the presence of a child.

Mandatory reporting laws

In the mid-1980s, the *Children's Services Ordinance 1986* included, for the first time, provisions requiring 'prescribed' persons who had reasonable grounds for suspecting that a child had suffered physical injury (otherwise than by accident) or had been sexually abused, to make a report to the youth advocate. The Ordinance identified the following professions as mandatory reporters:

- medical practitioners, dentists, nurses;
- police officers;
- teachers and persons employed to counsel children in a school setting;
- persons employed by the department or the health authority whose duties include matters relating to children's welfare; and
- child care professionals.

For several reasons the mandatory reporting provisions included in the *Children's Services Ordinance 1986* were not enacted in the ACT (for a review, see CLRC 1990). This did not occur until 1999 with the passage of the *Children and Young People Act 1999*. The Act also expanded the list of mandatory reporters to include:

- public servants who provide services related to the health and wellbeing of children or families;
- community (public) advocates; and
- home-based care coordinators.

The list of mandatory reporters was again expanded in 2008 (*Children and Young People Act 2008*) to include a small number of additional mandatory reporter categories—midwives and those responsible for home schooling children.

New South Wales

This section gives an overview and briefly discusses the offences with which an individual, who sexually abused a child in an institutional setting in NSW, may have been charged during 1950–2013. Since the start of the 1900s, NSW legislation has criminalised a variety of sexually abusive behaviours (see Table 3). Most of these offences were limited to penetrative sexual acts (between female victims and male offenders) and attempted carnal knowledge. Non-penetrative offences were also legislated. For example, the *Crimes Act 1900* made it an offence to indecently assault a male of any age or a female under the age of 16 years. While not defined, indecent assault included acts such as masturbation. Further, the *Police Act 1901* made it an offence for a man to 'expose his person' in public.

However, there were also a number of sexually abusive behaviours that were not criminalised in 1950. These included:

- sexual servitude;
- the procurement of children for sexual purposes; and
- grooming of children for sexual purposes.

No laws were enacted requiring individuals working in specific professions to report suspected child sexual abuse to delegated bodies. It was not until the late 1970s that the first mandatory reporting of suspected child abuse was introduced for medical practitioners. It was subsequently expanded to include a range of professionals, and explicit recognition of the need to report suspected child sexual abuse.

The age of consent for heterosexual sexual intercourse in 1950 was 16 years, which remained unchanged at the end of 2013.

Table 5 Sexual offence legislation operating in NSW at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
Crimes Act 1900					
63 Rape			Male	Life imprisonment	
65 Assault with intent to rape			Male	14 years imprisonment	
66 Carnal knowledge by false pretence or representation		Female		14 years imprisonment	
67 Carnally know girl under 10		<10 years Female	Male	Life imprisonment	
68 Attempt to know girl between 10 and 16		10–15 years Female	Male	14 years imprisonment	
71 Carnally know girl between 10 and 16		10–15 years Female	Male	10 years imprisonment	
72 Attempt, or assault with intent to carnally know girl between 10 and 16		10–15 years Female	Male	5 years imprisonment	
72A Carnal knowledge of idiot or imbecile		Female	Male	5 years imprisonment	Includes attempts
73 Carnal knowledge by teacher, father, stepfather with girl 10 or over and under 17 who is a pupil, daughter, stepdaughter		10–16 years Female	Male	14 years imprisonment	Includes half-brothers etc
74 Attempted carnal knowledge by teacher, father, stepfather with girl 10 or over and under 17 who is a pupil, daughter, stepdaughter		10–16 years Female	Male	7 years imprisonment	
76 Indecent assault—female under 16		<16 years Female	Male	5 years imprisonment	
78A Incest: carnal knowledge by male of mother, sister, daughter or granddaughter		Female	Male	7 years imprisonment	
78B Incest, attempts		Female	Male	2 years imprisonment	
79 Buggery		Male	Male	14 years imprisonment	
80 Attempted buggery		Male	Male	5 years imprisonment	
81 Indecent assault upon a male person		Male	Male	5 years imprisonment	
Police Act 1901					
Riotous, violent or indecent behaviour (s 12)				2 pounds or 7 days imprisonment	
Indecent exposure of the person (s 78)			Male	10 pounds	

Table 5 Sexual offence legislation operating in NSW at the start of 1950					
Section and offence	Aggravating factors	Victim age/ gender	Offender age/ gender	Max penalty	Notes
Obscene and Indecent Publications 1901					
15 Possession				20 pounds or 6 months imprisonment	
16(a) Printing or publishing obscene publications				20 pounds or 6 months imprisonment	
16(b) Publishing indecent advertisements or reports in newspaper				20 pounds or 6 months imprisonment	
16(c) Delivering such advertisements for publication in newspaper				20 pounds or 6 months imprisonment	
16(d) Affixing indecent or obscene pictures or writings				20 pounds or 6 months imprisonment	
16(f) Posting indecent pictures and printed matter				20 pounds or 6 months imprisonment	
16(g) Printing indecent pictures or printed matter				20 pounds or 6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, NSW sexual offence legislation has been significantly amended many times. Key changes are described briefly in Table 4 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 6 Timeline of key amendments to NSW's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1955	Definition of 'obscene materials' is amended	*Obscene and Indecent Publications (Amendment) Act 1955*
1970	New offence (*Summary Offences Act 1970*)—Offensive etc, conduct (s 7)	*Summary Offences Act 1970*
1975	*Obscene and Indecent Publications Act 1901* is repealed	*Indecent Articles and Classified Publications Act 1975*
	New offence (*Indecent Articles and Classified Publications Act 1975*)—Publication of indecent article (s 6)	
1977	Mandatory reporting laws are introduced for the first time	*Child Welfare Amendment Act 1977*
	Child pornography laws introduced for the first time	*Indecent Articles and Classified Publications (Amendment) Act 1977*
	New offences (*Indecent Articles and Classified Publications Act 1975*): • Publishes child pornography (s 18A(A)) • Possession of child pornography (s 18A(B))	
1979	Section 78 of the *Police Act 1902* is repealed	*Police Offences (Summary Offences) Amendment Act 1979*
	Summary Offences Act 1970 is repealed	*Summary Offences (Repeal) Act 1979*
	New offence (*Summary Offences Act 1970*)—Prying (s 547C)	*Crimes (Summary Offences) Amendment Act 1979*
1981	Definition of sexual intercourse is expanded	*Crimes (Sexual Assault) Amendment Act 1981*
	Common law offence of rape repealed and replaced with a series of sexual assault offences that used gender neutral language	
	New offences (*Crimes Act 1900*): • Sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse (s 61B) • Sexual assault category 2—inflicting actual bodily ham etc with intent to have sexual intercourse (s 61C) • Sexual assault category 3—sexual intercourse without consent (s 61D) • Sexual assault category 4—indecent assault and act of indecency (s 61E) • Attempts of the above (s 61F)	

Table 6 Timeline of key amendments to NSW's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1984	Definition of sexual intercourse expanded	*Crimes (Amendment) Act 1984*
	Homosexual sex between consenting male partners decriminalised—age of consent set at 18	
	New offences (*Crimes Act 1900*): • Homosexual intercourse with male under 10 (s 78H) • Attempt or assault with intent, to have homosexual intercourse with male under 10 (s 78I) • Homosexual intercourse with male between 10 and 18 (s 78K) • Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 (s 78L) • Homosexual intercourse with idiot or imbecile (s 78M) • Homosexual intercourse by teacher etc (s 78N) • Attempt, or assault with intent, to have homosexual intercourse with pupil etc (s 78O) • Acts of gross indecency with a male (s 78Q)	
	Child pornography laws amended	*Indecent Articles and Classified Publications (Amendment) Act 1984*
	New offences (*Indecent Articles and Classified Publications Act 1975*): • Publishing prohibited publications (including child pornography) (s 18B(A)) • Possessing prohibited publications for purpose of publishing it (including child pornography) (s 18B(B))	
1985	Sections 61D and 61E of the *Crimes Act 1900* amended to include requirement that the child is under the care or authority of the offender	*Crimes (Child Assault) Amendment 1985*
	Sections 67–72 of the *Crimes Act 1900* repealed in favour of new offences that use non-gendered language	
	New offences (*Crimes Act 1900*): • Sexual intercourse—child under 10 (s 66A) • Attempting, or assaulting with intent, to have sexual intercourse with child under 10 (s 66B) • Sexual intercourse—child between 10 and 16 (s 66C) • Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16 (s 66D)	

Table 6 Timeline of key amendments to NSW's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
1987	Mandatory reporting laws amended to expand list of mandatory reporters	*Children (Care and Protection) Act 1987*
	Terms 'idiot' and 'imbecile' replaced with 'intellectual disability'—defined as 'an appreciably below average general intellectual functioning that results in the person requiring supervision or social habitation in connection with daily life activities'	*Crimes (Personal and Family Violence) Amendment 1987*
	Sections 72A and 78M of the *Crimes Act 1900* repealed	
	New offences (*Crimes Act 1900*): • Sexual intercourse with person with intellectual disability (s 66F(2); victim is under the authority of the offender in connection with any facility or program providing services to persons with intellectual disabilities) • Sexual intercourse with person with intellectual disability—taking advantage of the other person's vulnerability to sexual exploitation (s 66F(3)) • Sexual intercourse with person with intellectual disability—attempts (s 66F(4))	
1988	New offences (*Summary Offences Act 1988*): • Offensive conduct or language (s 4(A)) • Obscene exposure (s 5)	*Summary Offences Act 1988*
	New offence (*Crimes Act 1900*)—Child not to be employed for pornographic purposes (s 91G)	*Crimes (Child Prostitution) Amendment Act 1988*
1989	New offences (*Crimes Act 1900*) • Aggravated sexual assault (s 61J) • Assault with intent to have sexual intercourse (s 61K) • Indecent assault (s 61L) • Aggravated indecent assault (s 61M) • Act of indecency (s 61N) • Aggravated act of indecency (s 61O) • Attempts of above (s 61P) • Sexual assault by forced self-manipulation (s 80A)	*Crimes (Amendment) Act 1989*
1992	Definition of sexual intercourse amended	*Criminal Legislation (Amendment) Act 1992*
1993	Section 4(a) of *Summary Offences Act 1988* substituted for new offence—Offensive conduct (s 4)	*Summary Offences (Amendment) Act 1993*
1995	*Indecent Articles and Classified Publications Act 1975* repealed	*Classification (Publications, Films and Computer Games) Enforcement Act 1995*
	New offences (*Crimes Act 1900*): • Possession of child pornography (s 578B) • Publishing indecent articles (s 578C) • Advertising or displaying products associated with sexual behaviour (s 578E)	
1996	Definition of sexual intercourse amended	*Transgender (Anti-Discrimination and Other Acts Amendment) Act 1996*

Table 6 Timeline of key amendments to NSW's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1997	Child pornography laws amended	*Crimes Amendment (Child Pornography) Act 1997*
1998	Mandatory reporting laws expanded	*Children and Young Persons (Care and Protection) Act 1998*
	New offence (*Summary Offences Act 1988*)—Loitering by convicted child sexual offenders near premises frequented by children (s 11G)	*Crimes Legislation Amendment (Child Sexual Offences) Act 1998*
2001	Sexual servitude laws introduced	*Crimes Amendment (Sexual Servitude) Act 2001*
	New offences (*Crimes Act 1900*): • Causing sexual servitude (s 80D) • Conduct of business involving sexual servitude (s 80E)	
2003	Age of consent for homosexual sex between males reduced to 16	*Crimes Amendment (Sexual Offences) Act 2003*
	Gendered language removed from the *Crimes Act 1900* with the repeal of sections 65 and 66	
	Sections 73–75 of the *Crimes Act 1900* repealed	
	New offences (*Crimes Act 1900*): • Sexual intercourse—child between 10 and 16 (s 66C) • Sexual intercourse with child between 16 and 18 under special care (s 73)	
2004	Definition of child pornography and offences revised.	*Crimes Amendment (Child Pornography) Act 2004*
	Section 91G of the *Crimes Act 1900* repealed	
	New offences (*Crimes Act 1900*): • Children not to be used for pornographic purposes—child under 14 (s 91G(1)) • Children not to be used for pornographic purposes—child over 14 (s 91G(2)) • Production or dissemination of child pornography (s 91H)	
2007	New offence (*Crimes Act 1900*)— Procuring or grooming child under 16 for unlawful sexual activity (s 66EB)	*Crimes Amendment (Sexual Procurement of Grooming of Children) Act 2007*
	Definition of consent revised to include a provision that 'if the person has sexual intercourse because of the abuse of a position of authority or trust' then the victim may been deemed as not providing their consent	*Crimes Amendment (Consent-Sexual Assault Offences) Act 2007*

Table 6 Timeline of key amendments to NSW's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2008	Definition of child pornography expanded to include manipulated images	*Crimes Amendment (Sexual Offences) Act 2008*
	New offences (*Crimes Act 1900*): • Voyeurism (s 91J(1)) • Voyeurism—aggravated (s 91J(3)) • Filming a person engaged in a private act (s 91K(1)) • Filming a person engaged in a private act—aggravated (s 91K(3)) • Filming a person's private parts (s 91L(1)) • Filming a person's private parts—aggravated offence (s 91L(1)) • Installing device to facilitate observation or filming (s 91M(1))	
	Section 66F of the *Crimes Act 1900* repealed	*Crimes Amendment (Cognitive Impairment—Sexual Offences) Act 2008*
	Term 'serious intellectual disability' replaced with 'cognitive impairment' Definition of cognitive impairment includes: • intellectual disability • developmental disorder • neurological disorder • dementia • severe mental illness • brain injury that results in the person requiring supervision or social habitation in connection with daily life services	
	New offences (*Crimes Act 1900*): • Sexual offences—cognitive impairment (s 66F(1)) • Sexual intercourse: person responsible for care (s 66F(2)) • Sexual intercourse: taking advantage of impairment (s 66F(3)) • Attempts of the above (s 66F(4))	
2010	New offence (*Crimes Act 1900*)—Aggravated offence: offence involving conduct on 3 or more occasions and 2 or more people	*Crimes Amendment (Child Pornography and Abuse Material) Act 2010*
	Child pornography replaced with child abuse materials	
	Definition of child abuse materials expanded	

Gendered language of sexual offence legislation

Prior to the 1980s, New South Wales sexual offence legislation used gendered language. This meant that for the most part, charges could only be brought against male offenders who sexually abused female victims. A notable exception to this general rule was the offence of indecent assault upon a male.

Revisions to the gendered language within the legislation began with the passage of the *Crimes (Sexual Assault) Amendment Act 1981* which led to the repeal of the common law offence of rape and the introduction of a suite of sexual assault offences that were worded in genderneutral terms. Five years later government initiated the repeal and introduction of a number of child sexual assault offences that used gender-neutral terms such as 'child' and 'person' (*Crimes (Child Assault) Amendment 1985*). However, it was not until the early 2000s, with the proclamation of the *Crimes Amendment (Sexual Offences) Act 2003* that gendered language was completely removed from NSW sexual offence legislation. The introduction of this Act resulted in the repeal of all offences referring to 'homosexual intercourse' between males.

Definition of sexual penetration

Prior to the early 1980s, sexual penetration (or carnal knowledge as it was then called) was defined in the *Crimes Act 1900* as being 'proved upon penetration'. It was only when the *Crimes (Sexual Assault) Amendment Act 1981* was passed that this definition was expanded substantially to include the penetration of the vagina or anus of any person by:

- any part of the body of another person; or
- an object manipulated by another person; or
- fellatio or cunnilingus (oral to body contact).

Since 1981, two key changes have been made to the definition of sexual penetration. First, at the start of the 1990s 'penetration' was replaced with 'penetration to any extent' (*Crimes Legislation (Amendment) Act 1992*) meaning that charges could be brought against those who may only penetrate the external parts of the vagina (eg labia majora) or anus. Then in the mid1990s the definition of vagina was expanded to include surgically-constructed vaginas (*Transgender (Anti-Discrimination and Other Acts Amendment) Act 1996*).

Decriminalisation of homosexual sexual acts

Prior to the early 1980s, committing homosexual sexual acts (referred to within the legislation as 'buggery') between male persons of any age regardless of consent was an offence in NSW. The *Crimes (Amendment) Act 1984* decriminalised homosexual sexual acts between consenting males who were 18 years or older. The same Act also introduced a suite of new offences criminalising homosexual acts where one of the participants was below the age of consent (18 years). Within this legislation homosexual acts were defined as anal and oral penetration. The proclamation of the *Crimes Amendment (Sexual Offences) Act 2003* meant all reference to homosexual sexual acts were removed from New South Wales's legislation, and the age of consent was reduced to 16 years to align with existing age of consent laws for heterosexual acts. As stated earlier, this Act simultaneously removed all gendered language from the state's sexual offence legislation.

Offences where the accused is in a position of authority or trust

Since its proclamation, the *Crimes Act 1900* has included a small number of offences explicitly criminalising sexual contact between children and persons in a position of authority. In 1950, it was an offence for a male schoolteacher to have sexual contact with female students who were between the ages of 10 and 16 years. This offence was eventually expanded to include male students in 1984 (*Crimes (Amendment) Act 1984*).

In the 1980s, a number of other offences were introduced into NSW legislation that criminalised contact between children and individuals in a position of authority.

- 1985—two sexual assault offences were amended to include a requirement that the victim was under the care or authority of the offender (*Crimes (Child Assault) Amendment 1985*).
- 1987—a new offence was introduced explicitly

criminalising sexual contact between intellectually disabled individuals and those who, in connection with a facility or program providing intellectual disability services, are in a position of authority relative to the victim (*Crimes (Personal and Family Violence) Amendment 1987)*

- 1989—the victim being 'under the authority' of the offender at the time of the offence was identified as an aggravating circumstance (*Crimes (Amendment) Act 1989*).

Further, in 2003 a small number of offences were introduced into the *Crimes Act 1900* that criminalised sexual contact between an adult and a child (16–17 years old) under their 'special care' (*Crimes Amendment (Sexual Offences) Act 2003)*. The legislation identified a series of scenarios in which the child would be considered as being under special care if the offender:

- is the step-parent, guardian or foster parent of the victim;
- is a school teacher and the victim is a pupil of the offender;
- has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim;
- is a custodial officer of an institution of which the victim is an inmate; or
- is a health professional and the victim is a patient of the health professional.

Four years later, the definition of consent provided in the *Crimes Act 1900* was revised to include a provision that 'if the person has sexual intercourse because of the abuse of a position of authority or trust' then the victim may have been deemed as not providing their consent. Finally, the *Crimes Amendment (Cognitive Impairment—Sexual Offences) Act 2008* made it an offence for someone who is 'responsible for care' of a person with a cognitive impairment to have sexual contact with that person.

Child abuse materials

Since the early 1900s, NSW has had legislation criminalising the possession, distribution and advertisement of obscene or indecent articles (*Obscene and Indecent Publications Act 1901)*. The definition of 'obscene' provided in the Act was very broad, encompassing any materials the court believed encouraged 'depravity, or would tend to injure the morals of the public or of any class or section thereof'. This definition was revised in 1955 to refer to any material that 'unduly emphasises matters of sex, crimes of violence, gross cruelty or horror' (*Obscene and Indecent Publications (Amendment) Act 1955*).

Laws explicitly referring to child pornography were first introduced in NSW in the late 1970s (*Indecent Articles and Classified Publications (Amendment) Act 1977*). The Act defined child pornography as publications containing 'indecent matter that depicts a child (under the age of 16 years) who is engaged in an activity of a sexual nature or is in the presence of another person who is so engaged'. However, these laws were repealed in the mid-1980s (*Indecent Articles and Classified Publications (Amendment) Act 1984*) in favour of laws criminalising the possession, distribution etc of 'prohibited' materials, which were defined as including child pornography.

Child pornography laws were introduced into the *Crimes Act 1900* with the passage of the *Crimes (Child Prostitution) Amendment Act 1988*. The Act introduced the offence of employing children for pornographic purposes—employed being defined as when the child receives money or some other material thing for their role. These laws were revised in 1997 (*Crimes Amendment (Child Pornography) Act 1997)* to replace the word 'employs' with 'uses', thereby removing the requirement that the child received some benefit from producing the materials.

In 1995, NSW again implemented explicit child pornography laws (*Classification (Publications, Films and Computer Games) Enforcement Act 1995). The definition* of child pornography provided in the Act was closely aligned with the classification system operating at the time. Child pornography was defined as a 'film, publication or computer game classified Restricted Classification (RC), or unclassified film, publication or computer game that would, if classified, be classified RC, on the basis that it describes or depicts, in a way that is likely to cause offence, a reasonable assault, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16'.

The proclamation of the *Crimes Amendment (Child Pornography) Act 2004* resulted in the definition of child pornography being expanded to refer to 'material that depicts or describes, in a manner that would in all circumstances cause offence to reasonable persons, a person under (or apparently under) the age of 16 years:

- engaged in sexual activity; or
- in a sexual context; or
- as the victim of torture, cruelty of physical abuse (whether or not in a sexual context).'

In 2008, the definition was again broadened to include material that contains or displays an image of a person that has been altered or manipulated so that the person appears to be a child (*Crimes Amendment (Sexual Offences) Act 2008*).

Two years later, the term 'child pornography' was replaced with 'child abuse materials' (*Crimes Amendment (Child Pornography and Abuse Material) Act 2010)*. The Act defined child abuse materials as anything that 'depicts or describes in a way that reasonable persons would regard as being, in all the circumstances, offensive such as:

- 'a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse;
- 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);
- 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
- the private parts of a person who is, appears to be or is implied to be, a child'.

Mandatory reporting laws

Mandatory reporting laws were introduced in NSW for the first time in the late 1970s (*Child Welfare Amendment Act 1977*). At this time, the only mandatory reporters identified in the legislation were medical practitioners. They were required to report when they suspected 'upon reasonable grounds' that a child (17 years old or younger) had been 'assaulted, ill-treated or exposed'. It is notable that mandatory reporters were not specifically required to report suspicions of sexual abuse until the *Children (Care and Protection) Act 1987* was passed and the definition was expanded.

The legislation was again amended in 1988 to include teachers, and to apply only to children aged 16 years or younger (*Crimes (Child Prostitution) Amendment Act 1988)*. However, the age of children who were the subject of reports was increased to 'less than 18 years' in the mid1990s (*Children (Care and Protection) Amendment (Disclosure of Information) Act 1996*). The laws were again revised via the *Children and Young Persons (Care and Protection) Act 1998*, which expanded substantially the list of mandatory reporters to include any person who, in the course of his or her professional work or other paid employment, delivers or holds a management position in an organisation which provide services to children (including health care, welfare, education, children's services, residential services or law enforcement).

Northern Territory

This section gives an overview and briefly discusses of the offences with which an individual who sexually abused a child in an institutional setting in the Northern Territory may have been charged during 1950–2013.

In 1950, Northern Territory legislation criminalised a range of sexually abusive behaviours (see Table 13). Offences included rape, 'defilement' of girls under the age of consent (16 years), procuring children for immoral purposes and indecent assault. As in other jurisdictions it was an offence for a male to expose himself in public.

However, some sexually abusive behaviours were not criminalised in 1950. These included sexual servitude, grooming children for sexual purposes and voyeurism offences (eg peeping). Also, no laws existed compelling individuals to report cases of suspected child sexual abuse to delegated authorities.

The age of consent for heterosexual sexual acts in 1950 was 16 years. This remained unchanged at the end of 2013.

Table 7 Sexual offence legislation operating in the Northern Territory at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
Criminal Law Consolidation Act 1876					
3(1) Procuring defilement of female by threats or fraud		Female	Male	2 years imprisonment	
3(2) Procuring defilement of female by threats or fraud		Female		2 years imprisonment	Victim is not a common prostitute or of known immoral character
3(3) Procuring defilement of female by threats or fraud		Female <21 years		2 years imprisonment	Victim is not a common prostitute or of known immoral character
4(1) Defilement of female between 13 and 16		Female 13–15 years	Male	2 years imprisonment	
4(2) Defilement of female between 13 and 16—idiot or imbecile		Female 13–15 years		2 years imprisonment	
6 Householder etc permitting defilement of female under 17 on his premises		Female <17 years			
11 Defilement of female by guardian	Victim <17 years female	Female <18 years	Male	3 years imprisonment	Guardian includes teacher or schoolmaster
60 Rape		Female	Male	Life imprisonment	
61 Attempt to commit rape		Female	Male	7 years imprisonment	
62 Procuring the defilement of a woman under age		Female <21 years		7 years imprisonment	
63 Carnally knowing a girl under 12		Female <12 years		Life imprisonment	
64 Attempting to carnally know a girl under 12		Female <12 years	Male	7 years imprisonment	
65 Carnally knowing a girl between 12 and 13 whether with or without consent		Female 12-13 years	Male	7 years imprisonment	
66 Indecent assault		Female		2 years imprisonment	
71 Sodomy and bestiality			Male	Life imprisonment	
72 Attempting to commit an infamous crime		Male	Male	7 years imprisonment	
73 Incest				7 years imprisonment	Can occur between parent and child, or brother and sister

Table 7 Sexual offence legislation operating in the Northern Territory at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
Police and Police Offences Ordinance 1923					
47 Offensive etc, conduct				5 pounds	
50 Indecent exposure				10 pounds or 1 month imprisonment	
53(a)(b) Obscenity (behaviour)				5 pounds or imprisonment for 2 months	
57(1)(f) Exposes to view etc obscene book, print etc				6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, the Northern Territory's sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 14 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 8 Timeline of key amendments to the Northern Territory's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1960	New offence Police and Police Offences Ordinance 1923—Obscenity (s 53)	
1969	Section 3(3) of the *Crimes Consolidation Act 1876* amended—removal of the age requirement	*Criminal Law Consolidation Amendment Ordinance 1969*
1978	Police and Police Offences Act renamed the *Summary Offences Act 1978*	*Summary Offences Act 1978*
1979	Section 57(1)(f) of the Summary Offences Act repealed	*Summary Offences Act (No.2) 1979*
1982	New offence (*Crimes Consolidation Act 1876*)—Abduction of child under 16 years (s 70(2); with intention of subjecting child to sexual intercourse or an indecent act by himself or another person or of having that child participate in or exposed to indecent or obscene behaviour)	*Criminal Law Consolidation Amendment Act 1982*
1983	*Crimes Consolidation Act 1876* repealed	*Criminal Code 1983*
	Decriminalisation of homosexual sexual acts undertaken in private between consenting adults—age of consent set at 18	
	Definition of carnal knowledge expanded	
	Terminology changed from 'idiot' and 'imbecile' to 'mentally ill' or 'handicapped' (abnormality of mind, unable to manage themselves or exercise responsible behaviour)	
	New offences (*Criminal Code 1983*): • Carnal knowledge or gross indecency between males in public (s 127) • Carnal knowledge or gross indecency between males in private—under 18 (s 128) • Carnal knowledge or gross indecency involving females under 16 (s 129) • Carnal knowledge or gross indecency involving mentally ill or handicapped females (s 130) • Attempts at procuration of young person or mentally ill or handicapped females (s 131) • Indecent treatment of child under 14 (s 132) • Gross indecency in public (s 133) • Incest by male (s 134) • Incest by adult female (s 135) • Child pornography—possession and publishment (s 137) • Sexual assaults (s 192) • Enticing away child under 16 for immoral purposes (s 201)	
	Mandatory reporting laws introduced	*Community Welfare Act 1983*
1994	Definition of sexual intercourse expanded	*Criminal Code Amendment Act (No. 3) 1994*
	Terminology of 'mentally ill or handicapped female' replaced with 'mentally ill or handicapped person'	
	Sections 130–131 (*Criminal Code 1983*) amended by removing explicit reference to 'female'	
	Section 132 and 192 of the *Criminal Code 1983* repealed	

Table 8 Timeline of key amendments to the Northern Territory's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
	New offences (*Criminal Code 1983*): • Unlawful sexual relationship with child (<16 years, s 131A) • Indecent dealing with child under 16 (s 132) • Sexual intercourse and gross indecency without consent (s 192) • Coerced sexual self-manipulation (s 192B)	
1995	New offence *(Summary Offences Act 1923)*—Loitering by sexual offender (s 47AC)	*Summary Offences Amendment Act (No. 3) 1995*
	New offence (*Classification of Publications and Films Act*—Using computer services to transmit etc objectionable material (s 50Z)	*Classification of (Publications, Films and Computer Games) Act 1995*
1996	Child pornography laws expanded	*Criminal Code Amendment Act (No. 4) 1996*
	Section 137 of the *Criminal Code 1983* repealed	
	New offences (*Criminal Code 1983*): • Possession of child pornography and certain indecent articles (s 125B) • Publishing indecent articles (s 125C)	
2002	Sexual servitude offences introduced	*Criminal Code Amendment Act 2002*
	New offences (*Criminal Code 1983*): • Sexual servitude (s 202B) • Conducting business involving sexual servitude (s 202C)	
2003	Age of consent for homosexual sex lowered to 16	*Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003*
	Sections 127–129, 134–135 of the *Criminal Code 1983* repealed	
	New offences (*Criminal Code 1983*): • Sexual intercourse or gross indecency involving child under 16 (s 127) • Sexual intercourse or gross indecency involving child over 16 under special care (s 128) • Incest (s 143(1)) • Incest—child 10–15 (s 143(2)) • Incest—child <10 (s 143(3))	
2004	Terminology changed from child pornography to child abuse materials	*Criminal Code Amendment (Child Abuse Material) Act 2004*
	Definition of child abuse materials expanded	
	Section 125B of the *Criminal Code 1983* repealed	
	New offences (*Criminal Code 1983*): • Possession of child abuse material (s 125B) • Using child for production of child abuse material or pornographic or abusive performance (s 125E)	
2007	The *Care and Protection of Children Act 2007* superseded the Community Welfare Act 1983; mandatory reporting laws were maintained with no change.	*Care and Protection of Children Act 2007*
2009	Mandatory reporting laws amended	*Care and Protection of Children Amendment Act 2009*

Gendered language of sexual offence legislation

Prior to the early-1980s, the Northern Territory's sexual offence legislation used predominantly gendered language. While a range of sexual behaviours perpetrated against female victims by male offenders were criminalised, only a small number of offences encompassed male victims (eg sodomy and attempt to commit 'infamous crimes').

The passage of the *Criminal Code 1983* resulted in the removal of gendered language from most of the sexual offence legislation. However, the Act also saw the introduction of four new offences:

- carnal knowledge or gross indecency between males in public (s 127)
- carnal knowledge or gross indecency between males (under 18 years) in private (s 128);
- carnal knowledge or gross indecency involving females under 16 years (s 129); and
- carnal knowledge or gross indecency involving mentally ill or handicapped females (s 131).

During the following 20 years, gendered language was gradually removed from the Northern Territory's sexual offence legislation. First, the proclamation of the *Criminal Code Amendment Act (No. 3) 1994* meant the term 'mentally ill or handicapped female' was replaced with 'mentally ill or handicapped person'. In 2004, the offence of carnal knowledge or gross indecency involving females under 16, was repealed (*Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003)* and replaced with sexual intercourse or gross indecency involving a *child* under 16 years. The Act also resulted in the repeal of ss 127 and 128 (see above) of the *Criminal Code 1983* (see above also).

Definition of sexual intercourse

In 1950, the definition of 'carnal knowledge' provided in the *Crimes Consolidation Act 1876* was very narrow—'proved upon penetration but it shall not be necessary to prove the actual emission of seed'. With the passage of the *Criminal Code 1983*, the definition of carnal knowledge was expanded to include acts of 'sexual intercourse, sodomy or oral sexual intercourse and it occurs as soon as there is penetration'.

The term carnal knowledge was replaced in the early 1990s by 'sexual intercourse' (*Criminal Code Amendment Act (No. 3) 1994)*, which was subsequently defined as:

- the insertion to any extent by a person of his penis into the vagina, anus or mouth or another person;
- the insertion to any extent by a person of any part of the person's body or any object into the vagina or anus of another person; or
- cunnilingus or fellatio.

The definition of vagina was also expanded to include the internal and external genitalia, and surgically-constructed genitalia.

Decriminalisation of homosexual sexual acts

Prior to the early-1980s, homosexual sexual acts (penetrative and non-penetrative) between males of any age, regardless of consent, was a criminal offence. In 1983, the Northern Territory decriminalised certain homosexual sexual acts undertaken in private between consenting partners who were over the age of 17 years (*Criminal Code 1983*; Carbery 2010). However, carnal knowledge or acts of gross indecency between males of any age in public was still an offence, as were any sexual acts committed in private where a third party was present and/or in the sight of any person not involved in the act. The *Criminal Code 1983* amendments made carnal knowledge or acts of gross indecency with a male under 14 years an aggravated offence. Twenty years later, all references to homosexual sexual acts were removed from the relevant legislation (*Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003).* This led to the decriminalisation of homosexual sexual acts between consenting individuals, and the age of consent being set at 16 years (Carbery 2010).

Offences where the accused is in a position of authority or trust

In 1950, the *Crimes Consolidation Act 1876* made it an offence for a male guardian, teacher or schoolmaster to 'defile' their female wards or pupils who were less than 18 years old. This offence was repealed with the passage of the *Criminal Code*

1983, and it was not until 20 years later that a similar offence was introduced. However, the *Criminal Code 1983* did make it an offence for a provider of disability support services (including volunteers) to have sexual intercourse with a mentally handicapped person under their care.

The *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* introduced a new offence—sexual intercourse or gross indecency involving children (16 or 17 years) who were under 'special care'. The legislation stipulated that the victim is under 'special care' if the offender:

- is the step-parent, guardian or foster parent of the victim;
- is a schoolteacher and the victim is a pupil of the offender;
- has established a personal relationship with the victim in connection with the care, instruction (for example, religious, sporting or musical instruction) or supervision (for example, supervision in the course of employment or training) of the victim;
- is a correctional services officer at a correctional institution at which the victim is detained; or
- is a health professional or other provider of health care or treatment and the victim is a patient or client of the offender.

Child abuse materials

Until the early 1990s, Northern Territory legislature did not explicitly criminalise the sale, production and the like of child abuse materials. This said, charges may have been brought against a person for selling etc child abuse materials under s 57 of the *Police and Police Offences Ordinance 1923–1960,* which made it an offence to exhibit, sell etc 'obscene' prints, publications etc. While the Ordinance did not define the term 'obscene', it may have been interpreted as including child abuse materials.

The Northern Territory explicitly criminalised the production, sale and similar of child pornography and indecent materials in the mid-1990s with the passage of the *Criminal Code Amendment Act (No. 4) 1996*. Child pornography was defined in the Act as a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be classified RC. This would be on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child under 16 years or who looks like a child who has not attained that age. The Act defined indecent articles as materials which:

- promote crime or violence, or incite or instruct in matters of crime or violence; or
- describe or depict, in a manner that is likely to cause offence to a reasonable adult:
  - the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct;
  - sexual conduct with or on the body of a dead person;
  - the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct;
  - bestiality;
  - acts of torture or the infliction of extreme violence or extreme cruelty; or
  - a person (whether or not engaged in sexual activity) who is a child who has not attained the age of 16 years or who looks like a child who has not attained that age;

In 2004, the terminology changed from child pornography to 'child abuse materials' (*Criminal Code Amendment (Child Abuse Material) Act 2004)*. The Act defined child abuse materials as those that depict, describe or represent, in a manner that is likely to cause offence to a reasonable adult, a person who is a child (under the age of 17 years) or who appears to be a child:

- engaging in sexual activity;
- in a sexual, offensive or demeaning context; or
- being subjected to torture, cruelty or abuse.

Mandatory reporting laws

Mandatory reporting laws were introduced in the Northern Territory for the first time in the early 1980s with the passage of the *Community Welfare Act 1983*. Unlike other jurisdictions, the Act did not identify specific categories of individuals (eg medical professionals) as mandatory reporters. Rather, it made it a requirement for any person who believes

on reasonable grounds that a child has or is suffering maltreatment, to make a report to the delegated authorities. Maltreatment was defined as including physical or emotional abuse, severe body malfunctioning or injury and sexual abuse. The only professional group excused from these very broad laws were members of the police force who were authorised to perform the statutory child protection role together with the child protection service.

The Northern Territory's mandatory reporting laws do not appear to have changed for more 20 years, including when the *Child Welfare Act 1983* was eventually superseded by the *Care and Protection of Children Act 2007*. However, the passage of the *Care and Protection of Children Amendment Act 2009* resulted in the previously enacted mandatory reporting laws being repealed in favour of a more structured series of reporting requirements. The laws now require any person to make a report if:

- a child has suffered or is likely to suffer harm or exploitation;
- a child aged less than 14 years has been or is likely to be a victim of a sexual offence;
- a child has been or is likely to be a victim of an offence against s 128 of the Criminal Code 1983 (sexual intercourse or gross indecency involving a child over 16 years under special care).

Queensland

This section gives an overview and briefly discusses the offences with which an individual who sexually abused a child in an institutional setting in Queensland may have been charged during 1950–2013.

As demonstrated in Table 15, the *Criminal Code Act 1899* and *Vagrants, Gaming and Other Offences Act 1931*, as they existed in 1950, criminalised sexually abusive behaviours in a range of contexts. Offences included:

- unnatural offences (sodomy);
- indecent treatment and defilement of children (various ages);
- householder permitting abuse of children on premises;
- procuration;
- incest;
- obscene publications;
- rape; and
- abduction with intent to sexually abuse.

However, there were also several sexually abusive behaviours that were not criminalised in 1950. These included:

- sexual contact with children over the age of consent (17 years) by someone in a position of authority or trust;
- sexual servitude;
- voyeurism (eg peeping); and
- grooming of children for sexual purposes.

Also no laws existed requiring individuals working in specific professions to report suspected child sexual abuse matters to delegated bodies.

In 1950 the age of consent for heterosexual sexual acts was 17 years. With the passage of the *Criminal Code Amendment Act 1976* the age of consent was lowered to 16. This remained unchanged at the end of 2013.

Table 9 Sexual offence legislation operating in Queensland at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Maximum penalty**	**Notes**
Criminal Code Act 1899					
208 Unnatural offences			Male	14 years imprisonment	
209 Attempt to commit unnatural offences				7 years imprisonment	
210 Indecent treatment of boys under 14		<14 years Male		7 years imprisonment	
211 Indecent practices between males		Male	Male	3 years imprisonment	
212 Defilement of girls under 12		<12 years Female		Life imprisonment 3 years imprisonment (attempt)	
213 Householder permitting defilement of young girls on his premises		<17 years Female	Male	2 years imprisonment Life imprisonment (if victim <12 years)	
214 Attempt to abuse girls under 10		<10 years Female		14 years imprisonment	
215(1) Defilement of girls under 17		<17 years Female		6 years imprisonment	
215(2) Defilement of idiot		Female		6 years imprisonment	Victim must be a female idiot or imbecile
216 Indecent treatment of girls under 17		<17 years Female		2 years imprisonment 3 years imprisonment (if victim <12 years)	
217 Procuration		<21 years Female		2 years imprisonment	Victim cannot be a common prostitute or of known immoral character
218 Procuring defilement of woman by threats, or fraud, or administering drugs		Female		2 years imprisonment	
219 Abduction of girl under 18 with intent to have carnal knowledge		<18 years Female	Male	2 years imprisonment	Victim cannot be married
220 Unlawful detention with intent to defile or in a brothel		Female	Male	2 years imprisonment	
221 Conspiracy to defile		Female		3 years imprisonment	
222 Incest by man		Female	Male	Life imprisonment	Victim must be daughter, sister, mother or other lineal descent of offender.

Table 9 Sexual offence legislation operating in Queensland at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Maximum penalty**	**Notes**
223 Incest by adult female			18 years or above Female	3 years imprisonment	Victim must allow her brother, son, father or other lineal ancestor to have carnal knowledge with her.
227 Indecent acts				2 years imprisonment	
228 Obscene publications and exhibitions				2 years imprisonment	
336 Assault with intent to commit unnatural offences				14 years imprisonment	
337 Indecent assault on males		Male		3 years imprisonment	
349–349 Rape		Female		Life imprisonment 14 years imprisonment (attempt)	Victim cannot be married
350 Indecent assaults on females		Female		2 years imprisonment	
351 Abduction		<21 years Female		7 years imprisonment	
352 Abduction of girls under 16		<16 years Female		2 years imprisonment	Victim cannot be married
The Vagrants, Gaming and Other Offences Act 1931					
12 Printing, publishing etc obscene matter				3 months imprisonment (first offence) 6 months imprisonment (second offence) 1 year imprisonment (third offence)	
13 Offence by occupier or owner (displaying obscene matter)				3 months imprisonment (first offence) 6 months imprisonment (second offence)	
14 Indecent postcards				6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, Queensland sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 16 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 10 Timeline of key amendments to Queensland's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
1971	Definition of obscene publications is expanded	*Vagrancy, Gaming and Other Offences Act Amendment Act 1971*
	New offence (*The Vagrants, Gaming and Other Offences Act 1931*)—Advertising indecent or obscene publications (s 12A)	
1976	Sections 213, 215 and 216 of *The Criminal Code Act 1899* amended—Age of consent lowered from 17 to 16 for each of these offences	*The Criminal Code Amendment Act 1976*
1980	Mandatory reporting laws introduced	*Health Act Amendment Act 1980*
	New offence—Notification of maltreatment (s 76K)	
1989	New offences (*Criminal Code Act 1899*): • Unnatural offences against children under 16 (s 208(a)) • Unnatural offences against those of whom the offender is guardian, carer or lineal descendent (s 208(b)) • Indecent treatment of children under 16 if the child is under the care or guardianship of the offender (s 210) • Householder permitting abuse of children on his premises (s 213) • Carnal knowledge of girls under 16 if the girl is under the care of the offender (s 215) • Abuse of intellectually impaired person if the offender is the carer or guardian of that person (s 216) • Procuration (s 217) • Taking child under 16 for immoral purposes (s 219) • Maintaining a sexual relationship with a child under 16 (s 229B)—defined as sexually assaulting a child on three or more occasions. • Indecent assaults (s 337)	*The Criminal Code, Evidence Act and Other Amendments Act 1989*
	Gendered language removed for various offences with the repeal of ss 210, 212, 213, 216, 217, 219, 337, 350 and 352 of the *Criminal Code 1899*	
	Section 228 of the *Criminal Code Act 1899* amended—expanded to specifically prohibit publications depicting children under 16	

Table 10 Timeline of key amendments to Queensland's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
	'Female idiot or imbecile' replaced with 'intellectually impaired person'— defined as 'a person who is so intellectually impaired as to be incapable of guarding himself or herself against sexual exploitation.' This amendment also reflects a move towards gender-neutral language	
	Definition of indecent assault or the act of gross indecency expanded	
1990	Sections 208, 209 and 211 of the *Criminal Code Act 1899* are repealed	*The Criminal Code and Another Act Amendment Act 1990*
	Anal intercourse is no longer unlawful for consenting adults over the age of 18 (ss 208–209)	
	New offences (*Criminal Code Act 1899*): • Unlawful anal intercourse (s 208) • Unlawful anal intercourse with a child under 12 (s 209(b)(i)) • Unlawful anal intercourse with a child if the offender is the lineal descendent (s 209(b)(ii)), guardian (s 209(b)(iii)) or carer (s 209(b)(iv)) of the child	
	Definition of carnal knowledge expanded to include anal intercourse.	
1991	New offences (*Classification of Publications Act 1991*): • Sale etc of prohibited publication (s 12) • Possession of prohibited publication (s 13) • Possession of child abuse publication (s 14) • Exhibition or display of prohibited publication (s 15) • Leaving prohibited publication in or on public place (s 16) • Procuring prohibited publication (s 17) • Procurement of minor for refused classification publication (s 18)	*Classification of Publications Act 1991*
	New offences (*Classification of Films Act 1991*): • Public exhibition of objectionable film (s 37) • Exhibition of an 'R' of objectionable film before a minor (s 38) • Display and sale of objectionable film prohibited (s 39) • Keeping together of classified and objectionable films prohibited (s 40) • Possession of objectionable film (s 41) • Making objectionable film (s 42) • Procurement of minor for objectionable film (s 43)	*Classification of Films Act 1991*
1992	Definition of 'intellectually impaired person' is expanded to include a person who has a disability that is attributable to an intellectual, psychiatric, cognitive or neurological impairment (or a combination of these) that results in a substantial reduction of the person's capacity for communication and social interactions and a need for support.	*Prostitution Laws Amendment Act 1992*
	Gendered language further removed with the revision of s 218. Replaced with: Procuring sexual acts by coercion (s 218)	
	A definition for 'sexual act' is introduced	
1993	New offence (*Criminal Code Act 1899*)—Unlawful stalking (s 359a)	*Criminal Law Amendment Act 1993*

Table 10 Timeline of key amendments to Queensland's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1995	New offences (*Classification of Computer Games and Images Act 1995*): • Public demonstration of objectionable computer game (s 22) • Demonstration of an objectionable computer game before a minor (s 23) • Sale of objectionable computer game (s 24) • Keeping together of classified and objectionable computer games (s 25) • Possession of objectionable computer game (s 26) • Making objectionable computer game (s 27) • Obtaining minor for objectionable computer game (s 28)	*Classification of Computer Games and Images Act 1995*
1997	Definition of carnal knowledge is expanded to include 'penetration to any extent'	*Criminal Law Amendment Act 1997*
	The legislation becomes more gender neutral with amendments to s 221 (conspiracy to defile), s 222 (incest) and s 347 (rape) of the *Crimes Code Act 1899*	
	Definition of incest expanded to include carnal knowledge between a person's offspring or other lineal descendent, sibling, parent, grandparent, uncle, aunt, nephew or niece. This includes half, adoptive or step relationships, but does not include persons who are lawfully married	
	Definition of rape amended to include provision that consent may be vitiated in situations where the person is in a position of authority	
1999	'Sexual act' is replaced with 'sexual intercourse', however, the definition remains the same	*Prostitution Act 1999*
2000	The definition for genitalia is expanded to include surgically constructed organs, for both males and females	*Criminal Law Amendment Act 2000*
	The *Criminal Code Act 1899* becomes more gender neutral with amendments to s 215 (carnal knowledge with or of children)	
	Consent explicitly defined in the *Criminal Code Act 1899*. Includes a provision that consent may be vitiated if it was obtained by 'exercise of authority'	
	Definition of obscene publications and exhibitions expanded to include computer generated images	
	Various sections of the legislation are restructured so as to allow for a consolidated and gender-neutral section for rape and sexual assaults	
	The definition of rape is expanded in s 349 (*Criminal Code 1899*)	
	New offences (*Criminal Code Act 1899*): • Sexual assaults where the offender pretends to be, or is armed with a dangerous or offensive weapon, or is in company with any other person (s 352(3)(a)) • Indecent assault where the person who is assaulted penetrates the vagina, vulva or anus with a thing or part of the person's body that is not a penis (s 352(3)(b)) • An act of gross indecency where the person who is procured by the offender penetrates the vagina, vulva or anus of themselves or another person with a thing or part of the body that is not the penis (s 352(3)(c))	
	Mandatory reporting laws are expanded	*Child Protection Amendment Act 2000*
	New offence (*Child Protection Amendment Act 2000*)—Obligations to report harm to children in residential care (s 147B)	

Table 10 Timeline of key amendments to Queensland's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
	New offence (*Commission for Children and Young People 2000*)— Referral of matters or offences to other persons (s 20)	*Commission for Children and Young People 2000*
2003	The offence of procuring sexual acts by coercion is extended so that it is not limited to sexual intercourse or acts involving physical contact, but applies to a range of sexual behaviours including acts of an indecent nature (s 218)	*Sexual Offences (Protection of Children) Amendment Act 2003*
	New offence (*Criminal Code Act 1899*)—Using internet etc to procure children under 16 (s 218A)	
	Section 229B of the *Criminal Code Act 1899* (maintaining a sexual relationship with a child) is amended so that the relationship is defined as involving one or more unlawful sexual acts over any period (down from 3). The age of consent is 18 for homosexual sexual acts and 16 for any other sexual acts.	
	Mandatory reporting laws are expanded	*Education and Other Legislation (Student Protection) Amendment Act 2003*
	New offences (*Education (General Provisions) Act 1989):* • Obligation to report sexual abuse of student under 18 attending state school (s 146A). • Obligation to report sexual abuse of student under 18 attending non-state school (s 146B).	
2004	Mandatory reporting laws are expanded with the repeal of s 76K and replacement with 'Division 6: Harm to Children' (ss 76K–76L)	*Child Safety Legislation Amendment Act (No. 2) 2004*
	The definition of carnal knowledge expanded to specifically include sodomy	*Justice and Other Legislation Amendment Act 2004*
2005	*Vagrancy, Gaming and Other Offences Act 1931* is repealed, along with offences relating to obscene publications	*Summary Offences Act 2005*
	New offence (*Summary Offences Act 2005*)—wilful exposure (s 9)	
	Child pornography laws expanded	*Criminal Code (Child Pornography and Abuse) Amendment Act 2005*
	New offences (*Criminal Code Act 1899*): • Involving child in making child exploitation material (s 228A) • Making child exploitation material (s 228B) • Distributing child exploitation material (s 228C) • Possessing child exploitation material (s 228D)	
	New offences (*Criminal Code Act 1899*): • Observations or recording in breach of privacy (s 227A) • Distributing prohibited visual recordings (s 227B)	*Justice and Other Legislation Amendment Act 2005*
	Mandatory reporting offences under the *Health Act 1937* are placed in the *Public Health Act 2005* (ss 158, 191).	*Public Health Act 2005*
2006	Mandatory reporting laws relating to school staff are renumbered from ss 146A–146B to ss 364–366 with the repeal and substitution of *Education (General Provisions) Act 1989* with *Education (General Provisions) Act 2006*	*Education (General Provisions) Act 2006*
2008	The offence for unlawful sodomy is revised	*Criminal Code and Other Acts Amendment Act 2008*
	'Intellectually impaired persons' is replaced with the 'persons with an impairment of the mind.' The definition remains the same as that specified in the 1992 legislation	

Table 10 Timeline of key amendments to Queensland's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2010	It is made clear that the relevant relationships for the offence of incest include those that are not blood relatives, but are created by the making of a parentage order, as well as the relevant relationships that cease to exist because of the making of the parentage order (s 222)	*Surrogacy Act 2010*
2011	Significant expansion of the obligations on teachers and other education staff to report sexual abuse of a student (ss 365–366) New offences (*Education (General Provisions) Act 2006):* • Obligation to report likely sexual abuse of person under 18 years at state school (s 365A) • Obligation to report likely sexual abuse of person under 18 years at non-state school (s 366A)	*Education and Training Legislation Amendment Act 2011*
2013	New offences (*Criminal Code Act 1899*): • Unlawful sodomy with a child who is also a person with an impairment of the mind (s 208(2A)) • Indecent treatment of children under 16 if the child is a person with an impairment of the mind (s 210(4A)) • Carnal knowledge with or of children under 16 if the child is a person with an impairment of the mind (s215(4A)) • Using the internet to procure children under 12 (s 218A(2a)) • Using the internet to procure children under 16 with the intention of meeting the child, or going to a place with the intention of meeting the child (s 218A(2b)) New offence (*Criminal Code Act 1899*)—Grooming children under 16 (s 218B); involves an adult engaging in any conduct with a child with intent to facilitate the procurement of the person to engage in a sexual act, or expose the child to any indecent matter. It is an aggravated offence to groom a child under 12 (s 218B(2))	*Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013*

Gendered language of sexual offence legislation

Queensland's *Criminal Code Act 1899* was historically biased towards protecting female victims of sexually abusive behaviours and criminalising only male offenders. However, gendered language included in the legislation was gradually replaced from the 1980s onwards.

- The *Criminal Code, Evidence Act and Other Amendments Act 1989* resulted in gender specific terminologies such as 'girl' being replaced with gender-neutral alternatives such as 'child' for a number of offences, including indecent treatment, abuse of children on premises, abuse of intellectually impaired persons, taking child for immoral purposes, procuration and indecent assaults.
- The *Prostitution Laws Amendment Act 1992* resulted in the gendered language used to describe the procuring sexual acts by coercion offence, being removed.
- The *Criminal Law Amendment Act 1997* resulted in the inclusion of gender-neutral language for the offences of rape, conspiracy to defile and incest.
- The *Criminal Law Amendment Act 2000* resulted in the removal of the gender bias for the offence of carnal knowledge of girls under 16 years by replacing 'girl' with 'children'.

Definition of carnal knowledge

In 1950, the *Criminal Code Act 1899* used the term 'carnal knowledge' in relation to sexual offences. While the Act did not provide an explicit definition of 'carnal knowledge', it was taken to mean, as it did in the other jurisdictions, penetration.

By the beginning of the 1990s, carnal knowledge was still not defined in the legislature, although the *Criminal Code and Another Act Amendment Act 1990* stipulated that it did include 'anal intercourse.' The *Criminal Law Amendment Act 1997* further expanded this definition to include 'penetration to any extent', meaning that acts that would have previously been categorised as 'indecent dealings' could now be prosecuted as carnal knowledge. The *Criminal Law Amendment Act 2000* then specified that carnal knowledge included the penetration of the penis, vagina or vulva, including surgically-constructed organs. Finally, the *Justice and Other Legislation Amendment Act 2004* rephrased the definition of carnal knowledge to specifically include sodomy.

While the definition of carnal knowledge provided under the Criminal Code relates only to acts involving penile penetration, the proclamation of the *Criminal Code, Evidence Act and Other Amendments Act 1989* led to the expansion of the definition of indecent assault to include acts involving the penetration of the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis. Therefore acts that do not involve penile penetration are prohibited under Queensland legislation.

Decriminalisation of homosexual sexual acts

Under the *Criminal Code Act 1899* (as it was enacted in 1950) it was a criminal offence for a male to have (or attempt to have) 'carnal knowledge' of any person 'against the order of nature.' Essentially this provision criminalised homosexual sexual intercourse between males of any age, regardless of consent. It was not until 1990 with the passage of *The Criminal Code and Another Act Amendment Act 1990* that homosexual sexual acts between consenting males over 18 years of age was decriminalised in Queensland.

While other jurisdictions initially set the age of consent for homosexual sexual acts higher than that specified for heterosexual sexual acts, this has generally been equalised through subsequent legislative changes. The same changes have not been made in Queensland. Consequently, Queensland is the only jurisdiction in Australia where the age of consent differs between anal sex at 18 years and other sexual acts at 16 years (Carbery 2010).

Offences where the accused is in a position of authority or trust

Unlike the other jurisdictions (with the exception of Tasmania), Queensland's sexual offence legislation does not include specific provisions criminalising sexual contact between a child 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 the child. However, the *Criminal Code, Evidence Act and Other Amendments Act 1989* did introduce aggravated provisions for a number of offences, including unnatural offences, the indecent treatment of boys under 14, carnal knowledge of girls under 16 and the abuse of an intellectually impaired person. The effect of these amendments is that sexual offenders are liable to an extended period of imprisonment if they are a 'person who has care of a child'. The *Criminal Law Amendment Act 1997* subsequently defined a 'person who has care of a child' as a parent, foster parent, stepparent, guardian or other adult in charge of the child, whether or not the person has lawful custody of the child.

The Act also prompted the amending of the definition of consent in relation to the rape offence. Specifically, it was stipulated that consent may be vitiated in circumstances where it was obtained by exercising authority. With the passage of the *Criminal Law Amendment Act 2000*, this provision was included in the broader definition of consent, meaning that it was applicable to all sexual offences.

Child exploitation material

Since its proclamation, the *Criminal Code Act 1899* has criminalised the public sale, exposure or exhibition of 'obscene publications.' The *Vagrants, Gaming and Other Offences Act 1931* later introduced additional laws to prohibit the printing, publishing and selling of 'obscene matter', as well as the selling of indecent postcards. Forty years later in 1971, an additional offence was introduced to prohibit the advertisement of indecent or obscene

publications (*Vagrancy, Gaming and Other Offences Act Amendment Act 1971*). At this time the Act defined 'obscene publications' relatively broadly as encompassing matters of 'sex, crime or depravity.' Several years later with the passage of *The Criminal Code, Evidence Act and Other Amendments Act 1989*, the definition of 'obscene' was expanded to explicitly include publications depicting children under 16 years. This definition was again expanded in 2000 to include computer generated images (*Criminal Law Amendment Act 2000*).

In the early 1990s, Queensland passed several pieces of legislation to further criminalise child pornography. Under the *Classification of Films Act 1991* it became illegal to possess and produce 'objectionable' films, including unclassified or unapproved films depicting a minor (whether engaged in sexual activity or otherwise) under the age of 16 in a way that is 'likely to cause offence to a reasonable adult person.' Further, the *Classification of Publications Act 1991* made it illegal to possess, exhibit or produce a prohibited publication. This was later expanded to include a 'child abuse photograph', the definition of which was similar to objectionable, only the publication must be in pictorial form (*Consumer Law (Miscellaneous Provisions) Act 1993*). A few years later the *Classification of Computer Games and Images (Interim) Act 1995* was enacted and introduced offences that prohibited the sale, possession and production of an 'objectionable' computer game.

While these Acts were beneficial in targeting child pornography produced for commercial purposes, calls were made for more specific offences that recognised 'the serious criminal and exploitative nature of the conduct involved in producing, distributing and consuming child pornography' (Crime and Misconduct Commission 2013:7). The *Criminal Code (Child Pornography and Abuse) Amendment Act 2005* was subsequently passed and was the first piece of legislation in Queensland to explicitly refer to 'child exploitation material'. The Act defined child exploitation material as 'that which, in a way likely to cause offence to a reasonable adult, describes or depicts someone who is, or apparently is, a child under 16 years old in a sexual context, in an offensive or demeaning context or being subjected to abuse, cruelty or torture.' The Act introduced a series of offences that criminalised involving a child in making child exploitation material, as well as the act of making and distributing child exploitation material. In the same year, the *Justice and Other Legislation Amendment Act 2005* made it illegal to observe or visually record another non-consenting person who is in a private place or engaging in a private act. The Act also criminalised the distribution of these prohibited visual recordings.

While the three classification Acts remain in effect today, in practice child pornography offenders are primarily charged under provisions introduced with the *Criminal Code (Child Pornography and Abuse) Amendment Act 2005* (Crime and Misconduct Commission 2013).

Mandatory reporting laws

Queensland first introduced mandatory reporting laws at the start of the 1980s (*Health Act Amendment Act 1980).* The laws, as they were then drafted, only imposed reporting obligations on medical practitioners who 'reasonably suspected' the neglect or maltreatment of a child. The terms 'neglect or maltreatment' were defined within the legislation as subjecting the child to unnecessary injury, suffering or danger. The terms 'unnecessary injury, suffering or danger' were not defined.

The *Child Safety Legislation Amendment Act (No. 2) 2004* subsequently made registered nurses mandatory reporters, and widened the reporting to explicitly include physical abuse, sexual abuse or exploitation, emotional/psychological abuse or neglect.

Over the following years, a number of other professional categories would eventually become mandatory reporters. For example:

- employees of residential care facilities, including authorised officers, employees of the Department of Child Safety and persons employed in a departmental care service or licensed care service must report physical abuse, sexual abuse or exploitation, emotional/psychological abuse or neglect (via the *Child Protection Amendment Act 2000*); and
- employees of the Commission for Children and Young People and Child Guardian must report if a

child is 'in need of protection' (via the *Commission for Children and Young People 2000).*

Further, in 2003 Queensland introduced laws which required state and nonstate school staff who reasonably suspected that a child was being sexually abused, to make a report (*Education and Other Legislation (Student Protection) Amendment Act 2003*). The Act confined the reporting obligations to instances where the employee suspected the offender was another school employee. However, this premise was subsequently removed to ensure that school staff (in both the public and private sector) are mandated to report sexual abuse by any person, not only limited to other school employees (*Education and Training Legislation Amendment Act 2011*). The Act also introduced a requirement that school employees report a reasonable suspicion that a student under 18 years attending the same school is 'likely to be sexually abused by another person.'

South Australia

This section gives an overview and briefly discusses the offences that an individual who sexually abused a child in an institutional setting in South Australia may have been charged with during 1950–2013.

South Australia has had legislation criminalising the sexual abuse of children since the early 1800s. However, it was not until the passage of the *Criminal Law Consolidation Act 1935* that a more rigorous and consolidated set of offences were enacted. Table 9 provides a historical snapshot of child sexual assault legislation in South Australia as at 1950.

As with all Australian jurisdictions, several sexually abusive behaviours were not criminalised under South Australian legislation in 1950. This includes sexual servitude, the grooming of children for immoral purposes, and voyeurism. Further, no laws required individuals to report suspected cases of child sexual abuse.

The age of consent for heterosexual sexual acts in 1950 was 16 years old. However, the age of consent for heterosexual and homosexual sexual acts involving penetration was increased to 17 years old by way of the *Criminal Law Consolidation Act Amendment Act 1976*. The age of consent for all other sexual acts remained 16 years old. The age of consent for homosexual and heterosexual sexual acts remained unchanged at the end of 2013.

Table 11 Sexual offence legislation operating in South Australia at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Maximum penalty**	**Notes**
Criminal Law Consolidation Act 1935					
48 Rape		Female		Life imprisonment	
49 Attempt to commit rape		Female		7 years imprisonment	
50 Carnally knowing a girl under 12		<12 years Female		Life imprisonment	
51 Attempting to carnally know a girl under 12		<12 years Female		7 years imprisonment	
52 Carnally knowing a girl between 12 and 13		12–13 years Female		7 years imprisonment	
53 Defilement of female by guardian		<18 years Female		7 years imprisonment	Offender is the victim's guardian, teacher or schoolmaster.
55(1A) Defilement of female between 13 and 16		14–15 years Female	Male	7 years imprisonment	
55(1B) Defilement of female idiot or imbecile woman or girl		Female	Male	7 years imprisonment	
56 Indecent assault		Female		5 years imprisonment (first offence) 7 years imprisonment (subsequent offence)	
58 Acts of gross indecency with girls under the age of 16		<16 years Female	Male	2 years imprisonment (first offence) 3 years imprisonment (subsequent offence)	
62 Procuring the defilement of a female under 21		<21 years Female	Male	7 years imprisonment	
63 Procuring females to be prostitutes		Female		7 years imprisonment	Victim cannot be a common prostitute or of known 'immoral' character
64(C) Procuring defilement of females by threats or fraud		<21 years Female	Male	7 years imprisonment	Victim cannot be a common prostitute or of known 'immoral' character
65 Householder permitting defilement of female under 17 on his premises		<17 years Female	Male	7 years imprisonment	

Table 11 Sexual offence legislation operating in South Australia at the start of 1950

Section and offence	Aggravating factors	Victim age/ gender	Offender gender	Maximum penalty	Notes
66 Detention of unmarried female and restoration to her parents		<18 years Female	Male	7 years imprisonment	Offender must have intent to have unlawful carnal knowledge with unmarried female victim
68 Permitting youths to resort to brothels		<17 years Male		7 years imprisonment	Offender must be the owner or occupier of the premises, or assist in the management of the premises.
69 Buggery				10 years imprisonment	Buggery is an offence if committed with mankind or an animal.
70 Attempts and indecent assault on males		Male		7 years imprisonment	
71 Gross indecency		Male	Male	3 years imprisonment	Acts of indecency are criminalised in both public and private places.
72 Incest				7 years imprisonment	Can occur between parent and child, or brother and sister. Both parties are liable to be imprisoned.
Police Act 1936					
79 Indecent exposure			Male	1 month imprisonment	
86(1)(f) Rogues and vagabonds—exposure of obscene matter			Male	6 months imprisonment	
86(1)(g) Rogues and vagabonds—obscene exposure of person			Male	6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, South Australia's sexual offence legislation has been significantly amended many times. Key changes are described briefly in Table 10 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 12 Timeline of key amendments to South Australia's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1953	*Police Act 1936* is repealed	*Police Offences Act 1953*
	New offences (*Police Offences Act 1953*): • Publication of indecent matter (s 33) • Indecent exposure and gross indecency (s 23)	
1969	Mandatory reporting laws are introduced	*Children's Protection Act Amendment Act 1969*
	New offence *(Children's Protection Act 1936–1969*—Offences to be reported (s 5a(1))	
1972	Homosexual acts carried out in private are no longer an offence for two consenting males over the age of 21 (under newly enacted s 68a)	*Criminal Law Consolidation Act Amendment Act 1972*
	Mandatory reporting laws amended with the repeal of the *Children's Protection Act Amendment Act 1969* and the passage of the *Community Welfare Act 1972*.	*Community Welfare Act 1972*
	New offence *(Community Welfare Act 1972)*—Reports of cruelty (s 73)	
1975	Amendments to ss 46–68 of the *Criminal Law Consolidation Act 1935* remove all gendered language in relation to rape, defilement and abduction	*Criminal Law (Sexual Offences) Amendment Act 1975*
	Carnal knowledge defined as including penetration per anum of a male or female person	
	Expansion of offences where the accused is in a position of authority or trust (s 53)	
	The offences for buggery and gross indecency (ss 68a–69) are repealed	
1976	'Sexual intercourse' replaces 'carnal knowledge' and is defined as the introduction of the penis of one person into the anus or mouth of another	*Criminal Law Consolidation Act Amendment Act 1976*
	Sections 48–55 (*Criminal Law Consolidation Act 1935*) are repealed	
	New offences (*Criminal Law Consolidation Act 1935*): • Rape (s 48) • Unlawful sexual intercourse (s 49)	
	The age of consent for homosexual sexual intercourse is lowered from 21 to 17 (s 49).	
	The age of consent for heterosexual sexual intercourse is raised from 16 to 17 (s 49).	
	The age of consent for other acts of a sexual nature is changed to 16 (s 49)	
	In relation to victims of unlawful sexual intercourse the phrase 'female idiot or imbecile' is replaced with 'mentally deficient' (s 49)	
	Capital punishment (death penalty) abolished for criminal offences, including child sexual assault	*Statutes Amendment (Capital Punishment Abolition) Act 1976*
	Mandatory reporting laws are amended	*Community Welfare Act Amendment Act 1976*
	New offences (*Community Welfare Act 1972–1976*): • Notification of maltreatment (s 82d) • Offences against children (s 82e)	
1978	The offence for acts of gross indecency with persons under the age of 16 is revised to include the production of child pornography (s 58)	*Criminal Law (Prohibition of Child Pornography) Act 1978*
1981	Mandatory reporting laws expanded.	*Community Welfare Act Amendment Act 1981*

Table 12 Timeline of key amendments to South Australia's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1983	New offence (*Criminal Law Consolidation Act 1935*)—Person for prurient purposes incites or procures commission by child of indecent act (s 58a)	*Criminal Law Consolidation Act Amendment Act (No. 3) 1983*
	The publication of indecent material is expanded to include photographs, film and video tapes (s 33)	*Statutes Amendment (Criminal Law Consolidation and Police Offences) Act 1983*
1985	Definition of sexual intercourse expanded	*Criminal Law Consolidation Act Amendment Act 1985*
1988	The categories of individuals required to report child maltreatment or neglect are expanded (s 91)	*Community Welfare Amendment Act 1988*
1991	In relation to victims of unlawful sexual intercourse, the phrase 'mentally deficient' is replaced with 'intellectually disabled' (s 49)	*Statutes Amendment (Attorney-General's Portfolio) Act 1991*
1992	Child pornography is specifically defined for the first time (s 33)	*Summary Offences (Child Pornography) Amendment Act 1992*
	The publication of indecent material is expanded to include computer data and records (s 33)	
1993	Mandatory reporting laws are subsumed within the *Children's Protection Act 1993* and replaced with the new offence: Notification of abuse or neglect (s 11). The categories of mandatory reporter professions are expanded	*Children's Protection Act 1993*
1994	In the definition of sexual intercourse the term vagina is substituted with labia majora	*Criminal Law Consolidation (Sexual Intercourse) Amendment Act 1994*
	New offence (*Criminal Law Consolidation Act 1935*)—Persistent sexual abuse of a child (s 74). Defined as the commission of a sexual offence against a child on at least 3 separate occasions (on at least 3 days)	*Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 1994*
	New offence (*Criminal Law Consolidation Act 1935*)—Unlawful stalking (s 19AA)	*Criminal Law Consolidation (Stalking) Amendment Act 1994*
2000	Sexual servitude offences introduced	*Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000*
	New offences (*Criminal Law Consolidation Act 1935*): • Sexual servitude and related offences (s 66) • Deceptive recruiting for commercial sexual services (s 67) • Use of children in commercial sexual services (s 68). This encompasses the use or display of the body of the child (<18 years old) for the gratification of another or others. Within this section it is also made illegal to ask a child to provide commercial sexual services, as well as obtain money from children doing so.	
2001	The definition of unlawful stalking is expanded to include the publication or transmission of offensive material by means of the internet or some other form of electronic communication, as well as mail, telephone and facsimile in such a way that the offensive material arouses apprehension or fear in the victim (s 19AA)	*Statutes Amendment (Stalking) Act 2001*
2002	New offences (*Classification (Publications, Films and Computer Games) Act 1995*): • Making available or supplying objectionable matter on online service (s 75C) • Making available or supplying matter unsuitable for minors on online service (s 75D)	*Classification (Publications, Films and Computer Games) (On-Line Services) Act 2002*

Table 12 Timeline of key amendments to South Australia's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2004	Child pornography laws are amended	*Criminal Law Consolidation (Child Pornography) Amendment Act 2004*
	Section 58A of *Criminal Law Consolidation Act 1935* repealed	
	New offences (*Criminal Law Consolidation Act 1935*): • Production or dissemination of child pornography (s 63) • Possession of child pornography (s 63A) • Procuring a child to commit indecent act (s 63B)	
2005	Mandatory reporting laws amended	*Children's Protection (Miscellaneous) Amendment Act 2005*
2008	Definition of sexual intercourse expanded to include the penetration of the vagina or labia majora, as well as surgically constructed organs	*Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*
	The offence of rape is expanded to criminalise a person who controls or influences another non-consenting person to have sexual intercourse with someone other than the offender, or participate in sexual self-penetration or bestiality (s 48)	
	New offence (*Criminal Law Consolidation Act 1935*)— sexual assault by forced self-manipulation (s 48A)	
	Definition of those in a position of authority or trust expanded (s 49)	
	Section 50 of the *Criminal Law Consolidation Act 1935* revised to criminalise the commission of more than 1 act of sexual exploitation (down from 3, as enacted in 1994)	
	Definition of incest is expanded to include sexual intercourse between a parent, child, sibling (including half-brother or half-sister), grandparent or grandchild. This offence does not include a family member related by marriage or adoption alone (s 72)	

Gendered language of sexual offence legislation

Historically South Australian sexual assault legislation has specified the sex of the victim as female and the offender as male. This meant that prior to 1975 male victims of sexual assault were largely unprotected within South Australian criminal law. However, there were a small number of notable exceptions to this general rule:

- buggery offences (while not defined in the Act were generally perceived as involving anal sexual intercourse between male persons);
- acts of gross indecency (involved a male victim and male offender);
- attempts and indecent assault upon male persons (again not defined but included acts such as masturbation); and
- incest.

When the *Criminal Law (Sexual Offences) Amendment Act 1975* was proclaimed, genderneutral alternatives such as 'person' were adopted in place of gender specific phrases like 'female', 'girl' and 'woman.' At this time the presumption of only male offenders within the legislation was also neutralised. For example, in relation to sexual offences perpetrated by an authority figure or guardian of the child the term 'schoolmistress' was inserted after 'schoolmaster'.

Definition of sexual intercourse

In 1950, all sexual offences included within the *Criminal Law Consolidation Act 1935* were defined with reference to the term 'carnal knowledge'. However, 'carnal knowledge' was not explicitly defined as 'penetration' until the passage of the *Criminal Law Consolidation Act 1975*. The following year the *Criminal Law Consolidation Act Amendment Act 1976* replaced 'carnal knowledge' with 'sexual intercourse', and the definition was expanded to include the penetration of the penis of one person into the anus or mouth of another. The *Criminal Law Consolidation Act Amendment Act 1985* further expanded this definition to include the penetration of the vagina or anus of a person by any part of the body or by an object, as well as fellatio and cunnilingus. More than 20 years later, the proclamation of the *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008* led to the definition of sexual intercourse being expanded again to include the penetration of the vagina or labia majora, as well as surgically-constructed organs.

Decriminalisation of homosexual sexual acts

Prior to the early 1970s, homosexual sexual acts, namely 'buggery' and 'acts of gross indecency', involving males of any age were criminal offences in South Australia regardless of consent. With the passage of the *Criminal Law Consolidation Act Amendment Act 1972*, homosexual sexual acts carried out in private were decriminalised for consenting males over the age of 21. Three years later, following the enactment of the *Criminal Law (Sexual Offences) Amendment Act 1975,* 'buggery' and 'gross indecency' offences were abolished entirely. This same year the legislation was made gender neutral. One year later, the age of consent was lowered to 17 (for sexual intercourse) and 16 for other acts of a sexual nature (*Criminal Law Consolidation Act Amendment Act 1976)*. This means that currently in South Australia the age of consent for both homosexual and heterosexual intercourse (vaginal and anal penetration including oral sex) is equivalent at 17 years, but for other acts of a sexual nature the age of consent is 16 years (Carbery 2010).

Offences where the accused is in a position of authority or trust

Since its enactment, the *Criminal Law Consolidation Act 1935* has explicitly criminalised sexual contact between female children (less than 18 years) and male individuals in a position of authority in relation to them—specifically, guardians, teachers and schoolmasters. As mentioned above, the laws were amended in 1975 (via the *Criminal Law (Sexual Offences) Amendment Act 1975*) to encompass male victims and female offenders (eg 'schoolmistresses'). However, it was not until the passage of the *Criminal Law Consolidation (Rape and Sexual Offence) Amendment Act 2008* that the legislation was significantly expanded to encompass a range of other individuals in a position of authority in relation to the victim, namely:

- teachers engaged in the education of the child;
- foster parents, step-parents or guardians of the child;
- religious officials or spiritual leaders providing pastoral care or religious instruction to the child;
- medical practitioners, psychologists or social workers providing professional services to the child;
- persons employed or providing services in a correctional institution or a training centre, and;
- employers of the child or other individuals who have the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (regardless of whether the work is paid or volunteer).

Child pornography

The history of child pornography legislation in South Australia is complex with several offences enacted over time across various Acts. The *Police Act 1936* was the first legislative instrument in South Australia to prohibit 'exposing' indecent or obscene materials. The *Police Offences Act 1953* later repealed this legislation and introduced offences to prohibit the production of indecent writing and printing that depraves individuals based on their age, specifically including children. However, the term child pornography was not introduced until the passage of the *Criminal Law (Prohibition of Child*

Pornography) Act 1978. The Act made it an offence to take a photograph (or procure or attempt to procure the taking of a photograph) of a child (under 16 years) while another person is committing an act of gross indecency upon the child. Five years later the *Criminal Law Consolidation Act Amendment Act (No. 3) 1983* introduced an offence prohibiting persons from provoking a child to commit an indecent act or expose any part of his or her body.

Child pornography was explicitly defined for the first time through the *Summary Offences (Child Pornography) Amendment Act 1992* as 'indecent or offensive material in which a child (whether engaged in sexual activity or not) is depicted or described in a way that is likely to cause offence to reasonable adult members of the community.' The Act also expanded the definition of 'indecent material' to include computer data and records, as well as photographs, film and video tapes. Finally, the *Criminal Law Consolidation (Child Pornography) Amendment Act 2004* specifically criminalised the production, dissemination and possession of child pornography. The offence prohibiting a person to incite or procure a child to commit an indecent act was simultaneously subsumed within this now consolidated child pornography legislation.

Mandatory reporting

South Australia first introduced mandatory reporting laws in 1969 with the passage of the *Children's Protection Act Amendment Act 1969.* Under this legislation medical practitioners, dentists and 'others' declared by the court were required to report if an offence, defined as the ill-treatment by parents, guardians and others having the charge of the child, had been committed against a child under 12 years.

In 1972 the *Community Welfare Act 1972* repealed and replaced the *Children's Protection Act Amendment Act 1969.* This new legislation explicitly defined that the reporting duty extended only to acts committed by parents or caregivers and the age of the child was raised to 15 years.

South Australia's mandatory reporting laws were further amended in the mid-1970s following the passage of the *Community Welfare Act Amendment Act 1976.* At this point, the legislation stipulated that various categories of professionals were obliged to report the suspected or actual maltreatment or neglect of a child. Maltreatment or neglect was defined in the Act as subjecting the child to unnecessary injury or danger, and did not specifically include reference to sexual abuse. The categories of individuals obliged to report included:

- legally qualified medical practitioners;
- registered dentists;
- registered or enrolled nurses;
- registered teachers;
- members of the police force; or
- employees of an agency established to promote child welfare or community welfare.

Following the passage of the *Community Welfare Act Amendment Act 1981* this list was expanded to include:

- registered psychologists;
- pharmaceutical chemists;
- any person employed in a school as a teacher's aide;
- any person employed in a kindergarten;
- any employee of an agency that provides health or welfare services to children; or
- social workers employed in a hospital, health centre or medical practice.

The *Community Welfare Act Amendment Act 1988* again expanded this list to include probation officers. This Act also broadened the scope of the reporting duty to apply not only to maltreatment by parents and caregivers, but to cases of maltreatment by any person.

South Australia's mandatory reporting laws later became subsumed under the *Children's Protection Act 1993*. This legislation made it a requirement for specific categories of people to report suspected cases of physical, sexual and/or emotional/psychological abuse or neglect of a child under 18 years. This list was further expanded to include: approved family day care providers and employees, or volunteers in, a government department, agency or instrumentality, or a local government or non-government agency that provides health, welfare, education, child care or residential services wholly or partly for children.

Finally, the *Children's Protection (Miscellaneous) Amendment Act 2005* once again expanded the list of mandatory reporters to include ministers of religion and those employed or who volunteer in an organisation formed for religious or spiritual purposes, as well as any other person who provides sporting or recreational services for children. It is notable that a minister of religion is not required to divulge information communicated in a confession.

Tasmania

This section gives an overview and briefly discusses the offences with which an individual who sexually abused a child in an institutional setting in Tasmania may have been charged during 1950–2013.

In 1950, Tasmania had comprehensive legislation in place criminalising a range of sexually abusive behaviours (see Table 7). This included:

- sexual acts between male persons (regardless of consent);
- sexual penetration of females under the age of consent (18 years);
- the procurement of females under the age of 21 for immoral purposes (those not identified as common prostitutes or of known immoral character); and
- sexual penetration of 'insane' and 'defective' females.

It was also an offence to solicit for sexual purposes in public places.

However, several sexual practices were not identified as criminal offences. These included sexual servitude, voyeurism and grooming. Also no laws required individuals working in specific professions to report suspected child sexual abuse matters to delegated bodies.

The age of consent for heterosexual sexual acts in 1950 was 18 years. However, the age of consent was reduced to 17 in the *Criminal Code Act 1974*, and remained unchanged at the end of 2013.

Table 13 Sexual offence legislation operating in Tasmania at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
Criminal Code 1924					
123 Indecent practices between males		Male	Male	20 years imprisonment	Includes buggery
124(1) Defilement of girls under 18		<18 years Female	Male	20 years imprisonment	
125 Householder permitting defilement of young girls on his premises		<18 years Female		20 years imprisonment	
126(1) Defilement of insane persons		Female	Male	20 years imprisonment	Victim is insane
126(2) Defilement of defectives		Female	Male	20 years imprisonment	Victim is mentally defective and is under the care of an institution or certified house 'Defective' within the meaning of the Mental Deficiency Act, 1920
127(1) Indecent assault		Female		20 years imprisonment	
128 Procuration		<21 years Female		20 years imprisonment	Victim is not a common prostitute or of known immoral character
129 Procuring defilement of woman by threats, or fraud, or administering drugs		Female		20 years imprisonment	
132 Encouraging seduction		<18 years Female		20 years imprisonment	
133(1) Incest		Female	Male	20 years imprisonment	Offender may be the victim's grandfather, father, brother or son, halfbrother
185 Rape				20 years imprisonment	Victim and offender are not married
186(1) Forcible abduction		Female	Male	20 years imprisonment	
188(1) Abduction of young girl with intent to defile		<18 years Female		20 years imprisonment	Victim is unmarried
Police Offences Act 1935					
8(v) Wilful obscene exposure			Male	10 pounds or 6 months imprisonment	

Table 13 Sexual offence legislation operating in Tasmania at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
8(viii(b) Soliciting for immoral purposes by male person			Male	10 pounds or 6 months imprisonment	
26(i) Selling or delivering indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(ii) Print or make indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(iii) Cause newspaper to become an indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(iv) Post indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(v) Exhibit indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(vi) Publicly exhibit indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	

Table 13 Sexual offence legislation operating in Tasmania at the start of 1950					
Section and offence	Aggravating factors	Victim age/ gender	Offender age/ gender	Max penalty	Notes
26(vii, x) Deliver indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(viii) Deliver or leave indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	
26(ix) Write, draw, affix, impress or exhibit indecent document				50 pounds 100 pounds or 3 months imprisonment (if offence committed wilfully)	

Sexual offence legislation 1950–2013

Since 1950, Tasmania's sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 8 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual intercourse;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child exploitation materials; and
- mandatory reporting laws.

Table 14 Timeline of key amendments to Tasmania's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1951	New offence (*Police Offences Act 1935*)—Assault of child (<14 years) or female with indecent intent (s 35(3))	*Sexual Offences Act 1951*
1954	New offences (*Objectionable Publications Act 1954*): • Distribution of any 'section 8' publication (s 15(a)) • Aiding, abetting etc offence (s 15(2))	*Objectionable Publications Act 1954*
1961	New offence (*Police Offences Act 1935*)—Peering into dwelling-houses etc (s 14A)	*Police Offences Act 1961*
1963	Section 8(v & viii) of the *Police Offences Act 1935* repealed	*Police Offences Act 1963*
	New offences (*Police Offences Act 1935*): • Wilful and obscene exposure (s 8(1a)(a)) • Solicitation in public place for immoral purposes (s 8(1A)(b(ii)))	
	Section 126 of the *Criminal Code 1924* amended—Definition of mentally defective amended to 'severe subnormality' within the meaning of the *Mental Health Act 1963* (state of arrested or incomplete development of the mind that includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so'	*Mental Health Act 1963*
1974	Sections 124(1), 127, 132 and 188–189 of the *Criminal Code 1924* amended	*Criminal Code Act 1974*
	Age of consent lowered to 17 for heterosexual sexual intercourse	
	Objectionable Publications Act 1954 repealed	*Restricted Publications Act 1974*
	Section 26 of the *Police Offences Act 1935* repealed (includes offences relating to indecent materials)	
	New offences (*Restricted Publications Act 1974*): • Handling etc of restricted publications by young person (s 12) • Prohibition of advertisement of restricted publications (s 13) • Selling, distributing etc of restricted publications (s 17)	
	Mandatory reporting laws introduced	*Child Protection Act 1974*
1977	New offences (*Restricted Publications Act 1974*): • Prohibition of sale etc of child abuse publications until determination made by the Board (s 11A) • Prohibition against production and reproduction of child abuse publications (s 13B) • Procuring children for child abuse publications (s 13C)	*Restricted Publications Act 1977*

Table 14 Timeline of key amendments to Tasmania's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1984	*Restricted Publications Act 1974* repealed	*Classification of Publications Act 1984*
	New offences (*Classification of Publications Act 1984*): • Sale etc of category 1 and category 2 restricted publications (other than film) (s 27) • Advertising of category 2 restricted publications (other than film) (s 28) • Handling etc of category 2 restricted publications by minors (other than film) (s 29) • Prohibition on sale etc of unclassified objectionable publications (other than film) (s 31) • Prohibition on sale etc of prohibited publications (child abuse publication—other than film) (s 33) • Prohibition on sale etc of objectionable films (s 41) • Prohibition against production or reproduction of child abuse and bestiality publications (s 43) • Procuring children for child abuse publications (s 44)	
1986	Mandatory reporting laws amended	*Child Protection Amendment Act 1986*
1987	'Carnal knowledge' replaced with 'sexual intercourse'—definition expanded	*Criminal Code Amendment (Sexual Offences) Act 1987*
	Gendered language removed from sexual offence legislation	
	Definition of 'consent' amended	
	Sections 124–126, 132–133, 186–189 of the *Criminal Code 1924* repealed	
	New offences (*Criminal Code 1924*): • Sexual intercourse with young person (17 years)(s124) • Person permitting unlawful sexual intercourse with young person (<17 years) on premises (s 125) • Unlawful sexual intercourse with insane persons (s 126(1)) • Unlawful sexual intercourse with defectives (s 126(2)) • Aggravated sexual assault (s 127A) • Indecent acts between males (s 123) • Incest (s 133) • Forcible abduction (for the purpose of marriage or sexual intercourse) (s 186)	
1993	New offence (*Classification of Publications Act 1984*)—Possession of child abuse publications (s 44A)	*Classification of Publications Amendment (No. 3) Act 1993*
1994	New offence (*Criminal Code 1924*)—Maintaining a sexual relationship with a young person (s 125A)	*Criminal Code Amendment (Sexual Offences) Act 1994*
	Definition of sexual intercourse expanded	*Criminal Code Amendment (Sexual Assault) Act 1994*

Table 14 Timeline of key amendments to Tasmania's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
1995	*Classification of Publications Act 1984* repealed	*Classification (Publications, Films and Computer Games) Enforcement Act 1995*
	New offences (*Classification (Publications, Films and Computer Games) Enforcement Act 1995):* • Sale, exhibition, advertise etc unclassified objectionable publication (other than a film) (s 17) • Sale, exhibition etc prohibited publication (other than a film) (s 18(1)) • Exhibiting prohibited publication to a minor (other than a film) (s 18(2)) • Sale, delivery etc of prohibited film (s 48) • Making, reproducing etc a child abuse product (s 72) • Procuring child for child abuse product (s 73) • Possession of child abuse product (s 74)	
1996	Section 126 of the *Criminal Code 1924* amended—Terminology changed from 'mentally defective'/'severe subnormality' to 'mental impairment'. Definition of mental impairment includes: • senility • intellectual disability • brain damage or • mental illness (serious distortion of perception or thought, or serious impairment or disturbance of the capacity for rational thought, or serious mood disorder, or involuntary behaviour or serious impairment of the capacity to control behaviour)	*Mental Health Act 1996*
1997	Homosexual sexual intercourse decriminalised—sections 122–123 of the *Criminal Code 1924* repealed. Age of consent set at 17	*Criminal Code Amendment Act 1997*
	Mandatory reporting laws amended	*Children, Young Persons and their Families Act 1997*
2000	New offence (*Police Offences Act 1935*)—loitering near children by sexual offenders (s 7A)	*Police Offences Amendment (Loitering Near Children) Act 2000*
2001	New offence (*Criminal Code 1924*)—Indecent act with young person (<17 years; s 125B)	*Criminal Code Amendment Act 2001*
	Offence regarding sexual intercourse with person with mental impairment amended	
	Gendered language removed from s 8(1a) of the *Police Offences Act 1935*	
	Definition of sexual intercourse expanded	*Births, Deaths and Marriages Registration Amendment Act 2001*
2004	Mandatory reporting laws amended	*Family Violence Act 2004*

Table 14 Timeline of key amendments to Tasmania's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2005	Child abuse publication/product changed to child exploitation material	*Criminal Code Amendment (Child Exploitation) Act 2005*
	New offences (*Criminal Code 1924*): • Involving person under 18 years in production of child exploitation material (s 130) • Production of child exploitation material (s 130A) • Procuring unlawful sexual intercourse with person under 17 etc (s 125C) • Communications with intent to procure person under 17 (s 125D) • Procuring by threats, fraud or administering drugs (s 129)	
	Sections 73–74 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* repealed	
	New offences (*Classification (Publications, Films and Computer Games) Enforcement Act 1995*): • Offence to make or reproduce child exploitation material (s 72A) • Offence to procure child to be involved in making child exploitation materials (s 73) • Offence to distribute child exploitation material (s 73A) • Possession of child exploitation material (s 74A)	
	Section 8(1A)(b(ii)) of the *Police Offences Act 1935* repealed	*Sex Industry Offences Act 2005*
	Section 128 of the *Criminal Code 1924* repealed	
2007	'Upskirting' offences introduced	*Police Offences Amendment Act 2007*
	New offences (*Police Offences Act 1935*): • Observation or recording in breach of privacy (s 13A) • Publishing or distributing prohibited visual recording (s 13B) • Possession of prohibited visual recording (s 13C)	
2009	Section 35(3) of the *Police Offences Act 1935* omitted	*Police Miscellaneous Amendments Act 2009*
2010	Mandatory reporting laws amended	*Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) 2010*

Gendered language of sexual offence legislation

Prior to 1987, Tasmania's sex offence legislation used predominantly gendered language—offences referred to female victims and male offenders. That said a small number of offences which did potentially encompass male victims were included in the *Criminal Code 1924*. Specifically, it was an offence for male persons to have carnal knowledge of or indecently assault another male person.

Towards the end of the 1980s, the Criminal Code Amendment (Sexual Offences) Act 1987 removed almost all of the gendered language inherent in the Criminal Code 1924. For example, terms such as 'females' and 'males' were replaced with 'person' or 'child' (Carbery 2010). However, the offences criminalising homosexual sexual intercourse and other sexual acts between males remained. With the repeal of these offences in 1997 (Criminal Code Amendment Act 1997) and the passage of the Sex Industry Offences Act 2005 which resulted in the removal of solicitation offences by a male of any age

from the Police Offences Act 1935, Tasmania's sexual offence legislation became predominantly gender neutral.

Definition of sexual intercourse

Until the late 1980s, sexual intercourse (or carnal knowledge as it was then called) was defined very narrowly as 'penetration'. However, with the proclamation of *Criminal Code Amendment (Sexual Offences) Act 1987*, the definition of sexual intercourse was expanded to include the penetration of the vagina, anus or mouth of a person by the penis (Model Criminal Code 1999). The same Act also introduced the offence of indecent assault and aggravated sexual assault, which defined sexual assault as:

- the penetration of the victim via an object manipulated by the offender; or
- the penetration of the victim via another part of the body, not the penis (eg finger).

The definition of sexual intercourse was again expanded in 1994 with the insertion of 'genitalia' after vagina (*Criminal Code Amendment (Sexual Offences) Act 1994*), and then in 2001 when the definition of vagina and penis was amended to include surgically-constructed genitalia (*Births, Deaths and Marriages Registration Amendment Act 2001*).

Decriminalisation of homosexual sexual acts

Prior to the late 1990s, penetrative and non-penetrative homosexual sexual acts between male persons of any age were criminal offences in Tasmania (regardless of consent). It was not until the passage of the *Criminal Code Amendment Act 1997* that the relevant offences were removed from the *Criminal Code 1924*, the same time at which Tasmania's legislation became predominantly gender neutral. The same Act set the age of consent at 17 years, meaning the age of consent for homosexual and heterosexual sexual act were equivalent.

However, soliciting in public places for immoral sexual purposes by a male of any age—the definition of which was not provided in the legislation but may have been interpreted as including homosexual intercourse—was not removed from the *Police Offences Act 1935* until 2005 (*Sex Industry Offences Act 2005*).

Offences where the accused is in a position of authority or trust

During 1950–2013, the *Criminal Code 1924* included a small number of offences criminalising sexual intercourse between those persons with mental or intellectual disorders (referred to at different points in the legislation as 'insane', 'deficient' and 'subnormal') and persons providing them with services, support and care. However, Tasmania has never introduced broader offences that specifically criminalise sexual contact between children and persons in a position of authority or trust, nor have they included it as an aggravating factor. That said, the *Criminal Code Amendment (Sexual Offences) Act 1987* significantly revised the definition of 'consent' by introducing a series of circumstances wherein the consent of the victim is vitiated. This included where the victim is 'overborne by the nature or position of another person', which may be interpreted as including persons in a position of authority, care or trust (ALRC 2010).

Child exploitation materials

Before the early 1970s, Tasmanian legislation did not explicitly prohibit the possession, distribution, production etc of child exploitation materials. However, the *Police Offences Act 1935* included a number of offences criminalising the act of publishing, selling, advertising and exposing to the public 'indecent materials'. While the term 'indecent' was not defined in the Act, it may have been used to bring charges in relation to child exploitation materials. The *Objectionable Publications Act 1954* proclaimed in the early 1950s made it an offence to sell, publish or otherwise advertise 'Section 8' publications. Section 8 publications were defined as being of an indecent nature (or suggesting indecency), or 'portrays, describes or suggests acts or situations of a violent, horrifying, or criminal, or of an immoral nature'.

In 1974, the indecent and Section 8 offences included within the *Police Offences Act 1935* and *Objectionable Publications Act 1954* were repealed and replaced with a suite of new offences included

in the *Restricted Publications Act 1974*. The Act gave the newly-titled Restricted Publications Board the power to determine whether materials should be classified as 'restricted', defined as a publication that 'describes, depicts, expresses or otherwise deals with matters of sex, drug addiction, crime, cruelty, violence, or revolting or abhorrent phenomena in a manner that is likely to cause offence to reasonable adult persons, or is unsuitable for perusal by young persons' (less than 18 years and unmarried).

In the late 1970s, the term 'child abuse publication' was introduced into Tasmanian legislation for the first time (*Restricted Publications Act 1977*). The Act defined the publications as those showing a child (less than 16 years):

- engaged in an activity or pose of a sexual nature; or
- who is in the presence of another person who is so engaged; or
- cruelty, violence or revolting or abhorrent phenomena involving a child, whether or not the child's involvement herein is active or passive.

The Act also introduced a small number of offences relating to the sale and production of child abuse publications, and for the first time, the procurement of children for the purpose of producing child abuse publications.

The *Restricted Publications Act 1974* was repealed in the early 1980s and replaced with the *Classification of Publications Act 1984*. While the substantive offences that were included in the new legislation remained unchanged, the definition of child abuse publications was amended to include reference to persons who 'appear' to be children. In 1993, an offence relating to the possession of child abuse publications was also introduced (*Classification of Publications Amendment (No. 3) Act 1993*).

In the mid-1990s, the *Classification Publications Act 1984* was repealed and replaced with the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*. The definition of child abuse publication remained the same, although the broader category of 'objectionable publications' was expanded to include child abuse publication.

In 2005, a series of offences relating to child exploitation materials were introduced into the *Criminal Code 1924* (via the *Criminal Code Amendment (Child Exploitation) Act 2005*). The Act defined child exploitation materials as a 'film, printed matter, electronic data etc 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:

- engaged in sexual activity; or
- in a sexual context; or
- as the subject of torture, cruelty or abuse (whether or not in a sexual context).

Mandatory reporting laws

Tasmania introduced mandatory reporting laws for the first time in 1974 (*Child Protection Act 1974)*. At this point in time the legislation:

- only mandated the reporting of 'injury as a result of cruel treatment';
- did not identify any specific professions as mandatory reporters;
- set out that people were only required to make reports in relation to children under the age of 12 years; and
- did not include a penalty for failure to report.

The *Child Protection Amendment Act 1986* removed the age requirement and changed the wording from 'suffered injury as a result of cruel treatment' to 'has suffered maltreatment, or that there is a substantial risk that a child will suffer maltreatment'. Maltreatment was broadly defined and included situations where 'any person (including a parent, guardian, or other person having custody, care or control of the child) causes the child to engage in, or be subjected to, sexual activity', or 'the child is, with or without the consent of the child or of a parent, guardian, or other person having the custody, care or control of the child, engaged in, or subjected to, sexual activity'. This included the production of child pornography.

It was not until the late 1990s with the proclamation of the *Children, Young Persons and their Families Act 1997* that a series of prescribed mandatory reporters were identified in Tasmanian legislation. Mandatory reporters included:

- registered medical practitioners, nurses and dentists;
- registered psychologists;
- police officers and departmental employees;
- probation officers;
- principals and teachers in any educational institution (including a kindergarten);
- child care workers and managers;
- any person who is employed or who is a volunteer in:
  - government agency that provides health, welfare, education, child care or residential services wholly or partly for children; and
  - an organisation that receives any funding from the Crown for the provision of such services; and
  - any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons.

The Act also made explicit that these categories of individuals must report 'neglect or abuse' which specifically included sexual abuse, as well as physical and emotional injury. A penalty of 20 penalty units was introduced for failing to make a report. Subsequently the *Family Violence Act 2004* provided more explicit directions for mandated reporters, requiring them to report suspected or actual family violence involving the use of a weapon, sexual violence or physical violence, or where a child is affected. With the proclamation of the *Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments)* 2010, the list of mandatory reporters was expanded to include midwives, persons in the dental profession (including dentists, dental therapists, dental hygienists or oral health therapists) and enrolled nurses.

Victoria

This section gives an overview and briefly discusses the offences with which an individual who sexually abused a child in an institutional setting in Victoria may have been charged during 1950–2013.

In 1950, Victoria had relatively comprehensive sexual offence legislation in place although limited by gender (see Table 5). Victorian legislation not only criminalised penetrative sexual acts on children under the age of consent, but also indecent assault (eg masturbation and oral sex), the procuration of children for immoral purposes and the sexual assault of females over the age of consent (ie 16 years or older, but only if they were virgins).

However, at this point in Victoria's history, several sexually abusive behaviours were not criminalised. This included:

- sexual contact with children over the age of consent (who were not virgins);
- sexual servitude; and
- grooming of children.

Further, in 1950 no laws mandated that specific professions report suspected child sexual abuse matters to delegated bodies.

The age of consent for heterosexual sexual acts in 1950 was 16 years. This remained unchanged at the end of 2013.

Table 15 Sexual offence legislation operating in Victoria at 1950

Section and offence	Aggravating factors	Victim age/ gender	Offender gender	Max penalty	Notes
Crimes Act 1928					
40(1) Rape		Female	Male	20 years imprisonment	
41 Attempted rape		Female	Male	10 years imprisonment	
42 Abusing girl under 10		<10 years Female	Male	20 years imprisonment	

Table 15 Sexual offence legislation operating in Victoria at 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Max penalty**	**Notes**
43 Attempted abuse of girl under 10		<10 years Female	Male	10 years imprisonment	
44(1) Abusing girl between 10 and 16	Offender is victim's schoolmaster or teacher	10–15 years Female	Male	10 years imprisonment 15 years imprisonment (aggravated)	
44(2) Attempted abuse of girl between 10 and 16	Offender is victim's schoolmaster or teacher	10–15 years Female	Male	3 years imprisonment 5 years imprisonment (aggravated)	
46(1) Offences against females between 16 and 18		16-17 years Female	Male >20 years	12 months imprisonment	'Female' refers to an unmarried woman who has not had consensual carnal intercourse with another male person
48(1) Abuse of female over 10 by father or ancestor		>9 years Female	Male	20 years imprisonment	Includes step-fathers and adoptive fathers
48(2) Attempted abuse of female over 10 by father or ancestor		>9 years Female	Male	10 years imprisonment	Includes step-fathers and adoptive fathers
48(3) Carnal knowledge of female by brother or son		>9 years Female	Male	7 years imprisonment	Includes halfbrothers/ sisters
48(4) Attempted carnal knowledge of female by brother or son		>9 years Female	Male	5 years	Includes halfbrothers/ sisters
50(1) Abuse of female lunatic		Female	Male	5 years imprisonment	Offender is a carer or employed by the hospital in some capacity Includes attempts
51(1) Indecent assault		Female		3 years imprisonment	
51(3) Second offence		Female		10 years imprisonment	
52(1) Procuration		Female <21 years		2 years imprisonment	Victim cannot be a common prostitute or of known 'immoral character'
53(1) Procuring defilement of women by threats or fraud		Female		2 years imprisonment	

Table 15 Sexual offence legislation operating in Victoria at 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Max penalty**	**Notes**
53(2) Procuring defilement of women by administering drugs		Female		10 years imprisonment	
54(a) Householder etc permitting defilement of girl on his premises		Female <13 years		10 years imprisonment	
54(b) Householder etc permitting defilement of girl on his premises		Female 13–15 years		2 years imprisonment	
55 Abduction of girl under 18 with intent to have carnal knowledge		Female <18 years		2 years imprisonment	
56(1) Unlawful detention with intent to have carnal knowledge		Female		2 years imprisonment	
57 Abduction of women from motives of lucre		Female		15 years imprisonment	
58 Forcible abduction of woman		Female		10 years imprisonment	
65(1) Infamous crimes (buggery)		<14 years >14 years if incident involves the use of violence and is non-consensual		20 years imprisonment	
65(2) Infamous crimes (buggery)				15 years imprisonment	
65(3) Attempt to commit infamous crime (buggery)		Male		10 years imprisonment	
66(1) Acts of gross indecency with girl under age of 16		<16 years Female	Male	2 years imprisonment (first offence) 3 years imprisonment (subsequent offence)	Includes procurement/ attempts to procure for the purpose of committing an act of indecency
66(4) Outrages on decency		Male	Male	3 years imprisonment	Includes procurement/ attempts to procure for the purpose of committing an act of indecency
Police Offences Act 1928					
24 Obscene threatening or abusive language etc in public				10 pounds or 3 months imprisonment	

Table 15 Sexual offence legislation operating in Victoria at 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender gender**	**Max penalty**	**Notes**
25 Offensive, insulting behaviour etc in or near public places				5 pounds or 1 month imprisonment	
72(4) Obscene publications				2 years imprisonment	
72(5) Obscene exposure				2 years imprisonment	
171 Keeping for gain printing etc obscene articles				50 pounds or imprisonment for 12 months 100 pounds or 2 years imprisonment (2nd offence)	
173 Affixing exhibiting etc indecent or obscene picture or printed or written matter				5 pounds of 3 months imprisonment	
174 Sending others to do the acts punishable under preceding section				5 pounds or 3 months imprisonment	
177 Printing etc in a newspaper any indecent picture or advertisement				20 pounds or 3 months imprisonment 100 pounds or 12 months imprisonment (subsequent offence)	
178 Printing or publishing etc indecent picture or advertisement				20 pounds or 3 months imprisonment 100 pounds or 12 months imprisonment (second offence)	
180 Importation of newspapers containing indecent advertisements				Not specified	
182(1) Indecent post cards				25 pounds or 6 months imprisonment	

Sexual offence legislation 1950–2013

Since 1950, Victoria's sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 6 and in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child pornography; and
- mandatory reporting laws.

Table 16 Timeline of key amendments to Victoria's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
1956	Sections 171, 173, 174 (Police Offences Act 1928) amended to include obscene records	*Police Offences (Amendment) Act 1956*
1957	*Police Offences Act 1928* repealed	*Police Offences Act 1957*
	New offences (*Police Offences Act 1957*) • Obscene threatening or abusive language etc in public (s 26) • Offensive, insulting behaviour etc in or near public places (s 27) • Obscene publication (s 72(d)) • Obscene exposure (s 72(e)) • Keeping for gain printing etc obscene articles (s 166) • Affixing exhibiting etc indecent or obscene picture or printed or written matter or playing obscene record (s 168) • Sending others to do the acts punishable under preceding section (s 169) • Printing etc in a newspaper any indecent picture or advertisement (s 172) • Printing or publishing etc indecent picture or advertisement (s 173) • Importation of newspapers containing indecent advertisements (s 175) • Indecent post cards (s 177)	
1958	*Crimes Act 1928* and *Police Offences Act 1957* repealed	*Crimes Act 1958* *Police Offences Act 1958*
	New offences (*Crimes Act 1958*) • Rape (s 44(1)) • Attempted rape (s 45) • Abusing girl under 10 (s 46) • Attempted abuse of girl under 10 (s 47) • Abusing girl between 10 and 16 (s 48(1)) • Attempted abuse of girl between 10 and 16 (s 48(2)) • Offences against females between 16 and 18 years (s 50(1)) • Abuse of female over 10 by father or ancestor (s 52(1)) • Attempted abuse of female over 10 by father or ancestor (s 52(2))	*Crimes Act 1958*

Table 16 Timeline of key amendments to Victoria's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
	• Carnal knowledge of female by brother or son (s 52(3)) • Attempt and assault with intent to carnally know female by brother or son (s 52(4)) • Abuse of female lunatic (s 54(1)) • Indecent assault (s 55(1)) • Second offence (indecent assault) (s 55(3)) • Procuring defilement of women by threats or fraud (s 57(1) • Procuring defilement of women by administering drugs (s 57(2)) • Householder etc permitting defilement of girl on his premises (victim <13 years) (s 58(a)) • Householder etc permitting defilement of girl on his premises (victim 13–15 years) (s 58(b)) • Infamous crimes (buggery; involving violence or child <14 years) (s 68(1)) • Infamous crimes (buggery) (s 68(2)) • Attempt to commit infamous crime (buggery) (s 68(3)) • Acts of gross indecency with girl under age of 16 (s 69(1)) • Outrages on decency (s 66(4))	
	New offences (*Police Offences Act 1958*)—No change from Police *Offences Act 1957* (including numbering)	*Police Offences Act 1958*
1966	Sections 26–27 of the *Police Offences Act 1958* repealed	*Summary Offences Act 1966*
	New offences (*Summary Offences Act 1966*) • Obscene indecent threatening language and behaviour etc in public (s 17) • Soliciting, loitering, etc for prostitution or homosexual purposes (s 18)	
1977	Child pornography laws introduced for the first time	*Police Offences (Child Pornography) Act 1977*
	New offences (*Police Offences Act 1958*) • Providing obscene material (child pornography)(s 168A) • Householder permits child porn to be kept on premises (s 168B(A)) • Prints, records etc child pornography (s 168B(B)) • Sells, publishes etc child pornography (s 168B(C)) • Procuring person for production of child pornography (s 168C)	
1980	Definition of sexual penetration expanded	*Crimes (Sexual Offences) Act 1980*
	Age of consent for sex (heterosexual and homosexual) set at 18	
	Terminology changed from 'lunatic' to 'mentally ill' (someone suffering from a psychiatric illness or other illness that substantially impairs mental health) or 'intellectually defective' (someone suffering from an arrested or incomplete development of mind)	
	Removal of gendered language from sexual offence legislation (for most offences)	
	Homosexual sex between consenting parties decriminalised—age of consent set at 18	

Table 16 Timeline of key amendments to Victoria's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
	Pre-existing sexual offences substituted for following offences (*Crimes Act 1958*): • Indecent assault (s 44(1)) • Indecent assault with aggravating circumstances (s 44(2)) • Rape (s 45(1)) • Attempt etc (s 45(2)) • Rape with aggravating circumstances (s 45(3)) • Attempt etc (s 45(4)) • Act of sexual penetration with child under 10 (s 47) • Attempt etc (s 47(2)) • Act of sexual penetration with person aged between 10 and 16 (s 48(1)) • Attempt etc (s 48(2)) • Act of sexual penetration with person between 16 and 18 (s 49(1)) • Attempt etc (s 49(2)) • Gross indecency with person under 16 (s 50(1)) • Act of sexual penetration with intellectually handicapped person (s 51) • Incest (s 52) • Procuring persons by threats or fraud (s 54) • Administration of drugs etc (s 55) • Abduction and detention (s 56) • Abduction from possession of parent etc (s 57) • Procuration (s 59) • Householder permitting penetration of young persons (s 60) • Unlawful detention for purposes of sexual penetration (s 61)	
	Section 18 of the *Summary Offences Act 1966* substituted for a new offence—Soliciting for immoral sexual purposes (s 18(b))	
1986	Section 18 of the *Summary Offences Act 1966* repealed	*Prostitution Regulation Act 1986*
1991	Definition of sexual penetration expanded	*Crimes (Sexual Offences) Act 1991*
	Removal of all gendered language	
	Terminology changed from 'mentally ill and intellectually deficient' to 'impaired mental functioning' (mental illness, intellectual disability, dementia or brain injury)	
	Age of consent reduced to 16 for homosexual and heterosexual sexual intercourse	

Table 16 Timeline of key amendments to Victoria's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
	Pre-existing sexual offences (*Crimes Act 1958*) substituted for following offences: • Rape (s 40) • Rape with aggravating circumstances (s 41) • Indecent assault (s 42) • Indecent assault with aggravating circumstances (s 43) • Incest (s 44) • Sexual penetration of child under the age of 10 (s 45) • Sexual penetration with person aged between 10 and 16 (s 46) • Indecent act with child under the age of 16 (s 47) • Sexual relationship with child under the age of 16 (s 47A) • Sexual penetration of 16 year old child (s 48) • Indecent act with 16 year old child (s 49) • Sexual offences against people with impaired mental functioning (s 51) • Sexual offences against residents of residential facilities (s 52) • Administration of drugs etc (s 53) • Occupier, etc. permitting unlawful sexual penetration (s 54) • Abduction of child under the age of 16 (s 56) • Procuring sexual penetration by threats or fraud (s 57) • Procuring sexual penetration of child under the age of 16 (s 58) • Soliciting acts of sexual penetration or indecent acts (s 60)	
1993	Mandatory Reporting Laws introduced	*Children and Young Persons (Further Amendment) Act 1993*
	New offence (*Crimes Act 1958*)—Loitering by sexual offender (s 60B)	*Crimes (Amendment) Act 1993*
	New offences (*Crimes Act 1958*) • Assault with intent to rape (s 40) • Sexual offence while armed with an offensive weapon (s 60A)	*Sentencing (Amendment) Act 1993*
1994	New offence (*Crimes Act 1958*)—Facilitating sexual offences against children (s 49A)	*Prostitution Control Act 1994*
1995	New offences (*Crimes Act 1958*) • Production of child pornography (s 68) • Procurement of minor for child pornography (s 69) • Possession of child pornography (s 70) • New offences (*Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995*) • Making objectionable film (s 24) • Producing objectionable publication (s 32)	*Classifications (Publications, Films and Computer Games)(Enforcement) Act 1995*

Table 16 Timeline of key amendments to Victoria's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2000	Definition of rape expanded to include compelling (by force or otherwise) a male person to sexually penetrate the offender or another person	*Crimes (Amendment) Act 2000*
	Sections 45–46 of the *Crimes Act 1958* replaced with new offence—Sexual penetration of child under the age of 16	
2001	New offence (*Classifications (Publications, Films and Computer Games) (Enforcement) Act 1995)*—Publication or transmission or child pornography (s 57A)	*Classification (Publications, Films and Computer Games) (Enforcement)(Amendment) Act 2001*
2004	Definition of child pornography revised	*Justice Legislation (Sexual offences and Bail) Act 2004*
	Sexual servitude offences introduced	
	New offences (*Crimes Act 1958*): • Sexual servitude (s 60AB) • Aggravated sexual servitude (s 60AC)	
2005	New offence (*Summary Offences Act 1966*)—Obscene exposure (s 19)	*Vagrancy Repeal and Summary Offences (Amendment) Act 2005*
	Definition of child pornography amended	*Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Act 2005*
	The *Children, Youth and Families Act 2005* is passed, which maintains existing mandatory reporting requirements and includes a provision for therapeutic treatment orders for adolescent sex offenders.	*Children, Youth and Families Act 2005*
2006	Definition of rape revised to gender neutral language—included compelling (by force or otherwise) a person to sexually penetrate the offender or another person	*Crimes (Sexual Offences) Act 2006*
	Sections 49, 51–52 and 58 of the *Crimes Act 1958* substituted	
	Terminology changed from 'impaired mental functioning' to 'cognitive impairment' (no change in definition)	
	New offences (*Crimes Act 1958*) • Compelling sexual penetration (s 38A) • Indecent act with 16 or 17 year old child (s 49) • Sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services (s 51) • Sexual offences against person with a cognitive impairment by providers of special programs (s 52) • Procuring sexual penetration of a child (s 58)	
2007	Inclusion of 'upskirt' offences for the first time	*Summary Offences Amendment (Upskirting) Act 2007*
	New offences (*Summary Offences Act 1966*) • Observation of genital or the anal region (s 41A) • Visually capturing genital or anal region (s 41B) • Distribution of image of genital or anal region (s 41C)	
2010	Sexual penetration of child offences restructure—child less than 12 rather than 10	*Crimes Legislation Amendment Act 2010*
	Mandatory reporting laws amended—midwives identified as mandatory reporters	*Statute Law Amendment (National Health Practitioner Regulation) Act 2010*

Gendered language of sexual offences legislation

Generally speaking, until the 1980s Victoria's sexual offence legislation was 'gendered', with the legislation, for the most part, designed to protect female victims of sexual abuse perpetrated by male offenders. A small number of exceptions included the offence of 'outrages against decency', which criminalised homosexual sexual acts between males, regardless of consent (see below).

The passage of the *Crimes (Sexual Offences) Act 1980* resulted in the repeal of most of Victoria's pre-existing sexual offence legislation which was replaced with a suite of offences that used gender-neutral language (eg 'person' and 'child'). However, there remained an exception—incest. Incest offences still identified victims as females and offenders as male family members (son, brother, father etc). However, this too was revised in the early 1990s through the *Crimes (Sexual Offences) Act 1991*.

Definition of sexual penetration

When it was first proclaimed, the *Crimes Act 1928* defined carnal knowledge as 'penetration' although there was no requirement to prove the 'actual emission of seed'. Therefore, the definition of carnal knowledge was defined quite narrowly as involving acts of penile penetration. In 1980, the term carnal knowledge was replaced with 'sexual penetration' which was defined as:

- the introduction (to any extent) of the penis of a person into the vagina, anus or mouth of another person of either sex, whether or not there is emission of semen; or
- the introduction (to any extent) of an object (not being part of the body) manipulated by a person of either sex into the vagina or anus of another person of either sex (*Crimes (Sexual Offences) Act 1980*).
- This definition did not include acts involving digital penetration.

The definition was again expanded in 1991 (*Crimes (Sexual Offences) Act 1991*) to include the 'introduction by a person of a part of his or her body (other than the penis) into the vagina or anus of another person'. The Act also resulted in the definition of 'vagina' being amended to include surgically-constructed genitalia.

Decriminalisation of homosexual sexual acts

Prior to the early 1980s, homosexual sexual intercourse (referred to within the legislation as 'buggery') between male persons of any age, regardless of consent, was a criminal offence in Victoria under the *Crimes Act 1928* and *1958.* The Acts made it an aggravated offence to commit 'buggery' with 'any person under 14 years old or any person with violence and without consent.' The *Summary Offences Act 1966* also prohibited the solicitation or accosting of any person, regardless of their age, for 'homosexual purposes'. It was not explicit within the legislation what was meant by 'homosexual purposes'.

Some years later the *Crimes (Sexual Offences) Act 1980* decriminalised homosexual sexual acts between consenting males who were over the age of consent (18 years). As stated earlier, this Act also gender neutralised the sexual assault legislation in Victoria. However, the same Act also introduced a new offence into the *Summary Offences Act 1966*—soliciting for immoral sexual purposes. While 'immoral sexual purposes' was not defined in the legislation, it was believed to encompass homosexual sexual acts and consequently may have been used by police to prosecute homosexual persons frequenting and/or engaging in sexual acts in public places (Carbery 2010). This offence was repealed six years later (*Prostitution Regulation Act 1986*).

The age of consent for homosexual sexual acts was subsequently lowered to 16 years (*Crimes (Sexual Offences) Act 1991*), aligning the age of consent for heterosexual and homosexual sexual acts. Further, on 12 January 2014, the Victorian Premier, Dr Denis Napthine, announced that men with historical convictions for consensual homosexual sex would be pardoned under new legislation put to Parliament later in the year (*The Australian 2014*).

Offences where the accused is in a position of authority or trust

In 1950, Victorian legislation criminalised sexual relationships between male teachers or schoolmasters and their female pupils (below the age of 16 years), and female 'lunatics' and their carers. In the early 1980s, the *Crimes (Sexual Offences) Act 1980* introduced a series of new offences that:

- criminalised sexual acts between children (less than 16 years old) and individuals in a position of authority or trust in relation to them;
- criminalised sexual acts between intellectually handicapped individuals and people in a position of authority or trust in relation to them; or
- identified such circumstances where the offender is in a position of authority of care in relation to the victim as an aggravating factor.

Ten years later, the *Crimes (Sexual Offences) Act 1991* introduced two new offences that explicitly criminalised acts of sexual penetration or indecent acts (eg masturbation) between a child over the age of consent (16 or 17 years) and a person in a position of authority or care.

It was only in 2006 that 'position of authority' was defined in Victorian legislation. The *Crimes (Sexual Offences) Act 2006* identified a series of individuals who were deemed to be in positions of authority or care:

- teachers;
- foster parents;
- legal guardians;
- ministers of religion with pastoral responsibility for the child;
- employers;
- youth workers;
- sport coaches;
- counsellors;
- health professionals (eg medical doctors);
- members of the police force acting in the course of his or her duty in relation to the child; and
- employees of remand centres, youth residential centres, youth training centres or prisons who are acting in the course of their duties in respect of the child.

Child pornography

Prior to the 1970s, the production, dissemination or possession of child pornography was not an explicit offence under Victorian law. This being said, child pornography may have been captured under the obscene/indecent materials offences included in the *Police Offences Act 1928* and later the *Police Offences Act 1957* and *1958*. These Acts made it an offence to display, possess or publish obscene materials or recordings, defined as materials tending to 'deprave and corrupt persons whose minds are open to immoral influences and/or unduly emphasising matters of sex, crimes of violence, gross cruelty or horror'. The Acts also defined 'materials of indecent or obscene nature' as referring or relating to 'syphilis gonorrhoea nervous debility, or other complaint or infirmity arising from or relating to sexual intercourse or sexual abuse, or to pregnancy or to irregularity or obstruction of the female system or to the treatment of any complaint or condition peculiar to females'.

The *Police Offences (Child Pornography) Act 1977* introduced child pornography laws into Victoria for the first time. The Act used the same definition of obscene or indecent materials as the *Police Offences Act 1958*, but stipulated that the material portrays, describes or represents a child (someone under the age of 16 years). The Act also criminalised the possession, dissemination, advertising, production and procurement of children (or persons who appear to be children) for the purpose of creating child pornography.

Child pornography laws were introduced into the *Crimes Act 1958* in the mid-1990s through the proclamation of the *Publications, Films and Computer Games (Enforcement) Act 1995*. Child pornography was defined as 'a film, photograph, publication or computer game that describes or depicts a person who is, or looks like, a minor under 16 engaging in sexual activity or depicted in an indecent sexual manner or context'. The definition of child pornography was revised in 2004 (*Justice Legislation (Sexual offences and Bail) Act 2004*) to

refer to the production of materials that involve, or appear to involve a person under the age of 18.

Mandatory reporting laws

Victoria first introduced mandatory reporting laws through the *Children and Young Persons (Further Amendment) Act 1993*. The Act required medical practitioners, psychologists, nurses, educators (including school principals), health/social/child care workers, police, probation and youth parole workers to report if they formed the belief, on reasonable grounds, that a child was in need of protection because of physical injury or sexual harm and the child's parents were not protecting, or were unlikely to protect, the child from harm. The laws were expanded slightly in 2010 *(Statute Law Amendment (National Health Practitioner Regulation) Act 2010*) to include midwives.

However, while health/social/child care workers, probation and youth parole workers are included in the mandatory reporting laws, they have not been 'gazetted' (operationalised; Mathews 2014).

Victoria's introduction of a new *Children, Youth and Families Act 2005* maintained the existing mandatory reporting requirements. At the end of 2013, it was still the case that the only professions that were mandated to report suspected physical and sexual harm were:

- registered medical practitioners, nurses and midwives;
- registered teachers;
- school principals (government and non-government); and
- police officers (Mathews 2014).

Western Australia

This section gives an overview and briefly discusses the offences with which an individual who sexually abused a child in an institutional setting in Western Australia may have been charged during 1950–2013.

As demonstrated in Table 11, in 1950 Western Australia had legislation in place criminalising sexual contact between children and adults in a range of contexts. Offences included:

- the sexual penetration of children;
- 'unnatural acts' (sodomy);
- householders permitting the abuse of children upon their premises; and
- the procurement of children for the purpose of sexual abuse.

However, a range of sexually abusive behaviours were not criminalised at this point in Western Australia's legislative history, including sexual servitude, voyeurism and grooming of children for immoral purposes. Neither were there laws requiring individuals to report cases of suspected child sexual abuse to delegated authorities.

The age of consent for heterosexual sexual acts in 1950 was 16 years. This remained unchanged at the end of 2013.

Table 17 Sexual offence legislation operating in Western Australia at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
Criminal Code Act Compilation Act 1913					
181(1) Unnatural offences			Male	14 years imprisonment	
182 Attempt to commit unnatural offences			Male	7 years imprisonment	
183 Indecent treatment of boys under 14		<14 years Male		7 years imprisonment	
184 Indecent practices between males		Male	Male	3 years imprisonment	Includes procurement
185 Defilement of girls under 13		<13 years Female	Male	14 years imprisonment (attempt) Life imprisonment	
186 Householder permitting defilement of young girls on his premises		<16 years Female		2 years imprisonment (if victim is 13–15) Life imprisonment (if victim is <13)	
187(1) Defilement of girls under 16		<16 years Female		2 years imprisonment (if offender is <21) 5 years imprisonment	
188(1) Defilement of idiots		Female		5 years imprisonment	Includes attempts Victim is an idiot or imbecile
189(1) Indecent dealing with girls under 16 and others		Female	Male	2 years imprisonment (if offender is <21) 4 years imprisonment	Victim is <16 years, or an idiot or imbecile, or victim if <17 years and the offender is a guardian employer, teacher or schoolmaster
189(2) Indecent dealing with girls under 16 and others		<13 years Female	Male	7 years imprisonment	Victim is an idiot or imbecile, or the offender is a guardian employer, teacher or schoolmaster
190 Defilement by guardian etc		<17 years Female	Male	5 years imprisonment	Offender is the victim's guardian, employer, teacher or schoolmaster

Table 17 Sexual offence legislation operating in Western Australia at the start of 1950					
Section and offence	**Aggravating factors**	**Victim age/ gender**	**Offender age/ gender**	**Max penalty**	**Notes**
191(1) Procuration		<21 years Female		2 years imprisonment	Victim is not a common prostitute or of known immoral character
192(1) Procuring defilement of women by threats, or fraud, or administering drugs		Female		2 years imprisonment	
193 Abduction of girl under 18 with intent to have carnal knowledge		<18 years Female		2 years imprisonment	Victim is unmarried
194(1) Unlawful detention with intent to defile, or in a brothel		Female		2 years imprisonment	
197 Incest by man		Female	Male	7 years imprisonment (attempt) Life imprisonment	Offender if the victim's father, son, brother, half-brother or other lineal descendent
325 Rape		Female	Male	Life imprisonment	Victim is not married to the offender
327 Attempt to commit rape		Female	Male	14 years imprisonment	Victim is not married to the offender
328 Indecent assault on female		Female	Male	2 years imprisonment	
Indecent Publications and Articles Act 1902					
2(1) Printing and publishing obscene books etc				20 pounds or imprisonment for 6 months	
2(2) Delivering indecent advertisements for publication in newspaper				20 pounds or imprisonment for 6 months	
3 Affixing etc indecent or obscene pictures or writings etc				20 pounds or imprisonment for 6 months	
6 Posting indecent pictures or printed matter				20 pounds or imprisonment for 6 months	
The Police Act 1892					
66(5) Exposing obscene pictures to the public				12 months	
66(11) Wilful and obscene exposure of the person				12 months	

Sexual offence legislation 1950–2013

Since 1950, Western Australia's sexual offence legislation has been amended significantly many times. Key changes are described briefly in Table 12 and then in more depth in the subsequent discussion. They concern:

- the use of gendered language;
- the definition of sexual penetration;
- the decriminalisation of homosexual sexual acts;
- offences where the accused is in a position of authority or trust;
- child abuse materials; and
- mandatory reporting laws.

Table 18 Timeline of key amendments to Western Australia's sexual offence legislation (1950–2013)

Year	Key amendment	Relevant legislation
1963	New offence (*The Police Act 1892*)—Householder etc allowing mental, physical or moral welfare of child under 16 years to be jeopardised (s 84(2))	*Police Act Amendment Act 1963*
1972	Section 183 of the *Criminal Code Act Compilation Act 1913* amended to remove gendered language	*Criminal Code Amendment Act 1972*
1988	Terminology changed from 'idiot' to 'mentally disabled or intellectually handicapped'	*Criminal Law Amendment Act 1988*
1989	Sodomy in private settings decriminalised (ss 181–184 of *Criminal Code Act Compilation Act 1913* repealed)—age of consent set at 18 years	*Law Reform (Decriminalization of Sodomy) Act 1989*
	Gendered language removed from most sexual offence legislation, except offences involving sodomy which still had an explicit focus on male victims and offenders	
	Definition of sexual penetration expanded	
	New offences (*Criminal Code Act Compilation Act 1913*): • Public acts of gross indecency between men (s 184) • Unlawful carnal knowledge of child under 13 (s 185) • Householder permitting defilement of young person on premises (s 186) • Unlawful carnal knowledge of child under 16 and male under 21 (s 187) • Indecent dealing (s 189)	
1990	Sections 193–194 of the *Criminal Code Act Compilation Act 1913* repealed	*Criminal Law Amendment Act 1990*
1992	Definition of sexual penetration amended	*Acts Amendment (Sexual Offences) Act 1992*
	Sections 185–190 196–198 and 206 of the *Criminal Code Act Compilation Act 1913* repealed	
	New offences (*Criminal Code Act Compilation Act 1913*): • Showing offensive material to children under 16 (s 204A) • Child under 13: Sexual offences against (s 320) • Child of or over 13 and under 16: Sexual offences against (s 321) • Child under 16: Sexual relationship (s 321A) • Child of or over 16: Sexual offences against by person in authority etc (s 322) • Juvenile male (16–20 years): Offences against (s 322A) • Indecent assault (s 323) • Aggravated indecent assault (s 324) • Sexual penetration without consent (s 325)	

Table 18 Timeline of key amendments to Western Australia's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
	• Aggravated sexual assault without consent (s 326) • Sexual coercion (s 327) • Aggravated sexual coercion (s 328) • Relatives and the like: sexual offences by (s 329) • Incapable person: sexual offences against (s 330)	
	Recording indecent acts perpetrated against children criminalised	
	Terminology shifts from 'mentally impaired' to 'mentally disabled or intellectually handicapped' (someone who is incapable of understanding the nature of the act or guarding himself or herself against sexual exploitation)	
1994	Age of consent for homosexual sex lowered to 18	*Human Rights (Sexual Conduct) Act 1994 Cwth*
1996	Section 330 of the *Criminal Code Act Compilation Act 1913* amended by the replacement of 'mentally disabled or intellectually handicapped' with 'mentally impaired'—defined as 'intellectual disability, mental illness, brain damage or senility'	*Mental Health (Consequential Provisions) Act 1996*
	Indecent Publications and Articles Act 1902 repealed	*Classification (Publications, Films and Computer Games) Enforcement Act 1996 (then known as the Censorship Act 1996)*
	New offences (*Classification (Publications, Films and Computer Games) Enforcement Act 1996*): • Sell etc indecent or obscene articles (s 59) • Sells or supplies child pornography (s 60(1)) • Publishes child pornography (s 60(2)) • Displays, exhibits or demonstrates child pornography (s 60(3)) • Possesses or copies child pornography (s 60(4)) • Using computer service to transmit etc objectionable material (s 101)	
2002	Sections 184 and 322A of the *Criminal Code Act Compilation Act 1913* repealed	*Acts Amendment (Lesbian and Gay Law Reform) Act 2002*
	Age of consent for homosexual sexual intercourse reduced to 16	
2004	Sexual servitude offences introduced for the first time	*Criminal Code Amendment Act 2004*
	New offences (*Criminal Code Act Compilation Act 1913*): • Sexual servitude (s 331B) • Conducting business involving sexual servitude (s 331C) • Deceptive recruiting for commercial sexual services (s 331D)	
	Sections 66 and 84 of the *The Police Act 1892* repealed	*Criminal Law Amendment (Simple Offences) Act 2004*
	New offences (*Criminal Code Act Compilation Act 1913*): • Obscene Acts in public (s 202) • Indecent acts in public (s 203) • Indecent acts with intent to offend (s 204)	

Table 18 Timeline of key amendments to Western Australia's sexual offence legislation (1950–2013)		
Year	**Key amendment**	**Relevant legislation**
2008	Section 321A of the *Criminal Code Act Compilation Act 1913* repealed	*Criminal Law and Evidence Amendment Act 2008*
	New offence (*Criminal Code Act Compilation Act 1913*)—Child under 16, persistent sexual conduct with (s 321A)	
	Mandatory reporting laws introduced	*Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*
2010	Section 60 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* is repealed	*Child Pornography and Exploitation Material and Classification Amendment Act 2010*
	New offences (*Criminal Code Act Compilation Act 1913*): • Involving child in child exploitation (s 217) • Production of child exploitation material (s 218) • Distribution of child exploitation material (s 219) Possession of child exploitation material (s 220)	

Gendered language of sexual offence legislation

Prior to the early 1970s, Western Australian sexual offence legislation included a number of offences that could be used to bring charges against male offenders who sexually abused female persons. In contrast, only a small number of offences encompassed male victims of sexual violence—for example, it was an offence to indecently deal with boys under the age of 14 years. 'Indecent dealing' was not defined in the legislation but appeared to include acts such as oral sex and masturbation. It was also an offence to commit (or attempt to commit) 'unnatural' offences, which included anal intercourse.

Non-gendered language started to be introduced into Western Australia's sexual offence legislation in 1972 (*Criminal Code Amendment Act 1972)* when the offence of indecently dealing with a boy under 14 years was amended to include gender neutral language (ie 'child' instead of 'boy'). The passage of the *Law Reform (Decriminalization of Sodomy) Act 1989* resulted in the removal of other gendered language, but also the introduction of a new offence—public gross indecency between male persons. Further, a few years later in the early 1990s, Western Australia introduced a suite of new offences criminalising the sexual penetration of or indecent dealing with a juvenile male between the ages of 16 and 20 years (*Acts Amendment (Sexual Offences) Act 1992).* With the repeal of these gendered offences in the early 2000s (*Acts Amendment (Lesbian and Gay Law Reform) Act 2002*), Western Australia's sexual offence legislation was predominantly gender neutral.

Definition of sexual penetration

Carnal knowledge was originally defined in the *Criminal Code Act Compilation Act 1913* as being completed 'upon penetration'. At the end of the 1980s, the term 'sexual penetration' replaced carnal knowledge and the definition was expanded to include the penetration of the anus of a female or male (*Law Reform (Decriminalization of Sodomy) Act 1989)*. The proclamation of the *Acts Amendment (Sexual Offences) Act 1992* resulted in the definition of sexual penetration again being revised to include:

- the penetration of the vagina, anus or urethra of any person with:
  - any part of the body of another; or
  - any object controlled by another person;
- acts involving the penetration of one person's penis into another's mouth (oral sex); and
- the manipulation of any part of the victim's body in order to cause sexual penetration of the offender.

Unlike the other jurisdictions, the definition of sexual penetration has not been amended in Western Australia to include surgically-constructed genitalia.

Decriminalisation of homosexual sexual acts

Until the 1990s homosexual sexual acts, namely 'carnal knowledge' between male persons of any age, was a criminal offence in Western Australia (regardless of consent). With the proclamation of the *Law Reform (Decriminalization of Sodomy) Act 1989*, homosexual sexual intercourse between consenting male persons (over the age of 21 years) in private was decriminalised. However, the Act also introduced a new offence criminalising acts of gross indecency between men of any age in public places. This offence was repealed in the early 2000s with the passage of the *Acts Amendment (Lesbian and Gay Law Reform) Act 2002.* Although the age of consent for homosexual sexual acts was lowered from 21 years to 16 years in 1994 with the passage of the *Human Rights (Sexual Conduct) Act (Cwth),* it was only in 2002 that the *Criminal Code Act Compilation Act 1913* was amended to reflect this change (*Acts Amendment (Lesbian and Gay Law Reform) Act 2002;* Carbery 2010). At this time the legislation was simultaneously made gender neutral.

Offences where the accused is in a position of authority or trust

Since its proclamation, the *Criminal Code Act Compilation Act 1913* has included a small number of offences criminalising the sexual abuse of children (defined as a person under the age of 17 years) by persons in a position of authority or care. Until the 1980s, the definition of 'authority or care' was very narrow, referring only to schoolmasters, teachers, employers and guardians. Further, the legislation only protected female victims of abuse, not males.

Legislation passed at the end of the 1980s (*Law Reform (Decriminalization of Sodomy) Act 1989*) introduced a new offence, effectively criminalising sexual contact between an 'incapable person' (defined in s 189(1)(b) as 'a person who is so mentally disabled or intellectually handicapped as to be incapable of understanding the nature of the sexual act; or guard themselves against sexual exploitation') and a person in a position of authority or trust. The legislation did not define 'authority or care', leaving it open for interpretation. While this offence was repealed in the early 1990s via the passage of the *Acts Amendment (Sexual Offences) Act 1992,* the same Act also introduced a suite of new offences explicitly criminalising sexual acts between 16 year old children and persons in a position of authority. The Act also introduced aggravated provisions for offences perpetrated against 'incapable persons' where the offender is in a position of authority or care.

Child pornography and child exploitation materials

Since the late 1800s, it has been an offence under the *The Police Act 1892* and *Indecent Publications and Articles Act 1902* to expose to view, sell, advertise etc any 'obscene' book, print, picture drawing or representation in Western Australia. While the term obscene was not defined in *The Police Act 1892*, the *Indecent Publications and Articles Act 1902* defined obscene materials very narrowly as those relating to any 'complaint or infirmity arising from or relating to sexual intercourse, or to nervous debility or female irregularities or which might reasonably be construed as relating to any illegal medical treatment or illegal operation'. Consequently it may have been used to bring charges against those trading, or exposing to view, child pornography.

In the early 1990s Western Australia introduced legislation (*Act Amendment (Sexual Offences) Act 1992)* that made it an offence to record indecent acts perpetrated against children under the age of 16. Further, the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (then known as the *Censorship Act 1996*) made it an offence to sell, distribute, exhibit or possess child pornography, which was defined as articles that describe or depict, in a manner that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 years of age (whether the person is engaged in sexual activity or not).

However, it was not until the *Child Pornography and Exploitation Material and Classification Amendment Act 2010* was proclaimed almost 20 years later that the possession, production and dissemination of child pornography and child exploitation materials were specifically criminalised under Western Australian criminal legislation. The Act defines child

pornography as 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 contact.

The legislation also defines child exploitation materials as:

- child pornography; or
- 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:
  - in an offensive or demeaning context; or
  - being subjected to abuse, cruelty or torture (whether or not in a sexual context).

Mandatory reporting laws

Mandatory reporting laws were only introduced in Western Australian in 2008 (via the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*) and had remained relatively unchanged by the end of 2013. The legislation requires doctors, nurses, midwives, police officers and teachers, who believe on 'reasonable grounds' that a child is being sexually abused, to report to the appropriate delegates. Unlike the other jurisdictions, Western Australia's mandatory reporting laws focus specifically on child sexual abuse, rather than neglect, abuse and maltreatment more broadly.

Commonwealth

This section gives an overview and briefly discusses the offences with which an individual who sexually abused a child in an institutional setting may have been charged during 2000–13 under Australian Commonwealth law.

Historically, Australian sexual assault legislation has been enacted via the states and territories. Consequently, it was not until the turn of the new millennium that laws relating to the sexual abuse of children in Australia (not including laws relating to child sexual abuse perpetrated overseas) were introduced at the Commonwealth level. Table 19 provides a timeline of these key amendments in the Commonwealth's relatively recent legislative history.

While Commonwealth legislation includes offences relating to the sexual abuse of children and adults overseas by Australian citizens, this review considers only offences committed within Australia.

Table 19 Timeline of key amendments to the Commonwealth's sexual offence legislation (2000–13)

Year	Key amendment	Relevant legislation
1995	Mandatory reporting laws introduced. New offence (*Family Law Act 1975*) – Where party to proceedings makes allegations of child abuse (s 67Z)	*Family Law Reform Act 1995*
2000	New offence (*Customs Act 1901*)—Special offences relating to Tier 2 goods (s 233BAB; prohibits persons from importing and exporting child pornography and child abuse material (classified as Tier 2 goods) in hard copy)	*Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000*

Table 19 Timeline of key amendments to the Commonwealth's sexual offence legislation (2000–13)		
Year	**Key amendment**	**Relevant legislation**
2004	Offences are introduced to prohibit using a carriage service (namely the telephone and internet) for sexual activity with a child, as well as for child abuse and pornography material	*Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004*
	Child abuse and child pornography material is defined in the legislation	
	Sexual activity is defined as sexual intercourse, an act of indecency or any other activity of a sexual or indecent nature that involves the human body, or bodily actions or functions	
	New offences (*Criminal Code Act 1995*): • Using a carriage service for child pornography material (s 474.19) • Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service (s 474.20) • Using a carriage service for child abuse material (s 474.22) • Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service (s 474.23) • Using a carriage service to procure persons under 16 (s 474.26) • Using a carriage service to 'groom' persons under 16 (s 474.27)	
2010	Offences are introduced to prohibit using a postal or similar service for sexual activity with a child, as well as for child abuse and pornography material	*Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*
	Offences relating to the use of a carriage service are expanded	
	Offences relating to child pornography and abuse material expanded to include computer or data storage devices	
	New offences (*Criminal Code Act 1995*): • Using a postal or similar service for child pornography material (s 471.16) • Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service (s 471.17) • Using a postal or similar service for child abuse material (s 471.19) • Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service (s 471.20) • Using a postal or similar service to procure persons under 16 (s 471.24) • Using a postal or similar service to 'groom' persons under 16 (s 471.25) • Using a postal service to send indecent material to person under 16 (s 471.26) • Using a carriage service for sexual activity with persons under 16 (s 474.25A) • Using a carriage service to transmit indecent communication to person under 16 (s 474.27A)	
	New aggravated offences: • Offence involving conduct on 3 or more occasions and 2 or more people (s 471.22) • Child with mental impairment or under care, supervision or authority of defendant (s 474.25B)	
2011	Minor amendments of mandatory reporting laws.	*Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*

Sexual offence legislation 2000–13

Child pornography and abuse material

The import and export of child pornography and child abuse material in Australia was prohibited under Commonwealth law following the passage of the *Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000*. With the passage of the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004* a number of new offences were introduced into the *Criminal Code Act 1995 (Cwth)* that further prohibited child pornography and exploitation materials. The Act defined 'child pornography material' as including materials depicting or describing a person under 18 years engaged or involved in a sexual pose or *sexual activity*, as well as material that depicts for a sexual purpose the sexual organs, the anal region, or the breasts of a person under 18 years. Within this same legislation 'child abuse material' was defined to cover material that offensively depicts or describes a person under 18 years as a victim of torture, cruelty or physical abuse. The Act made it illegal to use a 'carrier service' (namely the telephone or internet) to access, transmit, publish, distribute or make available such materials.

Six years later, the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* expanded these offences to prohibit using a 'postal or similar service' to send, request or receive child pornography or exploitation material. Further, the Act expanded the definition of child pornography and abuse material to include computer and storage devices.

The definition for 'sexual activity' was introduced in the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004* and refers to acts involving:

- sexual intercourse;
- an act of indecency; and
- any other activity of a sexual or indecent nature that involves the human body, or bodily actions or functions.

Sexual intercourse was defined as the penetration, to any extent, of the vagina or anus of a person by any part of another person's body (or by an object), fellatio or cunnilingus. The term vagina included surgically constructed genitalia.

Mandatory reporting

The Commonwealth introduced mandatory reporting laws in 1995 following the passage of the *Family Law Reform Act 1995*. This legislation requires personnel from the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia (including registrars, family counsellors, family dispute resolution practitioners or arbitrators, and lawyers independently representing children's interests) to report the abuse, or risk of abuse, of a child. Abuse was defined as including sexual assault, as well as involving a child in sexual activity or using the child directly or indirectly as a sexual object.

Conclusion

This report incorporates the findings of a review undertaken by the AIC which aimed at:

1. developing an understanding of the socio-political context within which child sexual abuse legislation has developed in Australia and internationally; and
2. providing an overview of the offences for which a person who sexually abused a child may have been charged during 1950–2013.

As an issue of social and political importance, child sexual abuse has been, at various stages throughout Australia's history, marginalised, denied, 'discovered' and 'rediscovered'. Awareness of child abuse generally appears to be linked with a range of factors. These included the gradual recognition of children's human rights culminating with the introduction of the UN *Convention of the Rights of the Child* which was ratified by Australia in 1989, as well as the efforts of child welfare and protection groups who, at different points, have lobbied for better treatment of, and services for abused, maltreated and neglected children, including child prostitutes.

Australian legislature has similarly minimised, ignored and 'discovered' child sexual abuse and child sexual assaults at various points over the past 300 years. Prior to the late 1800s only a small number of offences criminalised sexual contact between children (defined at different stages as a female below the age of 10 or 13 years) and adults. However, largely due to the efforts of moral purity and child protection groups towards the end of the nineteenth century, significant political pressure was placed on governments in the United Kingdom, Australia and the United States to increase the age of consent from 13 to 16 years and introduce new legislation criminalising sexually violent and abusive acts in a range of contexts. Subsequently, all of the Australian jurisdictions introduced new legislation that raised the age of consent from 13 to 14 or 16 years (depending on the jurisdiction) and criminalised sexually abusive and facilitative behaviours (eg procurement) in a range of contexts.

Between the late 1800s and the 1960s, very few revisions or amendments were made to Australia's then enacted sexual offence legislation. Considering the broader socio-political contextual factors at work, this was to be expected. During this period, child sexual abuse was denied or minimised by academics, psychoanalysts and the broader community as the fantasies of disturbed individuals or the result of sexually promiscuous or aggressive children. It was only with the greater societal awareness of child abuse and neglect generated in the 1960s, and the subsequent ascendency of feminist and women's rights advocacy groups in the 1970s, that child sexual abuse emerged again as an

issue of significant social and political importance. This placed increasing pressure on governments of the day to implement new legislation protecting children from sexual abuse.

As demonstrated throughout this report (and summarised in Table 20), between the 1970s and 2013, Australia's sexual offence legislation, particularly as it relates to children, has been revised and amended in significant ways. While each of the jurisdictions differed from one another on a number of key points, a small number of general trends did emerge:

- At the start of the 1950s Australian sexual offence legislation was largely gendered in nature. Specifically, with a small number of exceptions (eg indecent assault offences against male persons), it explicitly protected female victims from sexual offences perpetrated by male offenders. From the 1980s onwards most jurisdictions staged the removal of gendered language from the legislation to enable the law to deal with matters involving male victims, female offenders and same sex offences. Most finalised this process by the early 2000s. It is worth noting that with the passage of the *Criminal Law (Sexual Offences) Amendment Act 1975,* South Australia became one of the first jurisdictions to remove all gendered language from its sexual offence legislation.
- The first jurisdiction to decriminalise homosexual sexual acts between consenting males was South Australia, which passed relevant legislation in 1972. By the start of the 1990s, the Australian Capital Territory (1976), Victoria (1980), New South Wales (1984), Western Australia (1989) and Queensland (1990) had implemented similar legislation. Tasmania was the last jurisdiction to decriminalise homosexual sexual acts between consenting males, passing the relevant legislation in 1997. While the age of consent for homosexual sexual acts was initially set at 16, 18 or 21 years (depending on the jurisdiction), by the end of 2013 the age of consent for homosexual and heterosexual sexual acts had been equalised in all jurisdictions except Queensland (see Table 1).
- In most jurisdictions, the definition of sexual intercourse was not expanded beyond 'penile penetration' until the 1980s. At this point, definitions explicitly included acts involving 'penetration to any extent', oral sex and anal sex. Further, the definition of genitalia was expanded to include surgically constructed penises and vaginas (with the exception of Western Australia), thereby encompassing transgender people under the laws.
- While individuals who produced child pornography may have been charged under objectionable publications legislation, it was not until the 1970s that a number of jurisdictions attempted to define child pornography and included specific offences criminalising its production, distribution etc. By the end of the 1990s all Australian jurisdictions had enacted some form of child pornography legislation.
- Jurisdictions diverged significantly with the introduction of mandatory reporting laws. Early adopters (New South Wales, South Australia and Tasmania) had introduced legislation by the end of the 1970s with the Northern Territory, Australian Capital Territory and Queensland following suit towards the end of the 1980s. However, Victoria only introduced legislation in the early 1990s while Western Australia has only had legislation in place since 2008. While not always the case in early mandatory reporting provisions, all jurisdictions now mandate that suspected child sexual abuse be reported by a range of professions and/or the whole of the community.
- Finally, as demonstrated in Table 1, for most of the jurisdictions, the age of consent for heterosexual sexual acts did not change between 1950 and 2013, with two exceptions. The age of consent:
  - decreased from 18 years to 17 years in Tasmania in 1974; and
  - decreased from 17 years to 16 years in Queensland in 1976, and then increased again to 18 for acts involving anal sex.

Table 20 Summary of key changes to Australian sexual offence legislation, by jurisdiction									
	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	Commonwealth
Gendered language of sexual offence legislation									
Removal of gendered language	*1985: Crimes (Amendment) Ordinance (No. 5)* *1996: Law Reform (Abolitions and Repeals) Act*	*1981: Crimes (Sexual Assault) Amendment Act* *1985: Crimes (Child Assault) Amendment 1985* *2003: Crimes Amendment (Sexual Offences) Act*	*1983: Criminal Code* *1994: Criminal Code Amendment Act (No. 3)* *2003: Law Reform (Gender, Sexuality and De Facto Relationships) Act*	*1989: Criminal Code, Evidence Act and Other Amendments Act* *1992: Prostitution Laws Amendment Act* *1997: Criminal Law Amendment Act* *2000: Criminal Law Amendment Act*	*1975: Criminal Law (Sexual Offences) Amendment Act*	*1987: Criminal Code Amendment (Sexual Offences) Act* *1997: Criminal Code Amendment Act* *2005: Sex Industry Offences Act*	*1980: Crimes (Sexual Offences) Act* *1991: Crimes (Sexual Offences) Act*	*1972: Criminal Code Amendment Act* *1989: Law Reform (Decriminaliz-ation of Sodomy) Act* *2002: Acts Amendment (Lesbian and Gay Law Reform) Act*	-
Year by which most gendered language had been removed from sexual offence legislation	1996	2003	2003	2000	1975	2005	1991	2002	-
Definition of sexual penetration									
Inclusion of acts not involving penile penetration	*1985: Crimes (Amendment) Ordinance (No. 5)*	*1981: Crimes (Sexual Assault) Amendment Act*	*1994: Criminal Code Amendment Act (No. 3)*	*1989: Criminal Code, Evidence Act and Other Amendments Act*	*1985: Criminal Law Consolidation Act Amendment Act*	*1987: Criminal Code Amendment (Sexual Offences) Act*	*1980: Crimes (Sexual Offences) Act* *1991: Crimes (Sexual Offences) Act*	*1992: Acts Amendment (Sexual Offences) Act*	-
Definition expanded to include surgically constructed genitalia	*2013: Crimes Legislation Amendment Act*	*1996: Transgender (Anti-Discrimination and Other Acts Amendment) Act*	*1994: Criminal Code Amendment Act (No. 3)*	*2000: Criminal Law Amendment Act*	*2008: Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act*	*2001: Births, Deaths and Marriages Registration Amendment Act*	*1991: Crimes (Sexual Offences) Act*	N/A	-

Table 20 Summary of key changes to Australian sexual offence legislation, by jurisdiction

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	Commonwealth
Decriminalisation of homosexual sexual acts									
Decriminalisation of consensual homosexual sexual acts	*1976: Law Reform (Sexual Behaviour) Ordinance* *1985: Crimes (Amendment) Ordinance*	*1984:Crimes (Amendment) Act*	*1983: Criminal Code* *2003: Law Reform (Gender, Sexuality and De Facto Relationships) Act*	*1990: The Criminal Code and Another Act Amendment Act*	*1972: Criminal Law Consolidation Act Amendment Act*	*1997: Criminal Code Amendment Act* *2005: Sex Industry Offences Act*	*1980: Crimes (Sexual Offences) Act* *1986: Prostitution Regulation Act*	*1989: Law Reform (Decriminalisation of Sodomy) Act* *2002: Acts Amendment (Lesbian and Gay Law Reform) Act*	-
Age of consent for homosexual sexual acts equalised with that specified for heterosexual acts	*1985: Crimes (Amendment) Ordinance*	*2003: Crimes Amendment (Sexual Offences) Act*	*2003: Law Reform (Gender, Sexuality and De Facto Relationships) Act*	N/A	*1976: Criminal Law Consolidation Act Amendment Act*	*1997: Criminal Code Amendment Act*	*1991: Crimes (Sexual Offences) Act*	*2002: Acts Amendment (Lesbian and Gay Law Reform) Act*	-
Offences where the accused is in a position of authority or trust									
Definition of consent revised to include situations where the offender is in a position of authority relative to the victim	*1985: Crimes (Amendment) Ordinance*	*2007: Crimes Amendment (Consent-Sexual Assault Offences) Act*	N/A	*1997: Criminal Law Amendment* *2000: Criminal Law Amendment Act*	*2008: Criminal Law Consolidation (Rape and Sexual Offence) Amendment Act*	*1987: Criminal Code Amendment (Sexual Offences) Act*	N/A	N/A	-
Inclusion of specific offences	*2013: The Crimes Legislation Amendment Act*	*1984: Crimes (Amendment) Act* *1985: Crimes (Child Assault) Amendment* *1987: Crimes (Personal and Family Violence) Amendment*	*1983: Criminal Code* *2003: Law Reform (Gender, Sexuality and De Facto Relationships) Act*	*1989: Criminal Code, Evidence Act and Other Amendments Act*	N/Aa	N/A	*1980: Crimes (Sexual Offences) Act* *1991: Crimes (Sexual Offences) Act*	*1989: Law Reform (Decriminalisation of Sodomy) Act* *1992: Acts Amendment (Sexual Offences) Act*	-

Table 20 Summary of key changes to Australian sexual offence legislation, by jurisdiction

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	Commonwealth
		1989: Crimes (Amendment) Act *2003: Crimes Amendment (Sexual Offences) Act* *2008: Crimes Amendment (Cognitive Impairment—Sexual Offences) Act*							
Child pornography									
Introduction of laws that specifically referred to child pornography	*1983: Classification of Publications Ordinance* *1987: Crimes (Amendment) Ordinance*	*1977: Indecent Articles and Classified Publications (Amendment) Act* *1988: Crimes (Child Prostitution) Amendment Act*	*1996: Criminal Code Amendment Act (No. 4)*	*1989: The Criminal Code, Evidence Act and Other Amendments Act* *1991: Classification of Films Act* *1991: Classification of Publications Act* *1995: Classification of Computer Games and Images (Interim) Act*	*1978: Criminal Law (Prohibition of Child Pornography) Act*	*1977: Restricted Publications Act* *2005: Criminal Code Amendment (Child Exploitation) Act*	*1977: Police Offences (Child Pornography) Act* *1995: Publications, Films and Computer Games (Enforcement) Act*	*1996: Classification (Publications, Films and Computer Games) Enforcement Act* *2010: Child Pornography and Exploitation Material and Classification Amendment Act*	*2000: Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act*

Table 20 Summary of key changes to Australian sexual offence legislation, by jurisdiction

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	Commonwealth
Mandatory reporting laws									
Introduction of laws	*1999[b]: Children and Young People Act*	*1977: Child Welfare Amendment Act*	*1983: Community Welfare Act*	*1980: Health Act Amendment Act*	*1969: Children's Protection Act Amendment Act*	*1974: Child Protection Act*	*1993: Children and Young Persons (Further Amendment) Act*	*2008: Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act*	*1995: Family Law Reform Act*
Sexual abuse specifically identified as a reportable matter	*1999: Children and Young People Act*	*1987: Children (Care and Protection) Act*	*1983: Community Welfare Act*	*2000: Child Protection Amendment Act* *2003: Education and Other Legislation (Student Protection) Amendment Act* *2004: Child Safety Legislation Amendment Act (No. 2)*	*1993: Children's Protection Act*	*1986: Child Protection Amendment Act*	*1993: Children and Young Persons (Further Amendment) Act*	*2008: Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act*	-

Table 20 Summary of key changes to Australian sexual offence legislation, by jurisdiction

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	Commonwealth
List of mandatory reporters expanded	*1999: Children and Young People Act* *2008: Children and Young People Act*	*1988: Crimes (Child Prostitution) Amendment Act* *1998: Children and Young Persons (Care and Protection) Act*	N/Ac	*2000: Child Protection Amendment Act* *Commission for Children and Young People* *2003: Education and Other Legislation (Student Protection) Amendment Act* *2004: Child Safety Legislation Amendment Act (No. 2)*	*1976: Community Welfare Act Amendment Act* *1981: Community Welfare Act Amendment Act* *1988: Community Welfare Act Amendment Act* *1993: Children's Protection Act* *2005: Children's Protection (Miscellaneous) Amendment Act*	*1997: Children, Young Persons and their Families Act* *2010: Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments)*	*2010: Statute Law Amendment (National Health Practitioner Regulation) Act*	*N/Ac*	-

a: South Australia already had specific offences criminalising contact between children and those in a position of authority and these remained unchanged in 2013 except for the definition of 'person in a position of authority' being expanded *(Criminal Law Consolidation (Rape and Sexual Offence) Amendment Act 2008)*b: Mandatory reporting provisions were actually introduced in the ACT in 1986 by way of the *Children's Services Ordinance 1986*. However, for a range of reasons the ordinance was not enacted until 1999 with the passage of the *Children and Young People Act 1999*

c: The list of mandatory reporters identified under Northern Territory and Western Australia legislation has not changed since its enactment.

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Historical review of sexual offence and child sexual abuse legislation in Australia: 1788–2013

Prepared by the Australian Institute of Criminology for the Royal Commission into Institutional Responses to Child Sexual Abuse

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