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AIC reports

Consultancy Report

National review of child sexual abuse and sexual assault legislation in Australia

Prepared by the Australian Institute of Criminology
for the Australian Attorney-General's Department

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The Australian Institute of Criminology has undertaken a national review of statutory offences for sexual violence and abuse



Consent provisions across **all Australian jurisdictions** incorporate a communicative model of consent, which requires there to be ongoing and mutual **communication of consent** through words and/or actions



There is **greater variation across Australian jurisdictions** in how and to what extent consent provisions incorporate an **affirmative model of consent**, which additionally requires the active seeking of consent from others

There is **significant overall consistency across Australian jurisdictions** in provisions criminalising **sexual conduct**, particularly:



Contact sexual offences



Image-based sexual offences



Child sexual abuse material offences



Conduct to enable unlawful sexual conduct



Unlawful sexual conduct against specific groups



Unlawful sexual conduct under particular circumstances



Consultations with stakeholders and victims and survivors suggest **ongoing gaps and inconsistencies in legislation** regarding offences for persistent sexual abuse of a child, failing to report and protect children from sexual abuse, and non-consensual tampering with or removal of contraception, or 'stealthing'

Contents

xi Acknowledgements	8 Literature review
xi Disclaimer	8 Introduction
xii Content note	8 Historical context
xiii Acronyms and abbreviations	10 Recent developments
xiv Defined terms	11 Previous legislative reviews
xvi A note on terminology	11 Previous national reviews of legislation
xvii Executive summary	14 Previous state and territory reviews
xvii Background and aims	23 International practices on issues specific to sexual violence and abuse offences
xviii Approach	23 International approaches to consent
xix Findings	27 Protections for vulnerable persons
xix Literature review	28 Technology-facilitated sexual violence
xx Legislative analysis	29 Summary
xxiv Victim and survivor consultations	30 Legislative analysis
xxiv Stakeholder consultations	30 Introduction
xxv Overall	30 Consent
1 Introduction	31 Definitions of consent
1 Background and aims	32 Models of consent
2 Approach	38 Age of consent
3 Literature review	39 Circumstances where consent is not free and/or voluntary
3 Legislative analysis	42 Consent in Commonwealth, state and territory legislation
5 Consultations with victims and survivors and stakeholders	53 National overview
	55 Summary—consent

56	Conduct	117	Defences and excuses
56	Penetrative and non-penetrative sexual conduct	117	Age-related
64	Persistent or repeated child sexual abuse	126	Relationship between victim and defendant
67	Handling of unlawful sexual material	130	Belief in consent
77	Conduct enabling unlawful sexual conduct	131	Acting in the course of one's occupational duties
82	Failing to report or protect children from unlawful sexual conduct	138	Reasonable excuse not to report child sexual abuse or sexual assault
83	Summary—conduct	140	Lack of intent to derive sexual gratification
87	Aggravating and other specific circumstances	140	Defendant's conduct was reasonably acceptable or lawful
88	Victim age	140	Defendant's mistaken but honest and reasonable belief that they had not engaged in unlawful conduct
93	Relationships of care, authority and trust	141	Reasonable steps taken to prevent unlawful conduct
99	Victim impairment or vulnerability	143	No knowledge of victim cognitive or mental impairment
102	Violence and coercion	144	Coercion
104	Excessive humiliation, degradation or cruelty	145	Other defences specific to child sexual abuse material and image-based sexual abuse offences
104	Intimate partner and family violence	150	Summary—defences and excuses
108	Conduct in company	151	Summary
109	Breaking and entering		
110	Conduct against those acting in the course of their occupational or official duties		
112	Conduct motivated by hatred or prejudice		
113	Criminal organisations and organised crime		
116	Summary—aggravating and other specific circumstances		

152 Victim and survivor consultations	197 Appendix B: Victim and survivor written submission
152 Introduction	
152 Respondent details	199 Appendix C: Victim and survivor screening and demographic questions
155 Findings	199 Screening questions
156 General investigative difficulties	200 Demographics
157 Issues of consent	202 Appendix D: Stakeholder written submission
158 Substantiating historical abuse	203 Appendix E: Sexual conduct in legislation, by jurisdiction
159 Institutional abuse	
162 Appropriateness of language/terminology	228 Appendix F: Aggravating and other specific circumstances in legislation, by jurisdiction
163 Summary	257 Appendix G: Defences and excuses in legislation, by jurisdiction
164 Stakeholder consultations	
164 Introduction	
164 Respondent details	
165 Findings	
165 Inconsistencies in legislation regarding consent	
169 Inconsistencies in legislation of sexual conduct	
173 Preventing and responding to sexual violence	
173 Summary	
174 Conclusion	
179 References	
188 Appendix A: Victim and survivor semi-structured survey	
188 Most recent sexual assault/child sexual abuse matter	
193 Experiences with the criminal justice system	

Tables

- 2 Table 1: National legislative review approach
- 4 Table 2: Acts examined in the legislative analysis
- 34 Table 3: Consent models across Australian states and territories
- 40 Table 4: Circumstances where there is no consent to sexual activity, by jurisdiction
- 56 Table 5: Definitions—Penetrative sexual conduct
- 60 Table 6: Definitions—Non-penetrative contact and non-contact sexual conduct
- 65 Table 7: Definitions—Persistent child sexual abuse
- 67 Table 8: Definitions—Image-based sexual abuse conduct
- 72 Table 9: Definitions—Child sexual abuse material
- 76 Table 10: Summary table for child sexual abuse material definition, by jurisdiction
- 85 Table 11: Summary table for sexual conduct offences in Australian legislation
- 89 Table 12: Victim age distinctions specified in Commonwealth, state and territory sexual offences
- 93 Table 13: Victim age as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 94 Table 14: Definitions—Relationships of care or authority
- 99 Table 15: Relationships of care or authority as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 100 Table 16: Definitions—Victim impairment or vulnerability
- 102 Table 17: Victim impairment and vulnerability as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 103 Table 18: Coercion as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 104 Table 19: Excessive humiliation, degradation and cruelty as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 105 Table 20: Definitions—Intimate partner and family violence
- 108 Table 21: Intimate partner and family violence as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 109 Table 22: Conduct in company as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 110 Table 23: Breaking and entering as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 111 Table 24: Definitions—Acting in the course of occupational or official duties
- 112 Table 25: Conduct against those acting in the course of their occupational or official duties as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 113 Table 26: Conduct motivated by hatred or prejudice as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 114 Table 27: Definitions—Criminal organisation

- 115 Table 28: Criminal organisations and organised crime as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions
- 118 Table 29: Similar age of victim and defendant as a defence to certain sexual offences in Australian legislation
- 121 Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation
- 126 Table 31: Age of defendant as a defence to certain sexual offences in Australian legislation
- 126 Table 32: Marriage and other domestic partnerships as a defence to certain sexual offences in Australian legislation
- 128 Table 33: Other relationships between the victim and defendant as a defence to certain sexual offences in Australian legislation
- 129 Table 34: Reasonable belief that no relationship existed as a defence to certain sexual offences in Australian legislation
- 131 Table 35: Consent as a defence to certain sexual offences in Australian legislation
- 132 Table 36: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences in Australian legislation
- 135 Table 37: Conduct carried out for medical purposes as a defence to certain sexual offences in Australian legislation
- 137 Table 38: Definition of public benefit as a defence to certain sexual offences in each jurisdiction
- 138 Table 39: Other occupational duties as a defence to certain sexual offences in Australian legislation
- 139 Table 40: Reasonable excuses not to report child sexual abuse or sexual assault offences in each jurisdiction
- 141 Table 41: Definition of reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences in Australian legislation
- 144 Table 42: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences in Australian legislation
- 144 Table 43: Coercion as a defence to certain sexual offences in Australian legislation
- 145 Table 44: Accessing material classified as something other than refused classification as a defence to child sexual abuse material offences in Australian legislation
- 147 Table 45: Young people producing, disseminating or possessing images of themselves as a defence to child sexual abuse material offences in Australian legislation
- 149 Table 46: Distribution of intimate image only to person depicted in the image as a defence to child sexual abuse material offences in Australian legislation
- 153 Table 47: Description of abuse
- 154 Table 48: Victims and survivors and perpetrator relationships
- 203 Table E1: Penetrative sexual conduct offences
- 206 Table E2: Non-penetrative sexual conduct offences
- 210 Table E3: Persistent and repeated child sexual abuse offences
- 210 Table E4: Image-based sexual abuse offences

212 Table E5: Child sexual abuse material offences	246 Table F6: Intimate partner and family violence as an aggravating or specific circumstance of sexual offences
215 Table E6: Violence and coercion to enable unlawful sexual conduct offences	247 Table F7: Conduct in company as an aggravating or specific circumstance of sexual offences
217 Table E7: Deception and fraud to enable unlawful sexual conduct offences	250 Table F8: Breaking and entering as an aggravating or specific circumstance of sexual offences
218 Table E8: Use of substances to enable unlawful sexual conduct offences	251 Table F9: Victims acting in the course of their occupational or official duties as an aggravating or specific circumstance of sexual offences
218 Table E9: Procuring, grooming and encouraging to enable unlawful sexual conduct offences	252 Table F10: Hatred or prejudice as an aggravating or specific circumstance of sexual offences
221 Table E10: Incitement to commit unlawful sexual conduct offences	254 Table F11: Criminal organisation as an aggravating or specific circumstance of sexual offences
222 Table E11: Facilitation of unlawful sexual conduct offences	257 Table G1: Similar age of victim and defendant as a defence to certain sexual offences
224 Table E12: Trafficking in persons, sexual servitude and causing a child to perform sexual service offences	269 Table G2: Defendant's reasonable belief in the victim's age as a defence to certain sexual offences
225 Table E13: Failure to report child sexual abuse	279 Table G3: Age of defendant as a defence to certain sexual offences
227 Table E14: Failure to protect a child or vulnerable person from sexual abuse	280 Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences
228 Table F1: Victim age as an aggravating or specific circumstance of sexual offences	288 Table G5: Other relationships between the victim and defendant as a defence to certain sexual offences
235 Table F2: Relationships of care or authority as an aggravating or specific circumstance of sexual offences	289 Table G6: Reasonable belief that no relationship existed as a defence to certain sexual offences
238 Table F3: Victim impairment or vulnerability as an aggravating or specific circumstance of sexual offences	290 Table G7: Consent as a defence to certain sexual offences
242 Table F4: Violence and coercion as an aggravating or specific circumstance of sexual offences	
244 Table F5: Excessive humiliation, degradation and cruelty as an aggravating or specific circumstance of sexual offences	

- 298 Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences
- 309 Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences
- 315 Table G10: Conduct carried out for public benefit as a defence to certain sexual offences
- 322 Table G11: Other occupational duties as a defence to certain sexual offences
- 324 Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences
- 333 Table G13: Lack of intent to derive sexual gratification as a defence to certain sexual offences
- 335 Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences
- 340 Table G15: Defendant's mistaken but honest and reasonable belief that they had not engaged in unlawful conduct as a defence to certain sexual offences
- 342 Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences
- 346 Table G17: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences
- 348 Table G18: Coercion as a defence to certain sexual offences

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The Australian Government acknowledges the Traditional Custodians of this Country. We pay our respects to First Nations peoples past and present and their continuing connection to the land, waters, community and cultures. We also pay our respects to all First Nations people with a lived or living experience of sexual violence.

Disclaimer

This review examines legislation regarding sexual violence and abuse in Australia as it was at 31 August 2023. Every effort has been made to accurately represent legislation and ongoing efforts to amend it at this time. This includes the detailing of Bills that had not been passed, received assent or commenced by this date. Readers are advised that the currency of the analysis in this review, and the conclusions drawn, cannot be guaranteed beyond this date.

Content note

This review examines sexual violence and abuse, which may cause distress to some readers. Help is available.

If you or someone you know is in immediate danger or distress, please call 000.

Please contact the following services for counselling or assistance:

- Lifeline Australia: 13 11 14 or www.lifeline.org.au
- Beyond Blue: 1300 22 4636 or www.beyondblue.org.au
- Full Stop Australia: 1800 943 539 or www.fullstop.org.au
- Relationships Australia: 1300 364 277 or www.relationships.org.au
- National Sexual Assault and Domestic Family Violence Counselling Service (1800RESPECT): 1800 737 732 or www.1800respect.org.au
- Men's Referral Service: 1300 766 491 or www.ntv.org.au
- SANE Australia: 1800 187 263 or www.sane.org
- 13YARN: 13 92 76 (for Aboriginal and/or Torres Strait Islander people)
- Rainbow Sexual, Domestic and Family Violence Helpline: 1800 497 212 (for anyone from the LGBTIQ+ community)

Acronyms and abbreviations

ABS	Australian Bureau of Statistics
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
ALRC	Australian Law Reform Commission
(C)DPP	(Commonwealth) Director of Public Prosecutions
CSAM	child sexual abuse material
Department	Attorney-General's Department (Commonwealth)
HIV	human immunodeficiency virus
IBSA	image-based sexual abuse
LGBTQIA+	lesbian, gay, bisexual, transgender, queer, intersex (persons with variations in sex characteristics) and asexual
NSWLRC	New South Wales Law Reform Commission
QLRC	Queensland Law Reform Commission
RC	refused classification
SAPRP	Sexual Assault Prevention and Response Program
SCAG	Standing Council of Attorneys-General
TFSV	technology-facilitated sexual violence
UN	United Nations
VLRC	Victorian Law Reform Commission

Defined terms

Affirmative model of consent	Consent to sexual activity must be communicated through words and/or actions by each participant, and each participant must actively seek (ie affirm) the consent of the other.
Age of consent	The minimum age a person must be to legally be able to give their consent to engage in sexual activity with another person.
Aggravating and other specific circumstances	Circumstances under which sexual offences can be committed which are treated in legislation as, in some way, increasing the seriousness of these offences or justifying a higher penalty. These are typically reflected in legislation as elements of offences that apply on top of general sexual offences or as standalone sexual offences with a particular circumstance as an element.
Child sexual abuse	An umbrella term for offences involving sexual conduct, or conduct enabling it, committed against children under the age of consent.
Code jurisdictions	Australian states and territories where criminal law is completely codified in statute.
Common law	Laws made through judicial decisions, which set precedents for future judicial decision-making in similar matters.
Communicative model of consent	Consent to sexual activity must be communicated by participants through words and/or actions on a continuous basis and through mutual decision-making.
Complainant	A person against whom a sexual offence is alleged to have been committed.
Conduct	The physical elements of sexual offences. Includes sexual conduct and other conduct enabling it.
Consent	Free and voluntary agreement to participate in sexual activity.

Defences and excuses	<p>Conditions that, if substantiated, provide some justification or excuse for conduct that would otherwise be criminal, which either absolve a defendant of criminal liability completely or warrant conviction for a less serious offence.</p> <p>Note that some jurisdictions use the term ‘exemption’, ‘exception’ or ‘exclusion’ in place of ‘excuse’.</p>
Defendant	A person who has been charged with one or more sexual offences.
Elements of an offence	The physical and fault elements of an offence which must be proved beyond reasonable doubt before a conviction can be made out.
Enabling conduct	Physical offence elements that involve behaviours to bring about sexual conduct.
Fault element	Aspects of an offence relating to a defendant’s state of mind at the time they committed it, which the prosecution must prove beyond reasonable doubt before a conviction can be made out. Depending on the offence, the prosecution might need to show the defendant intended a particular outcome, was reckless about the risk of a consequence or knew about a particular circumstance. Not all offences require the prosecution to prove that the defendant had a particular state of mind to be found guilty. Also known as the mental element of an offence, or the mens rea.
Legislation/statute/Acts	Laws made by parliament.
Non-Code jurisdictions	Australian states and territories where criminal law is not completely codified in statute and still sits, to some degree, within common law. Also known as common law jurisdictions.
Offender/sexual offender	A person who has been found guilty of one or more sexual offences.
Perpetrator	A person who has engaged in one or more sexual offences, regardless of whether they have been reported, apprehended, investigated, charged, found guilty or sentenced.
Physical element	Aspects of an offence that pertain to the conduct—including an act, omission, or state of affairs which may or may not occur in specified circumstances—or the consequences of conduct which must be proved beyond reasonable doubt before a conviction can be made out. Also known as the actus reus.
Sexual assault	Used at certain points in this review to refer, broadly, to sexual offences. However, as this term refers to specific sexual offences in some jurisdictions, other terms are preferred throughout the review.
Sexual conduct	Physical offence elements involving acts of a sexual nature.

Sexual offence	Offences involving sexual conduct or conduct enabling it.
Sexual violence and abuse	An umbrella term describing all criminal activity of a sexual nature against adults and children, regardless of whether it was reported, investigated, charged, substantiated or sentenced.
Sex work	Sexual activity undertaken freely and voluntarily in return for material (often monetary) gain.
Standalone offences	Sexual offences that apply to sexual conduct in relation to specific groups (eg cognitively or mentally impaired victims) or under specific circumstances (eg within the context of a relationship of care or authority).
Victim/victims and survivors	People who have been subjected to sexual violence and abuse, regardless of whether it was reported or whether the perpetrator was charged, found guilty or sentenced.

A note on terminology

This report uses the terms ‘victim’, ‘victim and survivor’ and ‘complainant’ to describe people who have experienced sexual violence and abuse. We recognise that not all people with lived or living experience will identify with these terms. This review also refers to ‘women’s’ and ‘men’s’ experiences of sexual violence. This binary language reflects the ways in which the information referred to in the review has been captured. We acknowledge that there are people whose experiences are not captured by this binary language, including in LGBTIQ+ communities, and that non-binary, gender diverse and transgender people experience sexual violence and abuse at disproportionate rates. We further recognise that there are gaps in data collection. The terms ‘First Nations peoples’, ‘Indigenous peoples’ and ‘Aboriginal and Torres Strait Islander peoples’ are used interchangeably throughout this review because past naming conventions differ across government policies and programs.

Executive summary

Background and aims

This is the Australian Institute of Criminology's (AIC) national review of child sexual abuse and sexual assault legislation. The Australian Attorney-General's Department (the Department) commissioned this review to support implementation of the Standing Council of Attorneys-General (SCAG) *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027* (the Work Plan), under which all jurisdictions agreed to take collective and individual action.

Specifically, this review supports SCAG Work Plan Priority 1 ('Strengthening legal frameworks to ensure victims and survivors have improved justice outcomes and protections') and aligns with the following corresponding action:

“

1.1 Criminal laws: Review the criminal offences and legal definitions (including consent) relating to sexual offending in the context of the unique characteristics of each jurisdiction's legislative framework and criminal justice system and, if necessary, consider progressing and implementing appropriate reforms.

The national review also responds to concerns expressed by advocate Grace Tame during a presentation at the November 2021 Meeting of Attorneys-General around the inconsistencies in child sexual abuse and sexual assault laws across Australia. Importantly, this review is being undertaken in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse, which recommended a series of reforms to the criminal justice system (2017: 194). Although Commonwealth offences were strengthened in response to the Commission's recommendations, Australian states and territories are at different stages of implementing the recommended reforms.

The review broadly addresses these research questions:

1. What is the nature and scope of sexual assault and child sexual abuse legislation in Australia?
2. What differences and similarities (if any) are there between sexual assault and child sexual abuse legislative frameworks in Australia?
3. What impact (if any) do legislative inconsistencies have on:
 - a. the investigation and prosecution of sexual assault and child sexual abuse matters in the criminal justice system; and
 - b. the ability of victims and survivors to receive the support they require?
4. What are the barriers/challenges to achieving consistency in child sexual abuse and sexual assault legislation in Australia?
5. What are the gaps in current legislation for responding to new and emerging trends in sexual violence?
6. What does 'best practice' in relation to sexual assault and child sexual abuse legislation look like?

Approach

The review's components include an analysis of current legislation, a review of national and international research, and consultations with victims and survivors and expert stakeholders. A canvass of prior research, reviews and inquiries into legislative and other responses to sexual violence and abuse, in Australia and internationally, is used to examine best practice in sexual assault and child sexual abuse legislation and to provide background and context to the comparative analysis of legislation. It is also used, to some extent, to examine victim and survivor experiences navigating the criminal justice system and the barriers and challenges to achieving national consistency in legislation.

The legislative analysis examines all offences and other provisions in Australian Commonwealth, state and territory statute relevant to sexual violence and abuse where contravention is punishable through criminal proceedings; consent provisions; aggravating and other specific circumstances; and defences and excuses. The Department completed an initial sweep of relevant Commonwealth, state and territory Acts in late 2022, in consultation with state and territory justice officials. AIC researchers undertook regular subsequent sweeps up to 31 August 2023. Importantly, while minor variations in terminology or coverage are highlighted, this analysis mainly focused on more substantive gaps and inconsistencies in legislation.

Consultations were undertaken with victims and survivors of sexual violence and abuse and with expert stakeholders in sexual violence and abuse in Australia. The purpose of these consultations was to identify and understand the impacts of existing legislative frameworks on the experiences of victims and survivors, both in the criminal justice system and while seeking support to recover from their assault/abuse, and to obtain the views of both victims and survivors and professionals on the gaps in these frameworks and their implications for investigations and prosecutions. These consultations were undertaken from March to May 2023. Respondents made online submissions.

Findings

Literature review

The past few decades have seen a significant number of national, state and territory reviews and inquiries into legislation regarding sexual violence and abuse. This work has highlighted gaps and shortcomings and has driven successive rounds of reform.

A review of the international literature reveals that best practices in sexual violence and abuse legislation have been most extensively articulated in relation to consent. Over time, international understandings of legitimate sexual activity have moved gradually towards a consent-based conceptualisation that upholds the autonomy of individuals—although force-based conceptualisations, which rely on whether the victim said no or resisted in some way, are still prevalent. Communicative models of consent have become common in the legislation of many countries that have adopted this consent-based conceptualisation; such models emphasise the importance of parties to sexual activity freely and voluntarily communicating, through words and actions, their consent to the activity on an ongoing basis. Some international jurisdictions have gone further, enshrining in legislation an affirmative consent model that additionally requires parties to sexual activity to have actively, through words and/or actions, affirmed the consent of all other parties. There have also been intensified international efforts to address, through legislation, specific consent-related issues, including those regarding the removal of contraception during sex (ie ‘stealthing’) and the non-disclosure of sexual health status with sexual partners. Ages of consent vary considerably, from 11 to 21, but thresholds at 16 to 18 years have been recommended, and these are most widely adopted. It has been argued that these thresholds should apply consistently, regardless of gender, sexual orientation, religious or cultural laws, disability or marriage. Further, exemptions for circumstances where one or both parties to sexual activity are under the age of consent but are close in age to each other have been promoted as developmentally and ethically appropriate; these exemptions exist inconsistently in legislation around the world.

Internationally, efforts to enshrine special protections for those with a disability which impairs their ability to give consent in legislation have adopted either status or functional approaches. The functional approach, which takes into consideration a person's decision-making and communicative ability and recognises that someone with a disability may still be able to make informed choices, has been identified as preferable to the status approach, which treats all people with certain impairments as being incapable of giving consent. Finally, international literature has explored more recent attempts to criminalise technology-facilitated sexual abuse and the challenges involved in this.

Legislative analysis

Consent

Overall, there is significant consistency across Australian jurisdictions in consent provisions. Importantly, all jurisdictions have moved away from statutory consent definitions, where a failure to actively demonstrate non-consent can be interpreted as implied consent to sexual activity. All Australian jurisdictions now have statutory definitions of consent that reflect a communicative model of consent, where participants must actively demonstrate their willingness to engage in sexual activity. Australian jurisdictions with elements of an affirmative consent model enshrined in legislation, which additionally requires each participant to actively seek the consent of the other, are the Australian Capital Territory, New South Wales and Victoria. In Tasmania, an affirmative consent model has also been enshrined in legislation through inclusion of a requirement that defendants need to provide evidence of reasonable steps taken to ascertain consent before they can rely on the defence of mistaken belief. There is also ongoing debate around the extent to which affirmative models of consent should be further enshrined in legislation. How, and to what extent, elements of this model currently figure in legislation across jurisdictions varies.

Importantly, it is difficult to compare consent models operating in Australia because of differences in how the fault element of many sexual offences is examined in Code and non-Code jurisdictions. Where there is inconsistency, it relates more to differences in how questions of consent are structured and operate in legal proceedings for sexual offences, particularly between jurisdictions where criminal law is completely codified in statute (ie 'Code' jurisdictions: NT, Qld, Tas and WA) and those where the common law criminal system still operates to some degree (ie 'non-Code' jurisdictions: ACT, NSW, SA and Vic). Generally, most sexual offences in Code jurisdictions, in effect, only have a physical element. That is, for sexual offences based on an absence of consent, the prosecution need only prove beyond reasonable doubt that a defendant engaged in the relevant sexual conduct without the victim's consent for the defendant to be found guilty. To the extent that the defendant's state of mind is examined at all, it is typically only where a mistake of fact defence is employed.

However, in non-Code jurisdictions, sexual offences generally contain both a physical element and a fault element, such that the defendant's state of mind is not only relevant where a mistake of fact defence is employed. In the Australian Capital Territory, New South Wales and Victoria, any steps taken by the defendant to ascertain consent must be considered as part of the fault element of the offence. In South Australia, steps taken by the defendant to ascertain consent are considered as part of the test of whether the defendant was recklessly indifferent to whether the victim consented. In Queensland, Tasmania and Western Australia, steps taken by the defendant to ascertain consent are considered through the excuse or defence of mistake of fact. In the Northern Territory, there is nothing in statute that explicitly directs focus on the actions of the defendant or efforts to ascertain consent, although 'recklessness to a lack of consent', examined as part of the fault element of sexual offences, is defined as 'not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency' (s 192(4A) *Criminal Code Act 1983* (NT)).

Ages of consent—the minimum age at which a person can legally give their consent to engage in sexual conduct with another person—are set in statute at 16 years across all jurisdictions except South Australia and Tasmania, where they are set at 17 years. Additionally, sex work by persons under 18 years is also criminalised in statute across all jurisdictions, as is sexual conduct with young people aged 16–17 under the care or authority of defendants. However, where victims are 11–12 years or older, there are commonly certain circumstances specified in statute where sexual conduct may not be criminalised, assuming that it can be demonstrated that all parties to the sexual conduct agreed freely and voluntarily to participate. These include where parties are similar in age—normally within two years of each other—and where defendants were mistaken about the age of the victim.

Finally, legislation in all jurisdictions lists circumstances where there is, by default, no consent to sexual conduct. However, these circumstances vary in content and detail. Legislation in all jurisdictions specifies that consent is negated where a person participates in sexual conduct because of the actual infliction of violence or force and where they participate as a result of fraud, deception and certain mistakes. Circumstances where consent is not actively communicated, where there is an abuse of a position of authority or trust, and where a person does not have capacity to consent—including because of intoxication—are also specified as negating consent in some jurisdictions. Importantly, gaps and omissions in the circumstances provided may be addressed elsewhere in legislation, including in definitions of consent or in specific offences that cover a particular circumstance.

Conduct

Australian legislation covers a broad range of sexual conduct and conduct that enables it (eg violence, deception and fraud, grooming). Overall, there is a high degree of consistency across Australian jurisdictions in terms of the conduct covered under sexual offences. Not surprisingly, all jurisdictions have criminalised, in statute:

- penetrative sexual conduct involving adults and children;
- non-penetrative sexual conduct involving adults and children;
- persistent or repeated child sexual abuse;
- distributing intimate material without consent;
- producing, distributing and possessing child sexual abuse material (CSAM); and
- failing to report child sexual abuse.

Further, all jurisdictions except the Commonwealth (due to constitutional remit) have criminalised in statute:

- penetrative sexual conduct involving a familial relation;
- indecency in public or indecent exposure;
- violence and coercion to enable sexual services;
- deceptive recruitment for sexual services; and
- causing a child to perform sexual services.

Certain definitions of key terms are also consistent across jurisdictions; for example, penetrative sexual conduct in each jurisdiction includes, broadly, the penetration of the genitalia or anus by a penis, body part or object. Further, for intimate images in the context of image-based sexual abuse (IBSA) related offences, all jurisdictions cover images of a person's breasts, genitals or anal region and images depicting a person engaged in a sexual act. There are, however, some differences in the scope, breadth and detail of these definitions, and some jurisdictions have more comprehensive definitions than others. Importantly, some terms, most notably those about unlawful non-penetrative contact and non-contact sexual conduct, remain undefined or ill defined in the legislation of many jurisdictions.

While offences criminalising unlawful sexual conduct are consistent across jurisdictions, there is greater inconsistency in the nature and extent of criminalisation, in statute, of several forms of conduct that enable unlawful sexual conduct. Further, there are important differences in several terms used to refer to conduct, and their definitions, across Commonwealth, state and territory legislation. This is especially so for terms used to describe non-penetrative contact and non-contact sexual conduct. Additionally, there are some gaps in statutory offences regarding conduct about IBSA and the failure to report child sexual abuse and protect children from it.

Aggravating and other specific circumstances

Criminal and sentencing laws across Australia require that a multitude of factors be considered in sentencing. These broadly include the nature, gravity and severity of offences; the outcomes for victims and others; and the offenders' antecedents, character and behaviour during criminal justice proceedings. This legislative analysis canvasses circumstances:

- that are identified in Commonwealth, state and territory statute;
- under which sexual offences are actually committed (eg not circumstances before or after offence commission); and
- which are specified or treated in some way as aggravating the severity of offences pertaining to unlawful sexual or enabling conduct (eg specified as an aggravating circumstance to be considered during sentencing, associated with a harsher liable, proscribed or maximum penalty) or which are included in standalone offences for sexual or enabling conduct as a specific requirement or element of the offence.

This subsection should be read alongside that regarding conduct; nevertheless, there are several important findings. Some aggravating and specific circumstances, including younger victims, relationships of care or authority, persistent sexual abuse, coercion and conduct undertaken in company with others, are consistently specified in legislation in relation to penetrative and non-penetrative sexual offences. However, these circumstances are less consistently applied in statute to other forms of conduct across jurisdictions. There is also greater variation across jurisdictions in the specification of other aggravating and specific circumstances in statute, including excessive humiliation, degradation and cruelty towards victims, intimate partner violence, breaking and entering, conduct against victims performing their professional or official duties, conduct motivated by hatred or prejudice and conduct undertaken for a criminal organisation.

Defences and excuses

This legislative analysis further examines defences and excuses to sexual offences in Australian Commonwealth, state and territory legislation. The analysis excludes defences available at common law. Most jurisdictions statutorily enshrine defences and excuses analysed. However, some minor inconsistencies are apparent in how these defences are defined and the offences to which they apply.

Apparent gaps and inconsistencies should be read alongside the offences to which defences apply and how these offences are statutorily defined. For example, it is a defence to a charge of incest or related offences in New South Wales and South Australia that the defendant reasonably believed that they were not related to the victim. While this defence is not legislated in other jurisdictions, the defendant's knowledge that they were related to the victim is an element of the offence in the Australian Capital Territory, Queensland, Tasmania and Western Australia. In Victoria, there is a rebuttable presumption that the defendant is aware of their familial relation to the victim.

Victim and survivor consultations

Victims and survivors of sexual violence and abuse who participated in the consultation process for this review described a mixture of positive and negative experiences during the reporting and investigation of their matters. However, only one in five of the respondents had a matter that resulted in charges being pursued, with a lack of appropriate evidence being a key reason for attrition. For the small proportion of victims and survivors who experienced a trial, the process was characterised by long time frames and a significant emotional burden.

Taken together and focusing specifically on experiences that can be said to stem, in some way, from legislative conceptions of sexual violence and abuse, the findings of these consultations suggest that there continue to be considerable investigative difficulties associated with instances of historical and institutional sexual abuse in particular. Despite widespread legislative change in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse, to encourage institutional reporting about sexual abuse, there was evidence of organisations withholding information from authorities (particularly in historical sexual abuse investigations). Ongoing issues regarding consent, the appropriateness of some terminology used in legislation and cross-jurisdictional matters were also noted.

Stakeholder consultations

Consultations with stakeholders identified several inconsistencies in sexual offence legislation, including how consent and specific sexual offences are legislated. These mirror those identified in the section, *Legislative analysis*. Stakeholders argued for the introduction of an affirmative consent model in all jurisdictions and made recommendations to ensure that the principles of this model are consistently implemented by legal actors. They also argued that stealthing, persistent sexual abuse of a child and failure to report and protect children from unlawful sexual conduct should be criminalised in more consistent ways across jurisdictions. Harmonising legislation was seen as important to simplifying legislation, modelling clear and consistent standards for consensual sexual activity, improving reporting and conviction rates and improving victims and survivors' experience with the criminal justice system. Finally, stakeholders argued that improving outcomes for victims and survivors of sexual assault and child sexual abuse also required various non-legislative reforms.

Overall

Findings indicate that there is notable consistency in legislative provisions for consent across Australian jurisdictions, specifically in their adoption of a communicative model of consent. Many are now moving towards an affirmative model of consent. A communicative model of consent better emphasises the right of all people to choose whether or not they participate in sexual activity, and the importance of communicating this, than traditional consent models that take an absence of clear non-consent as consent. It is also consistent with minimum standards of good practice internationally. Affirmative consent reduces the potential for scrutiny of victim and survivor behaviours during legal proceedings, makes it easier to prosecute more nuanced forms of sexual violence and abuse (eg where a victim consents to one sexual activity but not another) and promotes healthy sexual relationships more broadly. Victim and survivor consultations undertaken as part of this review raised concerns about the ongoing scrutiny of victim and survivor behaviour as part of criminal investigations, which impacted negatively on the justice outcomes they were able to secure. The arguments put forward in favour of affirmative consent have underpinned moves towards affirmative consent models internationally.

Importantly, differences in how sexual offences are structured and operate and in the extent to which circumstances negating consent are relied upon to frame definitions of consent complicate any comparison of states and territories. These differences may also complicate efforts to ensure greater national consistency in standards and models of consent enshrined in legislation.

Ages of consent are highly consistent across Australian jurisdictions, as are the age thresholds used to criminalise sex work by underage persons and sexual activity with young people under care. Exceptions also exist across all jurisdictions where victims are 11–12 years or older and of a similar age—normally within two years—to the perpetrator. However, some studies have recommended wider age gaps where parties to sexual activity are both older adolescents and narrower age gaps where parties to sexual activity are younger children, to ensure that legislation is developmentally appropriate.

The review revealed a high overall degree of consistency across Australian jurisdictions in terms of much of the conduct covered by sexual offences in statute, particularly significant forms of unlawful sexual conduct. Some aggravating and specific circumstances, including younger victims, relationships of care or authority, coercion and conduct undertaken in company with others, are also consistently specified in legislation across jurisdictions in relation to penetrative and non-penetrative sexual offences. Most defences and excuses analysed are consistently enshrined in legislation across all jurisdictions, although there are some inconsistencies in how these defences are defined and the offences to which they apply. Greater inconsistency is evident in the extent to which standalone offences exist for sexual conduct in relation to specific groups (eg cognitively or mentally impaired victims) or under specific circumstances (eg within the context of a relationship of care or authority). There is also greater variety in the coverage, by standalone offences and in aggravating circumstances, of other forms of conduct that enable or contribute to sexual offending in some way.

In many cases, apparent gaps and inconsistencies in the coverage of different forms of conduct and in aggravating and other specific circumstances reflect variation in *how*, rather than *whether*, these are captured in legislation. Some jurisdictions might rely more heavily on standalone offences, the specification of aggravating circumstances or consent provisions to capture certain circumstances or forms of conduct. These gaps and inconsistencies may also reflect their enshrinement in common law. Again, this makes jurisdictions difficult to compare, while also posing potential challenges to efforts to harmonise legislation nationally.

Consultations with victims and survivors suggest ongoing difficulties in securing criminal justice outcomes for cases of historical sexual abuse. These difficulties stem from the challenges police and prosecutors experience in gathering the evidence required to substantiate charges. While persistent or repeated sexual abuse offences relax the requirement to particularise specific incidents that constitute a pattern of abuse—largely to overcome the investigative challenges inherent to cases of historical abuse—the findings of this review suggest that even basic details of specific incidents of abuse can be difficult to substantiate. These victim and survivor consultations, along with stakeholder consultations and the comparative analysis of legislation, also point to ongoing inconsistencies and challenges in the new statutory offences of failing to report and protecting offences, introduced across all jurisdictions. These include differences in who must report, whom the report must be made to and thresholds for reporting (ie the level of confidence one must have that abuse has occurred before being required to report). Concerningly, one victim-survivor consultation also hints that efforts by some organisations to conceal sexual abuse persist.

Finally, despite recent efforts to achieve national consistency in some of the terminology used in legislation regarding certain forms of sexual violence and abuse (eg persistent or repeated sexual abuse), inconsistencies regarding other terms and their definitions persist. These include inconsistencies in terms used to describe non-penetrative contact and non-contact sexual conduct and in the scope, breadth and detail of some definitions. Critically, some terms, most notably those about unlawful non-penetrative contact and non-contact sexual conduct, remain undefined or ill defined in the legislation of many jurisdictions. Feedback from a handful of victims and survivors consulted as part of this review also highlighted the potential for certain widely used terms to minimise the severity of sexual violence and abuse; these include ‘indecent’ and, in an instance where a charge was downgraded, ‘common assault’.

Introduction

Background and aims

This is the AIC’s national review of child sexual abuse and sexual assault legislation. The Australian Attorney-General’s Department (the Department) commissioned this review to support implementation of the SCAG *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027* (Work Plan), under which all jurisdictions agreed to take collective and individual action.

Specifically, this review supports SCAG Work Plan Priority 1 (‘Strengthening legal frameworks to ensure victims and survivors have improved justice outcomes and protections’) and aligns with the following corresponding action:

“

1.1 Criminal laws: Review the criminal offences and legal definitions (including consent) relating to sexual offending in the context of the unique characteristics of each jurisdiction’s legislative framework and criminal justice system and, if necessary, consider progressing and implementing appropriate reforms.

The national review also responds to concerns expressed by advocate Grace Tame during a presentation at the November 2021 Meeting of Attorneys-General around the inconsistencies in child sexual abuse and sexual assault laws across Australia. Additionally, it is important to note that this review is being undertaken in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse, which recommended a series of reforms to the criminal justice system (2017: 194). Commonwealth offences were strengthened in response to the Commission’s recommendations, but Australian states and territories are at different stages of implementing the recommended reforms.

The review broadly addresses these research questions:

1. What is the nature and scope of sexual assault and child sexual abuse legislation in Australia?
2. What differences and similarities (if any) are there between sexual assault and child sexual abuse legislative frameworks in Australia?
3. What impact (if any) do legislative inconsistencies have on:
 - a. the investigation and prosecution of sexual assault and child sexual abuse matters in the criminal justice system; and
 - b. the ability of victims and survivors to receive the support they require?
4. What are the barriers/challenges to achieving consistency in child sexual abuse and sexual assault legislation in Australia?
5. What are the gaps in current legislation for responding to new and emerging trends in sexual violence?
6. What does ‘best practice’ in relation to sexual assault and child sexual abuse legislation look like?

Approach

The review has several components:

- a literature review examining prior research, reviews and inquiries into legislative and other responses to sexual assault and child sexual abuse, in Australia and internationally;
- a review and analysis of existing Commonwealth, state and territory legislation; and
- consultations with victims and survivors and expert stakeholders.

Table 1 summarises the ways these components are used to address each of the research questions.

Research question	Literature review	Legislative analysis	Victim and survivor consultations	Stakeholder consultations
1	O	✓	–	–
2	O	✓	–	–
3 (a) & (b)	O	–	✓	✓
4	O	✓	–	✓
5	O	✓	O	✓
6	✓	–	–	✓

✓=Used to address research question

O=Partially used to address research question, or drawn on in some way

–=Not used to address research question

Literature review

A canvass of prior research, reviews and inquiries into legislative and other responses to sexual violence and abuse, in Australia and internationally, principally addresses research question six, regarding best practice in relation to sexual assault and child sexual abuse legislation. ‘Best’ and ‘good’ practice reflect innovative legislative reforms, particularly those consistent with the evidence base on sexual violence and abuse; its perpetrators and victims; what has been shown to improve outcomes in these cases; and legislation that is consistent with guidelines and principles detailed by international bodies (eg the United Nations (UN)). The literature review also provides background and context to the comparative analysis of legislation; touches on research questions about victim and survivor experiences navigating the criminal justice system; and explores the barriers and challenges to achieving national consistency.

Legislative analysis

A comparative analysis of existing Commonwealth, state and territory legislation about sexual assault and child sexual abuse addresses research questions one, two and five. This analysis includes all offences and other provisions in Australian Commonwealth, state and territory statutes of relevance to sexual violence and abuse, the contravention of which is punishable through criminal proceedings. Examples of offences not included are:

- those against animals or corpses;
- those involving public exposure or nudity where no victim was specifically targeted;
- those involving sex work (except where consent or victim age figure in the elements of the offence); and
- those involving breaches of general and sexual offender-specific legal orders.

While this analysis includes offences about conduct that enables sexual offending in some way (eg incitement or violence with intent), its focus on such offences is limited to those undertaken with the specific intent of enabling a sexual offence. This means that such offences with broader applicability (eg incitement to commit, or violence with intent to commit, *any offence*) are not included. Finally, this analysis is limited to an examination of legislation. It does not include common law, although common law from appeal courts and the High Court is crucial in interpreting legislation—how offences are proved, how defences are made out and how courts sentence. Judges give jurors trial directions, created by courts and often guided by common law, when appropriate. Common law influences how the law is explained to jurors and applied during trials.

The Department completed an initial sweep of relevant Commonwealth, state and territory Acts in late 2022, and AIC researchers undertook regular subsequent sweeps up to 31 August 2023—both for further information and to ensure that the analysis is up to date at completion. Table 2 details the Commonwealth, state and territory Acts examined. Acts other than those listed below have also been drawn on where they contain definitions of key terms used in relation to sexual offences. Importantly, while minor variations in terminology or coverage are highlighted, the focus of this analysis is on more substantive gaps and inconsistencies in legislation.

Table 2: Acts examined in the legislative analysis	
Jurisdiction	Act examined
Cth	<i>Criminal Code Act 1995</i> (Cth)
	Customs (Prohibited Imports) Regulations 1956 (Cth)
	Customs (Prohibited Exports) Regulations 1958 (Cth)
	<i>Family Law Act 1975</i> (Cth)
ACT	<i>Crimes Act 1900</i> (ACT)
	<i>Sex Work Act 1992</i> (ACT)
	<i>Children and Young People Act 2008</i> (ACT)
	<i>Crimes (Sentencing) Act 2005</i> (ACT)
NSW	<i>Crimes Act 1900</i> (NSW)
	<i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)
	<i>Children’s Guardian Act 2019</i> (NSW)
	<i>Summary Offences Act 1988</i> (NSW)
	<i>Public Health Act 2010</i> (NSW)
NT	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)
	<i>Criminal Code Act 1983</i> (NT)
	<i>Sex Industry Act 2019</i> (NT)
	<i>Care and Protection of Children Act 2007</i> (NT)
	<i>Summary Offences Act 1923</i> (NT)
Qld	<i>Sentencing Act 1995</i> (NT)
	<i>Criminal Code Act 1899</i> (Qld)
	<i>Prostitution Act 1999</i> (Qld)
	<i>Summary Offences Act 2005</i> (Qld)
	<i>Education (General Provisions) Act 2006</i> (Qld)
SA	<i>Child Protection Act 1999</i> (Qld)
	<i>Penalties and Sentencing Act 1992</i> (Qld)
	<i>Criminal Law Consolidation Act 1935</i> (SA)
	<i>Children and Young People (Safety) Act 2017</i> (SA)
Tas	<i>Summary Offences Act 1953</i> (SA)
	<i>Sentencing Act 2017</i> (SA)
	<i>Criminal Code Act 1924</i> (Tas)
	<i>Public Health Act 1997</i> (Tas)
	<i>Children, Young Persons and Their Families Act 1997</i> (Tas)
Tas	<i>Police Offences Act 1935</i> (Tas)
	<i>Sex Industry Offences Act 2005</i> (Tas)
	<i>Sentencing Act 1997</i> (Tas)

Table 2: Acts examined in the legislative analysis (cont.)

Jurisdiction	Act examined
Vic	<i>Crimes Act 1958</i> (Vic)
	<i>Summary Offences Act 1966</i> (Vic)
	<i>Sex Work Act 1994</i> (Vic) ^a
	<i>Children, Youth and Families Act 2005</i> (Vic)
	<i>Sentencing Act 1991</i> (Vic)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)
	<i>Prostitution Act 2000</i> (WA)
	<i>Children and Community Services Act 2004</i> (WA)
	<i>Family Court Act 1997</i> (WA)
	<i>Sentencing Act 1995</i> (WA)

a: The *Sex Work Decriminalisation Act 2021* (Vic) will repeal the *Sex Work Act 1994* (Vic) by 1 December 2023, and these crimes will be moved to the *Crimes Act 1958* (Vic)

The legislative analysis consists of four parts. Each examines a critical component of legislative regimes for sexual violence and abuse across Australia: consent; conduct; aggravating and other specific circumstances; and defences and excuses.

Consultations with victims and survivors and stakeholders

Consultations were undertaken with victims and survivors of sexual violence and abuse, along with expert stakeholders in sexual violence and abuse in Australia, to identify and understand some of the impacts of existing legislative frameworks on the experiences of victims and survivors, in the criminal justice system and while seeking support to recover from their assault/abuse. Victims and survivors and professionals' views on the gaps in these frameworks and their implications for the investigation and prosecution of sexual assault and child sexual abuse matters were also sought.

Importantly, these consultations were not undertaken with representative samples of victims and survivors or stakeholders. As such, while the findings contain important insights into the legislative landscape in Australia relating to sexual violence and abuse, they are neither representative of the populations from which they were derived nor exhaustive in their identification of issues with legislation in Australia. More detail is provided below.

The consultation processes for victims and survivors and stakeholders were run separately and in slightly different ways. Both received approval from the AIC's Human Research Ethics Committee (Protocol No. P0330A.A).

Victim and survivor consultations

Consultations were undertaken with those who are victims and survivors of sexual assault and/or child sexual abuse in Australia. These consultations were principally used to address research questions 3 (a) and (b), while also touching on research question 5.

Respondents had to be aged 18 years or older at the time of their participation. They had to have had contact with some element of an Australian criminal justice system (police, lawyers etc) from 2018 onwards for a sexual assault and/or child sexual abuse experience, to ensure that the experiences of victims and survivors reflect the current criminal justice and support service systems and can inform conclusions on the current legislative environment in Australia. Sexual violence and abuse experiences need not have occurred from 2018 onwards.

Within these restrictions, consultations sought submissions from as large a number, and as wide a range, of respondents as possible. To achieve this, the AIC undertook a mixed public and targeted campaign to recruit respondents. The public campaign used AIC and Department accounts on social media platforms, along with the AIC's email alert services. The targeted campaign involved directly contacting peak bodies for victim and survivor services and advocacy agencies to enlist their support in informing clients (particularly Aboriginal and Torres Strait Islander clients, clients from culturally and linguistically diverse communities and gender diverse clients) about the consultation.

Victims and survivors were invited to contribute to these consultations in one of two forms: a semi-structured survey (Appendix A) or a written submission addressing a set of broad questions relevant to the review (Appendix B). This choice allowed victims and survivors to contribute to the review in the way that made them most comfortable and caused the least distress. However, all respondents were asked the same screening and demographic questions (Appendix C). Both were run online through Survey Manager. Respondents were informed that their participation was entirely voluntary and that no identifying details were being sought or would be reported. The consultations were open from March until May 2023.

The analysis focused on identifying and examining victims and survivors' experiences connected to how sexual violence and abuse is criminalised in legislation. Despite the experiences of victims and survivors with this area of law, it was not assumed that they had the subject matter expertise required to answer technical questions about legislation, and such questions were not asked. Rather, the collection and analysis of information adopted a phenomenological approach, with victims and survivors asked to recount their own lived experiences navigating sexual violence and abuse matters through the criminal justice system. Thematic analysis was used to inductively identify experiences commonly reported by respondents that stem, in some way, from the design of current sexual violence and abuse legislation.

Stakeholder consultations

Consultations were also undertaken with stakeholders who have working experience or expertise in some element of the sexual violence and abuse legislation. These consultations addressed research questions 3 (a) and (b), 4, 5 and 6. Unlike the victim and survivor consultations, the AIC undertook an exclusively targeted campaign to recruit respondents to this consultation, directly approaching agencies, professional organisations and peak bodies via email and in person. Organisations were encouraged to pass on the invitation to other organisations and experts but were asked not to make the invitation public. Many organisations were approached across the victim and survivor and perpetrator services, advocacy and legal/judiciary (eg state and territory law societies and bar associations) sectors, along with researchers and academics.

Stakeholders were invited to contribute to these consultations through a written submission addressing a set of broad questions relevant to the review (Appendix D). Respondents were informed that their participation was entirely voluntary and that no identifying details were being sought or would be reported. The consultations were open from March until May 2023. It was assumed that stakeholders, unlike victims and survivors, had some level of expertise in legislation in at least one Australian jurisdiction, so they were asked direct questions about it. However, a similar analytic approach was taken to examining this information, which involved thematically identifying key issues across responses in relation to the research questions being addressed.

Literature review

Introduction

Historically, sexual offence law reform in Australia has attracted significant social, political and academic attention. This has reflected increasing public recognition of the prevalence of sexual violence and abuse and the associated harms. This section provides an overview of reviews of, and reforms to, Commonwealth, state and territory legislation in Australia about sexual violence and abuse, along with academic research on the topic. This overview is not intended to be exhaustive and will not capture all reviews and reforms within each jurisdiction. Key areas of law reform examined in this review include consent provisions, offence definitions and terminology in line with changing community attitudes. There have also been several new offences introduced in recent years, reflecting shifts in social norms and a rapidly changing technological environment. This section also considers good practice international approaches in legislation.

Historical context

Sexual violence and abuse offences were historically conceptualised as property offences. Under common law, women were regarded as the property of their fathers or husbands (depending on their marital status), and sexual violence and abuse were criminalised largely on the basis that they made women less valuable to men (Australian Law Reform Commission & NSW Law Reform Commission (ALRC & NSWLRC) 2010; Fileborn 2011). As such, the legal system offered little protection for victims themselves (Zydervelt et al. 2017). By the 1970s, women's rights movements had begun to advocate for the rights of victims of domestic, family and sexual violence (Boxall, Tomison & Hulme 2014). The movement sought to change historical understandings of sexual violence and abuse, arguing that it was 'symptomatic of patriarchal societal attitudes towards women and children and the unequal distribution of power' (Boxall, Tomison & Hulme 2014: 9).

In response, states and territories undertook a series of reviews and inquiries into sexual violence and abuse throughout the 1970s and 1980s. These led to significant legal reforms (Boxall, Tomison & Hulme 2014), including expansions to definitions of different sexual offences (including the introduction of gender-neutral language); the criminalisation of non-consensual sexual conduct within the context of marriage; the introduction of offences involving sexual conduct undertaken in abuse of a position of trust or authority; and the decriminalisation of same-sex acts between men (ALRC & NSWLRC 2010; Boxall, Tomison & Hulme 2014). These reforms began the conceptualisation of sexual activity as an act in which consent must be actively given and not assumed and of sexual violence and abuse as an offence against agency and autonomy (Fileborn 2011). Although these reforms increased community awareness of the nature and prevalence of sexual violence and abuse and led to higher rates of reporting (Boxall, Tomison & Hulme 2014), they did not contribute to higher conviction rates or to marked improvements in criminal justice system responses for victims (Larcombe 2011; Zydervelt et al. 2017).

Meanwhile, understanding of child sexual abuse has historically been limited. In the nineteenth century, children started to be characterised as innocent and ‘pure’, as opposed to innately immoral, and child protection became a priority of many governments (deMause 1974; Flegel 2009; Goldman & Ronken 2000). Children were soon identified as having unique rights, distinct from those of adults. The League of Nations introduced the *Declaration of the Rights of the Child 1924*. Nevertheless, child sexual abuse was mostly ignored, dismissed or minimised until the 1970s. Women’s rights movements, pivotal to advocating for reform relating to sexual violence and abuse against women, also drew attention to the prevalence and severity of the sexual abuse of children (Boxall, Tomison & Hulme 2014). This occurred alongside a broader shift in the criminal justice systems of many English-speaking countries, including Australia, away from rehabilitative ideals and towards more punitive approaches that sought to better hold offenders to account—especially those responsible for crimes the public considered especially morally repugnant. Consequently, victim advocacy groups and state and territory governments began undertaking reviews and inquiries into child sexual abuse, resulting in significant legal reform, including the introduction of mandatory reporting and CSAM laws (Boxall, Tomison & Hulme 2014).

Since the mid-1980s, Commonwealth and state and territory governments have designed and implemented, alongside these legal reforms, community education and prevention programs aimed at reducing the harms of sexual violence and abuse. However, while most Australians have little tolerance for violence against women and children, rates of victimisation remain high (Australian Bureau of Statistics (ABS) 2023a; ABS 2023b). Evidence shows that an unacceptably large proportion of the community continues to hold problematic and outdated views about sexual violence (Webster et al. 2018).

Recent developments

Sexual violence and abuse are disturbingly common in Australia. One in five adult women and one in 16 adult men self-reported sexual assault victimisation at some point since the age of 15 years (ABS 2023a). In 2022, the rate of sexual assault victimisation recorded by police increased to 124 victims per 100,000 population, the highest rate since the ABS began collecting these data in 1993 (69 per 100,000 population; ABS 2023b). Further, research from New South Wales shows that, while recorded crime rates for major offences fell between 2018 and 2023, sexual assault was one of two categories (the other being domestic violence) that showed an upward trend during this time (average annual percentage increase of 7%; New South Wales Bureau of Crime Statistics and Research 2023). Finally, while limited national data are available, they suggest that some populations are more likely to experience sexual violence and abuse. That includes people who are homeless, who have a disability, who identify as LGBTIQ+, who have previously been a victim of sexual violence or abuse, who are culturally and linguistically diverse and/or who are First Nations people (Anderson, Richards & Willis 2012; Australian Institute of Health and Welfare 2020).

Research also indicates that child sexual abuse is prevalent within Australia. Data from the ABS Personal Safety Survey 2021–22 indicate that one in 10 women and a little under one in 20 men self-reported experiencing sexual abuse before the age of 15 (ABS 2023b). More recently, the Australian Child Maltreatment Survey interviewed a representative sample of 8,503 Australian residents (Mathews et al. 2023). Findings suggested that around one-third (39%) of Australian adults have experienced sexual abuse before the age of 18. Child sexual abuse was most common among participants who identified as gender diverse (52%), followed by respondents who identified as women (37%) or men (19%). This study also highlighted negative outcomes associated with child sexual abuse, indicating that sexual abuse and emotional abuse are the forms of child maltreatment most associated with poor mental health (Scott et al. 2023).

Despite the high prevalence of sexual violence and abuse victimisation in Australia, most offences are never reported to police (ABS 2021). Further, those wanting to report to police continue to face barriers, including (though not limited to) a fear of not being believed, a fear of retribution by perpetrators, feelings of shame and trauma and a lack of confidence in the criminal justice system (Anderson, Richards & Willis 2012; Taylor & Gassner 2010). Similar barriers exist for children and young people (Lemaigre, Taylor & Gittoes 2017).

After sexual violence and abuse is reported, attrition rates are high and prosecution and conviction rates low (Anderson, Richards & Willis 2012; Bluett-Boyd & Fileborn 2014; Tidmarsh & Hamilton 2020). Many victims experience difficulties navigating their matters through the criminal justice system and choose to withdraw them (Daly 2011). Here, barriers include difficulties obtaining sufficient evidence (Easteal 2011; Fileborn 2011; Larcombe 2011; Tidmarsh & Hamilton 2020) and juries needing to make unanimous decisions beyond reasonable doubt, despite the complexities of many sexual violence and abuse cases (Tidmarsh & Hamilton 2020). One particularly prominent challenge is the persistence of prejudicial attitudes, rape myths and stereotypes regarding sexual violence and abuse within sections of the community (Webster et al. 2018; Women's Safety and Justice Taskforce 2022). These misconceptions can create additional barriers for victims and survivors navigating the criminal justice process by influencing the decision-making of legal actors (eg judges, lawyers, police) and biasing the thinking of jury members (Easteal 2011; Larcombe 2011; Taylor & Gassner 2010).

In response to calls for the modernisation of sexual offences, to reflect a contemporary understanding of the harm caused, and to the challenges in prosecuting and convicting sexual assault matters, Australian states and territories have more recently undertaken another series of reviews of sexual violence and abuse, typically with the aim of identifying opportunities for reform.

Previous legislative reviews

Previous national reviews of legislation

There have been several national and jurisdictional reviews of sexual violence and abuse legislation in Australia over recent decades, from both academia and government. Most sexual offences fall within the jurisdiction of states and territories. Commonwealth legislation also includes sexual offences that fall within its constitutional remit, primarily those related to external affairs or telecommunications and related services. The two primary research reviews into sexual violence and abuse legislation in Australia are Boxall, Tomison & Hulme's (2014) review into sexual offences against children and Fileborn's (2011) review into sexual offences against adults. There has not yet been a comprehensive legislative review of both child and adult sexual offence laws in Australia.

The most recent national review of child sexual assault legislation in Australia was prepared by the AIC for the Royal Commission into Institutional Responses to Child Sexual Abuse (Boxall, Tomison & Hulme 2014). This review examined the sociopolitical factors and events that influenced the development of Australia's child sexual abuse legislation from 1788 to 2013. Amendments to sexual offence legislation were relatively infrequent until the 1970s, when child sexual abuse emerged as a socially and politically important issue. The review identified two key changes in state and territory child sexual abuse legislation between the 1970s and 2013 (when the review was undertaken): the introduction of specific offences relating to CSAM (first adopted by NSW, Tas and Vic in 1977 and most recently by WA in 1996) and the introduction and strengthening of mandatory reporting laws (first adopted by SA in 1969 and most recently by WA in 2008). Boxall, Tomison and Hulme (2014) also identified three key changes to sexual offence legislation in all states and territories. These included the removal of gendered language from legislation (between 1975 and 2005), the decriminalisation of homosexual sexual acts (between 1972 and 1997) and expansions to the definition of sexual intercourse to include acts involving any penetration (not only penile), oral sex and anal sex (between 1980 and 1994).

Before this, Fileborn (2011) undertook a national review of sexual offences against adults. This review found that the major change in the preceding 30 years was a shift away from common law towards a statute-based model to better guide judicial decision-making. However, the author noted that judges and magistrates still had to interpret potentially ambiguous legislation when applying it to a case. Another change was in the nature and circumstances of how sexual assault was understood and in the emphasis on consent. Despite the move towards a more 'positive' model of consent over time (one defined by free agreement between involved parties), the author's critique of the conceptualisation of consent at the time of writing was that the actions of the complainant continued to be emphasised, making victims and their behaviour, rather than perpetrators, the focus of criminal trials (Fileborn 2011).

The report *Family violence: A national legal response* provides a review of the intersection between family and domestic violence laws across the Commonwealth, states and territories (ALRC & NSWLRC 2010). It also examines the impact of inconsistencies in the interpretation and application of these laws in cases of sexual assault occurring in a family/domestic violence context, including rules of evidence. The report notes that previous legislative reform has focused on definitions and terminology (eg rape vs sexual assault), consent (eg moves towards a communicative model) and criminal procedure and evidence reforms, such as greater guidance to juries and restricting the cross examination of complainants (ALRC & NSWLRC 2010).

Reviews of responses to sexual violence and abuse more broadly have indicated that the key reforms to legislation over the years have primarily been designed to:

- improve the process for victims giving evidence in court to make it less traumatising (eg by allowing vulnerable victims to give evidence remotely);
- increase access to intermediary therapeutic support for victims during the criminal justice process; and
- mitigate the impact of myths and misconceptions around sexual violence and abuse through jury directions (Australian Institute of Family Studies 2017).

However, challenges in the prosecution of sexual violence and abuse matters, including ongoing high case attrition, low conviction rates and high rates of successful appeals, persisted in the wake of these reforms.

Previous research has argued that the success of legislative reform may be impeded by how legal actors interpreted and practised laws (Bluett-Boyd & Fileborn 2014; Quilter 2011; Randall 2010). Importantly, legislation may be circumvented by pre-existing common law requirements and the interpretive schema of legal actors. An interpretative schema is defined by Quilter (2011) as something that is used to understand particulars as an account of what actually happened. In the context of sexual assault, this can include jurors considering the location and nature of the incident, subsequent reporting (or lack thereof) and victim's personal history to determine whether the victim is believable or otherwise. For example, despite legislative amendments in some jurisdictions barring or restricting the use of evidence about victims' sexual history, clothing before assault and consumption of alcohol, research shows that such evidence is still raised during sexual offence trials (Fileborn 2011; Quilter 2020; Women's Safety and Justice Taskforce 2022). The adversarial nature of the legal process can also limit sexual assault law reform by, inadvertently, limiting how the criminal justice system can address victims and survivors' justice needs (Bluett-Boyd & Fileborn 2014). Finally, it has been argued that efforts to improve the system for victims have become circular, where:

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Successive changes to the law have often followed evidence of failure to materially improve the quality of justice delivered to sexual assault survivors, which in turn prompts calls for more reform. (Quilter 2020: 228)

Previous state and territory reviews

Australian Capital Territory

Over recent decades, the Australian Capital Territory has undergone a series of reviews and reforms to the way that the criminal justice system handles sexual offence cases. In 2005, the ACT Office of the Director of Public Prosecutions (DPP) and the Australian Federal Police (AFP) published the report *Responding to sexual assault: The challenge of change*. It contained 105 recommendations for reform, including the establishment of the Sexual Assault Reform Program (SARP; DPP & AFP 2005). The SARP was an initiative led by the ACT Justice and Community Safety Directorate that focused on improving the justice process for victims of sexual violence, including legislative change around evidence requirements and additional support for victims, law enforcement and legal officers involved in sexual violence matters (Anderson, Richards & Willis 2012). An evaluation of the program found that the reforms improved victims' experience of the criminal justice process by improving interagency collaboration and access to support services. However, the legislative changes were not found to have had an impact on other key outcomes, such as attrition and the time taken for matters to be resolved (Anderson, Richards & Willis 2012).

In April 2021, representatives from the Australian Capital Territory Government and the community came together to establish the Sexual Assault Prevention and Response Program (SAPRP). The committee made 24 recommendations to improve the ways the Australian Capital Territory prevents and responds to sexual violence, outlined in the 2021 report *Listen. Take action to prevent, believe and heal* (ACT Government 2021). Recommendations covered a broad range of themes and included legislative reforms, the establishment of an ongoing consultation program with victims, workplace safety improvements and increased training and education.

In response to these recommendations, the Australian Capital Territory Legislative Assembly passed several legal reforms about sexual violence and abuse. The *Crimes (Stealth) Amendment Act 2021* (ACT) in October 2021 made stealthing (ie misrepresentation about the use of a condom) a criminal offence. A year later, a statutory definition of consent was introduced, in line with an affirmative consent standard under the *Crimes (Consent) Amendment Act 2022* (ACT). In August 2022, the *Family Violence Legislation Amendment Act 2022* (ACT) amended a number of areas relating to domestic and family violence offences, including sexual violence and abuse. This included the renaming of the offence under s 56 of the *Crimes Act 1900* (ACT) from 'Sexual relationship with child or young person under special care' to 'Persistent sexual abuse of child or young person under special care'. This change ensured that the legislation more accurately reflected the true nature and severity of the offence and associated harms and ensured consistency with the name of this offence elsewhere in Australia. By making this amendment, the Australian Capital Territory Government also implemented one of the recommendations of the SAPRP report.

Most recently, the Australian Capital Territory Legislative Assembly passed the *Sexual Assault Reform Legislation Amendment Act 2023* (ACT). This Act aimed to respond to changes in social and cultural norms about sexual violence, better reflect the impact of sexual violence offences and improve access to safe and trauma-informed justice for victims and survivors of sexual assault. The Act implemented five recommendations of the SAPRP report, including barring consideration of self-induced intoxication for the accused's knowledge, recklessness or reasonable belief as to consent. It further corrected two unintended consequences of the *Crimes (Consent) Amendment Act 2002* (ACT). One such amendment replaced 'sexual touching' with 'an act of indecency' in the definition of 'sexual act' (s 50C (Meaning of sexual act—pt 3) of the *Crimes Act 1900* (ACT)), to clarify that consent provisions must be considered in relation to an act of indecency (eg s 60 (Act of indecency without consent) of the *Crimes Act 1900* (ACT)).

New South Wales

In 2004, the New South Wales Attorney General established the Criminal Justice Sexual Offences Taskforce to examine sexual assault in the community and the criminal justice system. The Taskforce was comprised of government and non-government organisations, including justice and community services. The terms of reference for the taskforce were to:

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evaluate alternate models for the prosecution of sexual assault offences; evaluate proposals for legislative and procedural change in the area of sexual assault prosecutions in NSW; and identify areas of possible reform in relation to the provision of services for sexual assault victims. (Attorney General's Department NSW 2005: iv)

The resulting report was published by the taskforce in 2005 (Attorney General's Department NSW 2005). Issues the taskforce examined included the number of reported sexual assault cases that are prosecuted and the outcomes of those matters, the law in relation to consent and directions to juries in sexual assault trials. The taskforce identified low rates of reporting and convictions for sexual offences and high attrition of cases through the justice system. It made 70 recommendations for reform.

The *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* (NSW) introduced new consent provisions in response to the taskforce's 2005 report and further consultation undertaken by the New South Wales Attorney General's Department. It sought to bring about a cultural shift in the response to victims of sexual assault and to enshrine aspects of the communicative model of consent. In 2013, the Attorney General's Department (now the Department of Attorney General & Justice) undertook a statutory review of these reforms. The review found that the policy objective of the reform (to give clear guidance as to what constituted consent) remained valid (New South Wales Department of Attorney General & Justice 2013).

How courts were applying the communicative model of consent in sexual offence matters was later contextualised by the *Lazarus* case, which involved two trials and two appeals between 2015 and 2017 (*Lazarus v R* (2016) NSWCCA 52; *R v Lazarus* (2017) NSWCCA 279). Analysis of reasoning in the second trial found that scrutiny was ‘still very much on the complainants’ actions’, while there also appeared to be ‘very little obligation on men in Lazarus’ position to take positive steps to ascertain consent’ (Mason & Monaghan 2019: 26).

In 2017, the Department of Attorney General & Justice (now the Department of Justice) conducted a review into New South Wales legislation related to child sexual abuse offences. This review sought to implement the recommendations of the Joint Select Committee on Sentencing of Child Abuse Offenders by ‘identifying appropriate changes which would consolidate the current legislative framework, revise current offences and create any new offences’ (New South Wales Department of Justice 2017: 9). The discussion paper provided options for legislative reform to simplify the legislative framework, clarify offences (eg sexual assault and sexual intercourse with a child), improve and strengthen existing offences (eg persistent child sexual abuse), introduce new offences (eg failing to protect and failing to report), decriminalise consensual ‘sexting’, simplify aggravating factors and introduce statutory defences. In response to this review, as well as recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (2017), New South Wales introduced the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW). This Act introduced a range of reforms to strengthen child sexual abuse laws.

In 2018, the NSW Attorney General asked the NSW Law Reform Commission to review consent provisions in relation to sexual offences. After consulting widely with stakeholders and the community over three years, the NSW Law Reform Commission’s final report was released in 2020, making 44 recommendations (NSWLRC 2020). Most of these recommendations were implemented through the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW), which commenced on 1 June 2022. These included further clarifying and strengthening consent provisions (see *Consent*) and the introduction of new jury directions to address misconceptions about consent and sexual offences.

Northern Territory

In 2006, the Northern Territory Government created the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse and tasked it with researching and reporting on governmental responses to child sexual abuse in First Nations communities in the Northern Territory. The inquiry was asked to examine the nature of abuse experienced by Aboriginal and Torres Strait Islander children, why this was happening and how the Northern Territory Government could best respond to this challenge. The published report, *Ampe akelyernemane meke mekarle: Little children are sacred*, contains 97 recommendations for reform (Northern Territory Government 2007). These include additional police training for providing support to victims of child sexual abuse, increased access to offender rehabilitation programs in community and custodial settings and the development of alternative models of sentencing that are culturally relevant for Aboriginal and Torres Strait Islander peoples.

In response to the recommendations, the Northern Territory Department of Justice conducted a review into the protection of vulnerable witness legislation (Northern Territory Department of Justice 2011). Consultation with relevant stakeholders revealed that previous reforms had been effective overall and that the current legislation was consistent with that of other jurisdictions. Nevertheless, several recommendations were made for strengthening the protections, including ensuring appropriate timeframes the court should follow in relation to sexual assault matters (Northern Territory Department of Justice 2011).

Recently, the Northern Territory Government published their prospective framework for sexual violence prevention and response 2020–2028 (Northern Territory Government 2021). This was informed by consultation with, and submissions from, community stakeholders and representatives from Aboriginal Community Controlled Organisations and specialist domestic, family and sexual violence support services. The framework outlines a holistic approach and outcomes to be achieved. Outcomes assigned to the Department of the Attorney-General and Justice include prioritisation of the safety and wellbeing of sexual assault victims through all stages of the criminal justice system and a review into, and modernisation of, legislation regarding sexual violence to improve response to victims (Northern Territory Government 2021).

Queensland

Several recent reviews into the experiences of victims and survivors in the criminal justice system and the operation of sexual violence and abuse legislation have been conducted in Queensland. In September 2019, the Queensland Law Reform Commission (QLRC; 2020) undertook a review into Queensland consent laws and the excuse of mistake of fact, following a series of controversial cases of sexual offending. The final report recommended amendments to the *Criminal Code Act 1899* (Qld) to clarify consent provisions and definitions (QLRC 2020). The Queensland Government adopted the QLRC's recommendations with the passing of the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Act 2021* (Qld) in March 2021. In considering an affirmative consent model, the QLRC did not believe that the law should be changed, arguing that the current legislative approach incorporates elements of an affirmative model already (ie consent must be given, and a lack of consent is not only demonstrated by active resistance) (QLRC 2020; see also *Consent*). While the recommendations of the QLRC were positive, they have since been described as 'modest' (Duffy 2021). Some scholars argue that the resulting amendments only legislated existing common law understandings of consent without reforming them (see Quilter 2020: 227). Encouragingly, the focus on sexual assault law through the QLRC review, government consultation with stakeholders and victims and the efforts of key advocacy groups have initiated important conversations and community awareness and education campaigns (Duffy 2021).

Crowe and Lee (2020) examined the excuse of mistake of fact in Queensland rape and sexual assault matters. Their report highlighted key problems with the ways the mistake of fact excuse is defined and applied, including that it allows reference to factors unrelated to the definition of free and voluntary consent (eg victims' social behaviour, relationship with the defendant, defendants' level of intoxication and any potential resistance that victims may or may not overtly communicate). The authors argued that the current conceptualisation creates uncertainty around how consent is applied and has been 'used successfully by violent, predatory or repeat sexual offenders to avoid culpability for their behaviour' (Crowe & Lee 2020: 32). The report suggested amending the mistake of fact excuse so that it cannot be applied to consent in sexual offence matters or otherwise ensuring limited application of the excuse in sexual offence proceedings.

Most recently, the Queensland Government established the Women's Safety and Justice Taskforce as an independent body to examine legislating against coercive control and to explore women and girls' experiences of the criminal justice system as victims of sexual violence. The taskforce's second report, *Hear her voice: Report 2*, focuses on women and girls' experiences of the criminal justice system as victims and survivors of sexual violence (Women's Safety and Justice Taskforce 2022). The report is based on consultation, primarily with women and girls in the community and those in custody, but also with service providers, community leaders, academics and government departments. The taskforce made 188 recommendations for improving women and girls' experiences of the criminal justice system. These recommendations were focused on preventing sexual violence, improving community awareness (including better education around sexual violence, consent and respectful relationships), reducing barriers to reporting, improving policing, legal and court processes, better supporting victims and survivors, better engagement with First Nations women and legislative amendments.

The taskforce's recommendations for legislative reform included ensuring that the *Criminal Code Act 1899* (Qld) is more trauma informed, that it adopts an affirmative consent model, that it expands the list of circumstances in which consent is not free and/or voluntary, that it amends the mistake of fact excuse, that it legislates against stealthing and that it addresses sexual exploitation of children and young people by adults in a position of authority (Women's Safety and Justice Taskforce 2022). Further recommendations addressed reform to legislation that falls outside the scope of the current review, including police powers, evidence law and sentencing frameworks. Following the release of *Hear her voice: Report two*, the Queensland Government supported 103 recommendations in full and 71 in principle. It noted 14 recommendations (Queensland Government 2022). The Queensland Government has since begun progressing reforms to better support women and girls who come into contact with the criminal justice system because of sexual violence, including by legislating an affirmative consent model and criminalising stealthing.

South Australia

In response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse's final report (2017), the South Australian Government proposed several reforms to strengthen child sexual abuse laws. These reforms were detailed in the Statutes Amendment (Child Sexual Abuse) Bill 2020 (SA) and included amending the *Criminal Law Consolidation Act 1935* (SA) to strengthen child sexual abuse offences, ensure stricter controls around reporting suspected abuse and strengthen the criminal justice process to better protect victims and survivors (eg changing how victims can give evidence and ensuring that sentencing standards were in line with contemporary understandings of child sexual abuse). Following drafting of this Bill, the South Australian Attorney-General's Department undertook consultation with the community. The *Statutes Amendment (Child Sexual Abuse) Act 2021* (SA) subsequently came into operation in June 2022. Reforms it introduced included new criminal offences under s 64A (Failure to report suspected child sexual abuse) and s 65 (Failure to protect child from sexual abuse) of the *Criminal Law Consolidation Act 1935* (SA).

Repeated sexual abuse or persistent child sexual abuse is criminalised in South Australia under s 50 (Unlawful sexual relationship with a child) of the *Criminal Law Consolidation Act 1935* (SA). Recent academic inquiry into the operation of the law in South Australia and Queensland using relational terminology to characterise abuse of a child by an adult over a period of time has argued that the concept of 'persistent sexual abuse' is more appropriate and has recommended legislative reform to reflect this (Dallaston & Mathews 2021). Following the *Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 2023* (SA) being passed, s 50 of the *Criminal Law Consolidation Act 1953* (SA) is now titled Sexual abuse of a child.

Tasmania

In 2010, an inquiry into child sexual abuse was referred to the Tasmanian Law Reform Institute after a high-profile case sparked criticism in the community. The case involved a 12-year-old girl being subjected to sexual abuse by a large number of men who were invited to abuse her by the girl's mother and a male associate. The mother and male associate both pleaded guilty to procuring unlawful sexual intercourse with a young person, being a commercial operator of a sexual services business and receiving a fee derived from sexual services provided by a child in a sexual services business (Warner 2012). One of the men who sexually abused the victim was also found guilty of sexual intercourse with a young person under the age of 17, producing child exploitation material and possessing child exploitation material (*Tasmania v Martin* (No 2) (2011) TASSC 36). However, the DPP decided not to prosecute over 100 other men (including 19 who admitted to sexually abusing the victim) because there was no reasonable prospect of conviction. This was attributed to the fact that these men had responded to an advertisement stating that the victim was 18 years of age, that they had not sought nor expected to engage in sexual activity with a person under 18 and that they believed that the victim appeared older than 18. These factors laid the groundwork for the men to argue, if charged, that they had an honest and reasonable belief that the victim was over the age of consent (Warner 2012).

In 2012, the Tasmania Law Reform Institute conducted a review into the mistake as to age and consent defences for sexual offences involving young persons in Tasmania (Tasmania Law Reform Institute 2012). The inquiry recommended reforms to the defence of mistake as to age, including clarification around scope and uniformity in relation to the onus of proof for the defence. While the Tasmanian Government disagreed with some of the recommendations (eg that there should be no age restrictions on the age of the perpetrator who can claim the defence of mistake as to age), most were implemented with the passing of the *Criminal Code Amendment (Sexual Offences against Young People) Act 2013* (Tas). This Act:

- introduced an age (13 years) below which mistake as to age could not be raised in relation to a sexual offence against a young person;
- provided that mistake as to age in relation to sexual offences against a young person would not be honest and reasonable unless the accused took all reasonable steps to ascertain the young person's age;
- clarified that mistake as to age in relation to sexual offences against a young person could be relied on for the purpose of a consent defence based on age similarity; and
- made the onus of proof in relation to mistake as to age consistent for all sexual offences against a young person (clarifying that the onus of proof in all cases is on the prosecution).

The Tasmania Law Reform Institute further recommended that the offence of 'maintaining a sexual relationship with a young person' not be renamed to 'persistent sexual abuse of a child (or young person)' (Recommendation 16).

In 2015, the Tasmanian Sentencing Advisory Council published the report reviewing the sentencing for sexual offences under the *Criminal Code Act 1924* (Tas), specifically sentencing practices for rape, aggravated sexual assault, indecent assault, maintaining sexual relationship with a young person and sexual intercourse with a young person. Recommendations from the review centred on legislative reform to sexual offence sentence types and lengths and the creation of aggravated offences for certain sexual offences. The review further reported that community consultation identified issues with the wording of the offence under s 125A (Maintaining a sexual relationship with a young person) of the *Criminal Code Act 1924* (Tas), including that it was offensive and suggested consensual agreement in the context of power inequality and repeated exploitation. However, the review agreed with the 2012 Tasmanian Law Reform Institute report and did not recommend renaming the offence to 'Persistent sexual abuse of a child' because of concerns that this could discourage guilty pleas, influence the perceptions of the jury and make convictions more difficult to obtain, and that it failed to take into account the diversity of circumstances in which the offence may be charged (eg it would not necessarily be appropriate to label conduct that takes place in a close in age and 'consensual' relationship as 'persistent sexual abuse').

A few years later, the offence under s 125A (Maintaining a relationship with a young person) of the *Criminal Code Act 1924* (Tas) was again reviewed to assess whether the terminology was appropriate (Tasmania Department of Justice 2019). In March 2020, the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* (Tas) was passed. It modernised the language of a number of sexual offences under the *Criminal Code Act 1924* (Tas), including s 124 (Penetrative sexual abuse of a child (or young person)) and s 125A (Persistent sexual abuse of a child (or young person)). This was welcomed after extensive efforts by victim advocates, who argued that the language of ‘relationship’ falsely represents the nature of the crime and extent of the harm caused.

Most recently, the final report of the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings was tabled in the Tasmanian Parliament in September 2023. That Commission, independent of the Tasmanian Government and equivalent to a royal commission, was established on 15 March 2021 by Order of the Governor of Tasmania. Recommendations included legislative reform (eg removing all language in s 125A referring to ‘maintaining a sexual relationship’ and replacing it with words referring to the ‘persistent sexual abuse of a child or young person’), interventions for offenders, support for victims and survivors and training for relevant personnel (eg judiciary and prosecutors). The Tasmanian Government has since committed to implementing all recommendations.

Victoria

Victoria has a long history of reform to, and reviews of, sexual offence laws. In 2013, the Victorian Department of Justice conducted a review of rape and other sexual offences in the *Crimes Act 1958* (Vic) (State of Victoria 2013). The review was conducted on the basis that rape and many other sexual violence and abuse offences at the time were complex, inconsistent and unclear, creating difficulty for judges providing instructions to juries (State of Victoria 2013). Offences identified by the review as needing reform included persistent sexual abuse of a child and sexual violence perpetrated through the use of technology (State of Victoria 2013). In October 2014, the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic) was passed after consultation around the review. It introduced significant reforms to sexual violence and abuse laws in Victoria. Key changes to the *Crimes Act 1958* (Vic) included:

- clearer provisions and definitions around sexual offences;
- a new Subdivision (8A) of Division 1 of Part 1 of the *Crimes Act 1958* (Vic) with six new offences regarding rape, sexual assault, compelling offences, threat to commit a sexual offence and assault with intent to commit a sexual offence;
- definitions of s 37D (Sexual penetration) and s 37E (Sexual touching); and
- changes to consent (see *Consent*).

The *Crimes Amendment (Sexual Offences) Act 2016* (Vic) later introduced additional amendments to the *Crimes Act 1958* (Vic) to further clarify and modernise the law, including renaming ‘child pornography’ offences to ‘child abuse material’ and adapting existing offences to reflect changes in technology and offending facilitated through new technologies.

In 2021, the Victorian Law Reform Commission reviewed sexual offences as part of its broader review into justice system responses to sexual offences. The Victorian Law Reform Commission's report, *Improving the justice system response to sexual offences*, made further recommendations for reform (Victorian Law Reform Commission (VLRC) 2021). In response to the findings, the Victorian Government passed the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) in August 2022. The Act commenced on 30 July 2023 and made amendments to the *Crimes Act 1958* (Vic). Amendments included additional changes to consent provisions and updating and clarifying the list of circumstances where there is no consent (including adding the non-consensual removal, non-use or tampering of a condom without consent, commonly referred to as stealthing; see *Consent*). Further, IBSA offences were strengthened, becoming indictable offences moved from the *Summary Offences Act 1996* (Vic) to the *Crimes Act 1958* (Vic), and with a broader definition of 'intimate image'—more inclusive and applying to 'deep fake' pornography (digitally created intimate images).

Western Australia

In 2006, the Criminal Law and Evidence Amendment Bill 2006 (WA) was introduced to the Western Australian Parliament, outlining amendments to terminology of certain sexual offences and procedural aspects of sexual assault cases. The *Criminal Law and Evidence Amendment Act 2008* (WA) was subsequently passed. It enacted proposed reforms, including removing the term 'relationship' from the offence under s 321A (Persistent sexual conduct with a child under 16 years) of the *Criminal Code 1913* (WA). The reasoning behind the amendment of the wording was to recognise that the term 'relationship' was inappropriate and implied an assumption of consent or agreement. Limited legal reforms regarding sexual violence and abuse in Western Australia have followed.

In February 2022, the WA Attorney General asked the Law Reform Commission of Western Australia and the WA Department of Justice to examine the state's sexual offence laws. The Law Reform Commission of Western Australia has been tasked to conduct an inquiry into the (ideal) standard consent laws in the state, the mistake of fact defence in relation to consent and changes to the circumstances in which there is no consent. The review aims to determine whether current provisions reflect contemporary understanding and community attitudes towards sexual offending. Two published discussion papers outline options and questions identified by the Law Reform Commission as important considerations in law reform (Law Reform Commission of Western Australia 2022). The Department of Justice, through the Western Australian Office of Commissioner for Victims of Crime, is conducting a review into adult victim experiences of the justice system, involving consultation with victims and relevant community stakeholders. The review will consider end-to-end criminal justice process for victims of sexual offending, from reporting to after offenders are released; factors that contribute to attrition of cases through criminal justice system stages; and alternate and innovative justice responses for sexual assault, including restorative justice processes.

At the time of writing, the two concurrent and complementary reviews are ongoing. The Law Reform Commission of Western Australia report is due in late 2023, and the Office of Commissioner of Victims of Crime recommendations will be provided by mid-2024.

International practices on issues specific to sexual violence and abuse offences

Serious sexual offences conflict with international human rights standards (Human Dignity Trust 2019). Countries that have signed or ratified international treaties (eg the *Convention on the Elimination of All Forms of Discrimination against Women*) agree that it is the duty of states to ensure that their legislative frameworks for sexual violence and abuse are consistent with these standards (Council of Europe 2021). Their legislation must respect human dignity, ensure substantive equality, be non-discriminative and protect personal agency and bodily integrity (Human Dignity Trust 2019; UN Women 2012). These principles provide a useful reference for developing and evaluating good practice in sexual violence and abuse legislation (Human Dignity Trust 2019; UN Women 2012). Although a comprehensive international review of sexual offence legislation is beyond the scope of this review, this section will canvass some of the recent international reviews of, and reforms to, sexual offence legislation, with a particular focus on consent—given the salience of this concept in the literature and the centrality of consent to sexual harm.

International approaches to consent

Legislative definitions of consent

There has recently been considerable debate around legislative definitions of consent to sexual activity. One review of good practice in this area argues that consent should be defined as ‘unequivocal, free and continuing agreement’ to sexual conduct (Human Dignity Trust 2019: 28). All Australian jurisdictions have adopted similar definitions (see *Consent*), as have other geopolitically comparable nations (eg the United Kingdom, Ireland, Canada and some US jurisdictions). Most of these countries have additional provisions stating that the person must have the capacity to give consent or otherwise understand the nature of the act to which they are consenting (Human Dignity Trust 2019). Consent may also be defined by participation rather than agreement, such as in Sweden. There, sexual assault occurs when a person engages in sexual activity with ‘a person who is not participating freely’ (Gillen 2019: 362). This definition has been noted as having merit, because it conceptualises consent as requiring active participation, broadening the focus from the context in which consent is (or is not) given. It has also been noted that a definition based on participation could better protect people within longer-term relationships (Gillen 2019).

Circumstances of non-consent

For many sexual offences, an absence of consent is part of the physical element or *actus reus* of the offence. One of the ways that legislation defines consent is through a list of circumstances in which there is, by law, no consent. Consent may even be defined entirely by its absence. New Zealand is one country that has no legislative definition of consent. Rather, s 128A (Allowing sexual activity does not amount to consent in some circumstances) of the *Crimes Act 1961* (NZ) provides a list of circumstances where consent does not exist, including sexual activity with a person who is impaired, asleep or coerced through fear, force, mistake or manipulation. There is also the provision that a person does not consent just because he or she does not protest or offer physical resistance to the activity. Regardless of the definition of consent employed, most countries similarly legislate circumstances in which there is no consent (Gillen 2019). However, while some countries (eg Ireland) provide a more limited list of circumstances that negate consent, others provide a more exhaustive list (eg England, Northern Ireland and Wales). Countries vary in the content and detail provided in legislation outlining the circumstances where a person does not consent.

One question that has been central to international legislative consent reform is whether certain behaviours should be criminalised as standalone statutory offences or whether they should constitute circumstances that are specified in legislation as negating consent. This is particularly relevant to fraudulent and misrepresentative sexual behaviours, such as the non-consensual removal of, or tampering with, a condom during sexual activity (stealthing) or failing to disclose one's sexual health status. In Switzerland, the former is captured under its own offence; in the United Kingdom, it is captured by general sexual offences (eg rape), on the basis that consent was limited to sexual activity with a condom (*Assange v Swedish Prosecution Authority* (2012) EWHC 2849). Supreme Court judges in Canada explored these two approaches when a defendant appealed their sexual assault conviction following an instance of stealthing that resulted in the victim's pregnancy (*R v Hutchinson* (2014) 1 SCR 346). The majority ruled that the victim had consented to sexual intercourse, and it was not relevant whether a condom was used; however, the act of stealthing deprived the victim of their choice to become pregnant, and this amounted to fraud that vitiated consent. The minority in the court presented the view that consent could not be negated because it was never given (ie to the specific act of sexual intercourse without a condom). This highlights the complexity and controversy around whether stealthing is consent that is negated by fraud or deception, or whether it is a separate, non-consensual sexual act. Chesser and Zahra (2019) argue that, while either approach ensures the criminalisation of stealthing, introducing a separate statutory provision would ensure that it is distinguishable from existing offences and more clearly criminalised.

The criminalisation of failing to disclose sexual health status has also been given considerable attention because of the public health harms of criminalising transmission of sexually transmitted infections, particularly human immunodeficiency virus (HIV). This conduct may be criminalised in its own offence or as a circumstance in which consent does not exist. Singapore, for example, has a separate offence for this conduct (s 23 (Sexual activity by person with HIV Infection) of the *Infectious Diseases Act 1976*). In Canada, a person does not consent if they submit or do not resist by reason of 'fraud'. The Supreme Court of Canada has found that it will negate a complainant's consent if the accused person did not disclose their HIV status to the complainant, and there was a 'realistic possibility of transmission' of HIV (*R v Mabior* (2012) 2 SCR 584; *R v Cuerrier* (1998) 2 SCR 371). Ultimately, conversations around good practice for legislating circumstances of non-consent remain ongoing.

Affirmative consent

There has been considerable international reform to define various forms of sexual violence and abuse with reference to consent, but it is estimated that half of countries worldwide retain force-based definitions (United Nations General Assembly 2022). Models of sexual offences that focus on the complainant's lack of consent can lead to victims and their behaviour, rather than defendants, being the focus of criminal proceedings. This may cause secondary victimisation and trauma (Burgin 2019). However, even in countries that now have legislative provisions about communicative consent with good practice language (ie voluntary agreement), evidence of use of force and active resistance continues to figure prominently in criminal proceedings for sexual assault (Gillen 2019). This increases attention on the affirmative consent model and debate around whether greater focus on the behaviour of defendants is a potential solution to the issues with prosecuting sexual assault.

The simple definition of affirmative consent is that both parties must express their consent through words and/or actions *and* each party must also actively seek the consent of the other (Burgin 2019; see also *Legislative analysis*). Like Australia, many countries around the world require the prosecution to prove that the defendant knew that the victim was not consenting or may not have been consenting, or that the defendant was reckless in this regard (Gillen 2019). Some international jurisdictions have tenets of this affirmative consent model in their legislative definitions of consent, including that consent must be communicated through words and/or actions and must be sought by both parties before and during sexual activity. In a minority of countries (eg Canada and Scotland), the onus is on the defendant to prove that they took 'reasonable steps' to ascertain consent. Some US jurisdictions, such as California, Illinois and New York, have legislated an affirmative consent model (Kirchengast & Finlay 2022).

Advocates for an affirmative consent model argue that it shifts the focus away from the behaviour of the victim and onto the behaviour of the defendant (ie from whether the victim gave consent to whether the accused sought consent; Burgin 2019; Kerr 2019). However, critics warn that this model shifts the evidential burden to the accused, conflicts with international human rights law, removes the presumption of innocence and unfairly prejudices the accused and their right to silence (Dyer 2019; Ferzan 2016). A review of sexual offence legislation in Northern Ireland in 2019 did not recommend the implementation of an affirmative consent model, arguing that it is likely to criminalise people who do not have the necessary intent or *mens rea* (Gillen 2019). Further, this review considered the difficulty of legislating affirmative consent when communication in sexual encounters is often nuanced or implicit, particularly in long-term relationships. Instead, the report recommended legislating a provision stating that a person cannot be assumed to be consenting just because they do not resist or say or do anything to express non-consent (Gillen 2019). This is consistent with legislation in a number of countries, including New Zealand and some Australian jurisdictions (see *Legislative analysis*).

Age of consent

The legal age at which a person can consent to sexual activity varies internationally from 12 to 21 years. It is 16 to 17 years in most Commonwealth countries (Human Dignity Trust 2019). As in Australia, there is also variability within countries. This variability may relate to differences between jurisdictions; for example, the age of consent in the United States ranges from 16 in some states (eg Alabama and Oklahoma) to 18 in others (eg California, New York, Florida and Oregon). Variability in the age of consent within countries may also depend on the type of sexual activity engaged in, the gender of the people involved and whether the participants are married. Further, some countries in the Middle East and Africa have no age of consent or have marriage-based ages of consent (Human Dignity Trust 2019). These approaches conflict with human rights standards of equality and non-discrimination (Human Dignity Trust 2019). Good practice sexual offence laws regarding the age of consent should be consistent, regardless of gender, sexual orientation, religious or cultural laws, disability or marriage.

Good practice standards suggest that the age of consent should be between 16 and 18 (Human Dignity Trust 2019). It has been further recommended that there be legislative exemptions for circumstances where one or both parties to sexual activity are under the age of consent but are close in age to each other and that there be bigger age gaps for older adolescents than for younger children for these laws to be developmentally appropriate (Warner 2012). This protects young people from incurring a criminal conviction in circumstances of consensual sexual activity. This is the approach taken by some countries (eg Australia, Canada and the United States); however, other countries (eg Iceland) do not have this exemption. South Africa has recently undergone reform to decriminalise consensual sexual activity between younger and older adolescents, provided that there is not more than a two-year age gap between them (Essack & Toohey 2019).

Protections for vulnerable persons

Much attention has been paid to how legislation does (and does not) protect people who may be at greater risk of becoming victims of sexual violence and abuse. In legislating protections for potentially vulnerable populations, it is important that nations also ensure that these laws do not infringe upon the right to make choices about sexual activity (Human Dignity Trust 2019).

Legislation in many countries generally captures legal capacity to consent through a status or functional approach. The status approach is where all people in a particular group (eg people who have a disability or cognitive impairment) are seen as being incapable of giving consent. Countries adopting this approach include Kiribati, Barbados and Lesotho, where all sexual activity (even with consent) is criminalised if a person has a disability (Human Dignity Trust 2019). Similarly, consent may be negated in some regions (eg Ghana) when a person has a mental or intellectual impairment. While the aim of these laws is to protect people with a disability from abuse and exploitation, they conflict with human rights standards by denying people who have a disability their rights to make informed and voluntary decisions about sexual activity (Human Dignity Trust 2019).

The functional approach assesses a person's ability to understand and retain relevant information and their decision-making and communicative ability (Arstein-Kerslake 2015). This approach recognises that people can have limited capacity in one area but may still be able to make informed choices in other ways—such as whether or not they wish to engage in sexual activity. A recent systematic review concluded that approaches for determining the ability of people to consent to sexual activity most commonly include the function capacity approach, as well as person-centred, integrated and contextual approaches (Esmail & Boncannon 2022). Jurisdictions in the United States have adopted the functional approach, where capacity is defined in terms of the person's capacity to understand the nature of the sexual act. In a minority of US states (eg Alabama, New York and Washington), it is also required that the person be capable of understanding the moral aspect of the activity.

New Zealand provides an example of a combination of the status and functional approaches under s 138 (Sexual exploitation of person with significant impairment) of the *Crimes Act 1961* (NZ). This offence criminalises exploitative sexual activity with a person who has a significant intellectual, mental or physical condition or impairment. The functional approach is demonstrated by the requirement that the condition or impairment:

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significantly impairs the person's capacity (a) to understand the nature of sexual conduct; or (b) to understand the nature of decisions about sexual conduct; or (c) to foresee the consequences of decisions about sexual conduct; or (d) to communicate decisions about sexual conduct. (s 138 of the *Crimes Act 1961* (NZ))

The functional approach has been argued to be good practice, particularly where it allows for the person themselves to be included in developing an approach that works for them in facilitating healthy intimate relationships (Esmail & Boncannon 2022). To ensure adequate protections for vulnerable populations, the European Union Agency for Fundamental Rights (nd) has argued for increased penalties for offences against a person with a disability. This is consistent with the *Convention on the Rights of Persons with Disabilities*.

Technology-facilitated sexual violence

Technology-facilitated sexual violence (TFSV) refers to ‘a range of behaviours where digital technologies are used to facilitate both virtual and face-to-face sexually based harms’ (Henry & Powell 2018: 195). Conversations about the criminalisation of TFSV have become more prominent internationally. Italy, for example, has recently introduced amendments following a high-profile case that failed to achieve justice for a victim whose previous partner shared intimate videos of her online without her consent. This case resulted in a trial of the perpetrators and the social media platforms that facilitated this act by refusing to remove the content. At the conclusion of the trial, the platforms were ordered to remove the material; however, the victim was ordered to compensate the platforms for their legal fees. After the trial and subsequent media coverage, the victim took her own life. Following this case, Italy introduced the Red Code Law, which criminalised ‘the unlawful dissemination, delivery, transfer, or publication of sexually explicit images or videos aimed at remaining private’ (Law No. 69/2019, article 10(1)). However, this law is arguably ineffective because it fails to recognise that IBSA can include threats to undertake these activities and the actual or threatened dissemination of images that, while not explicitly sexual, can still be sexualised (Pavan & Lavorgna 2022). This law also ignores the responsibility of digital media companies that facilitate and enable TFSV, as is the case for most TFSV offences (Pavan & Lavorgna 2022).

It is generally accepted that TFSV should be criminalised because it infringes upon individual sexual autonomy and results in significant harm to victims and survivors (Goudsmit Samaritter 2021). However, as this report highlighted above, this may be challenging because of its complex nature. Further, the extent to which the traditional criminal justice system can effectively address TFSV may be limited by the pervasiveness of these behaviours, the anonymity of perpetrators and challenges inherent to holding perpetrators accountable when their actions are fragmented across online and offline jurisdictions (Jurasz & Barker 2021; Pavan & Lavorgna 2022). It has also been argued that online regulation must form part of the discussion about criminalising TFSV, because of the role online platforms inevitably play in facilitating these behaviours (Jurasz & Barker 2021). Despite these challenges, several countries have introduced legislation to address TFSV. Where TFSV is criminalised, it may be done so explicitly in legislation (eg Australia, Ghana and Mexico), within hate speech and discrimination legislation (eg Germany) or within legislation focused on reducing violence against women more broadly (eg Senegal; United Nations General Assembly 2022).

Summary

This literature review has examined the broader context in which legal frameworks for sexual assault and child sexual abuse exist, canvassed previous state and territory reviews and inquiries into these legal frameworks and examined international approaches to legislating sexual offences. While significant work has been undertaken in this space, the most recent national reviews of sexual assault and child sexual abuse laws were undertaken in 2011 (Fileborn 2011) and 2014 (Boxall, Tomison & Hulme 2014). It is, therefore, important to build the evidence by conducting an analysis of domestic sexual assault laws about adults, children and young people (at both Commonwealth and state and territory levels) to determine whether there are gaps or inconsistencies in the conduct criminalised in each jurisdiction, identify the impact of any substantive inconsistencies between legal frameworks and explore good practice approaches. Legislative reform alone may not address pervasive negative stereotypes around sexual assault and child sexual abuse and the justice needs of victims and survivors, but it is important to recognise the power of the law in shaping Australian culture and its role in communicating the behaviours that are not tolerated or accepted by the community (Stubbs 2003).

Legislative analysis

Introduction

This section presents the findings of the AIC’s comparative analysis of existing Commonwealth, state and territory legislation about sexual violence and abuse. It has four parts, each examining a critical component of legislative regimes for sexual violence and abuse across Australia:

- **consent**—statutory definitions and ages of consent, circumstances where consent is considered negated in statute and the models of consent that underpin current consent provisions;
- **conduct**—the physical elements of sexual offences, including sexual conduct and other conduct enabling it;
- **aggravating and other specific circumstances**—circumstances under which sexual offences can be committed which are treated in statute, in some way, as increasing the seriousness of these offences or justifying harsher penalties; and
- **defences and excuses**—conditions that provide some justification for conduct that would otherwise be criminal; which, if substantiated, either absolve a defendant of criminal liability completely or warrant their conviction for a less serious offence.

Consent

This subsection provides an overview of definitions of consent in legislation across Australian jurisdictions in relation to sexual activity, models of consent and how these operate, and statutory frameworks. Consent has traditionally been defined by what it is not (Kirchengast & Finlay 2022) rather than what it is, so the subsection also examines the varying list of circumstances in legislation where consent and ages of consent are considered negated ages of consent.

Australian states and territories are often categorised into ‘Code’ and ‘non-Code’ or common law jurisdictions. Code jurisdictions are those where criminal law is completely codified in statute. They include the Northern Territory, Queensland, Tasmania and Western Australia. In the non-Code jurisdictions (ACT, NSW, SA and Vic), the common law criminal system still operates to some degree; however, all have made significant moves to codify their criminal laws in statute as well, and the differences between them and the ‘Code’ jurisdictions are now far less stark than they once were. Nevertheless, there remain interesting variations in legislative approaches to consent between Code and non-Code jurisdictions, and examining these variations warrants the use of these imperfect categories. There is also some discussion of strict and absolute liability as they apply to sexual offences. Finally, an overview of reform specifically relating to consent provisions for each Australian state and territory and the Commonwealth is provided.

Definitions of consent

Whether or not someone consented to a sexual act is one of the main factors used to distinguish lawful sexual conduct from unlawful sexual conduct. Consent is defined varyingly in Australia as a ‘free’ and/or ‘voluntary’ decision. In some jurisdictions, consent is framed as an ‘agreement’ (Cth, NSW, NT, SA, Tas and Vic); in other jurisdictions, consent is ‘given’ by a person to another person (ACT, Qld and WA).

Legislation in some jurisdictions provides additional context beyond the wording of free and voluntary. In Queensland, the definition under s 348 (Meaning of consent) of the *Criminal Code 1899* (Qld) specifies that consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent. Contrastingly, in s 50B (Meaning of consent) of the *Crimes Act 1900* (ACT), the definition of consent specifies that informed agreement to the sexual act is communicated by *doing or saying something* (emphasis added).

While ‘free and voluntary’ terminology is intended to exclude instances of consent obtained through fear, force or deception, Quilter (2020: 233) has critiqued it as ‘neither self-evident nor self-executing’. Advocates for the terminology of ‘agreement’ argue that it further excludes circumstances of coercion and better reflects a positive state of mind rather than submission or acquiescence (Fileborn 2011; Standing Committee of Attorneys-General 1999). However, recent reviews have recommended against changing jurisdictional definitions of consent from consent that is ‘given’ to consent that is ‘agreed’ upon, because the latter is too similar to the former to bring cultural change (eg QLRC 2020). Other arguments against a preference for ‘free agreement’ are that it is confusing and unlikely to shift the focus of behaviour away from the offender (Gruber 2016; Law Reform Commission of Western Australia 2022; QLRC 2020).

Regardless of the specific wording, definitions of consent across all Australian jurisdictions are consistent with definitions in comparable countries internationally which emphasise ‘free’ and ‘voluntary’ or similar terms. For example, Canada defines consent as ‘voluntary agreement’ (*Criminal Code*, RSC, 1985, c. C-46 s 273.1(1)), and the United Kingdom defines consent as ‘free agreement’ (*Sexual Offences Act 2003* (UK) s 74).

Consent is also commonly defined by its absence (see Table 4 on page 40). Additionally, there are circumstances outlined in legislation that do not strictly negate consent, but where consent cannot be assumed only because a circumstance exists. For example, Australian Capital Territory legislation specifies that a person does not consent ‘only’ because of a particular fact, including that the person does not say or do something to resist the act or that they consented to another act with the defendant (s 67(2) *Crimes Act 1900* (ACT)). This is similar to legislation in New South Wales, which specifies that a person is not to be regarded as consenting ‘only’ because the person does not offer physical or verbal resistance or consents to any other particular sexual activity (s 61HI *Crimes Act 1900* (NSW)). The purpose of these provisions is to expand on or clarify the definition of consent, so that a person cannot be assumed to be consenting just because these circumstances exist. This is different to providing that there is legally no consent or that consent is negated in those circumstances.

Models of consent

Models of consent provide the conceptual foundation and justification for consent provisions in Commonwealth, state and territory legislation. At the time of writing, all Australian jurisdictions have enshrined a communicative model of consent in their legislation, and some jurisdictions (the ACT, NSW and Vic) have provisions that clearly align with an affirmative model of consent.

Under the communicative consent model, consent to sexual activity must be communicated by participants, through words and/or actions, on a continuous basis and through mutual decision-making (Croskery-Hewitt 2015). The communicative model of consent proposes that all persons have the right to choose whether or not they participate in sexual activity, that consent should not be presumed, and that true consent involves ongoing communication, decision-making and agreement that is ‘free and voluntary’ between the people involved (NSW Law Reform Commission 2020).

Australia has recently engaged in renewed debate around the further strengthening of sexual offence laws through the adoption of an affirmative consent standard. An affirmative consent model encompasses a communicative consent model, in that it requires people who are seeking to engage in sexual activity to actively communicate and display their willingness to each other through words and/or actions. **The key difference between the communicative and affirmative models is that the affirmative model goes a step further by requiring that each participant actively seek the consent of the other, rather than just communicate their own consent.** This means that each person must take steps, through words and/or actions, to ensure that the other person consents (Mason & Monahan 2019; Pineau 1989). Burgin and Flynn (2021: 336) argue that:

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Without steps being positively obligated on all sexual actors, and without qualifying that these steps must be ‘reasonable’ in themselves, implied consent narratives will continue to permeate rape trials, and women will continue to be blamed for being raped.

Essentially, an affirmative consent model attempts to shift the focus from whether the victim 'gave' consent to whether the defendant said or did anything to ensure that they had consent before and during sexual activity.

The Australian Capital Territory, New South Wales and Victoria are described as having an affirmative consent model. Their legislation provides that a defendant's belief in consent is not reasonable if the defendant did not say or do anything to ascertain consent. Tasmania has also been described as having an affirmative consent model, because a defendant needs to provide evidence of reasonable steps taken to ascertain consent before they can rely on the defence of mistaken belief. There have been calls to further strengthen consent laws across other Australian states and territories to require the defendant to take steps to affirm or ascertain consent in all cases. It is argued that this represents positive social progress toward a higher standard of fundamental expectations for ethical sexual relations and reflects the reality of how sexual harm is perpetrated and experienced (VLRC 2021). The requirement to take steps could be described as a 'pure' affirmative model of consent, because it 'elevates the question of whether the defendant did anything to ascertain consent from a discretionary consideration for the jury to an element of the offence' (North 2022). This has also been recommended because the complainants' behaviour and force-based understandings of consent (ie whether the complainant resisted or said 'no') continue to be the focus of trials in states and territories with communicative consent models (Burgin 2019). However, to understand differences in consent provisions around Australia, it is firstly important to consider variation in how the physical and fault element of sexual offences are determined in Code and non-Code jurisdictions.

Consent in relation to the physical and fault elements of sexual offences

Determining whether a person is guilty of a crime requires that the prosecution establish, beyond reasonable doubt, two main elements:

- that the conduct occurred (*actus reus* or physical element); and
- that the defendant was at fault through intention, knowledge or recklessness (*mens rea* or mental state/fault element).

There are significant differences between jurisdictions in the way sexual offences are structured and operate (Table 3). Australian states and territories can be divided into two broad categories:

- Code jurisdictions, in which sexual offences do not usually contain a specific fault element (ie NT, Qld, Tas and WA); and
- non-Code or common law jurisdictions, in which sexual offences contain physical and fault elements (ie NSW, ACT, Vic and SA).

For many sexual offences in Code jurisdictions, it is only required that the prosecution prove that the defendant committed the act and (if relevant) that the victim did not consent. To the extent that the defendant's state of mind (ie the fault element) is considered at all, it is only in relation to mistake of fact defences. For example, the defendant may seek to excuse their conduct on the basis of a mistaken belief that there was consent. Meanwhile, in non-Code jurisdictions, the prosecution must prove that the defendant had a particular state of mind at the time of the offence (eg knowledge that the victim did not consent).

Table 3: Consent models across Australian states and territories			
Jurisdiction & system	Age of consent	Definition of consent	Consideration of the defendant’s mental state
ACT Statute & Common law	16	<p>s 50B <i>Crimes Act 1900</i> (ACT)</p> <p>Meaning of consent—pt 3</p> <p>consent, to a sexual act, means informed agreement to the sexual act that is—</p> <p>(a) freely and voluntarily given; and</p> <p>(b) communicated by saying or doing something.</p>	<p>s 67 (When a person does not consent to an act) <i>Crimes Act 1900</i> (ACT)</p> <p>The defendant’s mental state is assessed as part of offence</p>
NSW Statute & Common law	16	<p>s 61HI <i>Crimes Act 1900</i> (NSW)</p> <p>Consent generally</p> <p>(1) A person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.</p> <p>(2) A person may, by words or conduct, withdraw consent to a sexual activity at any time.</p> <p>(3) Sexual activity that occurs after consent has been withdrawn occurs without consent.</p> <p>(4) A person who does not offer physical or verbal resistance to a sexual activity is not, by reason only of that fact, to be taken to consent to the sexual activity.</p> <p>(5) A person who consents to a particular sexual activity is not, by reason only of that fact, to be taken to consent to any other sexual activity.</p> <p>Example—: A person who consents to a sexual activity using a condom is not, by reason only of that fact, to be taken to consent to a sexual activity without using a condom.</p> <p>(6) A person who consents to a sexual activity with a person on one occasion is not, by reason only of that fact, to be taken to consent to a sexual activity with—</p> <p>(a) that person on another occasion, or</p> <p>(b) another person on that or another occasion.</p>	<p>s 61HK (Knowledge about consent) <i>Crimes Act 1900</i> (NSW)</p> <p>The defendant’s mental state is assessed as part of offence</p>
NT Criminal Code	16	<p>s 192 <i>Criminal Code Act 1983</i> (NT)</p> <p>(1) For this section, consent means free and voluntary agreement.</p>	<p>s 192(3)(b) and s 43AX (Mistake of fact) <i>Criminal Code Act 1983</i> (NT)</p> <p>The defendant’s mental state is assessed as part of the offence or through the mistake of fact defence where there is no fault element specified in the offence</p>

Table 3: Consent models across Australian states and territories (cont.)			
Jurisdiction & system	Age of consent	Definition of consent	Consideration of the defendant's mental state
Qld Criminal Code	16	s 348(1) <i>Criminal Code Act 1899</i> (Qld) (1) In this chapter, consent means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.	s 24 (Excuse of mistake of fact) and s 348A (Mistake of fact in relation to consent) <i>Criminal Code Act 1899</i> (Qld) The defendant's mental state is assessed through the mistake of fact excuse
SA Statute & Common law	17	s 46(2) <i>Criminal Law Consolidation Act 1935</i> (SA) (2) For the purposes of this Division, a person consents to sexual activity if the person freely and voluntarily agrees to the sexual activity.	s 47 (Reckless indifference) <i>Criminal Law Consolidation Act 1935</i> (SA) The defendant's mental state is assessed as part of offence
Tas Criminal Code	17	s 2A <i>Criminal Code Act 1924</i> (Tas) (1) In the Code, unless the contrary intention appears, 'consent' means free agreement.	s 14 (Mistake of fact) and s 14A (Mistake as to consent in certain sexual offences) <i>Criminal Code Act 1924</i> (Tas) The defendant's mental state is assessed through the mistake of fact defence
Vic Statute & Common law	16	s 36 <i>Crimes Act 1958</i> (Vic) (1) Consent means free and voluntary agreement.	s 36A (Reasonable belief in consent) <i>Crimes Act 1958</i> (Vic) The defendant's mental state is assessed as part of offence
WA Criminal Code	16	s 319 <i>Criminal Code Act Compilation Act 1913</i> (WA) (2) For the purposes of this Chapter— (a) consent means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means; (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act; (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.	s 24 (Mistake of fact) <i>Criminal Code Act Compilation Act 1913</i> (WA) The defendant's mental state is assessed through the mistake of fact defence

In the Australian Capital Territory, New South Wales and Victoria, any steps taken by the defendant to ascertain consent must be considered as part of the fault element of the offence, because legislation provides that a belief in consent will not be reasonable in the circumstances unless the accused person said or did something to ascertain whether the complainant was consenting (s 36A *Crimes Act 1958* (Vic); s 61HK *Crimes Act 1900* (NSW); s 67 *Crimes Act 1900* (ACT)) (see subsection *Defences and excuses* for more information). In South Australia, steps taken by the defendant are considered as part of the test of whether the defendant was recklessly indifferent as to whether the victim consented (s 47 *Criminal Law Consolidation Act 1935* (SA)). In Queensland, Tasmania and Western Australia, steps taken by the defendant are considered through the excuse or defence of mistake of fact (s 24 and s 348A *Criminal Code Act 1899* (Qld); s 14 *Criminal Code Act 1924* (Tas); s 24 *Criminal Code Act Compilation Act 1913* (WA)). In the Northern Territory, the prosecution must prove that the defendant knew that the alleged victim was not consenting or was reckless as to whether they consented to sexual activity. The *Criminal Code Act 1983* (NT) defines recklessness to a lack of consent in s 192(4A) as ‘not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency’ (p. 162). Otherwise, there is nothing in the *Criminal Code Act 1983* (NT) specifically directing focus on the actions of the defendant or efforts to ascertain consent.

Amendments to state and territory legislation to include legal tests that were previously enshrined in common law may be made to make legal principles more consistent and prominent. They may aim to shift community awareness, attitudes and expectations about appropriate sexual behaviours. Over time, there have been developments in the way sexual violence and abuse is legally understood and a shift away from common law approaches to this. These changes have led to consent provisions reflecting an expectation that participants will positively agree to sexual activity. In several states and territories, there is also focus on the steps taken by defendants, through words and/or actions, to ascertain consent. Both developments reflect the incorporation of communicative and (elements of) affirmative models of consent in legislation across jurisdictions.

However, some experts have cautioned that adopting an approach requiring the defendant to have taken steps to ascertain consent in order for their belief in consent to be considered reasonable would be a shift towards making all sexual offences absolute liability offences (Dyer 2019; Ferzan 2016). If the affirmative standard were applied in the context of the mistake of fact defence, then, logically, the defence may no longer be available because ‘the accused who has ensured that his or her partner is consenting, has made no mistake’ and so the offence changes from strict liability to absolute liability (Dyer 2019: 6). The risk is that some morally innocent people who genuinely have a reasonable belief in consent may be criminalised to accomplish the broader goal of encouraging social change through prescriptive legislation (Ferzan 2016). Dyer (2019: 49) argues that ‘it is not morally permissible for the state to punish non-culpable actors as a means of achieving social change’. This concept is further expanded below.

Strict and absolute liability offences

Strict liability offences are those offences where a fault element is removed, meaning that element of the offence will be established if the physical elements were engaged in or existed. However, the defence of honest and reasonable mistake of fact is available. Some jurisdictions (eg Tas) do not require the fault element of the crime to be determined for the offence to be established, and it is only examined as part of a mistake of fact defence. Strict liability sexual offences include some sexual offences against young people or a person with a cognitive impairment. For example, in New South Wales and the Northern Territory, the defendant may raise a mistake of fact defence for certain offences if they can establish their belief that the person was above the age of consent or their ignorance of the cognitive impairment.

Absolute liability offences are those where there is no fault element specified, and the defence of mistake of fact is not available. An example of an absolute liability sexual offence is the offence of sexual intercourse with a child under 10 in New South Wales (s 66A, *Crimes Act 1900* (NSW)). However, absolute liability offences are relatively rare in criminal law in Australia, including in relation to sexual violence and abuse. Absolute liability offences are frequently challenged on the basis that they are inconsistent with the basic human right to liberty, and the deterrent impact of such offences has been questioned (Warner 2012).

After reviewing submissions from stakeholders and considering the concerns summarised above, the Victorian Law Reform Commission recommended moving to a stronger affirmative model of consent, with the aim of creating meaningful change in sexual offence legislation (VLRC 2021). This was introduced through the legislative clarification that a belief in consent is not reasonable if the accused person does not say or do anything to find out whether the other person consents (*Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic)). In contrast, reviews in Queensland (QLRC 2020) and New South Wales (New South Wales Law Reform Commission 2020) did not recommend a requirement for defendants to take steps to ascertain consent, primarily because of the impact on the rights of defendants and the risk of this requirement operating unfairly; however, the Women's Safety and Justice Taskforce in Queensland did recommend the adoption of this requirement. At the time of writing, this requirement has been introduced into the *Crimes Act 1900* (NSW) through the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW) and the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Qld) has been introduced to the Queensland Parliament; among other amendments, it proposes the insertion of this requirement into the *Criminal Code Act 1899* (Qld).

Summary—models of consent

Legislation in the Australian Capital Territory, New South Wales and Victoria includes provisions that clearly align with an affirmative consent model. Legislation in these jurisdictions provides that consent must be communicated by words and/or actions, and a defendant's belief in consent is not reasonable if the defendant did not say or do anything to ascertain consent. Tasmania can also be said to have incorporated an affirmative consent model, because the defendant needs to raise evidence of steps taken to ascertain consent before they can rely on the defence of mistaken belief. All other Australian jurisdictions (NT, Qld, SA and WA) have communicative models of consent.

Some advocates have argued that a stronger affirmative consent standard would rebalance the system in favour of victims and ‘rather than continuing to place responsibility on women, those initiating sexual intercourse should be responsible for ensuring consent is communicated positively’ (Kerr 2019: 5). However, critics argue that the affirmative model generally shifts the burden of proof onto the defendant, may render sexual offences as strict or absolute liability offences depending upon whether a defence of honest or reasonable mistake was available and, potentially, will result in a situation where ‘morally innocent persons are punished to achieve what is seen as a higher good’ (Dyer 2019: 19; Ferzan 2016).

Age of consent

The age of consent is defined as the minimum age a person must be to legally be able to give their consent to engage in sexual activity with another person. While the defining characteristic of most sexual offences involving adults is the absence of consent, children of a certain age are not considered, under law, to have the developmental capacity or maturity to give consent to sexual activity (World Health Organization 1999).

In most Australian states and territories, the legal age of consent is 16, although it is 17 in South Australia and Tasmania. However, where victims are 11–12 years or older, it is common for legislation to specify circumstances where sexual conduct may not be criminalised, assuming that it can be demonstrated that all parties to the sexual conduct agreed freely and voluntarily to participate under conditions that did not negate this agreement (see ‘Circumstances where consent is not free and/or voluntary’). These include where all parties to the sexual conduct are close in age but under the age of consent (eg one person is 13 and the other is 14), or when only one person is over the age of consent, but they are less than two years apart in age (eg one person is 17 and the other is 15). States and territories that address ‘consensual’ sexual activity between young people of a similar age in legislation include the Australian Capital Territory, New South Wales, South Australia, Tasmania, Victoria and Western Australia. In these jurisdictions, the age of the participants is considered as part of determining whether the defence of similar age is available. Age differences are typically within two years, although experts have argued that it is developmentally appropriate for similar age defences to have larger age gaps for older children than younger children (Warner 2012). Additionally, mistake of fact defences regarding victim age can be raised where certain alleged sexual offences are against children aged over 10 in New South Wales and the Australian Capital Territory, 12 in Queensland and Victoria, 13 in Tasmania, 14 in the Northern Territory and 16 in South Australia (see subsection *Defences and excuses*). This is relatively consistent with comparable countries internationally, such as New Zealand (age 12) and the United Kingdom (age 13) (ss 132(4)–(5) *Crimes Act 1961* (NZ); c42, s 5, *Sexual Offences Act 2003* (UK)).

If one person is in a position of power over another person who is under 18 years, any consent to sexual activity may be irrelevant. This includes where one person is a school teacher, parent or carer, employer, counsellor or health care provider. Several jurisdictions have introduced specific statutory offences that apply in relationships of care or authority, for which consent is no defence. In Tasmania, it is a criminal offence for an adult who is in a position of authority over a child (under 18) to have sexual intercourse with that child (s 124A of the *Criminal Code Act 1924* (Tas)), and consent or similar age defences are not available. Similarly, in New South Wales, consent is not a defence to sexual offences that apply where the victim is aged 16–18 and under special care (s 73 and s 73A of the *Crimes Act 1900* (NSW)).

In all Australian jurisdictions, it is an offence to take, keep, send or request sexual or intimate images of a young person, even if they consent. In most states and territories, the law pertains to young people aged under 16 or 17 (usually in line with the age of consent); in Tasmania and at the Commonwealth level, the laws apply to images of any person under the age of 18 (eSafety Commissioner 2020). Where an image depicts a person who appears to be a child, the image may amount to CSAM, for which there are corresponding offences in all Australian jurisdictions (see *Conduct*). Sharing sexual or intimate material without consent is a crime in all states and territories and under the Commonwealth *Online Safety Act 2021* (Cth). These laws also apply to young people who share images of themselves or others, although a number of jurisdictions now have defences or exemptions to allow for sharing of sexual or intimate images between young people of a similar age where there is consent (see subsection *Defences and excuses*).

In Australia, it is legal for a person over the age of 18 to provide sexual services to another person over the age of consent. However, performing sex work is criminalised in statute for persons under the age of 18. The Commonwealth *Criminal Code Act 1995* (Cth) includes offences for child sexual abuse and dealings with CSAM committed via a carriage service, via a postal service and outside Australia by an Australian citizen or resident of Australia.

Circumstances where consent is not free and/or voluntary

Legislation in all Australian jurisdictions includes a list of circumstances where there is no consent to sexual activity; however, what each list includes varies in content and detail (see Table 4). There is overlap in the types of circumstances included across jurisdictions. These can be categorised under circumstances relating to the communication of consent, threats or use of bodily harm, fraud, deception and mistakes, abuse of position or relationship, impairment and incapacitation and other sexual behaviours. It is important to emphasise that these lists are not exclusive. If a specific circumstance does not fall within the list of a jurisdiction, this does not mean that other legislation does not capture it. Queensland, for example, does not list impairment as a circumstance in which there is no consent; but it is covered through the definition of consent under s 348(1) of the *Criminal Code Act 1899* (Qld), where ‘consent must be given by a person with the *cognitive capacity* to give consent’. Further, the Australian Capital Territory does not list non-communication of consent as a negating circumstance, but the definition of consent in s 50B(b) of the *Crimes Act 1900* (ACT) requires communication.

Category	Circumstance	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Communication of consent	A person does not say or do anything to communicate consent			✓		✓		✓	✓	
	A person says or does something to communicate withdrawing agreement to the act either before or during the act		✓			✓			✓	
	A person does not say or do something to resist the act									✓
	Any of the above		✓	✓		✓		✓	✓	✓
Threats or use of force or harm	A person participates in the act because of the infliction of violence or force on the person, or another person, an animal or property	✓	✓	✓	✓	✓	✓	✓	✓	✓
	A person participates in the act because of a threat to inflict violence or force on the person, or another person, an animal or property		✓	✓	✓	✓	✓	✓	✓	✓
	A person participates in the act because of extortion, coercion, blackmail, psychological oppression, intimidation or a fear of public humiliation or disgrace of the person or another person	✓	✓	✓			✓		✓	✓
	A person participates in the act because of a threat to mentally or physically harass the person or another person		✓				✓	✓	✓	
	A person participates in the act because of fear of harm of any type	✓	✓	✓	✓	✓	✓	✓	✓	
	A person participates because they are married to the other person		✓							
	Any of the above	✓	✓	✓	✓	✓	✓	✓	✓	✓

Table 4: Circumstances where there is no consent to sexual activity, by jurisdiction (cont.)										
Category	Circumstance	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Fraud, deception and mistakes	A person is mistaken about the identity of the other person		✓	✓	✓	✓	✓	✓	✓	
	A person participates because the person is mistaken about the nature or purpose of the sexual activity, including about whether the sexual activity is for health, hygienic or cosmetic purposes	✓		✓	✓	✓	✓	✓	✓	
	If the act involves an animal, the person mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes									✓
	A person participates in the act because of fraudulent misrepresentation of any fact made by someone else		✓	✓	✓				✓	✓
	A person participates in the act because of an intentional misrepresentation by another person about the use of a condom (stealthing)		✓					✓	✓	✓
	Any of the above	✓	✓	✓	✓	✓	✓	✓	✓	✓
Abuse of position or relationship	A person participates in the act as a result of an abuse of a relationship of authority, power, trust or dependence	✓	✓	✓		✓		✓	✓	
	A person participates in the act as a result of an abuse of a professional relationship		✓							
	Any of the above	✓	✓	✓		✓		✓		
Detainment	A person is unlawfully detained or knows that another person is unlawfully detained	✓	✓	✓	✓		✓	✓	✓	
Impairment and incapacitation	A person is incapable of agreeing to the act because of intoxication	✓	✓	✓	✓		✓	✓	✓	
	A person does not have the capacity to agree or is unable to understand the nature of the act	✓	✓	✓	✓		✓	✓	✓	
	A person is unconscious	✓	✓	✓	✓		✓	✓	✓	
	A person is asleep	✓	✓	✓	✓		✓	✓	✓	
	Any of the above	✓	✓	✓	✓		✓	✓	✓	

✓ = Circumstance specified in legislation

Some jurisdictions are quite comprehensive and specific in their list of circumstances (eg ACT, NSW, Vic). Others are deliberately broad in their approach (eg WA). However, all jurisdictions include wording in legislation indicating that the provisions specified are non-exhaustive, are examples and do not limit any further potential grounds where non-consent to sexual activity may be established. Many (ACT, NSW, Qld, Vic and WA) now have circumstances relating to the communication of consent which indicate, for example, that failing to resist or not saying or doing anything to communicate consent cannot be interpreted as consent. However, this is a relatively recent development.

Legislation in all jurisdictions specifies that there is no consent where a person participates in the sexual act because of the actual infliction of violence or force, and legislation in most jurisdictions states that there is no consent where there are threats, fear or intimidation. Legislation in all jurisdictions also includes circumstances relating to fraud, deception and mistakes, such as when a person is mistaken about the identity of the other person (ie ACT, NSW, NT, Qld, SA, Tas, Vic) or if they participate because of fraudulent misrepresentation of any fact (ie ACT, NSW, NT, Tas, WA). Legislation in a number of jurisdictions indicates that there is no consent where there is an abuse of a position or relationship of authority (ie ACT, NSW, Qld, Tas, Vic), and some jurisdictions also have specific offences that apply where the person is under the care or authority of the defendant (see *Conduct* and *Aggravating and other specific circumstances*). Many jurisdictions specify unlawful detainment, impairment or incapacitation as circumstances where a person cannot consent, such as being asleep, unconscious or intoxicated (ie ACT, NSW, NT, SA, Tas, Vic).

Consent in Commonwealth, state and territory legislation

Commonwealth

Commonwealth consent provisions relating to sexual offences are outlined in the *Criminal Code Act 1995* (Cth) under Division 268 (Subdivision C Crimes against humanity; Subdivision D War crimes) and Division 71 (Offences against UN personnel). The definition of consent and the list of circumstances where there is no consent to sexual activity are specified under Division 268 in the *Criminal Code Act 1995* (Cth) according to relevant offences (eg rape, enforced prostitution, sexual violence).

Consent is defined throughout the *Criminal Code Act 1995* (Cth) as free and voluntary agreement. The fault elements of an offence (ie intention, knowledge, recklessness and negligence) are broadly defined under Division 5 (Fault Elements) of the *Criminal Code Act 1995* (Cth); however, they may also be expanded on in specific offences. For example, recklessness with respect to consent is defined as awareness of a substantial risk that the person is not consenting to sexual activity and it being unjustifiable to take that risk with the circumstances known to them at the time (s 5.4 of the *Criminal Code Act 1995* (Cth)). More specifically, s 268.14(5) (Crime against humanity–rape) expands on the definition of recklessness as ‘not giving any thought to whether or not the person is consenting to sexual penetration’.

Consent provisions relevant to Commonwealth law are also outlined in the *Online Safety Act 2021* (Cth) under Part 6 (Non-consensual sharing of intimate images). This Act was passed in June 2021 and commenced in January 2022. It defines consent under s 21 in relation to intimate images or private sexual material as ‘consent that is (a) express; and (b) voluntary; and (c) informed’.

Importantly, the free and voluntary agreement definition only applies to Divisions 71 and 268 of the *Criminal Code Act 1995* (Cth) and offences against adults. For all other offences relating to child sexual abuse and dealings with CSAM (Divisions 272, 273, 471 and 474), the offences are against victims who cannot legally give consent by virtue of their age (ie under 16 or 18, depending on the specific child abuse offence; see subsection *Age of consent*). Child sex offences outside Australia refer to offences against children under the age of 16. There are also offences with lower penalties for offences against persons aged between 16 and 18 where the defendant is in a position of trust or authority (eg ss 272.12 and 272.13). Offences in the *Online Safety Act 2021* (Cth) relating to intimate images or private sexual material provide that consent cannot be given by a child under the age of 18 (s 5).

Australian Capital Territory

Before 2022, Australian Capital Territory legislation did not define what consent was in relation to sexual offences. Rather, the legislation defined what consent was not, by listing the circumstances where there is no consent under s 67 (When a person does not consent to an act) of the *Crimes Act 1900* (ACT). In 2018, the Australian Capital Territory Parliament’s Standing Committee on Justice and Community Safety held an inquiry into the Crimes (Consent) Amendment Bill 2018 (ACT). The Bill included reforms such as strengthening the Australian Capital Territory’s consent laws and clarifying the law around grounds for reasonable belief in consent, so that self-induced intoxication cannot be used as a way to justify belief.

The Australian Capital Territory Sexual Assault Prevention Response Steering Committee was appointed in 2021 with tripartisan support from the Legislative Assembly. The role of the committee was to oversee the Australian Capital Territory’s SAPRP and make recommendations to the Australian Capital Territory Government around how to improve the territory response to sexual assault. The committee consulted with relevant community stakeholders, particularly victims of sexual violence and professionals engaged within the criminal justice system. The final report, *Listen. Take action to prevent, believe and heal*, recommended adopting an ‘affirmative communicative’ model of consent alongside community education measures (ACT Government 2021). The committee recommended reforming the law to ‘require that consent to sexual activity be actively affirmatively communicated’ and to more closely align with the law in other jurisdictions with strong consent standards (eg Tas and Vic; ACT Government 2021: 78).

The Australian Capital Territory Government responded to the 24 recommendations of the committee in June 2022, agreeing to 13 and agreeing in principle to nine. The Crimes (Consent) Bill was introduced in February 2022 (ss 50A–50C) and passed in the Legislative Assembly in May 2022. As a result, consent is now defined in s 50B (Meaning of consent) of the *Crimes Act 1900* (ACT) as informed agreement that is freely and voluntarily given and communicated by saying or doing something.

The current affirmative standard of consent in the Australian Capital Territory is that it must be communicated through words and/or actions and actively sought by all participants. The definition stipulates that consent must be freely and voluntarily given, not presumed, and communicated through ongoing and mutual communication. The changes to the law were accompanied by a commitment to implement a range of community education initiatives as part of an overall prevention campaign. The Crimes (Stealthing) Amendment Bill 2021 (ACT) was introduced in April 2021 and passed in October 2021, with unanimous support in the Legislative Assembly, to criminalise stealthing under Australian Capital Territory criminal law. The Bill amended s 67(1) of the *Crimes Act 1900* (ACT) by including stealthing in the list of circumstances where there is no consent to sexual activity. The Australian Capital Territory was the first Australian jurisdiction to explicitly criminalise stealthing in this way in statute.

The age of consent in the Australian Capital Territory is 16 (s 55, *Crimes Act 1900* (ACT)).

New South Wales

In 1981, New South Wales made changes to its consent provisions, which included recognition that a person does not consent just because they do not physically resist. Since then, there have been several reforms to consent provisions in New South Wales which reflect a communicative model of consent. Several influential factors have been key in shaping consent law reform in New South Wales (NSW Law Reform Commission 2020).

A statutory definition of consent was not legislated until 2007, when communicative consent provisions were introduced into the mental and physical elements of the offence of sexual assault under the *Crimes Amendment (Consent Sexual Assault Offences) Act 2007* (NSW). This involved extending the list of circumstances where a person does not consent, including expanding the fault element to include 'no reasonable grounds' for a belief in consent, and introducing a requirement for factfinders to consider any steps taken by the defendant to ascertain whether the victim was consenting (New South Wales Law Reform Commission 2020).

Nearly a decade later, in 2015, Luke Lazarus was tried and found guilty of sexual intercourse without consent. The conviction was set aside on appeal because the trial judge had misdirected the jury about the 'no reasonable grounds' test (*Lazarus v R* (2016) NSWCCA 52). At the second trial in 2017, which was a judge-alone trial, the defendant was acquitted. The judge found that Mr Lazarus had formed a genuine belief, on reasonable grounds, that the complainant had consented. The judge observed that there had been no verbal resistance nor any physical action taken to move away (*R v Lazarus* (Unreported, NSWDC, Tupman DCJ, 4 May 2017). In November 2017, the Court of Criminal Appeal found that the second trial judge made an error by failing to consider any steps taken by Mr Lazarus to ascertain whether the complainant was consenting. Despite the error, the court did not order another retrial and dismissed the appeal (*R v Lazarus* (2017) NSWCCA 279).

The controversy surrounding the outcome of the *Lazarus* case sparked renewed calls for further reform of sexual assault and consent provisions in New South Wales. The case raised a potential issue with how the communicative consent model operated in practice in New South Wales courts. Non-consensual sexual activity had occurred, but the responsibility for communicating (non)consent remained with the complainant, whose silence and/or lack of resistance could continue to be (mis)construed as consent (Mason & Monaghan 2019; Quilter 2020).

In 2018, the New South Wales Attorney General asked the NSW Law Reform Commission to conduct an inquiry into sexual consent provisions and assess the scope for reform. The Commission consulted with relevant stakeholders over three years and received over 200 submissions. The report, *Report 148: Consent in relation to sexual offences*, was tabled in New South Wales Parliament in 2020 with 44 recommendations for amendments to sexual assault legislation (New South Wales Law Reform Commission 2018), including:

- simplifying and modernising the structure and language of consent law;
- modifying the list of circumstances in which the law provides that a person does not consent, including by providing that a person does not consent if they do not say or do anything to consent;
- introducing new jury directions combatting a range of rape myths; and
- clarifying the law on knowledge of non-consent (New South Wales Law Reform Commission 2020).

Arguments for law reform to shift focus onto the behaviour of the defendant were also reviewed—specifically whether a defendant should be required to take steps to ascertain consent. Arguments against this reform included that this could criminalise people who may otherwise hold an honest and reasonable belief, but who failed to take steps; and it could effectively turn sexual offences into absolute liability offences, which could result in unjust convictions (New South Wales Law Reform Commission 2020: 138). Because of the potentially negative impact on the rights of defendants, the Commission did not recommend changing the law in this regard. Instead, it supported a requirement for courts to consider whether the defendant took steps to ascertain consent. It noted that ‘a failure to take steps could be persuasive in some cases’ (New South Wales Law Reform Commission 2020: 139).

The *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW) implemented many of the reforms recommended by the NSW Law Reform Commission. The reforms commenced on 1 June 2022 and included:

- introducing objectives that recognise that a person has a right to choose whether to participate in sexual activities, that consent is not to be presumed, and that consent involves ongoing and mutual communication;
- defining consent as free and voluntary agreement ‘at the time’ the sexual activity occurs;
- recognising other aspects of consent, including that consent can be withdrawn and that consent to one activity does not, of itself, mean consent to any other activity; and
- addressing the issue of stealthing by including a legislative note that refers to sexual activity with a condom as an example of a particular sexual activity that a person may consent to without consenting to any other sexual activity (eg sexual activity without a condom).

The reforms went further than the NSW Law Reform Commission's recommendations, by providing that any belief in consent that a defendant had (or may have) is not reasonable in the circumstances if the defendant did not, within a reasonable time before or at the time of the sexual activity, say or do anything to ascertain consent (s 61HK(2) *Crimes Act 1900* (NSW)). The requirement does not apply to a defendant who shows that they had a cognitive impairment or mental health impairment at the time of the sexual activity that was a substantial cause of them not saying or doing anything (s 61HK(3) *Crimes Act 1900* (NSW)).

The age of consent in New South Wales is 16 (s 66C, s 66DB, s 66DD, s 66DE, s 66DF *Crimes Act 1900* (NSW)).

Northern Territory

At the time of writing, the Northern Territory has not finalised any review into sexual assault legislation or consent laws. However, the Northern Territory Law Reform Committee has recently accepted a request from the Northern Territory Attorney-General to review consent in the *Criminal Code 1983* (NT). A discussion paper has been released (Northern Territory Law Reform Committee 2023), stakeholder submissions have been received, and the final report is due to be released in October 2023. Recently, the Northern Territory Government released some priority actions as part of the Northern Territory's *Sexual violence prevention and response framework 2020–2028*. In the framework is a commitment to provide education and skill development focusing on consent in family violence programs run through Correctional Services.

Under current Northern Territory legislation, consent is defined under s 192 (Sexual intercourse and gross indecency without consent) of the *Criminal Code Act 1983* (NT). Consent is defined as free and voluntary agreement, and circumstances where a person does not consent are outlined (s 192(2)(a–g), *Criminal Code Act 1983* (NT)). In s 192A (Direction to jury in certain sexual offence trials), it is stated that judges shall direct juries that victims are not to be regarded as consenting just because they did not physically resist or sustain injury or had consented to sexual activity with the defendant on another occasion.

Under Northern Territory law, the prosecution must prove that the defendant knew that the alleged victim was not consenting or was reckless as to whether they consented to sexual activity. The *Criminal Code Act 1983* (NT) defines recklessness to a lack of consent in s 192(4A) as 'not giving any thought to whether or not the other person is consenting to the sexual intercourse or act of gross indecency'. Otherwise, there is nothing in the *Criminal Code Act 1983* (NT) directing focus on the actions of the defendant or efforts to ascertain consent.

The age of consent in the Northern Territory is 16 (s 127, *Criminal Code Act 1983* (NT)).

Queensland

Between 2018 and early 2019, the Queensland Attorney-General conducted consultations with legal experts and community stakeholders around the operation of sexual assault consent law in Queensland and the excuse of mistake of fact. The results of the consultation prompted the Attorney-General to refer the review to the QLRC (QLRC 2020), asking them to review the operation and application of the definition of consent and the excuse of mistake of fact to determine whether there was need for legislative reform. The final report was published in July 2020 (QLRC 2020).

Upon review of the need for reform to consent provisions in Queensland, the Commission determined that the existing definition of consent reflected attributes of an affirmative consent model: the definition specifies that consent must be communicated and that silence or passivity does not equate to consent (QLRC 2020). However, given that these aspects appeared in common law rather than explicitly in statute, the Commission recommended clarifying the provision under s 348 (Consent) in the *Criminal Code Act 1899* (Qld).

Currently, under s 348 (Consent), the *Criminal Code Act 1899* (Qld) defines consent as:

“

...freely and voluntarily given by a person with the cognitive capacity to give consent.

It further specifies that:

“

A person is not to be taken to give consent to an act only because the person does not, before or at the time the act is done, say or do anything to communicate that the person does not consent.

The law in Queensland does not, at the time of writing, require the defendant to take steps to determine whether the victim consented to sexual activity. However, the courts may consider this under s 348A (Mistake of fact in relation to consent) of the *Criminal Code Act 1899* (Qld), where anything the defendant said or did to ascertain consent is considered in deciding whether the defendant made an honest and reasonable mistake in determining consent. The QLRC did not support changes to the law to expressly require the defendant to take steps to ascertain consent as an element of the offence (as is the case in NSW). This is related to differences in the way that sexual offences operate in the criminal law between Code (eg Qld) and non-Code (eg NSW) jurisdictions, discussed previously.

The QLRC argued that the existing provision also allows for more flexibility in practice than a fixed rule requiring that the defendant always take steps (QLRC 2020: 188). The Commission referred to submissions that, in some relationships and circumstances, communication of consent may not require words or actions and may need to be 'evaluated against a pattern of past behaviour' (QLRC 2020: 78). It was determined that requiring the defendant to take steps does not account for variations in relationships and that 'a reform of this nature would be unlikely to produce any positive outcome' (QLRC 2020: 87). However, an amendment to the *Criminal Code Act 1899* (Qld) in 2021 included the insertion of s 348A (Mistake of fact in relation to consent), which, as specified above, makes it clearer that whether a defendant took steps (ie words or actions) is relevant in determining whether belief in consent is honest or reasonable. This amendment also clarified that the voluntary intoxication of the defendant is irrelevant to whether belief in consent is honest or reasonable.

The circumstances in which there is no consent to sexual activity are outlined in s 348(2) (Meaning of consent) of the *Criminal Code 1899* (Qld). Recommended amendments to the list include additional specifications that silence and passivity do not amount to consent and that consent can be withdrawn (QLRC 2020). The QLRC did not recommend including stealthing as part of the circumstances in which a person does not consent, partly to keep the list appropriately broad, citing concern that 'a more specific list may produce unanticipated and unsatisfactory outcomes' (QLRC 2020: vi).

The *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (Qld) was enacted in April 2021 to codify existing common law principles around consent in line with the key recommendations of the QLRC. The Act clarified several aspects of sexual assault law and amended the legislation to make the definition of consent consistent for all sexual offences under Chapter 32 of the *Criminal Code Act 1899* (Qld).

In March 2021, the Queensland Government established the independent Women's Safety and Justice Taskforce to examine coercive control and review the need for a specific offence of 'domestic violence' and to review the experience of women across the criminal justice system. This included consideration of sexual offence laws and consent provisions and women's experiences of the criminal justice system in prosecuting sexual offences. The taskforce's second and final report, *Hear her voice: Women and girls' experiences across the criminal justice system*, was released in July 2022 (Women's Safety and Justice Taskforce 2022). The taskforce made 188 recommendations for the Queensland Government to improve women and girls' experiences of the criminal justice system as victims and survivors of sexual violence and as defendants and offenders. These included recommendations 43 and 44, about introducing an affirmative model of consent, and new laws to specifically criminalise stealthing (Women's Safety and Justice Taskforce 2022).

On 21 November 2022, the Queensland Government released its response. It supported 103 recommendations in full (including recommendations 43 and 44) and 71 recommendations in principle. It noted 14 recommendations. The *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (Qld) has been introduced to the Queensland Parliament at the time of writing. Among other amendments, it proposes the insertion of a requirement that defendants take reasonable steps to have ascertained consent into the *Criminal Code Act 1899* (Qld).

The age of consent in Queensland is 16 (s 215, *Criminal Code Act 1899* (Qld)).

South Australia

Under s 46 (Consent to sexual activity) of the *Criminal Law Consolidation Act 1935* (SA), a person consents to sexual activity if they freely and voluntarily agree and not because of force, threat or fear. The legislation also outlines a number of circumstances in s 46(3) (Consent to sexual activity) of the *Criminal Law Consolidation Act 1935* (SA) where there is no consent to sexual activity.

In South Australia, the behaviour of the defendant and whether they took any steps to ascertain consent is relevant to the determination of whether the defendant was recklessly indifferent to the fact. Under s 47 (Reckless indifference) of the *Criminal Law Consolidation Act 1935* (SA), a person is recklessly indifferent to whether another person consents or has withdrawn consent if:

- they are aware of the possibility they may not consent but proceed regardless; or
- if they fail to take reasonable steps to ascertain consent; or
- if they do not give any thought to whether the other person consents.

This test constitutes part of the mental element of the offence, meaning that these things must be considered in determining whether an offence has occurred.

There have been limited inquiries and reforms into sexual assault laws and legislative definitions of consent in South Australia. However, in November 2022, the Statutes Amendment (Stealth and Consent) Bill 2022 (SA) passed in parliament. It effectually criminalises stealthing, so that there is no consent if a person removes their condom during sex without the other person's knowledge (s 46(3)(ga), *Criminal Law Consolidation Act 1935* (SA)).

The age of consent in South Australia is 17 (s 49, *Criminal Law Consolidation Act 1935* (SA)).

Tasmania

In 2004, the Tasmanian Parliament introduced reforms to sexual assault legislation to enact a statutory definition of consent and s 14A (Mistake as to consent in certain sexual offences) of the *Criminal Code Act 1924* (Tas). Tasmanian legislation defines consent under s 2A (Consent) of the *Criminal Code Act 1924* (Tas) as free agreement, followed by a list of circumstances in which there is not free agreement to sexual activity. Under s 2A(2)(a) (Consent), the list of circumstances where there is not free agreement begins by specifying that a person does not consent where a person does not say or do anything to communicate consent.

As in other Code jurisdictions (eg Qld, WA), under Tasmanian law, the crime of sexual assault has no mental element; the question of a defendant's belief or knowledge about consent is examined through the defence of honest and reasonable mistake of fact. In s 14A (Mistake as to consent in certain sexual offences) of the *Criminal Code Act 1924* (Tas), belief in consent is not honest or reasonable if the defendant did not take reasonable steps, in the circumstances known to them at the time of the offence, to ascertain that the victim was consenting to the act. This means that, in Tasmania, for certain sexual offences, the defendant must provide evidence of any mistaken, honest and reasonable belief in consent as part of the process for excusing their conduct. If this is raised by the defence, then it is for the prosecution to disprove it.

Tasmania was the first Australian state to introduce reforms to consent law in line with the communicative model by introducing reference to 'free agreement' in the definition of consent. The reforms were also consistent with other jurisdictions internationally, specifically Canada (see *R v Ewanchuk* (1999) 1 SCR 330 (46); Bachand 2019; Cockburn 2012). Tasmania was the first jurisdiction to legislate an approach to consent that more closely resembled an affirmative consent standard. Tasmania has been described as having an affirmative consent model, firstly, because the definition of consent itself requires the other person to say or do something to communicate consent, and secondly, because a defendant needs to provide evidence of reasonable steps taken to ascertain consent before they can rely on the defence of mistaken belief.

Academic work examining the likelihood that the defendant in *Lazarus* would have been acquitted if the case had been heard in Tasmania instead of New South Wales has concluded that there could have been different outcomes in the two jurisdictions, related to the diversity in their approaches to consent (Bachand 2019). The author argues that the outcome may have been altered through application of s 14A (Mistake as to consent in certain sexual offences) of the *Criminal Code Act 1924* (Tas), had it been available, because this rule (arguably) puts more emphasis on the reasonableness of the steps taken by the defendant to ascertain consent (Bachand 2019).

However, empirical analysis of sexual assault matters heard in the Tasmanian Supreme Court post reform to consent legislation has shown that rape myths and pre-reform misconceptions of consent persisted in legal practice (Cockburn 2012). The findings have been used to argue that legislative change alone is not sufficient for improving justice outcomes for victims of sexual assault, prompting calls for further reform initiatives, such as jury directions and judicial training.

In 2018, the Tasmania Law Reform Institute published a review into current law on Consensual Assault in Tasmania which is outlined in s 182(4) (Definition of assault) of the *Criminal Code Act 1924* (Tas). There is some (limited) discussion around legal moralism and sexual activity in this context, with a focus on sadomasochistic sexual activity (Tasmania Law Reform Institute 2018).

In May 2022, Tasmania passed the Criminal Code Amendment Bill 2022 (Tas) which amended the definition of consent under s 2A (Consent) of the *Criminal Code Act 1924* (Tas) to include a provision that there is no consent if a person tampers or removes their condom before or during the sexual intercourse without the other person's knowledge or agreement.

The age of consent in Tasmania is 17 (Schedule 1, s 124, *Criminal Code Act 1924* (Tas)).

Victoria

Victoria has had a communicative model of consent for around 30 years; over time, legislative reforms have strengthened this approach. In 1991, reforms included changes to the definition of consent, to include the wording 'free agreement'; specification of circumstances where there is no consent to sexual activity; and the introduction of jury directions to combat rape myths (North 2022).

In 2001, the Victorian Law Reform Commission conducted a review of the operation of the criminal justice system as a response to victims of sexual assault and to determine scope for reform. Three years later, the Victorian Law Reform Commission published a report with 202 recommendations for reform to sexual assault (VLRC 2004). Among these was a recommendation to change the fault element of relevant sexual offences from a subjective test to an objective test; the defendant must have reasonable belief, and not just an honest belief, in consent. Other recommendations included training for judges and lawyers, changes to committal processes to reduce delays and specialised handling of sexual offence cases (VLRC 2004). Many of the issues identified and reforms recommended then remain relevant today.

Some years later, the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic) introduced an objective fault element under s 37G (Reasonable belief) of the *Crimes Act 1958* (Vic). Under the amendment, reasonable belief in consent was assessed through consideration of the circumstances, including any steps taken by the defendant to ascertain consent. However, this was criticised because there was no test of the reasonableness of the steps, so a step could hypothetically include the defendant thinking about whether the other person was consenting, such as in *Lazarus* in New South Wales (Burgin & Crowe 2020). Indeed, a review of transcripts in the Victorian County Court between 2013 and 2020 found that the existing communicative model was not consistently being implemented in practice. The findings suggested limited attention towards the behaviour of the defendant and identified evidence of sustained questioning of victim behaviour and of persistent rape myths such as an emphasis on acts of physical resistance by the victim (Quilter, McNamara & Porter 2023).

In 2021, the Victorian Attorney-General asked the Victorian Law Reform Commission to review Victoria's justice responses to sexual offences, including sexual assault laws, to identify where areas for reform remained. The final report makes further recommendations for improving the criminal justice response to sexual offences, including strengthening the definition of consent, making consent ongoing throughout the course of the conduct, adapting the definition to the sex industry, responding to issues proving consent for police beyond physical evidence, and improving how reasonable belief in consent is being understood and applied (VLRC 2021: 297–99).

A key recommendation from the review was that Victoria move to an affirmative consent model, where participants are responsible for finding out whether the other person is consenting to sex (VLRC 2021: xxvi). This would put greater focus on the actions of the defendant (VLRC 2021). However, critics argued that the law did not need to be changed because it is relevant to the existing reasonable belief test, and the law already required the jury to pay attention to whether the defendant took steps to ascertain consent. There was concern that legislative change would make the law more complicated, lead to more appeals but not increase the chance of conviction for sexual assault matters (VLRC 2021). Nevertheless, after considering opposition to affirmative consent, the Commission recommended the adoption of an affirmative consent model as a preferred option for reform.

The *Justice Legislation Amendment (Sexual offences and Other Matters) Act 2022* (Vic) introduced a number of changes to legislation, including changing the definition of consent from free agreement to free and voluntary agreement under s 36(1) (Consent) of the *Crimes Act 1958* (Vic). The Act also introduced a requirement that a person must have said or done something for their belief in consent to be reasonable. Several additions were added to the list of circumstances where there is no consent to sexual activity, including provisions around the non-consensual removal, non-use or disruption (or tampering) of a condom without consent, to implement recommendations from the Victorian Law Reform Commission review (2021) and to align with recent developments in other jurisdictions (eg ACT, NSW).

The age of consent in Victoria is 16 (s 49B, *Crimes Act 1958* (Vic)).

Western Australia

Consent was first defined in the *Criminal Code Compilation Act 1913* (WA) when the *Acts Amendment (Sexual Assaults) Act 1985* (WA) was enacted. This followed the 1983 review into the Code, which made recommendations to define consent and to outline circumstances where there is no consent to sexual activity. This definition remains essentially the same today.

In Western Australia, consent and the circumstances where consent is not given are defined under s 319(2) (Terms used) of the *Criminal Code Compilation Act 1913* (WA):

“

consent means a consent freely and voluntarily given, and without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means.

In the same section, the *Criminal Code Act 1913* (WA) also states that failure to offer physical resistance is not evidence of consent to sexual activity and that young people under the age of 13 are unable to consent to any sexual act. While the legislation does not provide detail about *how* consent needs to be given, the courts have typically interpreted consent as being communicated by words or actions (Law Reform Commission of Western Australia 2022).

Recent analysis comparing Queensland and Western Australia (both Code jurisdictions) has suggested that there is little reason why the definition of consent, as it relates to sexual offending, should be different between the two states (Duffy & Burton 2022: 209). Reflecting on recent law reform in Queensland, key areas for legislative improvement to Western Australia include a consistent definition of consent to be applied across sexual offences; legislation of certain common law principles, such as a communicative model of consent; and a provision that there is no consent where a person continues to engage in sexual activity after another person has withdrawn their consent (Duffy & Burton 2022).

In February 2022, the Attorney General asked the Law Reform Commission of Western Australia to examine sexual assault legislation in Western Australia and provide advice about the scope for reform. The Law Reform Commission of Western Australia released their *Discussion Paper Volume 1: Objectives, Consent and Mistake of Fact* in December 2022 (Law Reform Commission of Western Australia 2022). The paper forms part of a larger review of sexual offences in Western Australia and the wider government sexual violence prevention and response strategy.

The discussion paper presents a review of evidence and other jurisdictional approaches to communicative and affirmative models of consent, stealthing and the mistake of fact defence. The paper includes a list of questions and recommendations around how consent should be defined or clarified and addresses issues related to the scope of the consent provision and its location in the *Criminal Code Act 1913 (WA)* (Law Reform Commission of Western Australia 2022).

In line with other recent reviews, this one addressed the question about introducing a requirement for the defendant to demonstrate steps taken to ascertain consent. Consistent with the findings of the New South Wales Law Reform Commission (2018) and the QLRC (2020), the Law Reform Commission of Western Australia has made the case that there are circumstances where consent may be given without doing or saying anything, which may only be understood in the context of the particular relationship or history of behaviour (Law Reform Commission of Western Australia 2022).

The age of consent in Western Australia is 17 (s 321, *Criminal Code Compilation Act 1913 (WA)*).

National overview

In May 2008, the Australian Government commissioned the National Council to Reduce Violence Against Women and their Children, and the first national plan to reduce violence against women was drafted. The report, *Time for action: The National Council's plan for Australia to reduce violence against women and their children, 2009–2021*, identified significant concerns about the lack of consistency across Australian states and territories regarding consent laws in the context of sexual violence and abuse (Australian Department of Social Services 2009).

In response to the report, the ALRC then reviewed sexual offences relevant to the family violence context in each Australian jurisdiction and at the Commonwealth level. The review identified significant inconsistencies in consent legislation across states and territories. The findings led the ALRC to recommend reforms in line with increased harmonisation in sexual offence provisions (Australian Law Reform Commission & NSW Law Reform Commission 2010). Recommendations stressed that all jurisdictions' provisions should include:

- a statutory definition of consent based on the concept of 'free and voluntary agreement';
- a 'non-exhaustive' list of circumstances where there is no consent to sexual activity;
- a defence to the charge of 'rape' that the defendant held an honest and reasonable belief that the victim was consenting; and
- that judges should provide jury directions around consent in sexual assault trials.

All Australian jurisdictions except Tasmania have now enacted definitions of consent that involve the wording 'free' and/or 'voluntary', whereas the definition in Tasmania is simply 'free agreement'. Victoria recently changed the definition from 'free agreement' to include 'voluntary', to move towards consistency with other jurisdictions and to a stronger consent standard. While 'free' means free from coercion, threats, deception or inappropriate means, 'voluntary' goes beyond mere submission and compliance towards active participation that is informed and intentional (Quilter 2020).

Some jurisdictions use the wording of 'agreement' (NSW, NT, SA); others define consent as 'given' (ACT, Qld). The terminology of 'agreement' is consistent with other countries internationally that have communicative consent models, such as Canada and England (*Criminal Code, RSC, 1985, c. C-46 s 273.1(1)*; *Sexual Offences Act 2003 (UK) s 74*).

All Australian jurisdictions outline circumstances where a person does not consent. These vary in content, wording and detail. Most jurisdictions have now enshrined in legislation that a person does not consent if the person does not say or do anything to communicate consent (eg NSW, Qld, Tas, Vic) and/or that a failure to resist does not equate to consent (eg ACT, NSW, Vic). This reflects longstanding evidence that many victims of sexual assault react by freezing and are unable to say or do anything because of intense fear or (past) trauma (Galliano et al. 1993; Kalaf et al. 2017).

A key concern of recent state and territory reviews is whether an affirmative consent model should be enacted in legislation, requiring the defendant to say or do something to ascertain consent. Such a requirement applies in the Australian Capital Territory, New South Wales and Victoria; a defendant's belief in consent will not be considered reasonable if the defendant did not say or do anything to ascertain whether the complainant consented. In Tasmania, a defendant cannot successfully argue that they held an honest and reasonable, but mistaken, belief in consent if they did not take reasonable steps (in the circumstances known to them at the time) to ascertain consent.

There are important differences between Code and other (non-Code) jurisdictions in how consent is dealt with that need to be acknowledged when comparing approaches across states and territories. For example, in non-Code jurisdictions (eg NSW, the ACT, Vic, SA), sexual offences have a physical and fault element. In Code jurisdictions (eg Qld, Tas, WA), sexual offences do not contain a fault element. The prosecution need only prove that the defendant committed the relevant conduct and (if relevant) that the complainant did not consent to that conduct. However, the defendant's state of mind is relevant to the 'mistake of fact' defence.

Summary—consent

Over time, inquiries and reviews into consent provisions have resulted in the raising of the standard of consent across Australia. All Australian jurisdictions now have statutory definitions of consent that reflect a communicative model of consent, where participants must freely and voluntarily agree to sexual activity. Efforts to enshrine an affirmative model of consent in legislation aim to raise the bar for what is expected of people in terms of finding out whether the other person is consenting to sexual activity.

The findings from reviews into consent law in the Australian Capital Territory, New South Wales, Queensland, Victoria and Western Australia show that there is, in essence, significant consistency across Australian jurisdictions. Where inconsistencies appear to be present, these relate more to superficial differences in the approaches of Code and non-Code jurisdictions regarding how sexual offences are structured and operate, rather than actual substantive gaps in the coverage of consent laws.

Ages of consent, or the minimum age at which a person can legally give their consent to engage in sexual conduct with another person, are set in statute at 16 across all states and territories except South Australia and Tasmania, where they are set at 17. Additionally, the provision of sex work by persons under 18 is also criminalised in statute across all jurisdictions, as is sexual conduct with young people aged 16–17 under the care or authority of defendants. However, where victims are 11–12 or older, there are commonly certain circumstances specified in statute where sexual conduct may not be criminalised (ie where parties are of a similar age), assuming that it can be demonstrated that all parties to the sexual conduct agreed freely and voluntarily to participate. Some variation across jurisdictions is evident here, and this variation is examined further in *Defences and excuses* below.

Finally, legislation in all jurisdictions lists circumstances where there is, by default, no consent to sexual conduct. However, these lists vary in content and detail. Legislation in all jurisdictions specifies that consent is negated where a person participates in sexual conduct because of the actual infliction of violence or force or where they participate as a result of fraud or deception or under a particular mistaken belief. Circumstances where consent is not actively communicated, where there is an abuse of a position of authority or trust, and where one or more participants is incapable of consenting, including because of intoxication, are also specified as negating consent in some jurisdictions. Importantly, gaps and omissions in these lists may be addressed elsewhere in legislation, including in definitions of consent or in specific offences that cover a particular circumstance.

Conduct

This subsection examines the conduct criminalised by sexual offences in Australian Commonwealth, state and territory legislation. For the purposes of this analysis, the conduct was classified into five broad categories:

- penetrative and non-penetrative sexual conduct;
- persistent or repeated child sexual abuse;
- handling of unlawful sexual materials, including indecent materials, IBSA, and CSAM;
- conduct aiming to enable unlawful sexual conduct; and
- failing to report or stop unlawful sexual conduct.

These categories are not mutually exclusive. This report will show that multiple forms of conduct can comprise the physical element of a single offence, and multiple offences can exist criminalising the same conduct (often under different circumstances) within a jurisdiction. This subsection examines how, and to what extent, different forms of conduct relevant to sexual violence and abuse are covered in legislation across jurisdictions, including how the conduct is described and the definitions of key terms.

Penetrative and non-penetrative sexual conduct

Penetrative sexual conduct

Penetrative sexual conduct is generally described across the jurisdictions as sexual intercourse with, or penetration of, another person. Definitions of this behaviour outlined in legislation vary by jurisdiction (see Table 5). Some jurisdictions use the term ‘sexual intercourse’ (ie Cth, ACT, NSW, NT, SA, Tas), and some use the term ‘sexually penetrate’ (ie Cth) or ‘sexual penetration’ (ie Vic and WA). Queensland uses ‘penile intercourse’. In Western Australia, certain offences include the terms ‘carnal knowledge’ or ‘carnal connection’, which refer broadly to penetration.

Table 5: Definitions—Penetrative sexual conduct

Jurisdiction	Term used	Definition
Cth	Sexual intercourse	The penetration, to any extent, of the vagina ^a or anus of a person by any part of the body of another person; or the penetration, to any extent, of the vagina or anus of a person, by an object, carried out by another person; or fellatio; or cunnilingus; or the continuation of sexual intercourse. Sexual intercourse does not include an act of penetration that: is carried out for a proper medical or hygienic purpose; or is carried out for a proper law enforcement purpose. Defined in s 272.4 (Meaning of sexual intercourse) of the <i>Criminal Code Act 1995</i> (Cth).
	Sexually penetrate	Penetrate (to any extent) the genitalia ^b or anus of a person by any part of the body ^c of another person or by any object manipulated by that other person; or penetrate (to any extent) the mouth of a person by the penis of another person; or continue to sexually penetrate. Defined in s 268.14 (Crime against humanity—rape), s 474.32 (Abhorrent violent conduct), s 268.59 (War crime—rape) and s 268.82 (War crime—rape) of the <i>Criminal Code Act 1995</i> (Cth).

Table 5: Definitions—Penetrative sexual conduct (cont.)

Jurisdiction	Term used	Definition
ACT	Sexual intercourse	<p>Penetration, to any extent, of the genitalia^d or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or the penetration, to any extent, of the genitalia or anus of a person by an object^e, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or the introduction of any part of the penis of a person into the mouth of another person; or fellatio; or cunnilingus; or the continuation of sexual intercourse.</p> <p>Defined in s 50 (Definitions—pt 3) of the <i>Crimes Act 1900</i> (ACT).</p>
NSW	Sexual intercourse	<p>Penetration to any extent of the genitalia or anus of a person by—(i) any part of the body of another person, or (ii) any object manipulated by another person, or the introduction of any part of the genitalia of a person into the mouth of another person, or the application of the mouth or tongue to the female genitalia, or the continuation of sexual intercourse. It is not relevant whether a part of the body referred to is surgically constructed or not. Penetration carried out solely for proper medical or hygienic purposes is not sexual intercourse.</p> <p>Defined in s 61HA (Meaning of ‘sexual intercourse’) of the <i>Crimes Act 1900</i> (NSW).</p>
NT	Sexual intercourse	<p>The insertion to any extent by a person of his penis into the vagina^f, anus or mouth of another person; the insertion to any extent by a person of any part of the person’s body or an object into the vagina or anus of another person, except for the purpose of performing a medical examination or administering medical treatment; or cunnilingus or fellatio, and continues until the withdrawal of the part of the body or object from the mouth, vagina or anus into which it was inserted or the cessation of cunnilingus or fellatio, as the case may be.</p> <p>Defined in s 1 (Definitions) of the <i>Criminal Code Act 1983</i> (NT).</p>
Qld	Penile intercourse	<p>The penetration, to any extent, of the vagina^g, vulva^h or anus of a person by the penis of another person. A person engages in penile intercourse with another person if— the person penetrates, to any extent, the vagina, vulva or anus of another person with the person’s penis; or the person’s vagina, vulva or anus is penetrated, to any extent, by the penis of another person.</p> <p>Defined in s 6 (Meaning of engage in penile intercourse) of the <i>Criminal Code Act 1899</i> (Qld).</p>
SA	Sexual intercourse	<p>Any activity (whether of a heterosexual or homosexual nature) consisting of or involving— penetration of a person’s vagina, labia majora or anus by any part of the body of another person or by any object; or fellatio; or cunnilingus, and includes a continuation of such activity.</p> <p>Defined in s 5 (Interpretation) of the <i>Criminal Law Consolidation Act 1935</i> (SA).</p>
Tas	Sexual intercourse	<p>The penetration, to the least degree, of a person’s vaginaⁱ, genitalia^j, anus or mouth by a penis^k; or the penetration, to the least degree, of a person’s vagina, genitalia or anus by a body part of a person other than a penis; or the penetration, to the least degree, of a person’s vagina, genitalia or anus by an object held or manipulated by, or attached to, another person; or the continuation of an act of penetration. Penetration does not include penetration carried out for a proper medical purpose, for the purposes of hygiene or for any purpose that is authorised by law.</p> <p>Defined in s 2B (Sexual Intercourse) of the <i>Criminal Code Act 1924</i> (Tas).</p>

Table 5: Definitions—Penetrative sexual conduct (cont.)		
Jurisdiction	Term used	Definition
Vic	Sexually penetrates	<p>A person (A) sexually penetrates another person (B) if— A introduces (to any extent) a part of A’s body or an object into B’s vagina^a; or A introduces (to any extent) a part of A’s body or an object into B’s anus; or A introduces (to any extent) their penis into B’s mouth; or A, having introduced a part of A’s body or an object into B’s vagina, continues to keep it there; or A, having introduced a part of A’s body or an object into B’s anus, continues to keep it there; or A, having introduced their penis into B’s mouth, continues to keep it there. A reference to a part of the body includes a reference to a surgically altered or constructed part of the body.</p> <p>Defined in s 35A (Sexual penetration) of the <i>Crimes Act 1958</i> (Vic).</p>
WA	Sexually penetrate	<p>To penetrate the vagina (which term includes the labia majora), the anus, or the urethra of any person with— (i) any part of the body of another person; or (ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes; or to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the labia majora), the anus, or the urethra of the offender by part of the other person’s body; or to introduce any part of the penis of a person into the mouth of another person; or to engage in cunnilingus or fellatio; or to continue sexual penetration.</p> <p>Defined in s 319 (Terms used) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)</p>
	Carnal knowledge or carnal connection	<p>The offence, so far as regards that element of it, is complete upon penetration. Penetration includes penetration of the anus of a female or male person.</p> <p>Defined in s 6 (Terms used: carnal knowledge, carnal connection) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)</p>

Note: Some acts described may not be considered penetrative by all jurisdictions

a: Vagina includes any part of a female person’s genitalia and a surgically constructed vagina

b: Genitalia include surgically constructed genitalia

c: Parts of the body of a person include surgically constructed parts of the body of the person

d: Genitalia includes surgically constructed or altered genitalia

e: Object includes an animal

f: Vagina means the internal and external female genitalia and includes a surgically constructed vagina

g: Vagina includes a surgically constructed vagina, whether provided for a male or female

h: Vulva includes a surgically constructed vulva, whether provided for a male or female

i: Vagina includes a surgically constructed or reconstructed vagina

j: Genitalia includes genitalia that have been surgically constructed or reconstructed

k: Penis includes a surgically constructed or reconstructed penis

l: Vagina includes the external genitalia

Overall, legislation in each jurisdiction has definitions including penetration of the genitalia or anus by a penis, and all except Queensland include penetration by a body part or object. All apart from Queensland also include penetration of the mouth by a penis, and most—except for Queensland, Tasmania and Victoria—specifically cover cunnilingus or the introduction of the mouth to female genitalia. Importantly, not all acts described may be considered penetrative by all jurisdictions (eg cunnilingus); and, while Queensland does not include certain acts in the definition of ‘penile intercourse’, such conduct is legislated within subsections of certain offences (eg s 349 (Rape) in the *Criminal Code Act 1899* (Qld)). There is variation in the scope and extent to which gendered language is adopted in these definitions. Some jurisdictions specify penetration of gendered body parts (ie vagina, labia majora or vulva; Cth, NT, Qld, SA, Vic and WA), while some refer more broadly to genitalia.

Similarly, some jurisdictions use gendered language to describe oral penetration. Four jurisdictions specify the introduction of the penis to another person’s mouth (Cth, Tas, Vic, WA). Five jurisdictions specify the introduction of any part of the genitalia to another person’s mouth (NSW) or ‘fellatio’ (ACT, NT, SA, WA), clearly recognising the introduction of the defendant’s mouth to the victim’s male genitalia. Similarly, New South Wales specifies the application of the mouth or tongue to female genitalia, while others use the term ‘cunnilingus’ (Cth, ACT, NT, SA, WA). Western Australia is unique in that it specifies penetration of the urethra. Most jurisdictions refer to the inclusion of surgically constructed body parts (Cth, ACT, NSW, NT, Qld, Tas and Vic), with some specifying surgically constructed vagina (Cth, Qld, NT, Tas), vulva (Qld) or penis (Tas).

Legislation across the Commonwealth and all states and territories criminalises penetrative sexual conduct in the absence of consent (see Table E1, Appendix E). Legislation in most jurisdictions includes standalone offences for penetrative sexual conduct involving an adult, a child or young person, a vulnerable or impaired person or a familial relation. There is no standalone offence for unlawful penetrative sexual conduct involving a person with a mental impairment or another vulnerability in the Australian Capital Territory, although this is specified as an aggravating circumstance (see *Aggravating and other specific circumstances*).

There are no standalone offences for unlawful penetrative sexual conduct of adults in Commonwealth legislation, because this is not within the Commonwealth’s jurisdiction. However, it is covered under offences that pertain to this conduct occurring in particular circumstances which place it within the Commonwealth’s jurisdiction (eg war, crimes against humanity), some of which are discussed further in the next subsection (*Aggravating and other specific circumstances*).

Non-penetrative sexual conduct

A range of other sexually abusive behaviours involving physical contact without penetration have been criminalised in statute by all jurisdictions. While unlawful penetrative sexual conduct is clearly and relatively consistently defined in statute across all jurisdictions, this is less the case for unlawful, non-penetrative sexual conduct (see Table 6). Commonwealth legislation refers to ‘acts of a sexual nature’ and ‘sexual activity’, which are not clearly defined in statute but which refer to a range of non-penetrative contact and non-contact forms of sexual conduct. Similarly, most jurisdictions refer to acts of indecency, indecent assault and/or indecently dealing with another person. What constitutes ‘indecency’ is not statutorily defined, although, in common law, it refers broadly to conduct of a sexual nature involving various forms of non-penetrative physical contact or no physical contact, including sexualised touching or touching of the genitalia and sexual behaviours or gestures in the presence of a victim (Bronitt & McSherry 2017; Kirchengast & Finlay 2022). Acts of indecency can also sometimes have broader applications to conduct of a non-sexual nature, such as the public slaughter of livestock in a metropolitan area (eg Tasmania Department of Justice 2019).

Table 6: Definitions—Non-penetrative contact and non-contact sexual conduct

Jurisdiction	Term used	Definition
Cth	Act of a sexual nature	Used in the <i>Criminal Code Act 1995</i> (Cth) but not defined in statute
	Sexual activity	Sexual intercourse; or any other activity of a sexual or indecent nature (including an indecent assault) that involves the human body, or bodily actions or functions (whether or not that activity involves physical contact between people). Without limiting when a person engages in sexual activity, a person is taken to engage in sexual activity if the person is in the presence of another person (including by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity. Defined in the Dictionary in the <i>Criminal Code Act 1995</i> (Cth)
ACT	Act of indecency	Used in the <i>Crimes Act 1900</i> (ACT) but not defined in statute
	Sexual act	Sexual act means sexual intercourse; or an act of indecency or any other act in circumstances where a reasonable person would consider the act to be sexual; but does not include an act carried out for a proper medical purpose or otherwise authorised by law. The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include whether the area of the body involved in the act is a person’s breasts, genital area or anal area; whether the person carrying out the act does so for the purpose of sexual arousal or sexual gratification; whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual. Defined in s 50C (Meaning of sexual act—pt 3) of the <i>Crimes Act 1900</i> (ACT)

Table 6: Definitions—Non-penetrative contact and non-contact sexual conduct (cont.)

Jurisdiction	Term used	Definition
NSW	Sexual act	<p>An act (other than sexual touching) carried out in circumstances where a reasonable person would consider the act to be sexual. The continuation of a sexual act is also a sexual act.</p> <p>The matters to be taken into account in deciding whether a reasonable person would consider an act to be sexual include—whether the area of the body involved in the act is a person’s genital area, anal area or breasts—whether or not the breasts are sexually developed, and regardless of the person’s gender or sex, or whether the person carrying out the act does so for the purpose of obtaining sexual arousal or sexual gratification, or whether any other aspect of the act (including the circumstances in which it is carried out) makes it sexual. An act carried out solely for proper medical or hygienic purposes is not a sexual act for the purposes of this Division.</p> <p>Defined in s 61HC (Meaning of ‘sexual act’) of the <i>Crimes Act 1900</i> (NSW)</p> <p>It is not relevant whether a part of the body referred to is surgically constructed or not (s 61H <i>Crimes Act 1900</i> (NSW))</p>
	Sexual touching	<p>A person touching another person—with any part of the body or with anything else, or through anything, including anything worn by the person doing the touching or by the person being touched, in circumstances where a reasonable person would consider the touching to be sexual. The continuation of sexual touching is also sexual touching. The matters to be taken into account in deciding whether a reasonable person would consider touching to be sexual include—whether the area of the body touched or doing the touching is the person’s genital area, anal area or breasts—whether or not the breasts are sexually developed, and regardless of the person’s gender or sex, or whether the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification, or whether any other aspect of the touching (including the circumstances in which it is done) makes it sexual. Touching carried out solely for proper medical or hygienic purposes is not sexual touching.</p> <p>Defined in s 61HB (Meaning of ‘sexual touching’) of the <i>Crimes Act 1900</i> (NSW)</p> <p>It is not relevant whether a part of the body referred to is surgically constructed or not (s 61H <i>Crimes Act 1900</i> (NSW))</p>
	Self-manipulation	<p>The penetration of the vagina or anus of any person by an object manipulated by the person, except where the penetration is carried out for proper medical or other proper purposes.</p> <p>Defined in s 80A (Sexual assault by forced self-manipulation) of the <i>Crimes Act 1990</i> (NSW)</p> <p>It is not relevant whether a part of the body referred to is surgically constructed or not (s 61H <i>Crimes Act 1900</i> (NSW))</p>
NT	Act of gross indecency	Used in the <i>Criminal Code Act 1983</i> (NT) but not defined in statute
Qld	Indecent assault	Used in the <i>Criminal Code Act 1899</i> (Qld) but not defined in statute
	Indecently deals with	Used in the <i>Criminal Code Act 1899</i> (Qld) but not defined in statute

Table 6: Definitions—Non-penetrative contact and non-contact sexual conduct (cont.)		
Jurisdiction	Term used	Definition
SA	Sexual manipulation	The manipulation by a person of another person’s genitals or anus (whether or not including sexual intercourse). Defined in s 48A (Compelled sexual manipulation) of the <i>Criminal Law Consolidation Act 1935 (SA)</i>
	Act of gross indecency	Used in the <i>Criminal Law Consolidation Act 1935 (SA)</i> but not defined in statute
	Indecent assault	Used in the <i>Criminal Law Consolidation Act 1935 (SA)</i> but not defined in statute
Tas	Indecent assault	Used in the <i>Criminal Code Act 1924 (Tas)</i> but not defined in statute
	Indecent act	Used in the <i>Criminal Code Act 1924 (Tas)</i> but not defined in statute
Vic	Touching	Touching may be done—with any part of the body; or with anything else; or through anything, including anything worn by the person doing the touching or by the person touched. Touching may be sexual due to— the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female or a person who identifies as a female, the breasts; or the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or any other aspect of the touching, including the circumstances in which it is done. Defined in s 35B (Touching) of the <i>Crimes Act 1958 (Vic)</i>
WA	Indecently dealing with	A reference to a person indecently dealing with a child or an incapable person includes a reference to the person— procuring or permitting the child or incapable person to deal indecently with the person; or procuring the child or incapable person to deal indecently with another person; or committing an indecent act in the presence of the child or incapable person. Defined in s 319 (Terms used) of the <i>Criminal Code Act Compilation Act 1913 (WA)</i>
	Indecent act	An indecent act which is— committed in the presence of or viewed by any person; or photographed, videotaped, or recorded in any manner. Defined in s 319 (Terms used) of the <i>Criminal Code Act Compilation Act 1913 (WA)</i>
	Indecent assault	Used in the <i>Criminal Code Act Compilation Act 1913 (WA)</i> but not defined in statute

Jurisdictions use other terms, including ‘sexual touching’ (NSW and Vic), meaning to touch another person with any body part or an object under circumstances considered to be sexual; ‘sexual act’ (NSW), meaning an act under circumstances a reasonable person would consider to be sexual; and ‘self-manipulation’ (NSW), meaning to force another person to penetrate themselves with an object. Finally, South Australia uses the term ‘sexual manipulation’ to refer to contact with another person’s genitals or anus that may or may not include sexual intercourse.

All jurisdictions have offences about contact and non-contact sexual conduct. These include acts of indecency, gross indecency, sexual touching, indecent or sexual assault and exposing a child or person with an impaired mind to sexual material (Table E2, Appendix E). As with offences about penetrative sexual conduct, discussed above, Commonwealth offences are unique in that they criminalise non-penetrative contact and non-contact sexual conduct only under certain circumstances.

All jurisdictions have specifically criminalised in statute non-penetrative contact and non-contact sexual conduct involving child victims. Further, most jurisdictions have specifically criminalised in statute this conduct involving victims who are children or young people under the care, supervision or authority of the offender. While legislation in Queensland, South Australia and Tasmania does not have standalone offences for non-penetrative contact and non-contact sexual conduct against children or young people under care, supervision or authority, it is treated in statute as an aggravating circumstance to be considered during sentencing (see *Aggravating and other specific circumstances*). Similarly, while several jurisdictions specifically criminalise in statute this conduct involving victims with a mental or cognitive impairment, legislation in the Australian Capital Territory and Tasmania specifies it as an aggravating circumstance to be considered during sentencing. Further, legislation in New South Wales includes standalone offences that apply where the victim is a child or young person under the authority of the offender or has a cognitive impairment, as well as general sexual offences for which these circumstances operate as aggravating circumstances (see *Aggravating and other specific circumstances*). While all states and territories have specifically criminalised in statute penetrative sexual abuse involving a familial relation, only Western Australia has specifically criminalised non-penetrative contact and non-contact sexual conduct involving a lineal relative or de facto child.

Legislation in all jurisdictions except Victoria has specifically criminalised exposing a child to sexual material. While Victoria does not explicitly legislate against exposing a child to materials of a sexual nature, this conduct is included in a broader offence for grooming behaviours in s 49K (Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity) of the *Crimes Act 1958* (Vic). Terminology about how materials are 'shared' is inconsistent across the jurisdictions. Most legislate against showing or exposing a child to sexual materials (NSW, NT, Qld, Tas, WA). Some legislate against sending or delivering materials (Cth, ACT, SA), making materials available (ACT) or exhibiting materials (SA). Queensland and the Northern Territory specify the intentionality or wilfulness of the conduct. New South Wales uniquely legislates against exposing a child to sexual materials when doing so with the intention of making it easier to procure the child for unlawful sexual activity with the defendant or any other person, thus limiting the scope of the offence. Finally, Queensland alone has enacted legislation for exposing a person of impaired mind to indecent materials.

Finally, all jurisdictions have specifically criminalised indecency in public. While this is often legislatively undefined, these offences apply to conduct such as public masturbation and exposure. Further, while all jurisdictions have specifically criminalised observing another person under certain circumstances, just four specify observations that are sexual in nature (ie Peeping Tom offences; ACT, NSW, Qld, Vic). These include observations for sexual gratification or of a sexual/private act or certain body parts.

Persistent or repeated child sexual abuse

In recent years, all jurisdictions have created statutory offences specifically for ongoing patterns of sexual abuse against a child. These offences apply to situations in which victims are subjected to repeated instances of conduct constituting sexual offending by an offender over a period of time. They have been created in acknowledgement of the ongoing sexual abuse children can suffer at the hands of adults who have regular contact with them and the conditions child sexual abusers sometimes construct around their victims to enable this ongoing pattern of abuse (Dallaston & Mathews 2022; Woiwod & Connolly 2017).

Initially, these offences referred to the maintenance of an unlawful or sexual 'relationship' with a child across many jurisdictions. Opposition to use of the term 'relationship', which is taken by many as implying mutuality and romance, has prompted these jurisdictions to gradually amend the names of their offences to some variation of 'persistent' or 'repeated' sexual abuse of a child (or, in the case of SA, simply 'sexual abuse of a child'; Dallaston & Mathews 2022). However, the term 'relationship' has been retained as part of the offence description in many jurisdictions, although its definition emphasises the occurrence of multiple acts of sexual abuse between an adult and a child. Importantly, while multiple incidents of sexual offending are required to prove this offence, the requirement to particularise each of these incidents is relaxed in statute. In other words, it is not necessary for police and prosecutors to establish the date, time, place, circumstances and/or nature of each offence encompassed in an allegation of persistent child sexual abuse in the same level of detail as they would if investigating each incident and charging it as a separate offence.

There are some minor differences across jurisdictions in how these offences are defined in statute (Table 7; see also Table E3, Appendix E). The Commonwealth, the Australian Capital Territory, New South Wales, Queensland and South Australia all specify two or more instances of unlawful sexual conduct, while the Northern Territory, Tasmania and Western Australia define it as comprising three or more instances. Most jurisdictions only specify acts against children under the age of consent for that jurisdiction. However, the Australian Capital Territory's offence description accommodates conduct against both children under the age of consent (16) and those aged 16–17 who were under special care of the offender. Similarly, South Australia accommodates in its offence description conduct against children under the age of consent (17) and those aged 17 who were under the authority of the offender. These include a wide range of caregiving, educational, instructional and mentoring relationships.

There are also differences across jurisdictions in the sexual offences that are specified in legislation as considerable as part of a pattern of ongoing abuse. While offences covering contact and non-contact forms of unlawful sexual conduct are included across all jurisdictions, other forms of conduct are also covered across some, including CSAM production and possession, violence, and procurement or grooming.

Table 7: Definitions—Persistent child sexual abuse

Jurisdiction	Offence	Relevant parts of provision
Cth	Persistent sexual abuse of child outside Australia	<p>(1) A person commits an offence against this section if the person commits an offence (the underlying offence) against one or more of the following provisions in relation to the same person (the child) on 2 or more separate occasions during any period:</p> <p>...</p> <p>s 272.11 (Persistent sexual abuse of a child outside Australia) of the <i>Criminal Code Act 1995</i> (Cth).</p>
ACT	Persistent sexual abuse of child or young person under special care	<p>(1) A person commits an offence if the person—</p> <p>(a) is an adult; and</p> <p>(b) engages in a relationship with a child, or a young person under the special care of the adult, that involves more than 1 sexual act.</p> <p>(2) For subsection (1) (b)—</p> <p>(a) a relationship includes repeated contact, interaction, engagement or association, of a sexual nature or otherwise; and</p> <p>(b) the relationship may have started, or started and ended, before the amendment day; and</p> <p>(c) 1 or more of the sexual acts may have occurred before the amendment day; and</p> <p>(d) a sexual offence that could be charged and proved under section 66B (Course of conduct charge—child sexual offences) can be 1 of the sexual acts.</p> <p>s 56 (Persistent sexual abuse of child or young person under special care) of the <i>Crimes Act 1900</i> (ACT)</p>
NSW	Persistent sexual abuse of a child	<p>(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence.</p> <p>(2) An unlawful sexual relationship is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period.</p> <p>s 66EA (Persistent sexual abuse of a child) of the <i>Crimes Act 1900</i> (NSW)</p>
NT	Sexual relationship with child ^a	<p>(2) Any adult who maintains a relationship of a sexual nature with a child under the age of 16 years is guilty of an offence...</p> <p>(3) A person shall not be convicted of an offence against this section unless it is shown that the offender, as an adult, has, during the period in which it is alleged that he maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child on 3 or more occasions, and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.</p> <p>s 131A (Sexual relationship with a child) of the <i>Criminal Code Act 1983</i> (NT)</p>
Qld	Repeated sexual conduct with a child	<p>(1) Any adult who maintains an unlawful sexual relationship with a child under the age of 16 years commits a crime.</p> <p>(2) An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.</p> <p>s 229B (Repeated sexual conduct with a child) of the <i>Criminal Code Act 1899</i> (Qld)</p>

Table 7: Definitions—Persistent child sexual abuse (cont.)		
Jurisdiction	Offence	Relevant parts of provision
SA	Sexual abuse of a child	(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence. (2) An unlawful sexual relationship is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period. s 50 (Sexual abuse of a child) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
Tas	Persistent sexual abuse of child or young person	(2) A person who maintains a sexual relationship with a young person who is under the age of 17 years, and to whom he or she is not married, is guilty of a crime. (3) An accused person is guilty of having committed an offence under subsection (2) if, during a particular period when the young person was under the age of 17 years— (a) the accused committed an unlawful sexual act in relation to the young person on at least 3 occasions; and (b) the young person was not married to the accused. s 125A (Persistent sexual abuse of child or young person) of the <i>Criminal Code Act 1924</i> (Tas)
Vic	Persistent sexual abuse of a child under the age of 16	(1) A person (A) commits an offence if— (a) A sexually abuses another person (B) on at least 3 occasions during a particular period; and (b) B is a child under the age of 16 years during the whole of that period. s 49J (Persistent sexual abuse of a child under the age of 16) of the <i>Crimes Act 1958</i> (Vic)
WA	Child under 16, persistent sexual conduct with	(2) For the purposes of this section a person persistently engages in sexual conduct with a child if that person does a sexual act in relation to the child on 3 or more occasions each of which is on a different day. s 321A (Child under 16, persistent sexual conduct with) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)

a: At the time of writing, the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (NT) which, among other things, replaces the title of s 131A with ‘Repeated sexual abuse’, had received assent but had yet to commence

Handling of unlawful sexual material

Image-based sexual abuse

IBSA involves the taking and/or distribution of an intimate image without the consent of the person depicted or the threatened taking and distribution of such an image. Legislation in Australia has long criminalised the non-consensual taking of images and other recordings of people which could be considered sexual, intimate or otherwise invasive of their privacy (Powell et al. 2020). These activities are now considered to fall under the rubric of IBSA. There is now widespread acknowledgement of the harm caused when these images are shared without the consent of the person depicted and of the potential for various forms of abuse inherent in this activity. All Australian jurisdictions have statutory definitions of these images (Table 8). While definitions across all jurisdictions cover images depicting a person engaged in a sexual act or images of a person’s breasts, genitals or anal region, there are otherwise noticeable differences in the scope, breadth and detail of these definitions.

Table 8: Definitions—Image-based sexual abuse conduct

Jurisdiction	Term used	Definition
Cth	Private sexual material	Material that: depicts a person who is, or appears to be, 18 years of age or older and who is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); and does so in circumstances that reasonable persons would regard as giving rise to an expectation of privacy; or material the dominant characteristic of which is the depiction of: a sexual organ or the anal region of a person who is, or appears to be, 18 years of age or older; or the breasts of a female person who is, or appears to be, 18 years of age or older; where the depiction is in circumstances that reasonable persons would regard as giving rise to an expectation of privacy. Defined in s 473.1 (Definitions) of the <i>Criminal Code Act 1995</i> (Cth)
	Indecent material	Indecent according to the standards of ordinary people. Defined in s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age) of the <i>Criminal Code Act 1995</i> (Cth)
ACT	Intimate image	A still or moving image of a person, in any form— of the person’s genital or anal region; or for a female or a transgender or intersex person who identifies as a female—of the person’s breasts; or of the person engaged in a private act ^a ; or that depicts the person in a sexual manner or context; and includes an image, in any form, that has been altered to appear to show any of the things mentioned. Defined in s 72A (Definitions—pt 3A) of the <i>Crimes Act 1900</i> (ACT)
NSW	Intimate image	An image ^b of a person’s private parts, ^c or of a person engaged in a private act, ^d in circumstances in which a reasonable person would reasonably expect to be afforded privacy, or an image that has been altered to appear to show a person’s private parts, or a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy. Defined in s 91N (Definitions) of the <i>Crimes Act 1900</i> (NSW)

Table 8: Definitions—Image-based sexual abuse conduct (cont.)		
Jurisdiction	Term used	Definition
NT	Intimate image	<p>An image^e that depicts or has been altered to appear to depict: a person engaged in a sexual act of a kind not ordinarily seen in public; or a person in a manner or context that is sexual; or the genital or anal region of a person, whether bare or covered by underwear; or a breast, whether bare or covered by underwear, of a female person or of a transgender or intersex person who identifies as female.</p> <p>Defined in s 208AA (Definitions) of the <i>Criminal Code Act 1983</i> (NT)</p>
Qld	Intimate image	<p>A moving or still image of a person that depicts— the person engaged in an intimate sexual activity that is not ordinarily done in public; or the person’s genital or anal region, when it is bare or covered only by underwear; or if the person is female or a transgender or intersex person who identifies as female—the person’s bare breasts; and includes an image that has been altered to appear to show any of the things mentioned even if the thing has been digitally obscured, if the person is depicted in a sexual way.</p> <p>Defined in s 207A (Definitions for this chapter) of the <i>Criminal Code Act 1899</i> (Qld)</p>
SA	invasive image	<p>An image^f of a person if it depicts the person in a place other than a public place—engaged in a private act;^f or in a state of undress such that— in the case of a female—the bare breasts are visible; or in any case—the bare genital or anal region is visible. However, an image of a person that falls within the standards of morality, decency and propriety generally accepted by reasonable adults in the community will not be taken to be an invasive image of the person.</p> <p>Defined in s 26A (Interpretation) of the <i>Summary Offences Act 1953</i> (SA)</p>
	Indecent filming	<p>Filming of— another person in a state of undress in circumstances in which a reasonable person would expect to be afforded privacy; or another person engaged in a private act^g in circumstances in which a reasonable person would expect to be afforded privacy; or another person’s private region^h in circumstances in which a reasonable person would not expect that the person’s private region might be filmed.</p> <p>Defined in s 26A (Interpretation) of the <i>Summary Offences Act 1953</i> (SA)</p>
Tas	Prohibited visual recording	<p>A visual recording of another person in a private place or engaging in a private act made in circumstances where a reasonable adult would expect to be afforded privacy; or a visual recording of the person’s genital or anal region, when it is covered only by underwear or bare, made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.</p> <p>Defined in s 13B (Publishing or distributing prohibited visual recording) of the <i>Police Offences Act 1935</i> (Tas)</p>
Vic	Intimate image	<p>An image depicting— a person engaged in a sexual activity; or a person in a manner or context that is sexual; or the genital or anal region of a person (whether bare or covered by underwear); or if a person is female, or a transgender or intersex person identifying as female, the breasts of the person.</p> <p>Defined in s 530 (Definitions) of the <i>Crimes Act 1958</i> (Vic)</p>

Table 8: Definitions—Image-based sexual abuse conduct (cont.)

Jurisdiction	Term used	Definition
WA	Intimate image	A still or moving image of a person, in any form, that shows, in circumstances in which the person would reasonably expect to be afforded privacy— the person’s genital area or anal area, whether bare or covered by underwear; or in the case of a female person, or transgender or intersex person identifying as female, the breasts of the person, whether bare or covered by underwear; or the person engaged in a private act; ⁱ and includes an image, in any form, that has been created or altered to appear to show any of the things mentioned. Defined in s 221BA (Terms used) of the <i>Criminal Code Act Compilation Act 1913 (WA)</i>
	Indecently record	To take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, video tape, or other recording (including a sound recording). Defined in s 319 (Terms used) of the <i>Criminal Code Act Compilation Act 1913 (WA)</i>

a: Engaged in a private act means— (a) in a state of undress; or (b) using the toilet, showering or bathing; or (c) engaged in an act of a sexual nature of a kind not ordinarily done in public

b: Image means a still or moving image, whether or not altered

c: Private parts means— (a) a person’s genital area or anal area, whether bare or covered by underwear, or (b) the breasts of a female person, or transgender or intersex person identifying as female, whether or not the breasts are sexually developed

d: A person is engaged in a private act if— (a) the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity, and (b) the circumstances are such that a reasonable person would reasonably expect to be afforded privacy

e: Image means a moving or still image in any form

f: Image means a moving or still image, and includes an image that has been altered by digital or other means

g: Private act means— (a) a sexual act of a kind not ordinarily done in public; or (ab) an act carried out in a sexual manner or context; or (b) using a toilet

h: Private region of a person means the person’s genital or anal region, or in the case of a female, the breast, when covered by underwear or bare

i: Engaged in a private act means— (a) in a state of undress; or (b) using the toilet, showering or bathing; or (c) engaged in a sexual act

Most jurisdictions use the term ‘intimate image’ (ACT, NSW, NT, Qld, Vic, WA), while others use the terms ‘private sexual material’, ‘indecent material’ (Cth), ‘invasive image’, ‘indecent filming’ (SA), ‘prohibited visual recording’ (Tas) and ‘indecently record’ (WA). Definitions in most jurisdictions specify that an image of a person’s anal or genital region may be bare or covered in some amount of clothing (NSW, NT, Qld, Tas, WA); in South Australia, images are considered invasive only where the anal or genital regions are bare. Most jurisdictions also refer to breasts and specifically include the breasts of a transgender or intersex person who identifies as female (ACT, NSW, NT, Qld, Vic, WA), while Tasmania does not refer to breasts at all.

Context also figures in these definitions, although differently and to different degrees. Some jurisdictions refer to images taken in circumstances where a reasonable person would expect privacy (Cth, NSW, SA, Tas, WA), and South Australia's definition only applies to images of a person in a place other than a public place. The Australian Capital Territory and Northern Territory specify images of a person in a manner or context that is sexual. The Australian Capital Territory also specifically includes images of a person in a state of undress or using the toilet, showering or bathing, as do New South Wales and Western Australia. Most jurisdictions refer to images that have been altered in any way to depict the conduct described (ACT, NSW, NT, Qld, SA, WA). Uniquely, the Commonwealth's definition only applies to materials featuring persons aged 18 or older, with materials featuring persons under 18 considered separately as child abuse material (discussed later).

Offences relating to IBSA include possessing, capturing, distributing or threatening to capture or distribute intimate images (Table E4, Appendix E). Tasmania is the only jurisdiction to have criminalised possessing a prohibited visual recording in statute. All state and territories except the Northern Territory have specifically criminalised the capturing of material of an intimate nature in statute, although offences differ considerably across the jurisdictions. Most criminalise in statute the visual capture of another person engaging in a sexual act (NSW, Qld, SA) or another person's genitals or anal region (ACT, NSW, Qld, SA, Vic) or a female person's breasts (ACT, NSW, SA). Legislation in the Australian Capital Territory, Queensland, South Australia, and Tasmania specifically criminalises filming a person in circumstances where it is an invasion of privacy or where a reasonable person would expect to be afforded privacy. New South Wales legislation also includes offences of filming a person engaged in a private act, or a person's private parts, for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, and Western Australia and Queensland alone legislate against indecently recording or photographing a person with an impaired mind. Differences may be due to the introduction of certain offences to legislation before recognition and consistent understanding of IBSA as an issue.

Legislation relating to the distribution of intimate images is more consistent, probably because of the recent emergence of IBSA as a recognised issue and the subsequent introduction of legislation. Every state and territory has criminalised in statute the distribution of intimate images. Offences in New South Wales, the Northern Territory and Victoria specify intentional distribution. Queensland specifies distribution done in a way that would cause the other person distress reasonably arising in all the circumstances, regardless of whether there was intent to cause distress or distress was actually caused. Additionally, most states and territories have specifically criminalised in statute threats to capture (ACT, NSW) and/or distribute (ACT, NSW, NT, Qld, Vic, SA) intimate images. Legislation in five jurisdictions requires the defendant to intend for the threat to arouse fear (ACT, NSW, NT, SA) or distress (Qld) or be reckless as to causing fear (ACT, SA). Only Queensland and Victoria have specifically criminalised threats made to a person to distribute intimate images of a third person.

Researchers and advocates have noted the rapid emergence of abuse through the creation and distribution of AI generated and other manufactured or digitally altered materials (Flynn et al 2022). Commonly referred to as ‘deepfakes’, these materials include images or videos that have been fabricated to depict individuals engaging in sexual or intimate behaviours. It is worth noting that, while none of the legislative definitions provided above specifically mentions the new technologies that have precipitated the recent spike in this form of image-based abuse, most incorporate some mention of altered images. Further, all definitions are worded to not specifically exclude manufactured or altered material or to limit applicability to ‘genuine’ material.

Child sexual abuse material

Legislation across all jurisdictions specifically criminalises conduct about material that sexually depicts children—CSAM. Statutory definitions in four jurisdictions use the term ‘child abuse material’ (Cth, NSW, NT, Vic), and five use the term ‘child exploitation material’ (ACT, Qld, SA, Tas, WA; Table 9). Definitions across all jurisdictions specify certain materials that depict, describe or represent a child or—apart from the Australian Capital Territory—a person who appears to be a child. The definition of a child with reference to representation in sexual material differs across jurisdictions. Four specify a child under 16 (ACT, NSW, Qld, WA); four specify a child under 18 (Cth, NT, Tas, Vic); and South Australia specifies a child under 17.

Table 9: Definitions—Child sexual abuse material

Jurisdiction	Term used	Definition
Cth	Child abuse material	<p>Material^a that depicts a person, or a representation of a person, who: is, or appears to be, under 18 years of age; and is, or appears to be, a victim of torture, cruelty or physical abuse; or</p> <p>Material that describes a person who: is, or is implied to be, under 18 years of age; and is, or is implied to be, a victim of torture, cruelty or physical abuse; or</p> <p>Material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who: is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity; or</p> <p>Material the dominant characteristic of which is the depiction, for a sexual purpose, of: a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or a representation of such a sexual organ or anal region; or the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age; or</p> <p>Material that describes a person who is, or is implied to be, under 18 years of age and who: is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity; or</p> <p>Material that describes: a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or the breasts of a female person who is, or is implied to be, under 18 years of age; or</p> <p>Material that is a doll or other object that resembles: a person who is, or appears to be, under 18 years of age; or a part of the body of such a person; if a reasonable person would consider it likely that the material is intended to be used by a person to simulate sexual intercourse.</p> <p>Defined in s 473.1 (Definitions) of the <i>Criminal Code Act 1995</i> (Cth)</p>
ACT	Child exploitation material	<p>Anything that represents^b— the sexual parts of a child; or 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; substantially for the sexual arousal or sexual gratification of someone other than the child.</p> <p>Defined in s 64 (Using child for production of child exploitation material etc) of the <i>Crimes Act 1900</i> (ACT)</p>

Table 9: Definitions—Child sexual abuse material (cont.)

Jurisdiction	Term used	Definition
NSW	Child abuse material	<p>Material^c that depicts or describes, in a way that reasonable persons would regard as being, in all the circumstances, offensive—a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty or physical abuse, or a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of other persons), or 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^d of a person who is, appears to be or is implied to be, a child.</p> <p>The matters to be taken into account in deciding whether reasonable persons would regard particular material as being, in all the circumstances, offensive include the standards of morality, decency and propriety generally accepted by reasonable adults, the literary, artistic or educational merit (if any) of the material, the journalistic merit (if any) of the material, being the merit of the material as a record or report of a matter of public interest, and the general character of the material (including whether it is of a medical, legal or scientific character).</p> <p>Defined in s 91FB (Child abuse material—meaning) of the <i>Crimes Act 1900</i> (NSW)</p>
NT	Child abuse material	<p>Material that depicts, describes or represents, in a manner that is likely to cause offence to a reasonable adult, a person who is a child or who appears to be a child: engaging in sexual activity; in a sexual, offensive or demeaning context; or being subjected to torture, cruelty or abuse.</p> <p>Defined in s 125A (Interpretation) of the <i>Criminal Code Act 1983</i> (NT)</p>
Qld	Child exploitation material	<p>Material^e that, in a way likely to cause offence to a reasonable adult, describes or depicts a person, or a representation of a person, who is, or apparently is, a child under 16 years— in a sexual context, including for example, engaging in a sexual activity; or in an offensive or demeaning context; or being subjected to abuse, cruelty or torture.</p> <p>Defined in s 207A (Definitions for this chapter) of the <i>Criminal Code Act 1899</i> (Qld)</p>
	Child abuse object	<p>A doll, robot or other object if—a reasonable adult would consider—the doll, robot or other object is a representation or portrayal of a person, or part of a person, who is a child under 16 years; or the predominant impression conveyed by the doll, robot or other object is that it is a representation or portrayal of a person, or part of a person, who is a child under 16 years, irrespective of whether it has adult characteristics; and the doll, robot or other object has been used, or a reasonable adult would consider it is intended for use, in an indecent or sexual context including, for example, engaging in a sexual activity.</p> <p>Defined in s 207A (Definitions for this chapter) of the <i>Criminal Code Act 1899</i> (Qld)</p>

Table 9: Definitions—Child sexual abuse material (cont.)

Jurisdiction	Term used	Definition
SA	Child exploitation material	Material ^f that— describes or depicts a child under, or apparently under, the age of 17 years engaging in sexual activity; or consists of, or contains, the image or representation of (or what appears to be the image or representation of) a child under, or apparently under, the age of 17 years, or the bodily parts of such a child, or in the production of which such a child has been or appears to have been involved; or consists of, or contains, the image or representation of (or what appears to be the image or representation of) a child-like sex doll, or part of a child-like sex doll; and that is of a pornographic nature; ^g or that is a child-like sex doll. Defined in s 62 (Interpretation) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
Tas	Child exploitation material	Material ^h 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). Defined in s 1A (Definitions for purposes of sections 130, 130A, 130B, 130C, 130D, 130E, 130F, 130G and 337C) of the <i>Criminal Code Act 1924</i> (Tas)
Vic	Child abuse material	Material ⁱ that— depicts or describes a person who is, or who appears or is implied to be, a child— as a victim of torture, cruelty or physical abuse (whether or not the torture, cruelty or abuse is sexual); or as a victim of sexual abuse; or engaged in, or apparently engaging in, a sexual pose or sexual activity (whether or not in the presence of another person); or in the presence of another person who is engaged in, or apparently engaged in, a sexual pose or sexual activity; or the genital or anal region of a person who is, or who appears or is implied to be, a child; or the breast area of a person who is, or who appears or is implied to be, a female child; and reasonable persons would regard as being, in the circumstances, offensive. Defined in s 51A (Definitions) of the <i>Crimes Act 1958</i> (Vic)
WA	Child exploitation material	Child pornography; or material ^j 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— in an offensive or demeaning context; or being subjected to abuse, cruelty or torture (whether or not in a sexual context). Defined in s 217A (Terms used) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)
	Child pornography	Material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child— engaging in sexual activity; or in a sexual context. Defined in s 217A (Terms used) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)

- a: Material includes material in any form, or combination of forms, capable of constituting a communication
- b: Represent means depict or otherwise represent on or in a film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else
- c: Material includes any film, printed matter, data or any other thing of any kind (including any computer image or other depiction)
- d: Private parts of a person are a person's genital area or anal area, whether bare or covered by underwear, or the breasts of a female person, or transgender or intersex person identifying as female, whether or not the breasts are sexually developed
- e: Material includes anything that contains data from which text, images or sound can be generated
- f: Material includes— (a) any written or printed material; or (b) any picture, painting or drawing; or (c) any carving, sculpture, doll, statue or figure; or (d) any photographic, electronic or other information or data from which an image or representation may be produced or reproduced; or (e) any film, tape, disc, or other object or system containing any such information or data
- g: Pornographic nature— material is of a pornographic nature for the purposes of this Division if the material is intended or apparently intended— (a) to excite or gratify sexual interest; or (b) to excite or gratify a sadistic or other perverted interest in violence or cruelty
- h: Material includes any film, printed matter, electronic data and any other thing of any kind (including any computer image or other depiction)
- i: Material means— (a) any film, audio, photograph, printed matter, image, computer game or text; or (b) any electronic material; or (c) any other thing of any kind. An image may be still, moving, recorded or unrecorded
- j: Material includes— (a) any object, picture, film, written or printed matter, data or other thing; and (b) anything from which text, pictures, sound or data can be produced or reproduced, with or without the aid of anything else

Across jurisdictions, the behaviour or conduct depicted within material that is considered CSAM differs (see Table 10). Notably, all jurisdictions include within statutory definitions material that describes, depicts or represents a child engaged in sexual activity. Most, apart from Queensland, Tasmania and Western Australia, refer to specific body parts of a child. The Commonwealth, the Australian Capital Territory, New South Wales and Western Australia specify materials depicting a person engaged in sexual activity or a sexual pose in the presence of a child. Most jurisdictions, apart from the Australian Capital Territory and South Australia, include a child being subjected to abuse, torture or cruelty within their definition. Statutory definitions in most jurisdictions additionally require that reasonable persons would, in all circumstances, regard the material as offensive (Cth, NSW, NT, Qld, Tas, Vic). Finally, three jurisdictions specify a doll or object that resembles a child or part of a child that is used to simulate sexual intercourse (Cth), in an indecent or sexual context (Qld) or to excite or gratify sexual interest (SA).

Table 10: Summary table for child sexual abuse material definition, by jurisdiction

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Conduct depicted, described or represented									
A child engaged in sexual activity	✓	✓	✓	✓	✓	✓	✓	✓	✓
A child in a sexual pose	✓		✓					✓	
A person engaged in sexual activity or a sexual pose in the presence of a child	✓	✓	✓						✓
A child in a sexual context				✓	✓		✓		✓
A child as the victim of sexual abuse								✓	
A child’s sexual organ, sexual parts, private parts, breasts of a female child, or bodily parts	✓	✓	✓	✓		✓		✓	
A child being subjected to abuse, torture or cruelty, whether sexual or not	✓		✓	✓	✓		✓	✓	✓
Additional requirement that a reasonable person would regard the material as offensive	✓		✓	✓	✓		✓	✓	
A doll or object that resembles a child or part of a child in an indecent or sexual context, or that is used to simulate sexual intercourse or to excite or gratify sexual interest	✓				✓	✓			

✓ = Some level of coverage of the conduct in legislation

Every Australian jurisdiction has specifically criminalised in statute the possession, distribution and production of CSAM (see Table E5, Appendix E). Legislation for accessing child abuse material is less widespread, with just four jurisdictions having such legislation in place (Cth, SA, Tas, Vic). South Australia, Tasmania and Victoria criminalise accessing CSAM, when a person has the intention to access such materials (ie not by mistake). South Australia further criminalises taking a step toward accessing CSAM. The other states and territories rely on the Commonwealth legislation to criminalise accessing CSAM.

Offences regarding the possession of child abuse and child exploitation material are quite consistent across all jurisdictions. Interestingly, only the Commonwealth, Queensland and South Australia have specifically criminalised the possession of a child-like sex doll or child abuse object. Criminalisation of the distribution and production of CSAM is similarly consistent across jurisdictions. Legislation in Queensland and South Australia also specifically criminalises the production of a sexual abuse object or child-like sex doll; despite criminalising the possession of such items in statute, the Commonwealth does not criminalise their production.

Conduct enabling unlawful sexual conduct

Violence and coercion

For the purposes of this review, ‘violence and coercion’ means making another person do something against their will by physical force, the infliction of harm or intimidation. Such activities figure consistently in legislative conceptualisations of consent across Australia, particularly as a circumstance under which consent cannot be taken to have been given (see *Consent*). Examined here are offences that criminalise violence and coercion specifically with the intent of engaging in unlawful sexual conduct of some kind. Terminology differs notably across jurisdictions; in essence, however, legislation typically frames descriptions of this activity in terms of the pain or bodily harm caused to the victim or threats or intimations of an ability or willingness to cause such pain or harm (except for abduction, kidnapping and detainment, discussed below). Legislation in most jurisdictions includes such offences (ACT, NSW, Qld, SA, Tas, Vic and WA; Table E6, Appendix E). Legislation in the Australian Capital Territory, New South Wales and Victoria also includes offences involving threats to harm or harming a third person with the intent of engaging in unlawful sexual conduct with a victim, while New South Wales alone specifically criminalises in statute assault with the intent of engaging in sexual intercourse with a child.

All states and territories except for New South Wales and Western Australia specifically criminalise in statute the abduction, kidnapping or detainment of a victim with the intention of engaging in unlawful sexual conduct. The Northern Territory, Queensland and Victoria specifically criminalise the abduction, kidnapping or detainment of a child victim with the intention of engaging in unlawful sexual conduct or allowing another person to engage in unlawful sexual conduct with them. Interestingly, offences in the Northern Territory and South Australia contain gendered language, referring to ‘he’ and ‘she’ in reference to the defendant and victim respectively; however, legislation exists to broaden the interpretation of these sections to any gender or sex (ie *Interpretation Act 1978* (NT) and *Interpretation Act 2021* (SA)). Finally, legislation in all states and territories specifically criminalises coercion in some form as a means to inducing someone to provide, or continue providing, sexual services.

Deception and fraud

Most states and territories, other than the Australian Capital Territory, New South Wales and the Northern Territory, have statutory offences for the use of deception and fraud with the specific intent of engaging in unlawful sexual conduct (Table E7, Appendix E). These offences, broadly, refer to unlawful sexual conduct committed against victims who were procured through false pretence, false or misleading representation or fraudulent means, with specific terminology depending on the jurisdiction. In Western Australia, the offence in s 192 (Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug) of the *Criminal Code Act Compilation Act 1913* (WA) uses gendered language to describe such conduct, referring to the procurement of a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man. In a later subsection, the same conduct done to a man or boy is also specified. Finally, legislation in Queensland uniquely criminalises conspiring with another person to permit unlawful penile intercourse through false pretence or fraudulent means.

All jurisdictions except for the Commonwealth specify an offence for the deceptive recruitment of victims into delivering sexual services. These offences differ somewhat across jurisdictions. The Australian Capital Territory, New South Wales, the Northern Territory, South Australia, Victoria and Western Australia all similarly specify that it is unlawful for a person who has the intention of inducing someone to enter into an engagement to provide sexual services to use fraud, to deceive that person or to fail to disclose the fact that the engagement will involve the provision of sexual services. In South Australia and Western Australia, these offences are limited to instances where the victim's continuation or advancement in employment or engagement is dependent on their preparedness to provide sexual services. The Northern Territory, Queensland and Tasmania include an offence for using false representations or fraudulent means to make another person continue to provide sexual services.

Finally, just two jurisdictions (ACT and NT) criminalise deception regarding sexual health status, specifically within the context of sex work. These offences criminalise telling someone about undergoing a medical test or examination or (in ACT) telling someone about the results of a medical test or examination, to make them believe that they—or the other person (NT)—are not infected with a sexually transmissible infection.

Use of substances

Offences criminalising the coercive or deceptive administration of intoxicating substances are common across Australia. Examined here are offences about the use of substances in this way to render a victim incapacitated to allow the offender to engage in unlawful sexual conduct against them (Table E8, Appendix E). Legislation in New South Wales, Victoria and Western Australia includes specific offences for the administration of substances to an adult or child to procure a sexual act against them. Importantly, while not all jurisdictions have enacted legislation for the unlawful use of substances with intent to enable sexual activity, use of substances is often included in sections regarding consent or as an aggravating circumstance. Additionally, sex work legislation in the Australian Capital Territory, New South Wales, the Northern Territory and Tasmania criminalises the use of substances specifically to induce or procure a victim to provide sexual services.

Procuring, grooming and encouragement

The enabling conduct reviewed thus far involves coercing, tricking or incapacitating victims with the intent of engaging in unlawful sexual conduct against them. The offences examined here pertain principally to conduct that involves enticing or persuading a victim into such activity (Table E9, Appendix E). Because of the nature of this conduct, the offences reviewed here relate mostly to victims who are children or young people. 'Procure', in criminal law, broadly refers to efforts made and steps taken to produce or bring about something (*Encyclopaedic Australian Legal Dictionary*). This can include the use of force, deception and many other methods; indeed, many procurement offences about unlawful sexual conduct specify the method by which an offender has sought to produce or bring about that conduct (eg procure by coercion, threats, fraud etc). This subsection has discussed these. Examined here are offences about the procurement, by unspecified means, of unlawful sexual conduct, along with offences that specifically mention grooming, encouragement and like terms. Where the offence relates to a child victim, 'procurement' is most often taken as meaning some form of enticement, persuasion or encouragement, unless otherwise specified.

Legislation in seven jurisdictions has criminalised this conduct. Most specify communicating or engaging in conduct with a child (Cth, ACT, NSW, Qld, SA, Tas, Vic) and/or another person (Cth, ACT, NSW, Qld, Tas, Vic) to engage in unlawful sexual conduct with that child. While Commonwealth and Tasmanian legislation broadly criminalises engagement with any third person, legislation in the Australian Capital Territory, New South Wales, Queensland and Victoria more narrowly specifies a person who has some sort of a relationship with the child. Engagement with a third person is not further defined except in New South Wales, where it is specified that engagement must involve the provision of financial or other material benefit by the offender to the third person. Legislation in New South Wales also specifically criminalises exposure of a child to indecent material with the intention of grooming the child for unlawful sexual conduct.

All jurisdictions except the Australian Capital Territory and Victoria legislate against procuring a child to engage in unlawful sexual conduct. The conduct referred to by each jurisdiction differs. It includes sexual activity (NSW, SA); sexual activity outside Australia (Cth); penetrative sexual conduct (NT, Qld, Tas); an indecent act (NT, Tas); or sexual behaviour (WA). New South Wales uniquely legislates against travelling to procure a child for sexual activity, and the Northern Territory alone legislates against attempts to procure a child for unlawful sexual conduct. The Commonwealth additionally legislates against the use of the postal service or a carriage service to procure a child for sexual activity.

Seven jurisdictions have legislation in place addressing unlawfully enabling the production of CSAM by involving a child. Four jurisdictions explicitly legislate against procurement in this context (ACT, NSW, NT, WA). Other activities include using (ACT, NSW, NT), offering (ACT, NT, WA), causing (NSW, WA), inviting (Vic, WA), encouraging (Vic) or involving in any way (Qld, Tas) a child in the production of child abuse material. The Northern Territory specifies the involvement of a child or a person who appears to be a child.

Legislation in Queensland criminalises the procurement of a person without their consent for an act of gross indecency or to witness an act of gross indecency. No other jurisdictions legislate against procurement of an adult for sexual conduct. Similarly, few jurisdictions legislate against procuring a person of impaired mind with the intent to commit a sexual offence against them (ie an indecent act or penile intercourse—Queensland; engage in sexual behaviour—WA).

Finally, legislation in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Western Australia criminalises the procurement of a person for prostitution. In Queensland and Western Australia, this includes procuring a person to leave or (in Qld) enter the state or to leave their home to participate in prostitution. New South Wales legislates against procuring someone who is not a prostitute for prostitution or procuring prostitution through certain means (eg fraud, violence, drugs). Legislation in the Australian Capital Territory and Tasmania specifically prohibits the procurement of children for commercial sexual services. Legislation in Western Australia retains some gendered language in relation to this offence, referring to a woman or girl ‘of known immoral character’ becoming ‘an inmate of a brothel’.

Incitement

Legislation in most jurisdictions includes offences for inciting (ie making or encouraging) someone to commit an offence. Examined here are incitement offences that involve offenders encouraging or compelling (through whatever means) another person to commit a sexual offence specifically. Several sexual offences in Victoria and New South Wales include inciting another person to engage in the relevant unlawful sexual conduct (Table E10, Appendix E). Legislation in Victoria also specifies incitement using threats, fraud and intoxicating substances. Incitement of a person to engage in unlawful sexual conduct with a child specifically is criminalised in statute in Western Australia.

Four jurisdictions have criminalised the encouragement of another person to use a website that contains CSAM. Legislation in New South Wales, South Australia and Victoria criminalises the encouragement of another person to use a website or platform with the intention that it be used to deal with CSAM. Legislation in Queensland more broadly criminalises someone encouraging another person to use or advertise a website that they know is used to distribute CSAM.

Facilitation

For the purposes of this review, facilitation includes any conduct that aids or enables another person to commit a sexual offence or to avoid apprehension for a sexual offence. This is a diverse category of conduct; it broadly includes the facilitation of: child sexual abuse; the production, distribution and administration of CSAM; and the avoidance of detection for engagement with CSAM (Table E11, Appendix E).

Legislation in four jurisdictions specifically criminalises facilitating unlawful sexual conduct with a child. This includes taking action that results or appears to result in child sexual abuse (NSW), doing anything to enable or aid another person in child sexual abuse (WA), taking or detaining a child for the purpose of another person engaging in sexual activity with them (Qld), causing a sexual performance from a child where someone receives payment, reward or other benefit, and facilitating engagement in sexual activity by another person with a child or in the presence of a child (Vic). Legislation in five jurisdictions (NSW, Qld, SA, Tas and WA) specifically criminalises allowing one's premises to be used for unlawful sexual conduct involving a child. It covers owners, occupiers or those who have a role in the management or control of the premises. In New South Wales, this only applies to child prostitution occurring in the premises.

Legislation in all jurisdictions except South Australia criminalises facilitating the production or distribution of CSAM. Conduct specified within these offences as constituting facilitation differs across these jurisdictions, with some offering no further definition (ie Cth, Tas) for facilitation of CSAM. Other jurisdictions legislate against providing a child for use in the production of CSAM (ACT, NSW, NT, Qld, Tas, Vic, WA). The Northern Territory specifies the involvement of a child or a person who appears to be a child.

Legislation in five jurisdictions specifically criminalises the administration of a website depicting or distributing CSAM (Cth, NSW, Qld, SA, Vic). This includes designing, creating, building, developing, maintaining, managing, controlling, moderating, regulating, promoting or providing a device to host a website or digital platform that is used to depict or distribute CSAM. However, specific conduct relating to the administration of such a platform differs across jurisdictions. Legislation in four jurisdictions also specifically criminalises the provision of information to aid a person to avoid detection, apprehension or prosecution for CSAM offences (NSW, Qld, SA & Vic).

Finally, legislation in New South Wales specifically criminalises the facilitation of a person unlawfully observing or filming a third person's private parts engaging in a sexual act by installing a device or constructing or adapting the fabric of a building.

Trafficking in persons, sexual servitude and causing a child to perform sexual service

Trafficking in persons is criminalised under Commonwealth law. Commonwealth trafficking in persons offences broadly covers organising or facilitating the entry, proposed entry or receipt to Australia, the exit or proposed exit from Australia or the transportation from one place in Australia to another of a person or a child (under the age of 18; Table E12, Appendix E). These offences apply where coercion, threats or deception have been used or where there is a substantial risk of exploitation. This could include deceiving victims about their involvement in the provision of sexual services or the nature and extent of these services; their exploitation for sexual services; or the confiscation of travel or identity documents.

Commonwealth legislation and that of most states and territories also specifically criminalises sexual servitude, which broadly refers to a condition where a person who provides sexual services is not free to stop or to leave the place where they provide sexual services because of force or threats. Victorian legislation elaborates on the conditions under which commercial sexual services are considered sexual servitude, including detainment, fraud and manifestly excessive debt. This conduct is specifically criminalised in statute in the Australian Capital Territory, New South Wales, the Northern Territory, South Australia, Victoria and Western Australia. Conducting a business that involves sexual servitude is also specifically criminalised in statute in the Australian Capital Territory, New South Wales, the Northern Territory, Victoria and Western Australia.

Finally, all state and territories have specifically criminalised in statute child commercial sexual services (ACT, SA, Tas), child sex work (NT, Vic) or child prostitution (NSW, Qld, WA). Offences are quite consistent and broad regarding the conduct covered, including causing (ACT, NSW, SA, Vic, WA), permitting (ACT, SA, Tas, WA), offering (ACT), procuring (ACT, Tas), inducing (NSW, Vic, WA), engaging (SA), employing (SA) or engaging in conduct (NT) that results in a child providing commercial sexual services. Two jurisdictions also legislate against entering into, or offering to enter into, an agreement where a child would provide sexual services (NT, Vic). Finally, Queensland, New South Wales and Victoria alone explicitly legislate against obtaining a sexual service from a child. Queensland does not legislate against other forms of conduct that result in child sexual services.

Failing to report or protect children from unlawful sexual conduct

One of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017) was that jurisdictions introduce criminal offences for failing to report child sexual abuse and failing to protect children from sexual abuse. This was recommended to protect children from abuse by bolstering reporting of institutional child sexual abuse to police—and preventing its occurrence in the first place.

Failure to report

All jurisdictions have criminalised failing to report child sexual abuse (Table E13, Appendix E). Such legislation is enacted within criminal statutes except in the Northern Territory and Western Australia. Legislation specifies failing to report information of a past (Cth, ACT, NSW, NT, Qld, SA, Tas, Vic, WA), current (Qld) or suspected future (Cth, SA, NT, WA) sexual offence against a child as soon as practicable. Most offences apply broadly to any adult with information about a child who has been sexually abused; however, the Commonwealth specifies information about a child under the care or supervision of a Commonwealth officer (the defendant). In South Australia, the offence applies to an employee of an institution or provider of out-of-home care. In Western Australia, the offence applies to specified individuals (eg doctors, nurses, police officers). Legislation in the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania and Victoria explicitly states that religious confession privilege does not negate the obligation to report.

Within broader legislation, all jurisdictions outline mandatory reporting obligations that require certain people, institutions and their representatives to report suspected cases of child abuse and neglect to government authorities (see Australian Institute of Family Studies 2020 for review). All require these individuals to report suspected child sexual abuse. However, there are significant differences across jurisdictions about who has to report and whom the report must be made to. The Australian Capital Territory, New South Wales, South Australia and Tasmania provide the most comprehensive list of mandatory reporters; in the Northern Territory, it applies to all adults.

Failure to protect

All jurisdictions apart from the Northern Territory have criminalised failing to protect children from child sexual abuse (Table E14, Appendix E); however, Western Australia has not enacted specific provisions within criminal statute, unlike the other jurisdictions. It is generally unlawful for a person who is in a position of authority within an organisation, or who is a Commonwealth officer, and who is aware of a risk to a child and has the power or responsibility to act, to be negligent or to not act to reduce or remove that risk. Importantly, while the Royal Commission into Institutional Responses to Child Sexual Abuse (2017) recommended that offences should protect children up to 18 years of age, offences in Victoria and the Australian Capital Territory cover children under 16 years of age.

While Western Australia has not enshrined the obligation to protect children from sexual abuse in their Criminal Code, failing to protect a child at risk of sexual abuse is covered in the *Children and Community Services Act 2004 (WA)*, stipulating that any adult who suspects child sexual abuse (current, past or future) has a responsibility to take steps to prevent the occurrence or further occurrence. Western Australia legislates that a person who has the care or control of a child and who engages in conduct that may result in the child suffering sexual abuse is guilty of a crime.

Summary—conduct

Australian legislation covers a broad range of unlawful conduct that is sexual in nature. This review has revealed many similarities, and a few key differences, across jurisdictions in terms of the coverage of this conduct in legislation (summarised in Table 11). Not surprisingly, all jurisdictions have criminalised, in statute:

- penetrative sexual conduct involving adults and children;
- non-penetrative sexual conduct involving adults and children;
- persistent or repeated child sexual abuse;
- distributing intimate material without consent;
- producing, distributing and possessing CSAM; and
- failing to report child sexual abuse.

There is also consistency across jurisdictions on several other types of sexual conduct—except the Commonwealth, because certain offences fall outside their remit. Specifically, all states and territories have criminalised in statute:

- penetrative sexual conduct involving a familial relation;
- indecency in public or indecent exposure;
- violence and coercion to enable sexual services;
- deceptive recruitment for sexual services; and
- causing a child to perform sexual services.

Certain definitions are also consistent across jurisdictions. For example, penetrative sexual conduct in each jurisdiction includes, broadly, penetration of the genitalia or anus by a penis, body part or object. Further, for intimate images in the context of IBSA-related offences, all jurisdictions cover images depicting a person engaged in a sexual act or images of a person's breasts, genitals or anal region. There are, however, some differences in the scope, breadth and detail of these definitions, and some jurisdictions have more comprehensive definitions than others. Importantly, some terms, most notably those about unlawful non-penetrative contact and non-contact sexual conduct, remain undefined or poorly defined in the legislation of many jurisdictions.

There are, however, differences in the scope and language used to describe offences. Further, there is greater inconsistency across jurisdictions in the nature and extent of criminalisation in statute of several forms of conduct that enable unlawful sexual conduct. Some key differences were also observed within broader categories of unlawful conduct. For example, while all jurisdictions include legislation covering who must report child sexual abuse and under what conditions, and what reasonable steps certain individuals must take to protect a child from sexual abuse, some jurisdictions lack certain provisions that were recommended by the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse. Notably, the Northern Territory has no statutory offence for failing to protect children from sexual abuse, and the Australian Capital Territory and Victoria do not specify protection of children under 18 years—as other jurisdictions do—but rather, under 16 years.

Further, while all jurisdictions have an offence for the unlawful distribution of intimate images, only some have an offence for threatening to distribute intimate images, which is an important component of IBSA. There are also apparent gaps in legislation for offences about activities that enable unlawful sexual conduct; however, in some jurisdictions, these activities are included as an aggravating factor for a sexual offence rather than a standalone offence.

Table 11: Summary table for sexual conduct offences in Australian legislation									
	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative and non-penetrative sexual conduct offences									
Penetrative sexual conduct									
Involving any person	✓	✓	✓	✓	✓	✓	✓	✓	✓
Involving a child or young person	✓	✓	✓	✓	✓	✓	✓	✓	✓
Involving a child or young person under supervision, care or authority	✓	✓	✓	✓		✓	✓	✓	✓
Involving a vulnerable or impaired person			✓	✓	✓	✓	✓	✓	✓
Involving a familial relation		✓	✓	✓	✓	✓	✓	✓	✓
Non-penetrative sexual conduct									
Involving any person	✓	✓	✓	✓	✓	✓	✓	✓	✓
Involving a child or young person	✓	✓	✓	✓	✓	✓	✓	✓	✓
Involving a child or young person under supervision, care or authority	✓	✓	✓	✓				✓	✓
Involving a vulnerable or impaired person				✓	✓	✓		✓	✓
Involving a familial relation									✓
Involving exposing a child or a vulnerable or impaired person to sexual material	✓	✓	✓	✓	✓	✓	✓		✓
Involving indecency in public or indecent exposure		✓	✓	✓	✓	✓	✓	✓	✓
Involving indecent observation		✓	✓		✓			✓	
Persistent or repeated child sexual abuse									
Persistent or repeated child sexual abuse	✓	✓	✓	✓	✓	✓	✓	✓	✓
Handling of unlawful sexual material offences									
Image-based sexual abuse									
Possessing intimate material							✓		
Capturing intimate material		✓	✓		✓	✓	✓	✓	✓
Distributing intimate material	✓	✓	✓	✓	✓	✓	✓	✓	✓
Threats to capture or distribute intimate material		✓	✓	✓	✓	✓		✓	
Child sexual abuse material									
Accessing CSAM	✓					✓	✓	✓	
Possession of CSAM	✓	✓	✓	✓	✓	✓	✓	✓	✓
Distribution of CSAM	✓	✓	✓	✓	✓	✓	✓	✓	✓
Production of CSAM	✓	✓	✓	✓	✓	✓	✓	✓	✓

Table 11: Summary table for sexual conduct offences in Australian legislation (cont.)									
	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Conduct enabling sexual conduct offences									
Coercion									
Violence and threats		✓	✓		✓	✓	✓	✓	✓
Abduction and kidnapping		✓		✓	✓	✓	✓	✓	
Violence and coercion to enable sexual services		✓	✓	✓	✓	✓	✓	✓	✓
Deception and fraud									
Deception and trickery for the procurement of sexual acts					✓	✓	✓	✓	✓
Deceptive recruitment for sexual services		✓	✓	✓	✓	✓	✓	✓	✓
Deception about sexual health status of sex worker		✓		✓					
Use of substances									
Use of substances to enable unlawful sexual conduct		✓	✓	✓	✓		✓	✓	✓
Procuring, grooming and encouragement									
Procuring a person for sexual activity					✓				
Procuring a vulnerable or impaired person for sexual activity					✓				✓
Procuring a person for prostitution		✓	✓		✓	✓	✓		✓
Grooming or encouraging a child for sexual activity	✓	✓	✓		✓	✓	✓	✓	
Procuring a child for sexual activity	✓		✓	✓	✓	✓	✓		✓
Procuring a child for the production of sexual abuse material		✓	✓	✓	✓		✓	✓	✓
Incitement									
Incitement to engage in unlawful sexual conduct			✓					✓	✓
Incitement to engage with CSAM			✓		✓	✓		✓	
Facilitation									
Facilitating a child sexual offence			✓		✓			✓	✓
Allowing premises to be used for child sexual offence			✓		✓	✓	✓		✓
Facilitating production or distribution of CSAM	✓	✓	✓	✓	✓		✓	✓	✓
Facilitating administration of digital platform that deals with CSAM	✓		✓		✓	✓		✓	
Facilitating the avoidance of detection of, or prosecution for, CSAM offences			✓		✓	✓		✓	
Facilitating unlawful observation or filming			✓						

Table 11: Summary table for sexual conduct offences in Australian legislation (cont.)									
	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Trafficking in persons, sexual servitude and causing a child to perform sexual service									
Trafficking person for sexual services or servitude	✓								
Sexual servitude	✓	✓	✓	✓		✓		✓	✓
Causing a child to perform sexual service		✓	✓	✓	✓	✓	✓	✓	✓
Failing to report or protect children from unlawful sexual conduct offences									
Failure to report	✓	✓	✓	✓	✓	✓	✓	✓	✓
Failure to protect	✓	✓	✓		✓	✓	✓	✓	✓

Note: A tick represents some level of coverage for the conduct; however, there may still be gaps and limitations in the legislation for this conduct. Nuances and limitations for jurisdictional legislation are discussed in the text above and should be considered in tandem with this summary table

Aggravating and other specific circumstances

This subsection examines the aggravating and other specific circumstances of sexual offences which are currently specified in Australian Commonwealth, state and territory legislation. Sometimes, sexual offences that are committed under certain circumstances are considered to be of particular severity or concern. This can be reflected in the inclusion of these circumstances in statute as circumstances of aggravation which, if present, are used to justify harsher penalties. Commonly, these circumstances are not included in the elements of the offences to which they are applied but are considered at sentencing.

However, legislation in most jurisdictions also includes standalone offences for at least some forms of sexual or enabling conduct committed under particular circumstances. In these instances, a particular circumstance is an element of the offence that must be proved beyond reasonable doubt. Both are examined in this subsection, and the terms ‘aggravating and specific circumstances’ are used to refer to both.

This subsection focuses on circumstances:

- that are identified in Commonwealth, state and territory statute;
- under which sexual offences are actually committed (ie not circumstances that are before or after offence commission); and
- that are specified or treated in some way as aggravating the severity of offences about unlawful sexual or enabling conduct (eg specified as an aggravating circumstance to be considered during sentencing, associated with a harsher liable, proscribed or maximum penalty) or which are included in standalone offences for sexual or enabling conduct as a specific requirement or element of the offence.

Circumstances of interest include how offences are committed, the contexts in which they are committed and the characteristics of whom they are committed against. These circumstances are summarised against offence categories which, in many cases, have been aggregated up from those used in Table 11. There are some specific offence categories in Table 11 to which aggravating and other specific circumstances rarely, if ever, apply. In other instances, these circumstances apply to all specific offence categories under a broader category in Table 11, because the same offences cover them all in many jurisdictions. Further detail is included in text and in Appendix F.

The value of having an aggravating or other specific circumstance specified in legislation, apart from deterrence, includes the potential to prompt police and other criminal justice actors to consider it more consistently and more thoroughly in responding to sexual offences. However, it is important to note that the absence of any specific mention of an aggravating or other specific circumstance in a particular jurisdiction's legislation does not mean that this circumstance has no bearing in practice on the charging, prosecution or sentencing of offenders for sexual offences in that jurisdiction. Courts have discretion to consider aggravating and mitigating circumstances (subject to express legislative override) in arriving at a just sentence for the particular facts of an individual case. Cases from the High Court and the appeal courts of each jurisdiction influence how the law is applied in this context, although they are outside the scope of this review. Often, legislated aggravating factors are those which the courts had always considered under the common law anyway. One jurisdiction may have legislative recognition of a specific aggravating factor, and another may not, yet courts in both may give consideration to that factor (if it applies in the given case). Further, jurisdictions that do not explicitly specify or treat a circumstance as aggravated in statute may nonetheless include standalone offences for sexual or enabling conduct under that circumstance (eg standalone sexual offences against cognitively or mentally impaired victims in some jurisdictions). This subsection should, therefore, be read carefully alongside the previous subsection (*Conduct*).

Victim age

The previous subsections canvass sexual offences against persons under the age of consent across all jurisdictions. Typically, offences involving sexual conduct against persons under the age of consent carry harsher liable, proscribed or maximum penalties than equivalent offences against adults. This subsection examines the distinctions in age below these ages of consent in each jurisdiction, which are used to justify harsher penalties for sexual and enabling conduct against younger children, compared with older children.

Legislation in all jurisdictions, including the Commonwealth, applies further age distinctions below ages of consent to justify harsher penalties for at least some forms of unlawful sexual and enabling conduct when committed against especially young victims. However, as Table 12 shows, the age distinctions used to classify especially young victims vary greatly across, and even within, jurisdictions. Legislation in Queensland and the Commonwealth also applies single age distinctions (under 12 and under 10 years of age, respectively) to many different forms of unlawful sexual and enabling conduct. Additionally, legislation in most jurisdictions treats trafficking in persons, sexual servitude and similar offences against victims under 18 years of age as aggravated or includes standalone offences with harsher liable, required or maximum penalties for these victims. In New South Wales, the *Crimes Act 1900* (NSW) specifies a number of age distinctions; and s 21A (Aggravating, mitigating and other factors in sentencing) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) further specifies victim vulnerability—including victims who are very young or very old (not further specified)—as an aggravating circumstance applicable to all offences, except where the circumstance is also an element of the offence. Table 13 also shows significant variation in the conduct to which these age distinctions are applied in statute. Penetrative and non-penetrative sexual conduct and procurement, grooming and encouragement are most consistently covered, while IBSA and certain forms of enabling conduct are more variably covered (see also Table F1, Appendix F).

Table 12: Victim age distinctions specified in Commonwealth, state and territory sexual offences

Jurisdiction	Age distinctions	Offences
Cth	<10 years of age	s 272.8 (Sexual intercourse with child outside Australia); s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia); s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia); s 272.11 (Persistent sexual abuse of child outside Australia); s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority); s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority); 272.14 (Procuring child to engage in sexual activity outside Australia); s 272.15 (“Grooming” child to engage in sexual activity outside Australia); s 272.15A (“Grooming” person to make it easier to engage in sexual activity with a child outside Australia); s 471.24 (Using a postal or similar service to procure persons under 16); s 471.25 (Using a postal service to “groom” persons under 16); s 471.25A (Using a postal or similar service to “groom” another person to make it easier to procure persons under 16); s 471.26 (Using a postal or similar service to send indecent material to person under 16); s 474.25A (Using a carriage service for sexual activity with person under 16 years of age); s 474.25B (Aggravated offence—using a carriage service for sexual activity with a person under 16 years of age); s 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16); s 474.26 (Using a carriage service to procure persons under 16 years of age); s 474.27 (Using a carriage service to “groom” persons under 16 years of age); s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age); and s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age) of the <i>Criminal Code Act 1995</i> (Cth)
	<18 years	s 271.4 (Offence of trafficking in children); s 271.7 (Offence of domestic trafficking in children) of the <i>Criminal Code Act 1995</i> (Cth)

Table 12: Victim age distinctions specified in Commonwealth, state and territory sexual offences (cont.)

Jurisdiction	Age distinctions	Offences
ACT	<10 years	s 55 (Sexual intercourse with young person); s 61 (Act of indecency with young people); s 62 (Incest and similar offences); and s 66 (Grooming and depraving young people) of the <i>Crimes Act 1900</i> (ACT)
	10≥ years and <16 years	s 55 (Sexual intercourse with young person); s 61 (Act of indecency with young people); s 62 (Incest and similar offences) of the <i>Crimes Act 1900</i> (ACT)
	<12 years	s 64 (Using child for production of child exploitation material etc) of the <i>Crimes Act 1900</i> (ACT); s 20 (Causing child to provide sexual services etc) of the <i>Sex Work Act 1992</i> (ACT)
	<18 years	s 79 (Sexual servitude offences) and s 80 (Deceptive recruiting for sexual services) of the <i>Crimes Act 1900</i> (ACT)
NSW ^a	<10 years	s 66A (Sexual intercourse—child under 10); s 66B (Attempting, or assaulting with intent, to have sexual intercourse with child under 10); s 66DA (Sexual touching—child under 10); s 66DC (Sexual act—child under 10); and s 91G (Children not to be used for production of child abuse material) of the <i>Crimes Act 1900</i> (NSW)
	<14 years	s 66C (Sexual intercourse—child between 10 and 16); s 66EB (Procuring or grooming child under 16 for unlawful sexual activity); s 66EC (Grooming a person for unlawful sexual activity with a child under the person’s authority); s 91D (Promoting or engaging in acts of child prostitution); and s 91G (Children not to be used for production of child abuse material) of the <i>Crimes Act 1900</i> (NSW)
	<16 years	s 61J (Aggravated sexual assault); s 80A (Sexual assault by forced self-manipulation); s 91J (Voyeurism); s 91K (Filming a person engaged in a private act); and s 91L (Filming a person’s private parts) of the <i>Crimes Act 1900</i> (NSW)
	<17 years	s 73 (Sexual intercourse—young person between 16 and 18 under special care); s 73A (Sexual touching—young person between 16 and 18 under special care) of the <i>Crimes Act 1900</i> (NSW)
	<18 years	s 80D (Causing sexual servitude); and s 80E (Conduct of business involving sexual servitude) of the <i>Crimes Act 1900</i> (NSW) s 80C (Meaning of ‘circumstances of aggravation’) of the <i>Crimes Act 1900</i> (NSW) specifies a victim under 18 years of age as one of the possible circumstances of aggravation applicable to the above two offences

Table 12: Victim age distinctions specified in Commonwealth, state and territory sexual offences (cont.)

Jurisdiction	Age distinctions	Offences
NT	<10 years	s 127 (Sexual intercourse or gross indecency involving child under 16 years); s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person); s 132 (Indecent dealing with child under 16 years) and s 134 (Incest) of the <i>Criminal Code Act 1983</i> (NT)
	10≥ years and <16 years	s 134 (Incest) of the <i>Criminal Code Act 1983</i> (NT)
	<12 years	s 202B (Sexual servitude) and s 202C (Conducting business involving sexual servitude) of the <i>Criminal Code Act 1983</i> (NT)
	<14 years	s 12 (Causing or allowing child to perform sex work or work in sex services business); and s 14 (Agreeing to sex work by child) of the <i>Sex Industry Act 2019</i> (NT)
	12≥ years and <16 years	s 134 (Incest); s 202B (Sexual servitude); and s 202C (Conducting business involving sexual servitude) of the <i>Criminal Code Act 1983</i> (NT)
	<16 years	s 202D (Deceptive recruiting for sexual services)
	16 years≥ and <17 years	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
Qld	<12 years	s 210 (Indecent treatment of children under 16); s 213 (Owner etc permitting abuse of children on premises); s 215 (Engaging in penile intercourse with child under 16); s 218A (Using internet etc to procure children under 16); s 218B (Grooming child under 16 years or parent or carer of child under 16 years); s 219 (Taking child for immoral purposes); and s 228 (Obscene publications and exhibitions) of the <i>Criminal Code Act 1899</i> (Qld)
	<16 years	s 229FA (Obtaining prostitution from person who is not an adult) of the <i>Criminal Code Act 1899</i> (Qld)
	<18 years	s 229G (Procuring engagement in prostitution); s 229H (Knowingly participating in provision of prostitution); 229HB (Carrying on business of providing unlawful prostitution); and 229K (Having an interest in premises used for prostitution) of the <i>Criminal Code Act 1899</i> (Qld)
SA	<12 years	s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); and s 60 (Procuring sexual intercourse) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
	<14 years	s 63B (Procuring child to commit indecent act etc); s 49 (Unlawful sexual intercourse); s 56 (Indecent assault); and s 66 (Sexual servitude and related offences) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
	<17 years	s 56 (Indecent assault) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
	<18 years	s 66 (Sexual servitude and related offences); s 67 (Deceptive recruiting for commercial sexual services); and s 68 (Use of children in commercial sexual services) of the <i>Criminal Law Consolidation Act 1935</i> (SA)
	60> years	s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); and s 60 (Procuring sexual intercourse). of the <i>Criminal Law Consolidation Act 1935</i> (SA)

Table 12: Victim age distinctions specified in Commonwealth, state and territory sexual offences (cont.)

Jurisdiction	Age distinctions	Offences
Tas	<13 years	<p>s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); and s 185 (Rape) of the <i>Criminal Code Act 1924</i> (Tas)</p> <p>As specified in s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders) of the <i>Sentencing Act 1997</i> (Tas)</p> <p>Additionally, this age distinction also applies to s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here</p>
	<18 years	<p>s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 133 (Incest); and s 185 (Rape) of the <i>Criminal Code Act 1924</i> (Tas)</p> <p>As specified in s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders) of the <i>Sentencing Act 1997</i> (Tas)</p> <p>Additionally, this age distinction also applies to s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here</p> <p>Note that this circumstance is not applicable to the other Tasmanian sexual offences specified above by virtue of victims under 18 years of age constituting elements of these offences</p>
Vic	<12 years	s 49A (Sexual penetration of a child under the age of 12) of the <i>Crimes Act 1958</i> (Vic)
	<18 years	s 50C (Sexual penetration of a child or lineal descendant); s 50D (Sexual penetration of a step-child); s 53B (Using force, threat etc to cause another person to provide commercial sexual services); s 53C (Causing another person to provide commercial sexual services in circumstances involving sexual servitude); s 53D (Conducting a business in circumstances involving sexual servitude); and s 53F (Deceptive recruiting for commercial sexual services) of the <i>Crimes Act 1958</i> (Vic)
WA	<13 years	s 320 (Child under 13, sexual offences against) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)
	13≥ years and <16 years	s 324 (Aggravated indecent assault); s 326 (Aggravated sexual penetration without consent); s 328 (Aggravated sexual coercion) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)
	<16 years	s 329 (Relatives and the like, sexual offences by) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)
	<18 years	s 331B (Sexual servitude); s 331C (Conducting business involving sexual servitude); and s 331D (Deceptive recruiting for commercial sexual service) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)

a: s 21A (Aggravating, mitigating and other factors in sentencing) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) specifies victim vulnerability as an aggravating factor to be taken into account in determining the appropriate sentence for all offences in New South Wales (except where this circumstance is also an element of the offence). ‘Vulnerability’ is specified as including victims being very young or very old, although no specific age cut-offs are specified. Nevertheless, this has been reflected in Table 12

Table 13: Victim age as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓	✓	✓	✓	✓	✓	✓	✓	✓
Non-penetrative sexual conduct	✓	✓	✓	✓	✓	✓	✓	✓	✓
Production of CSAM		✓	✓	✓	✓		✓		✓
Distribution of CSAM			✓		✓				
Possessing and accessing CSAM			✓						
Image-based sexual abuse			✓						
Coercion	–		✓	✓	✓	✓	✓	✓	
Deception and fraud	–	✓	✓	✓		✓	✓	✓	✓
Use of substances	–	–	✓			–	–		
Procurement, grooming and encouragement	✓	✓	✓	✓	✓	✓	✓		✓
Trafficking in persons, sexual servitude and causing a child to perform sexual services	✓	✓	✓	✓		✓		✓	✓
Incitement	–	–	✓					–	–
Facilitation		–	✓		✓		✓		
Failure to protect or report			✓						

Relationships of care, authority and trust

In most jurisdictions, the lists of circumstances where there is no consent include an abuse of a relationship of care, authority or trust between an offender and victim (see *Consent*). Many jurisdictions have also introduced standalone offences that apply in relationships of care or authority (see *Conduct*), recognising the vulnerable position of victims within these relationships and the abuse of trust and power exercised by offenders responsible for their care and protection. However, legislation across most jurisdictions also singles out, in some way, unlawful sexual and enabling conduct committed against victims with whom offenders have a relationship of care or authority as being aggravated or otherwise warranting harsher penalties. Incest offences, which involve sexual conduct with (usually) biological relations, are not examined here, although there is some overlap. Additionally, offences involving a failure to protect or report sexual abuse are not examined here, because the relationships of offenders to victims in these offences are inextricable from the conduct, not a mere circumstance under which the conduct could occur.

This circumstance encompasses two broad types of relationship: relationships involving the provision of healthcare services by offenders to victims suffering permanent or long-term health conditions; and relationships where offenders are in a position of care, supervision or authority over victims outside of healthcare—such as teachers and legal guardians. The level of detail in how these relationships are defined in statute, and the extent to which different relationships are specified, varies considerably across jurisdictions (Table 14). This circumstance is applicable to penetrative and non-penetrative sexual conduct across all jurisdictions and to CSAM production and procurement, grooming and encouragement offences in most (Table 15; see also Table F2, Appendix F). It is less commonly applicable to other CSAM and enabling offences across jurisdictions. It is applicable to most, if not all, forms of unlawful sexual and enabling conduct in the Australian Capital Territory, New South Wales and Tasmania.

Table 14: Definitions—Relationships of care or authority

Jurisdiction	Term	Definition
Cth	Position of trust or authority	<p>A person is in a position of trust or authority in relation to another person if: (a) the person is the other person’s parent, stepparent, or grandparent; or (b) the person is the other person’s foster parent, guardian or carer; or (c) the person is a teacher engaged in the education of the other person; or (d) the person is a religious official or spiritual leader (however described) providing pastoral care or religious instruction to the other person; or (e) the person is the other person’s sports coach; or (f) the person is a medical practitioner, nurse, psychologist, other health professional (however described), counsellor or social worker providing professional services to the other person; or (g) the person is a member of a police force or police service, or a person employed or providing services in a correctional institution (however described), performing duties in relation to the other person; or (h) the person: (i) is an employer of the other person; or (ii) has the authority to determine significant aspects of the other person’s terms and conditions of employment; or (iii) has the authority to terminate the other person’s employment (whether the other person is being paid in respect of that employment or is working in a voluntary capacity).</p> <p>Without limiting who is a grandparent of a person for the purposes of this section, a person (the first person) is the grandparent of another person if the first person is a parent or stepparent of a parent or stepparent of the other person.</p> <p>Defined in s 272.3 (Meaning of position of trust or authority) of the <i>Criminal Code Act 1995</i> (Cth)</p>
ACT	Special care	<p>A young person is under the special care of a person if the person: (a) is 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; or (b) is a parent, step-parent, grandparent, foster carer or legal guardian of the young person; or (c) is a domestic partner of a person mentioned in paragraph (b); or (d) has an established personal relationship with the young person in relation to the provision of religious, sporting, musical or other instruction; or (e) is the young person’s employer; or (f) provides professional counselling to the young person; or (g) is a health service provider and the young person is the person’s patient; or (h) is a custodial officer and the young person is a young detainee in the officer’s care, custody or control; or (i) is a carer for the young person if the young person has impaired decision-making ability; or (j) is otherwise responsible for the care, supervision or control of the young person.</p> <p>Defined in s 55A (Sexual intercourse with young person under special care) of the <i>Crimes Act 1900</i> (ACT)</p>

Table 14: Definitions—Relationships of care or authority (cont.)

Jurisdiction	Term	Definition
NSW	Abuse of position of trust or authority	<p>Not further defined</p> <p>Used in s 21A (Aggravating, mitigating and other factors in sentencing) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)</p>
	Under authority	<p>A person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.</p> <p>Used in s 61J (Aggravated sexual assault); s 61KD (Aggravated sexual touching); s 61KF (Aggravated sexual act); s 66C (Sexual intercourse—child between 10 and 16); s 66DE (Aggravated sexual act—child between 10 and 16); s 80A (Sexual assault by forced self-manipulation); and s 91G (Children not to be used for production of child abuse material) of the <i>Crimes Act 1900</i> (NSW)</p> <p>Defined in s 61H of the <i>Crimes Act 1900</i> (NSW)</p>
	Special care	<p>A young person is under the special care of the accused if, and only if: (a) the accused person is the parent or the parent of a parent of the complainant, the guardian or authorised carer of the complainant, or the spouse or de facto partner of one of these people; (b) the accused person is a teacher at, or the principal or a deputy principal of, the school at which the complainant is a student; (b1) the accused person performs work at the school at which the complainant is a student, in which the accused person has students at the school, including the complainant, under the authority of the accused person; (c) the accused person has an established personal relationship with the complainant in connection with the provision of religious, sporting, musical or other instruction to the complainant, in which relationship the complainant is under the authority of the accused person; (d) the accused person is a custodial officer of an institution of which the complainant is an inmate; (e) the accused person is a health professional and the complainant is a patient of the health professional; (f) the accused person performs work for an organisation that provides residential care to young persons placed in out-of-home care (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)), and has an established personal relationship with the complainant in connection with the provision of that residential care to the complainant, in which relationship the complainant is under the authority of the accused person; (g) the accused person performs work for an organisation that provides refuge or crisis accommodation, and has an established personal relationship with the complainant in connection with the provision of that accommodation to the complainant, in which relationship the complainant is under the authority of the accused person.</p> <p>Defined in s 73 (Sexual intercourse—young person between 16 and 18 under special care) and s 73A (Sexual touching—young person between 16 and 18 under special care) of the <i>Crimes Act 1900</i> (NSW)</p>
	Person responsible for care	<p>A person is responsible for the care of a person who has a cognitive impairment if the person provides care to that person: (a) at a facility at which persons with a cognitive impairment are detained, reside or attend, or (b) at the home of that person in the course of a program under which any such facility or other government or community organisation provides care to persons with a cognitive impairment.</p> <p>The care of a person with a cognitive impairment includes voluntary care, health professional care, education, home care and supervision.</p> <p>Defined in s 66F (Sexual offences—cognitive impairment) of the <i>Crimes Act 1900</i> (NSW)</p>

Table 14: Definitions—Relationships of care or authority (cont.)

Jurisdiction	Term	Definition
NT	Special care	<p>A person (the victim) is under the special care of another person (the offender) if the offender: (a) is the step-parent, guardian or foster parent of the victim; (b) is a school teacher and the victim is a pupil of the offender; (c) 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; (d) is an officer at a correctional institution at which the victim is detained; or (e) is a health professional or other provider of health care or treatment and the victim is a patient or client of the offender.</p> <p>Defined in s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care) of the <i>Criminal Code Act 1983</i> (NT)</p>
	Provider of disability support services	<p>Means a person who provides a disability support service, whether or not he or she does so for remuneration or on a voluntary basis, but does not include such a person who himself or herself at the time of providing a disability support service is a mentally ill or handicapped person.</p> <p>Disability support service means a medical or therapeutic service provided to a mentally ill or handicapped person and related to the mental illness or handicap.</p> <p>Defined in s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person) of the <i>Criminal Code Act 1983</i> (NT)</p>
Qld	No term used	<p>Offender is the guardian of the victim or, for the time being, has the victim under his or her care.</p> <p>Used in s 210 (Indecent treatment of children under 16); s 215 (Engaging in penile intercourse with child under 16); and s 216 (Abuse of persons with an impairment of the mind) of the <i>Criminal Code Act 1899</i> (Qld)</p>

Table 14: Definitions—Relationships of care or authority (cont.)

Jurisdiction	Term	Definition
SA	Position of authority	<p>A person is in a position of authority in relation to a person under the age of 18 years (the child) if— (a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or (b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or (c) the person provides religious, sporting, musical or other instruction to the child; or (d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or (e) the person is a health professional or social worker providing professional services to the child; or (f) the person is responsible for the care of the child and the child has a cognitive impairment; or (g) the person is employed or providing services in a correctional institution (within the meaning of the <i>Correctional Services Act 1982</i>) or a training centre (within the meaning of the <i>Young Offenders Act 1993</i>), or is a person engaged in the administration of those Acts, acting in the course of the person’s duties in relation to the child; or (ga) the person is employed or providing services in a licensed children’s residential facility (within the meaning of the <i>Children and Young People (Safety) Act 2017 (SA)</i>), or a residential care facility or other facility established under s 36 of the <i>Family and Community Services Act 1972 (SA)</i>, or is a person engaged in the administration of those Acts, acting in the course of the person’s duties in relation to the child; or (h) the person is an employer of the child or other person who has the authority to determine significant aspects of the child’s terms and conditions of employment or to terminate the child’s employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).</p> <p>Defined in s 49 (Unlawful sexual intercourse) of the <i>Criminal Law Consolidation Act 1935 (SA)</i></p>
	No term used	<p>Provides a service (whether for remuneration or not) to a person with a cognitive impairment.</p> <p>Used in s 51 (Sexual exploitation of person with a cognitive impairment) of the <i>Criminal Law Consolidation Act 1935 (SA)</i></p>

Table 14: Definitions—Relationships of care or authority (cont.)

Jurisdiction	Term	Definition
Tas	Care, supervision or authority	Not further defined Used in s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders) of the <i>Sentencing Act 1997</i> (Tas)
	Person responsible for the care of a person with a mental impairment	A person is responsible for the care of a person with a mental impairment if the person provides medical, nursing, therapeutic or educative services to the person with a mental impairment in connection with that mental impairment. Defined in s 126 (Penetrative sexual abuse of person with mental impairment) of the <i>Criminal Code Act 1924</i> (Tas)
	Person in a position of authority	in relation to a child, includes the following persons: (a) a person who is a teacher, if the child is a pupil of the teacher or a pupil at the educational institution at which the teacher works; (b) a parent of the child or a person who is in a significant relationship, within the meaning of the <i>Relationships Act 2003</i> , with a parent of the child; (c) a person who provides religious, sporting, musical or other instruction to the child; (d) a person who is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; (e) a health professional or social worker providing professional services to the child; (f) a person who is responsible for the care of the child if that child has a cognitive impairment; (g) a person employed or providing services in a prison, within the meaning of the <i>Corrections Act 1997</i> , or a detention centre, within the meaning of the <i>Youth Justice Act 1997</i> , or a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; (h) a person employed or providing services in a child care service, within the meaning of the <i>Children, Young Persons and Their Families Act 1997</i> , or a person engaged in the administration of that Act, acting in the course of the person's duties in relation to the child; (i) a person who provides child care to, or a child care service in respect of, the child for fee or reward; (j) an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity). Defined in s 124A (Penetrative sexual abuse of child or young person by person in position of authority) of the <i>Criminal Code Act 1924</i> (Tas)
WA	Under care, supervision or authority	Not further defined Used in s 321 (Child of or over 13 and under 16, sexual offences against); s 330 (Incapable person, sexual offences against); and s 322 (Child of or over 16, sexual offences against by person in authority etc) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)

Table 15: Relationships of care or authority as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓	✓	✓	✓	✓	✓	✓		✓
Non-penetrative sexual conduct	✓	✓	✓	✓	✓	✓	✓		✓
Production of CSAM		✓	✓		✓	✓	✓		✓
Distribution of CSAM		✓	✓						
Possessing and accessing CSAM		✓	✓						
IBSA		✓	✓						
Coercion	–	✓	✓			✓	✓		
Deception and fraud	–		✓			✓	✓		
Use of substances	–	–	✓			–	–		
Procurement, grooming and encouragement		✓	✓		✓	✓	✓		✓
Trafficking in persons, sexual servitude and causing a child to perform sexual services			✓						
Incitement	–	–	✓					–	–
Facilitation		–	✓				✓		
Failure to protect or report									

Victim impairment or vulnerability

In most jurisdictions, the list of circumstances in which there is no consent includes an impairment or incapacity on the part of the victim (see *Consent*). Many jurisdictions have also introduced standalone offences that apply to victims with impairments, disabilities or other vulnerabilities (see *Conduct*). However, legislation across all jurisdictions singles out, in some way, unlawful sexual and enabling conduct committed against vulnerable and impaired victims as being aggravated or otherwise warranting harsher penalties as well.

Table 16 shows that jurisdictions vary significantly in the range of persons considered vulnerable or impaired in statute. Definitions are narrower in some jurisdictions and limited to victims with a cognitive or mental impairment. Other jurisdictions include physical disabilities. Yet others take a much broader view of vulnerability and impairment, specifying persons as vulnerable or impaired based on their social or geographic isolation, age and occupation. Additionally, legislation in Victoria and Tasmania goes into considerable detail outlining the factors that *cannot* be taken as indicative of mental illness in their statutory definitions of this term. They broadly include political and religious beliefs and activities, sexual orientation and activities, prior criminal and antisocial activities, social status and membership of a cultural or racial group. Importantly, many of the offences covered in this subsection are also covered in the previous subsection, because they pertain to unlawful sexual or enabling conduct committed against an impaired or vulnerable victim who was also in the offender’s care.

Table 16: Definitions—Victim impairment or vulnerability		
Jurisdiction	Term	Definition
Cth	Mental impairment	Includes senility, intellectual disability, mental illness, brain damage and severe personality disorder Defined in s 73 (Mental impairment) of the <i>Criminal Code Act 1995</i> (Cth)
ACT	Vulnerable person	An adult who: (a) has a disability within the meaning of the <i>Disability Services Act 1991</i> (ACT); or (b) is at least 60 years old and: (i) has a disorder, illness or disease that affects the person’s thought processes, perception of reality, emotions or judgement or otherwise results in disturbed behaviour; or (ii) has an impairment that (A) is intellectual, psychiatric, sensory or physical in nature; and (B) results in a substantially reduced capacity of the person for communication, learning or mobility; or (iii) for any other reason is socially isolated or unable to participate in the life of the person’s community. Defined in s 33 (Sentencing—relevant considerations) of the <i>Crimes (Sentencing) Act 2005</i> (ACT)
	Vulnerable	For example, because the victim was very young or very old or had a disability, because of the geographical isolation of the victim or because of the victim’s occupation (such as a person working at a hospital (other than a health worker), taxi driver, bus driver or other public transport worker, bank teller or service station attendant). Defined in s 21A (Aggravating, mitigating and other factors in sentencing) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)
NSW	Cognitive impairment	A person has a cognitive impairment if the person has: (a) an intellectual disability, or (b) a developmental disorder (including an autistic spectrum disorder), or (c) a neurological disorder, or (d) dementia, or (e) a severe mental illness, or (f) a brain injury, that results in the person requiring supervision or social habilitation in connection with daily life activities. Defined in s 61HD (Meaning of “cognitive impairment”) of the <i>Crimes Act 1900</i> (NSW)
	Serious physical disability	Not further defined Used in s 61J (Aggravated sexual assault); s 61KD (Aggravated sexual touching); s 61KF (Aggravated sexual act); s 66C (Sexual intercourse—child between 10 and 16); s 66DE (Aggravated sexual act—child between 10 and 16); s 80A (Sexual assault by forced self-manipulation); and s 91G (Children not to be used for production of child abuse material) of the <i>Crimes Act 1900</i> (NSW)
NT	Serious physical disability	Not further defined Used in s 127 (Sexual intercourse or gross indecency involving child under 16 years) of the <i>Criminal Code Act 1983</i> (NT)
	Serious intellectual disability	Not further defined Used in s 127 (Sexual intercourse or gross indecency involving child under 16 years) of the <i>Criminal Code Act 1983</i> (NT)
Qld	Person with an impairment of the mind	A person with a disability that: (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and (b) results in (i) a substantial reduction of the person’s capacity for communication, social interaction or learning; and (ii) the person needing support. Defined in s 1 (Definitions) of the <i>Criminal Code Act 1899</i> (Qld)

Table 16: Definitions—Victim impairment or vulnerability (cont.)

Jurisdiction	Term	Definition
SA	Cognitive impairment	Includes: (a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder); (b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder); (c) a mental illness. Defined in s 5AA (Aggravated offences) of the <i>Criminal Law Consolidation Act 1935</i> (SA). Also defined separately, and similarly, in s 51 (Sexual exploitation of person with a cognitive impairment) of the same Act
Tas ^a	Disability	Any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner. Defined in s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders) of the <i>Sentencing Act 1997</i> (Tas)
	Mental impairment	Means senility, intellectual disability, mental illness or brain damage. Defined in s 126 (Penetrative sexual abuse of person with mental impairment) of the <i>Criminal Code Act 1924</i> (Tas)
	Mental illness	A person is taken to have a mental illness if he or she experiences, temporarily, repeatedly or continually (a) a serious impairment of thought (which may include delusions) or a serious impairment of mood, volition, perception or cognition; and (b) nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug-taking from being regarded as an indication that a person has a mental illness. A number of conditions are also specified as not constituting mental illness, including: (a) current or past expression of, or failure or refusal to express, a particular political opinion or belief; (b) current or past expression of, or failure or refusal to express, a particular religious opinion or belief; (c) current or past expression of, or failure or refusal to express, a particular philosophy; (d) current or past expression of, or failure or refusal to express, a particular sexual preference or orientation, or gender identity or expression; (e) current or past engagement in, or failure or refusal to engage in, a particular political or religious activity; (f) current or past engagement in a particular sexual activity or sexual promiscuity; (g) current or past engagement in illegal conduct; (h) current or past engagement in an antisocial activity; (i) particular economic or social status; (j) membership of a particular cultural or racial group; (k) intoxication (however induced); (l) intellectual or physical disability; (m) acquired brain injury; (n) dementia; or (o) temporary unconsciousness. Specified in s 126 (Penetrative sexual abuse of person with mental impairment) of the <i>Criminal Code Act 1924</i> (Tas). Defined in s 4 (Meaning of mental illness) of the <i>Mental Health Act 2013</i> (Tas)
WA	Incapable person	A person who is so mentally impaired as to be incapable of understanding the nature of the act the subject of the charge against the accused person, or of guarding himself or herself against sexual exploitation. Defined in s 330 (Incapable person, sexual offences against) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)

a: s 124A (Penetrative sexual abuse of child or young person by person in position of authority) of the *Criminal Code Act 1924* (Tas) also specifies ‘cognitive impairment’ in its definition of ‘position of authority’. This is elaborated upon in ‘Relationships of care, authority and trust’

This circumstance is comprehensively applicable to penetrative and non-penetrative sexual conduct across most jurisdictions (Table 17; see also Table F3, Appendix F) and applicable to most, if not all, forms of unlawful sexual and enabling conduct in the Australian Capital Territory and New South Wales.

Table 17: Victim impairment and vulnerability as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓	✓	✓	✓	✓	✓	✓		
Non-penetrative sexual conduct	✓	✓	✓	✓	✓		✓		
Production of CSAM		✓	✓		✓		✓		
Distribution of CSAM		✓	✓						
Possessing and accessing CSAM		✓	✓						
IBSA		✓	✓		✓				
Coercion	–	✓	✓				✓		
Deception and fraud	–	✓	✓				✓		✓
Use of substances	–	–	✓			–	–		
Procurement, grooming and encouragement		✓	✓		✓		✓		✓
Trafficking in persons, sexual servitude and causing a child to perform sexual services		✓	✓						✓
Incitement	–	–	✓					–	–
Facilitation		–	✓				✓		
Failure to protect or report									

Violence and coercion

Legislative definitions of consent, and particularly circumstances under which consent is considered negated, typically specify sexual conduct undertaken through violence, force or intimidation as non-consensual. However, unlawful sexual and enabling conduct that is committed through the use of violence, force or intimidation is also considered to be aggravated in legislation across most jurisdictions (Table 18; see also Table F4, Appendix F). Note that the following examination does not include standalone offences about the use of violence with intent to engage in unlawful sexual conduct, which are discussed in the previous subsection (*Conduct*) and which offenders may be charged with alongside other sexual offences in all jurisdictions.

The Australian Capital Territory includes a number of separate offences for violence of escalating severity with the intent of engaging in either sexual intercourse (s 51 (Sexual assault in the first degree), s 52 (Sexual assault in the second degree) and s 53 (Sexual assault in the third degree) of the *Crimes Act 1900* (ACT)) or an act of indecency (s 57 (Act of indecency in the first degree), s 58 (Act of indecency in the second degree) and s 59 (Act of indecency in the third degree) of the *Crimes Act 1900* (ACT)). These specify correspondingly longer liable terms of imprisonment for more serious forms of violence. However, these are not examined further in this subsection, because they nonetheless constitute offences of violence with intent.

Table 18: Coercion as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓		✓	✓	✓		✓		✓
Non-penetrative sexual conduct	✓		✓	✓	✓	✓	✓		✓
Production of CSAM			✓	✓			✓		✓
Distribution of CSAM			✓	✓					
Possessing and accessing CSAM			✓	✓					
IBSA			✓	✓					
Coercion	–		✓	✓		✓	✓		✓
Deception and fraud	–		✓	✓		✓	✓		
Use of substances	–	–	✓	✓		–	–		
Procurement, grooming and encouragement			✓	✓		✓	✓		
Trafficking in persons, sexual servitude and causing a child to perform sexual services			✓	✓		✓			
Incitement	–	–	✓	✓				–	–
Facilitation			–	✓	✓		✓		
Failure to protect or report									

As the previous subsection noted, legislation across jurisdictions in Australia generally frames descriptions of violence or force in terms of pain or bodily harm caused to the victim or threats or intimations of a capacity or willingness to cause such pain or harm, rather than actions performed by offenders (except for abduction, kidnapping and detainment and weapons, discussed below). Threatened violence and intimidation are included in legislation as aggravating circumstances in New South Wales, the Northern Territory, South Australia, Tasmania and Western Australia, along with the Commonwealth. Weapons are also treated as an aggravating circumstance of some offences in legislation of the Commonwealth, New South Wales, the Northern Territory, Queensland, South Australia and Western Australia, although there is variation across jurisdictions in how their role in offences is described. For example, legislation in the Northern Territory, Queensland and Western Australia refers simply to offenders being armed (or, in Qld and WA, pretending to be armed) with a weapon in connection with the commission of relevant offences. Legislation in New South Wales and South Australia, along with Commonwealth legislation, refers to the use or threatened use of a weapon. Finally, while jurisdictions typically include separate offences for abducting, or depriving the liberty of, victims for the purposes of engaging in unlawful sexual conduct against them, New South Wales includes deprivation of liberty as an aggravating circumstance of several sexual offences.

This circumstance is applicable to penetrative and non-penetrative sexual conduct across most jurisdictions but is less often applicable to other forms of unlawful sexual and enabling conduct. In New South Wales and the Northern Territory, it is specified as an aggravating circumstance to be considered during sentencing for offences about all forms of unlawful sexual and enabling conduct, except where it is an element of the offence.

Excessive humiliation, degradation or cruelty

As well as violence, force and intimidation, legislation in four jurisdictions (Cth, NSW, Tas and WA) also specifies the excessively humiliating, degrading or cruel treatment of victims as an aggravating circumstance of a number of sexual offences (Table 19; see also Table F5, Appendix F). This circumstance is applicable to penetrative and non-penetrative sexual conduct across all four jurisdictions, as well as to a small number of other forms of unlawful sexual and enabling conduct. In New South Wales, it is specified in statute as an aggravating circumstance to be considered during sentencing for offences pertaining to all forms of unlawful sexual and enabling conduct.

Table 19: Excessive humiliation, degradation and cruelty as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓		✓				✓		✓
Non-penetrative sexual conduct	✓		✓				✓		✓
Production of CSAM			✓				✓		
Distribution of CSAM			✓						
Possessing and accessing CSAM			✓						
IBSA			✓						
Coercion	–		✓				✓		✓
Deception and fraud	–		✓				✓		
Use of substances	–	–	✓			–	–		
Procurement, grooming and encouragement			✓				✓		
Trafficking in persons, sexual servitude and causing a child to perform sexual services	✓		✓						
Incitement	–	–	✓					–	–
Facilitation		–	✓				✓		
Failure to protect or report									

Intimate partner and family violence

Intimate partner and family violence have been high on the agenda of Commonwealth, state and territory governments in Australia over the last two decades, as its prevalence and impact, particularly for women and children, has become increasingly evident. This is most prominently reflected in the *National plan to end violence against women and children 2022–2032* (Australian Department of Social Services 2022), a joint initiative of governments across Australia to develop, strengthen and coordinate measures to address this and other forms of violence against women and children. Importantly, research has found that, in many cases, what appear to be isolated incidents of violence (including sexual violence) within intimate partner relationships are actually part of an ongoing pattern of abusive and controlling behaviour (Boxall & Lawler 2021). In this context, sexual offences perpetrated within the context of a current or former intimate partner relationship have come to be treated more seriously in legislation across many jurisdictions.

The Australian Capital Territory, Queensland and South Australia all specify a current or former intimate partner relationship with the victim as an aggravating circumstance of most sexual offences (Table 20). Additionally, two jurisdictions (Tas and WA) have statutory offences for persistent family violence in which victims are subjected to repeated violence, which can include sexual offences, over a period of time by someone they are in, or have been in, a relationship with. Both define this as family violence on three or more occasions, although Western Australia further specifies that these occasions must be on different days over a period not exceeding 10 years. The unlawful conduct covered also varies, with Western Australia being limited to indecent assault (including aggravated indecent assault) and image-based abuse, and Tasmania encompassing a broader range of contact and non-contact sexual conduct, but no IBSA. Finally, unlike the Australian Capital Territory, Queensland and South Australia, all of which adopt a broader view of relationships which covers other familial or caregiver connections, Tasmania and Western Australia have a more limited focus on current and former intimate and other romantic relationships.

Table 20: Definitions—Intimate partner and family violence

Jurisdiction	Term used	Definition
ACT	Family violence	<p>Includes specified sexual offences (see Table F6, Appendix F) against a current or former family member</p> <p>Defined in s 72AA (Aggravated offences—pt 3 offences involving family violence) and s 72EA (Aggravated offences—pt 3A offences involving family violence) of the <i>Crimes Act 1900</i> (ACT)</p> <p>‘Family member’ means: (a) a domestic partner or former domestic partner of the person; or (b) an intimate partner or former intimate partner of the person; or (c) a relative of the person; or (d) a child of a domestic partner or former domestic partner of the person; or (e) a parent of a child of the person.</p> <p>Defined in s 9 (Meaning of family member) of the <i>Family Violence Act 2016</i> (ACT)</p>
Qld	Domestic violence	<p>Behaviour, or a pattern of behaviour, by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that is of a specified nature (including sexually abusive). Behaviour, or a pattern of behaviour, may occur over a period of time, may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and is to be considered in the context of the relationship between the first person and the second person as a whole (see Table F6, Appendix F).</p> <p>Specified in s 8 (Meaning of domestic violence) of the <i>Domestic and Family Violence Protection Act 2012</i> (Qld)</p> <p>‘Relevant relationship’ includes an intimate personal relationship, a family relationship, or an informal care relationship.</p> <p>Defined in s 13 (Meaning of relevant relationship) of the <i>Domestic and Family Violence Protection Act 2012</i> (Qld)</p>

Table 20: Definitions—Intimate partner and family violence (cont.)

Jurisdiction	Term used	Definition
SA	No term used	<p>Offender was in a relationship with the victim at the time of the offence (see Table F6, Appendix F), or had formerly been in a relationship with the victim.</p> <p>Two people will be taken to be in a relationship if: (a) they are married to each other; or (b) they are domestic partners; or (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affect the other; or (d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or (e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or (f) 1 is a child and the other is a person who acts in <i>loco parentis</i> in relation to the child; or (g) 1 is a child who normally or regularly resides or stays with the other; or (h) they are brothers or sisters or brother and sister; or (i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or (j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or (k) 1 is the carer (within the meaning of the <i>Carers Recognition Act 2005</i> (SA)) of the other.</p> <p>Used in s 5AA (Aggravated offences) of the <i>Criminal Law Consolidation Act 1935</i> (SA)</p>
Tas	Persistent family violence	<p>Persistent unlawful family violence in relation to another person who is, or has been, in a family relationship. This includes unlawful family violence acts in relation to a spouse or partner on at least three occasions. (See Table F6, Appendix F for sexual offences that come under ‘unlawful family violence’.)</p> <p>Defined in s 170A (Persistent family violence) of the <i>Criminal Code Act 1924</i> (Tas)</p> <p>‘Family relationship’ means a marriage or a significant relationship within the meaning of the <i>Relationships Act 2003</i> (Tas), and includes a relationship in which one or both of the parties is between the ages of 16 and 18 and would, but for that fact, be a significant relationship within the meaning of that Act. ‘Spouse or partner’ of a person means another person with whom the person is, or has been, in a family relationship.</p> <p>Defined in s 4 (Interpretation) of the <i>Family Violence Act 2004</i> (Tas)</p>

Table 20: Definitions—Intimate partner and family violence (cont.)

Jurisdiction	Term used	Definition
WA	No term used	<p>Offences (see Table F6, Appendix F) against someone with whom the offender is in a family relationship.</p> <p>Specified in s 221 (Term used: circumstances of aggravation) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)</p> <p>‘Family relationship’ means a relationship between 2 persons: (a) who are, or were, married to each other; or (b) who are, or were, in a de facto relationship with each other; or (c) who are, or were, related to each other; or (d) one of whom is a child who (i) ordinarily resides, or resided, with the other person; or (ii) regularly resides or stays, or resided or stayed, with the other person; or (e) one of whom is, or was, a child of whom the other person is a guardian; or (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other; or (g) one of whom is the former spouse or former de facto partner of the other person’s current spouse or current de facto partner.</p> <p>Defined in s 4 (Terms used: family relationship and family member) of the <i>Restraining Orders Act 1997</i> (WA)</p>
	Persistent family violence	<p>A person doing an act of family violence (see Table F6, Appendix F) on 3 or more occasions each of which is on a different day over a period not exceeding 10 years against the same person with whom they are in a designated family relationship.</p> <p>‘Designated family relationship’ means a relationship between 2 persons who are, or were married to each other, who are, or were, in a de facto relationship with each other, or who have, or had, an intimate personal relationship with each other.</p> <p>Defined in s 299 (Terms used in relation to s. 300 (Persistent family violence)) of the <i>Criminal Code Act Compilation Act 1913</i> (WA)</p>

This circumstance is applicable quite consistently across these jurisdictions to penetrative and non-penetrative sexual conduct and, in the Australian Capital Territory and Queensland, is applicable to most or all other relevant forms of conduct (Table 21; see also Table F6, Appendix F). Legislation in Tasmania specifies conduct or behaviours, rather than actual offences, to which this circumstance is applicable.

Table 21: Intimate partner and family violence as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct		✓			✓		O		✓
Non-penetrative sexual conduct		✓			✓	✓	O		✓
Production of CSAM		✓			✓				
Distribution of CSAM		✓			✓				
Possessing and accessing CSAM		✓			✓				
Image-based sexual abuse		✓			✓				✓
Coercion	–	✓			✓	✓	O		✓
Deception and fraud	–				✓	✓			
Use of substances	–	–			✓	–	–		
Procurement, grooming and encouragement		✓			✓	✓			
Trafficking in persons, sexual servitude and causing a child to perform sexual services					✓				
Incitement	–	–			✓			–	–
Facilitation		–			✓				
Failure to protect or report					✓				

✓ = Specified in legislation as an aggravating or specific circumstance of one or more offences in this category
 O = Specified in statute as an aggravating or specific circumstance of broadly defined sexual acts, not specific offences
 Blank = Not specified in legislation as an aggravating or specific circumstance of one or more offences in this category
 – = Not applicable, no offences in this category recorded in the jurisdiction

Conduct in company

Legislation in most jurisdictions specifies particular sexual offences as being aggravated in some way if an offender committed the offence with other offenders (Table 22; see also Table F7, Appendix F). This is applicable to penetrative and non-penetrative sexual conduct in all those jurisdictions except the Commonwealth and Victoria. It also applies to CSAM-related conduct in New South Wales, the Northern Territory, South Australia and Tasmania. In New South Wales, the *Crimes Act 1900* (NSW) includes an offence that specifies being in the company of another person or persons as an aggravating circumstance in the production of CSAM and procuring a child for purposes of producing CSAM. Further, most of these jurisdictions include specific offences for violence committed as part of unlawful sexual conduct in the company of others. New South Wales and the Northern Territory also specify this circumstance as an aggravating factor to be considered in sentencing for all offences, except where this circumstance is an element of the offence. The Commonwealth only applies this circumstance in legislation about CSAM-related conduct. The *Criminal Code Act 1995* (Cth) includes separate aggravated offences for the production, distribution and receipt/possession of CSAM on three or more separate occasions by two or more persons. Because this rather reflects the maintenance of an ongoing CSAM enterprise, it has been included under *Criminal organisations and organised crime* below.

Table 22: Conduct in company as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct		✓	✓	✓	✓	✓	✓		✓
Non-penetrative sexual conduct			✓	✓	✓	✓	✓		✓
Production of CSAM			✓	✓			✓		✓
Distribution of CSAM			✓	✓					
Possessing and accessing CSAM			✓	✓					
Image-based sexual abuse			✓	✓					
Coercion	–	✓	✓	✓		✓	✓		✓
Deception and fraud	–		✓	✓		✓	✓		
Use of substances	–	–	✓	✓		–	–		
Procurement and grooming			✓	✓		✓	✓		
Trafficking in persons, sexual servitude and causing a child to perform sexual services			✓	✓		✓			
Incitement	–	–	✓	✓				–	–
Facilitation		–	✓	✓			✓		
Failure to protect or report			✓						

Breaking and entering

Two jurisdictions (NSW and WA) have statutory offences that treat various forms of unlawful sexual and enabling conduct committed while burgling or breaking and entering into a property as aggravated (Table 23; see also Table F8, Appendix F). Finally, s 11A of Tasmania's *Sentencing Act 1997* (Tas) requires that the forced or uninvited entry of an offender into a victim's home or other premises be considered in sentencing for a wide range of sexual offences in the *Criminal Code Act 1924* (Tas).

Table 23: Breaking and entering as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct			✓				✓		✓
Non-penetrative sexual conduct			✓				✓		✓
Production of CSAM			✓				✓		✓
Distribution of CSAM									
Possessing and accessing CSAM									
IBSA									
Coercion	–						✓		✓
Deception and fraud	–						✓		
Use of substances	–	–				–	–		
Procurement and grooming			✓				✓		
Trafficking in persons, sexual servitude and causing a child to perform sexual services									
Incitement	–	–	✓					–	–
Facilitation		–	✓				✓		
Failure to protect or report									

Conduct against those acting in the course of their occupational or official duties

Legislation in all jurisdictions in Australia specifies or treats violence of some kind against persons who are performing their occupational duties as an aggravating circumstance. This most often covers acts of violence against law enforcement officers; frequently, other public officers and health/emergency workers; and, less often, any workers. However, only legislation at the Commonwealth level and in New South Wales, the Northern Territory and South Australia specifically treats unlawful sexual and enabling conduct against those performing their occupational duties as an aggravating circumstance (Tables 24 and 25; see also Table F9, Appendix F). In New South Wales and the Northern Territory, this is specified as an aggravating factor applicable to all offences in their respective crimes acts, excluding those offences for which this circumstance is an element of the offence. In South Australia, it is an aggravating circumstance applicable to several sexual offences. The Commonwealth has an offence pertaining specifically to the non-consensual penetration of a UN or associated person while engaged in a UN operation that is not an enforcement action.

Table 24: Definitions—Acting in the course of occupational or official duties	
Jurisdiction	Occupations and occupational duties specified
Cth	<p>United Nations (UN) or associated person while they are engaged in a UN operation that is not an enforcement action.</p> <p>Defined in s 71.8 (Unlawful sexual penetration) of the <i>Criminal Code Act 1995</i> (Cth)</p>
NSW	<p>Police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official exercising public or community functions.</p> <p>Defined in s 21A (Aggravating, mitigating and other factors in sentencing) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)</p> <p>Victim vulnerability at the time of the offence is also specified as an aggravating factor, and this includes victims who were vulnerable because of their occupation (such as a person working at a hospital (other than a health worker), taxi driver, bus driver or other public transport worker, bank teller or service station attendant)</p> <p>Defined in s 21A (Aggravating, mitigating and other factors in sentencing) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)</p>
NT	<p>Police officer or emergency worker in the execution of the officer's or worker's duty.</p> <p>Defined in s 6A (Aggravating factors) of the <i>Sentencing Act 1995</i> (NT)</p>
SA	<p>Police, correctional or community corrections officer, employee in a training centre (as defined in the <i>Youth Justice Administration Act 2016</i> (SA)), youth justice worker, or other law enforcement officer who was either offended against while acting in the course of their professional duties, or in retribution for something connected with their official duties.</p> <p>Also separately specifies those engaged in a prescribed occupation or employment (paid or volunteer) while acting in the course of their official duties, and those who were in a position of particular vulnerability because of the nature of their occupation or employment</p> <p>Defined in s 5AA (Aggravated offences) of the <i>Criminal Law Consolidation Act 1935</i> (SA)</p>

Table 25: Conduct against those acting in the course of their occupational or official duties as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions									
	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓		✓	✓		✓			
Non-penetrative sexual conduct			✓	✓		✓			
Production of CSAM			✓	✓					
Distribution of CSAM			✓	✓					
Possessing and accessing CSAM			✓	✓					
IBSA			✓	✓					
Coercion	–		✓	✓		✓			
Deception and fraud	–		✓	✓		✓			
Use of substances	–	–	✓	✓		–	–		
Procurement, grooming and encouragement			✓	✓		✓			
Trafficking in persons, sexual servitude and causing a child to perform sexual services			✓	✓		✓			
Incitement	–	–	✓	✓				–	–
Facilitation		–	✓	✓					
Failure to protect or report									

Conduct motivated by hatred or prejudice

Legislation in many jurisdictions now specifies or treats sexual offences motivated by hatred of or prejudice against ethnic, cultural, national or other groups as aggravated. At the Commonwealth level, the *Criminal Code Act 1995* (Cth) specifies several offences that involve directly committing or enabling multiple forms of unlawful sexual conduct undertaken specifically as part of a broader attack on a civilian population (ie crimes against humanity, Table 26; see also Table F10, Appendix F). Sentencing legislation in New South Wales, the Northern Territory, South Australia, Tasmania and Victoria specifies it as an aggravating circumstance applicable to all offences in their respective crimes acts, excluding those offences for which this circumstance is an element of the offence.

Table 26: Conduct motivated by hatred or prejudice as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions									
	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct	✓		✓	✓		✓	✓	✓	
Non-penetrative sexual conduct	✓		✓	✓		✓	✓	✓	
Production of CSAM			✓	✓		✓	✓	✓	
Distribution of CSAM			✓	✓		✓	✓	✓	
Possessing and accessing CSAM			✓	✓		✓	✓	✓	
IBSA			✓	✓		✓	✓	✓	
Coercion	–		✓	✓		✓	✓	✓	
Deception and fraud	–		✓	✓		✓	✓	✓	
Use of substances	–	–	✓	✓		–	–	✓	
Procurement, grooming and encouragement			✓	✓		✓	✓	✓	
Trafficking in persons, sexual servitude and causing a child to perform sexual services	✓		✓	✓		✓	✓	✓	
Incitement	–	–	✓	✓		✓	✓	–	–
Facilitation		–	✓	✓		✓	✓	✓	
Failure to protect or report									

Criminal organisations and organised crime

Over the past two decades, all states and territories in Australia, along with the Commonwealth, have introduced or strengthened laws that criminalise involvement with ‘criminal’ organisations. Broadly, these are individuals who associate for the purpose of crime (Table 27). These laws have seen the introduction of new offences for participating in or committing crimes with, or on behalf of, criminal organisations. Offenders can be charged with these alongside other offences, including the sexual offences discussed in this review. Additionally, acting alongside, under the direction of, or for the benefit of, a criminal organisation is specified or treated as an aggravating circumstance of certain offences in many jurisdictions.

Table 27: Definitions—Criminal organisation		
Jurisdiction	Term used	Definition
Cth	No term specified	<p>Commission of the relevant offence on 3 or more separate occasions by 2 or more persons.</p> <p>Used in s 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people); s 4 71.22 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people); and s 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people) of the <i>Criminal Code Act 1995</i> (Cth)</p>
NSW	No term specified	<p>Planned or organised criminal activity.</p> <p>Used in s 21A (Aggravating, mitigating and other factors in sentencing) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)</p>
NT	No term specified	<p>Substantial planning and organisation.</p> <p>Used in s 6A (Aggravating circumstances) of the <i>Sentencing Act 1995</i> (NT)</p>
Qld	Criminal organisation	<p>A group of 3 or more persons, whether arranged formally or informally: a) who engage in, or have as their purpose (or 1 of their purposes) engaging in, serious criminal activity; and b) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.</p> <p>Defined in s 161O (Meaning of criminal organisation) of the <i>Penalties and Sentencing Act 1992</i> (Qld)</p>
SA	Criminal organisation	<p>A criminal group or a declared organisation.</p> <p>A group of 2 or more persons is criminal if: a) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence of violence (or conduct that would, if engaged in within this State, constitute such an offence); or b) an aim or activity of the group includes engaging in conduct, or facilitating engagement in conduct, constituting a serious offence (or conduct that would, if engaged in within this State, constitute such an offence) that is intended to benefit the group, persons who participate in the group or their associates.</p> <p>Defined in s 83D (Interpretation) of the <i>Criminal Law Consolidation Act 1935</i> (SA)</p> <p>A declared organisation is one that is subject to a court declaration as such based on: a) members of the organisation associating for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and b) the organisation representing a risk to public safety and order in SA.</p> <p>Defined in s 11 (Court may make a declaration) of the <i>Serious and Organised Crime (Control) Act 2008</i> (SA)</p>
WA	Declared criminal organisation	<p>An organisation in respect of which a declaration is in force under Part 2 of the <i>Criminal Organisations Control Act 2012</i> (WA), issued on the basis that the organisation: a) is an organisation; b) that has members who associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and c) which represents a risk to public safety and order.</p> <p>Defined in s 13 (Designated authority may make declaration) of the <i>Criminal Organisations Control Act 2012</i> (WA)</p>

With sexual offences, this circumstance is arguably of particular relevance where groups undertake sexual servitude, forced prostitution, trafficking in persons and the production and distribution of CSAM as part of an ongoing criminal enterprise. This circumstance is directly and specifically applicable to sexual offences in statute in three jurisdictions (Qld, SA and WA; Table 28; see also Table F11, Appendix F). Many of Queensland’s sexual offences specify, as an aggravating circumstance, that the offender was a participant in a criminal organisation when the offence was committed and knew, or ought to have known, that the offence was being committed for, or with other members of, that organisation. In South Australia, s 5AA (Aggravated offences) of the *Criminal Law Consolidation Act 1935* (SA) includes, as an aggravating circumstance of a number of sexual offences included in the Act, commission of the offence with or for a criminal organisation and identifying with a criminal organisation while committing the offence. In Western Australia, minimum sentences are mandated for a large number of sexual offences if committed with or for a criminal organisation. Across all three jurisdictions, this circumstance is applicable to a wide range of penetrative and non-penetrative, sexual servitude and trafficking in persons offences. It is also applicable to offences involving the production and distribution of CSAM in Queensland and South Australia.

Table 28: Criminal organisations and organised crime as an aggravating or specific circumstance of different kinds of sexual offences across jurisdictions

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Penetrative sexual conduct			✓	✓	✓	✓			✓
Non-penetrative sexual conduct			✓	✓	✓	✓			✓
Production of child sexual material	O		✓	✓	✓				✓
Distribution of CSAM	O		✓	✓	✓				✓
Possessing and accessing CSAM	O		✓	✓	✓				✓
IBSA			✓	✓	✓				✓
Coercion	–		✓	✓	✓	✓			✓
Deception and fraud	–		✓	✓	✓	✓			✓
Use of substances	–	–	✓	✓	✓	–	–		
Procurement, grooming and encouragement			✓	✓	✓	✓			✓
Trafficking in persons, sexual servitude and causing a child to perform sexual services			✓	✓	✓	✓			✓
Incitement	–	–	✓	✓				–	–
Facilitation		–	✓	✓	✓				
Failure to protect or report									

✓ = Specified in legislation as an aggravating or specific circumstance of one or more offences in this category

O = Circumstance is described as relevant conduct by two or more persons on three or more occasions, and may or may not apply to criminal organisations

Blank = Not specified in legislation as an aggravating or specific circumstance of one or more offences in this category

– = Not applicable, no offences in this category recorded in the jurisdiction

Like other jurisdictions, New South Wales has introduced legislation to criminalise certain organisations under its *Crimes (Criminal Organisations Control) Act 2012* (NSW). Individuals who sexually offend with or for an organisation declared as criminal under this Act can also be charged with offences centred on participating in, or benefiting from, the activities of criminal groups—although sexual offences are not, in statute, explicitly considered to be aggravated in such circumstances. However, s 21A (Aggravating, mitigating and other factors in sentencing) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) specifies, as an aggravating circumstance of all offences in the *Crimes Act 1900* (NSW) to be considered during sentencing, commission as part of a planned or organised criminal activity. Similarly, in the Northern Territory, s 6A (Aggravating factors) of the *Sentencing Act 1995* (NT) also specifies commission involving substantial planning and organisation as an aggravating circumstance to be considered during sentencing for all sexual offences in the *Criminal Code Act 1983* (NT). Finally, the *Criminal Code Act 1995* (Cth), discussed earlier, specifies as an aggravating circumstance of offences that pertain to the production and dissemination of CSAM, unlawful sexual conduct on two or more occasions by three or more persons. While terminology specific to criminal organisations or organised crime is not used, this circumstance may be applicable to instances where CSAM is made and distributed in the context of an ongoing criminal enterprise.

Summary—aggravating and other specific circumstances

This subsection has examined the aggravating and other specific circumstances which are currently specified in Australian Commonwealth, state and territory legislation as applicable to sexual offences. While some circumstances (ie victim age, relationships of care or authority) are consistently applicable to penetrative and non-penetrative sexual conduct, there is greater variation across jurisdictions in the specification of other circumstances and in the applicability of these circumstances to other forms of unlawful sexual and enabling conduct. To reiterate: this subsection should be read alongside the preceding subsection (*Conduct*), because the absence of aggravating circumstances in a jurisdiction's legislation may be explained by the existence of standalone offences covering these circumstances in relation to certain conduct.

Defences and excuses

This subsection examines defences and excuses (sometimes exemptions, exceptions or exclusions) to sexual offences in Commonwealth, state and territory legislation. Broadly speaking, defences and excuses are conditions that negate one or more elements of an offence (Fairall & Barrett 2016). Colloquially, anything a defendant does to refute a prosecution's argument is construed as a defence or excuse, including proving that they were not present at the time and place of an offence (ie alibi) or that their action or inaction did not bring about the physical element of an offence (ie denial of causation). In a stricter legal sense, and for the purposes of this review, defences and excuses refer to conditions that provide some justification for conduct that would otherwise be criminal. If substantiated, defences and excuses either absolve a defendant of criminal liability completely or warrant their conviction for a less serious offence. Excuses exclude the applicability of provisions to certain persons or under certain circumstances (eg conduct undertaken in the course of one's occupational duties). Given their similarity in nature and use to other defences, the term 'defence' is used throughout this subsection to refer to both excuses and other types of defences.

This subsection examines how defences are defined, offences to which these defences apply and the extent to which defences are applied consistently between jurisdictions. This review considers legislated defences only, excluding those that may be available at common law. Broadly, defences to sexual offences focus on victim and defendant characteristics (eg age and relationship to each other), the context in which conduct is carried out and the defendant's intention in carrying out the conduct. In reading this subsection, it is important to note that defences may have fallen into more than one category where the defence comprises multiple elements.

Age-related

Similar age of victim and defendant

A defence of similar age is legislated in Australian jurisdictions other than the Commonwealth, the Northern Territory and Queensland (Table 29; see also Table G1, Appendix G). These defences primarily apply to contact and non-contact sexual offences against children (ACT, NSW, SA, Tas, Vic and WA), although they may also apply to CSAM and IBSA offences (ACT and Vic), and procuring offences (SA and Tas). Legislation in each jurisdiction details the minimum age of the victim and the maximum difference in age between the victim and defendant required for this defence to apply. The similarity in age between the victim and defendant may be only one element of a defence that requires multiple elements to be proven (eg similarity in age and consent, or similarity in age and marriage). Where a similarity in age defence is not legislated in particular jurisdictions or for particular offences, this may be because of how offences are defined, limitations in how the offences apply to minors or other factors. For example, under the published Director's Guidelines in Queensland (Queensland Department of Justice and Attorney-General 2022), the age difference between the complainant and defendant may be relevant to an exercise of the DPP's public interest discretion.

Table 29: Similar age of victim and defendant as a defence to certain sexual offences in Australian legislation

Jurisdiction	Age of victim	Age of defendant	Legislation	Relevant offences
ACT	10 years or above	Not more than 2 years older	<i>Crimes Act 1900 (ACT)</i>	s 55 (Sexual intercourse with a young person) ^a s 61 (Acts of indecency with young people) ^a s 72D (Distribution of intimate image of young person) ^a
	Not specified	Not more than 2 years older	<i>Crimes Act 1900 (ACT)</i>	s 55A (Sexual intercourse with young person under special care) s 61A (Act of indecency with young person under special care)
NSW	14 years or above	Not more than 2 years older	<i>Crimes Act 1900 (NSW)</i>	s 66C (Sexual intercourse—child between 10 and 16) ^b s 66DB (Sexual touching—child between 10 and 16) s 66DD (Sexual act—child between 10 and 16) s 73 (Sexual intercourse—young person between 16 and 18 under special care) s 73A (Sexual touching—young person between 16 and 18 under special care)
SA	16 years or above	Under 17 years	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 49 (Unlawful sexual intercourse) s 63B (Procuring child to commit indecent act etc)
	17 years or above	Under 18 years	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 49 (Unlawful sexual intercourse) (where defendant was in a position of authority) s 63B (Procuring child to commit indecent act etc) (where defendant was in a position of authority)
Tas	15 years or above	Not more than 5 years older	<i>Criminal Code Act 1924 (Tas)</i>	s 124 (Penetrative sexual abuse of child or young person) ^a s 125B (Indecent act with child or young person) ^a
	12 years or above	Not more than 3 years older	<i>Criminal Code Act 1924 (Tas)</i>	s 125C (Procuring child or young person for sexual abuse) ^a s 125D (Communications with intent to procure child or young person) s 127 (Indecent assault) ^a

Table 29: Similar age of victim and defendant as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Age of victim	Age of defendant	Legislation	Relevant offences
Vic	12 years or above	Not more than 2 years older	<i>Crimes Act 1958</i> (Vic)	s 49B (Sexual penetration of a child under the age of 16) ^a
				s 49D (Sexual assault of a child under the age of 16)
	16–17 years	Not more than 5 years older	<i>Crimes Act 1958</i> (Vic)	s 49F (Sexual activity in the presence of a child under the age of 16)
				s 49H (Causing a child under the age of 16 to be present during sexual activity)
				s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority) ^a
				s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority) ^a
Youngest child in image	Not more than 2 years older	<i>Crimes Act 1958</i> (Vic)	s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority) ^a	
			s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity) ^a	
16–17 years	Not more than 2 years older	<i>Crimes Act 1958</i> (Vic)	s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity) ^a	
			s 51B (Involving a child in the production of child abuse material) ^a	
WA	Not specified	Not more than 3 years older	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 51C (Producing child abuse material) ^a
				s 51D (Distributing child abuse material) ^a
				s 51G (Possession of child abuse material) ^a
				s 51H (Accessing child abuse material) ^a
				s 204A (Showing offensive material to child under 16)
				s 321 (Child of or over 13 and under 16, sexual offences against)
				s 321A (Child under 16, persistent sexual conduct with)

a: Requires another element of a defence to be proven (eg consent or marriage)

b: Applies to s 66C(3) (Sexual intercourse—child between 14 and 16) only

There is little consistency in the minimum age of the victim required for the defence to be applied (ranging from 10 and above in the ACT to 17 and above in SA). There is more consistency in the maximum age difference between the victim and the defendant, although this still ranges from one year in South Australia to five years in Tasmania and Victoria. A difference in age of five years is only applicable where the victim is older (ie 15 or above in Tas and 16 or above in Vic).

Defendant's reasonable belief in victim's age

These defences primarily relate to circumstances in which the victim was over the age of consent, or the defendant reasonably believed that the victim was over the age of consent. The age of consent is 16 in all jurisdictions other than South Australia and Tasmania, where it is 17 (see subsection *Consent* above). Some of the defences considered here specify an age below or above the age of consent, depending on the offence to which they apply (Table 30; see also Table G2, Appendix G). Defences that require proof of the defendant's reasonable belief that the victim was older than the age of consent are legislated as defences to circumstances of aggravation for procuring offences in South Australia and Western Australia; they do not preclude the defendant from being convicted of the offence without the circumstance of aggravation. Defences requiring proof that the defendant believed that the victim was older than the age of consent relate to contact and non-contact sexual offences (Cth, ACT, SA, Tas and Vic), sex work offences (ACT, SA, Tas and Vic) and procuring offences (NSW, SA and Tas).

Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation

Jurisdiction	Age that the defendant believed the victim to be	Legislation	Relevant offences
Cth	16 years or above	<i>Criminal Code Act 1995</i> (Cth)	<p>s 272.8 (Sexual intercourse with child outside Australia)</p> <p>s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)</p> <p>s 272.14 (Procuring child to engage in sexual activity outside Australia)</p> <p>s 272.15 (“Grooming” child to engage in sexual activity outside Australia)</p> <p>s 272.15A (“Grooming” person to make it easier to engage in sexual activity with a child outside Australia)</p> <p>s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)</p> <p>s 474.26 (Using a carriage service to procure persons under 16 years of age)</p> <p>s 474.27 (Using a carriage service to “groom” persons under 16 years of age)</p> <p>s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age)</p> <p>s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age)</p>
	18 years or above	<i>Criminal Code Act 1995</i> (Cth)	<p>s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority)</p> <p>s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority)</p>
	Under 18 years ^a	<i>Criminal Code Act 1995</i> (Cth)	<p>s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)</p> <p>s 474.26 (Using a carriage service to procure persons under 16 years of age)</p> <p>s 474.27 (Using a carriage service to “groom” persons under 16 years of age)</p> <p>s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age)</p>

Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation (cont.)			
Jurisdiction	Age that the defendant believed the victim to be	Legislation	Relevant offences
ACT	16 years or above	<i>Crimes Act 1900 (ACT)</i>	s 55 (Sexual intercourse with young person) ^b s 61 (Acts of indecency with young people) ^b s 66 (Grooming and depraving young people) s 72D (Distribution of intimate image of young person) ^b
	18 years or above	<i>Crimes Act 1900 (ACT)</i>	s 55A (Sexual intercourse with young person under special care) s 61A (Act of indecency with young person under special care)
		<i>Sex Work Act 1992 (ACT)</i>	s 19 (Soliciting) s 20 (Causing child to provide commercial sexual services etc)
NSW	16 years or above	<i>Crimes Act 1900 (NSW)</i>	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)
NT	16 years or above	<i>Criminal Code Act 1983 (NT)</i>	s 127 (Sexual intercourse or gross indecency involving child under 16 years) ^c s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person) ^{b,c} s 131 (Attempts to procure child under 16 years) ^c s 131A (Sexual relationship with child) ^c s 132 (Indecent dealing with child under 16 years) ^c
Qld	16 years or above	<i>Criminal Code Act 1899 (Qld)</i>	s 210 (Indecent treatment of children under 16) ^d s 213 (Owner etc permitting abuse of children on premises) ^d s 215 (Engaging in penile intercourse with child under 16) ^d s 218A (Using internet etc to procure children under 16) s 218B (Grooming child under 16 years or parent or carer of child under 16 years) s 219 (Taking child for immoral purposes) ^d s 229B (Repeated sexual conduct with a child) ^d
	12 years or above	<i>Criminal Code Act 1899 (Qld)</i>	s 218A (Using internet etc to procure children under 16) (where victim under 12 years) s 218B (Grooming child under 16 years or parent or carer of child under 16 years) (where victim under 12 years)

Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Age that the defendant believed the victim to be	Legislation	Relevant offences
SA	17 years or above	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 49 (Unlawful sexual intercourse) ^e s 63B (Procuring child to commit indecent act etc) ^e
	18 years or above	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 49 (Unlawful sexual intercourse) (where defendant was in a position of authority) ^f s 63B (Procuring child to commit indecent act etc) (where defendant was in a position of authority) ^f s 68 (Use of children in commercial sexual services)
Tas	17 years or above	<i>Criminal Code Act 1924 (Tas)</i>	s 124 (Penetrative sexual abuse of child or young person) ^{g,h} s 125B (Indecent act with child or young person) ^{g,h} s 125C (Procuring child or young person for sexual abuse) ^{g,h} s 125D (Communications with intent to procure child or young person) ^{g,h} s 127 (Communications with intent to procure child or young person) ^{g,h}
	18 years or above	<i>Sex Industry Offences Act 2005 (Tas)</i>	s 9 (Participation of children) ⁱ

Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Age that the defendant believed the victim to be	Legislation	Relevant offences
Vic	16 years or above	<i>Crimes Act 1958</i> (Vic)	<p>s 49B (Sexual penetration of a child under the age of 16)^d</p> <p>s 49D (Sexual assault of a child under the age of 16)^d</p> <p>s 49F (Sexual activity in the presence of a child under the age of 16)^d</p> <p>s 49H (Causing a child under the age of 16 to be present during sexual activity)^d</p> <p>s 49K (Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity)</p>
	18 years or above	<i>Crimes Act 1958</i> (Vic)	<p>s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)</p> <p>s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority)</p> <p>s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority)</p> <p>s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity)</p> <p>s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</p> <p>s 49Q (Causing or allowing a sexual performance involving a child)^d</p> <p>s 49R (Inviting or offering a sexual performance involving a child)^d</p>
	18 years or above	<i>Sex Work Act 1994</i> (Vic) ^j	<p>s 5 (Causing or inducing child to take part in sex work)</p> <p>s 7 (Agreement for provision of sexual services by a child)^e</p> <p>s 11 (Allowing child to take part in sex work)</p>

Table 30: Defendant’s reasonable belief in victim’s age as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Age that the defendant believed the victim to be	Legislation	Relevant offences
WA	16 years or above	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 186 (Occupier or owner allowing young person to be on premises for unlawful carnal knowledge) s 204B (Using electronic communication to procure, or expose to indecent matter, child under 16)
	13 years or above	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 204B (Using electronic communication to procure, or expose to indecent matter, child under 16) (where victim under 13 years)

a: Refers to age of the participant (ie someone who the defendant intends will engage in sexual activity with a child, or will be present while a child engages in sexual activity with another person)

b: Requires another element of a defence to be proven (eg consent or marriage)

c: Victim must be 14 years or above for the defence to apply to this offence

d: Victim must be 12 years or above for the defence to apply to this offence

e: Victim must be 16 years or above for the defence to apply to this offence

f: Victim must be 17 years or above for the defence to apply to this offence

g: Victim must be 13 years or above for the defence to apply to this offence

h: Defence does not apply if the defendant did not take all reasonable steps to ascertain the age of the person or was in a state of self-induced intoxication, and the mistake was not one which the defendant would have made if not intoxicated

i: Defence does not apply unless the defendant proves that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was of or over the age of 18

j: The *Sex Work Decriminalisation Act 2021* (Vic) repealed the *Sex Work Act 1994* (Vic) on 1 December 2023, and these crimes were moved to the *Crimes Act 1958* (Vic)

It may also be a defence for the defendant to prove that the victim was of or above a certain age. This defence is legislated in Victoria. Specifically, proof that the victim was aged 18 or above at the time of the alleged offence is a defence to distributing an intimate image and sexual penetration of a stepchild. Both defences require additional elements to be proven (consent and defendant not in a position of authority, respectively).

Age of defendant

The age of the defendant is legislated as a defence to a charge of incest or related offences under New South Wales and Victorian legislation (Table 31; see also Table G3, Appendix G).

In New South Wales, this defence requires that the defendant was above the age of 16 and under the age of 18 at the time of the offence; in Victoria, the defence refers to the defendant being under the age of 18 only. In both jurisdictions, this defence applies only to certain types of relationships, as discussed under ‘Other relationships between the victim and defendant’.

In New South Wales, the age of the defendant is also a defence to CSAM offences in which the material depicts only the defendant.

Table 31: Age of defendant as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Relevant offences
NSW	<i>Crimes Act 1900</i> (NSW)	s 78A (Incest)
		s 91H (Production, dissemination or possession of child abuse material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)

Relationship between victim and defendant

A number of defences to sexual offences relate to the relationship between the victim and defendant. These include circumstances in which the defendant had a reasonable belief that a relationship did or did not exist. These defences are examined below.

Marriage and other domestic partnerships

That the defendant was married to, or had a domestic partnership with, the victim is legislated as a defence to certain sexual offences in all jurisdictions. The offences to which this defence applies include contact and non-contact sexual offences against children and young people or individuals with a cognitive or mental impairment, offences in which the defendant was in a position of trust or authority over the victim, incest and related offences and child abuse material offences (Table 32; see also Table G4, Appendix G).

Table 32: Marriage and other domestic partnerships as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Relevant offences
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority)
		s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority)
ACT	<i>Crimes Act 1900</i> (ACT)	s 55A (Sexual intercourse with young person)
		s 61A (Act of indecency with young person under special care)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)
		s 73 (Sexual intercourse—young person between 16 and 18 under special care)
		s 73A (Sexual touching—young person between 16 and 18 under special care)
NT	<i>Criminal Code Act 1983</i> (NT)	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
		s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 222 (Incest)

Table 32: Marriage and other domestic partnerships as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Legislation	Relevant offences
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)
		s 51 (Sexual exploitation of person with a cognitive impairment)
		s 63B (Procuring child to commit indecent act etc)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 124A (Penetrative sexual abuse of a child or young person by person in position of authority)
		s 125A (Persistent sexual abuse of child or young person)
		s 126 (Penetrative sexual abuse of person with mental impairment)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)
		s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority)
		s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority)
		s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity)
		s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)
		s 51B (Involving a child in the production of child abuse material)
		s 51C (Producing child abuse material)
		s 51D (Distributing child abuse material)
		s 51G (Possession of child abuse material)
		s51H (Accessing child abuse material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)
		s 52C (Sexual assault of a person with a cognitive impairment or mental illness)
		s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness)
		s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)
		s 322 (Child of or over 16, sexual offences against by person in authority etc)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 322 (Child of or over 16, sexual offences against by person in authority etc)
		s 330 (Incapable person, sexual offences against)

These defences (ie the victim and defendant were married or had a domestic partnership) are generally consistent across jurisdictions, with Commonwealth and Victorian legislation being the exceptions. The defence of marriage in Commonwealth legislation requires the defendant to prove that there existed a marriage between themselves and the victim that was recognised as valid under the law of the place where the marriage was solemnised, where the sexual activity took place, or where the defendant resided. This defence further requires proof that the marriage was genuine when solemnised and that the victim was over 16 at the time. These specifications relate to the nature of the offences to which this defence applies, being sexual intercourse or sexual activity with a young person outside of Australia (where the defendant was in a position of trust or authority). In Victoria, it is a defence that the defendant was married to, or in a domestic partnership with, the victim or that the defendant reasonably believed that they were married to, or in a domestic partnership with, the victim. Victoria is the only jurisdiction to have legislated reasonable belief in marriage as a defence to sexual offences. In both the Commonwealth and Victoria, the defendant needs to prove additional elements of the defence (eg age of victim, consent or that a domestic partnership commenced before the victim came to be under the care, supervision or authority of the defendant).

Other relationships between the victim and defendant

Other relationships between the victim and defendant may be raised as a defence to incest and related offences under New South Wales and Victorian legislation (Table 33; see also Table G5, Appendix G). In New South Wales, it is a defence to incest that the other person to whom the charge relates was the parent (including adoptive parent) or grandparent of the defendant. This is to ensure that a young person cannot be prosecuted for an incestuous relationship with a parent or grandparent who had authority over them. In Victoria, it is a defence to incest that the other person to whom the charge relates was the defendant’s step-parent (provided that the defendant has never been under the care, supervision or authority of this person) or stepchild (provided that the other person has never been under the defendant’s care, supervision or authority). This recognises that, in some situations—such as the marriage of older adults—a step-parent will never have played the role of a parent, and a sexual relationship between consenting adults should not be considered incest.

In both jurisdictions, this defence also requires that the defendant be of a particular age (discussed above under *Age of defendant*).

Table 33: Other relationships between the victim and defendant as a defence to certain sexual offences in Australian legislation		
Jurisdiction	Legislation	Relevant offences
NSW	<i>Crimes Act 1900</i> (NSW)	s 78A (Incest)
Vic	<i>Crimes Act 1958</i> (Vic)	s 50D (Sexual penetration of a step-child)
		s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)

Reasonable belief that no relationship existed

Defendants' reasonable belief that no relationship existed between themselves and the victim is legislated as a defence in New South Wales, South Australia and Victoria (Table 34; see also Table G6, Appendix G).

In New South Wales and South Australia, this is a defence to incest and related offences that specifies that the defendant did not know or could not reasonably have been expected to know that they were related to the victim. While this is not a defence in other jurisdictions, the defendant's knowledge of their relationship to the victim is an element of the offence in the Australian Capital Territory, Queensland, Tasmania and Western Australia. In Victoria, there is a rebuttable presumption that the defendant is aware of their relationship to the victim. In the Northern Territory, however, knowledge of the relationship is not an element of the offence, and lack of knowledge is not a defence to incest.

In Victoria, defences about a reasonable belief that no relationship existed are applicable to sexual offences against children or adults under the care, supervision or authority of the defendant. These defences require the defendant to prove that they had a reasonable belief that the victim was not under their care, supervision or authority, or that they had a reasonable belief that the service provider agency they were employed by was not providing treatment to the victim at the time of the conduct constituting the offence.

Table 34: Reasonable belief that no relationship existed as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Relevant offences
NSW	<i>Crimes Act 1900</i> (NSW)	s 78A (Incest)
		s 78B (Incest attempts)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 72 (Incest)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity)
		s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)
		s 52C (Sexual assault of a person with a cognitive impairment or mental illness)
		s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness)
		s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)

Belief in consent

An honest and reasonable but mistaken belief that the victim consented to sexual activity is legislated as a defence to sexual offences in Queensland, Tasmania and Western Australia. A mistake of fact defence is required in these jurisdictions, because most sexual offences do not legislate a fault element (ie the prosecution is not required to prove that the defendant knew the victim was not consenting or was reckless as to consent; see subsection *Consent*). Unless excluded by law, the mistake of fact defence applies to all offences in Queensland and Western Australia (*Criminal Code Act 1899* (Qld) s 24 (Mistake of fact); *Criminal Code Act Compilation Act 1913* (WA) s 24 (Mistake of fact)). In Queensland, s 348A of the *Criminal Code Act 1899* (Qld) provides further detail about the mistake of fact defence as it applies to offences against Chapter 32 (Rape and sexual assaults).

Tasmania has a similar mistake of fact defence (*Criminal Code Act 1924* (Tas) s 14 (Mistake of fact)) and has also introduced a supplementary provision: 'Mistake as to consent in certain sexual offences' (*Criminal Code Act 1924* (Tas) s 14A). This defence applies to four sections of the *Criminal Code Act 1924* (Tas): s 124 (Penetrative sexual abuse of child or young person), s 125B (Indecent act with child or young person), s 127 (Indecent assault) and s 185 (Rape). This defence cannot be raised by the defendant if they were intoxicated and would not have otherwise made the mistake, were reckless as to consent, or did not take reasonable steps to ascertain consent (*Criminal Code Act 1924* (Tas) s 14A (Mistake as to consent in certain sexual offences)). Mistake of fact defences in Queensland, Tasmania and Western Australia are excluded from Table 35 but included in Table G7, Appendix G.

That the victim consented to the sexual activity, or that the defendant had a reasonable but mistaken belief that the victim consented, is legislated as a specific defence to some sexual offences in the Australian Capital Territory, South Australia, Tasmania and Victoria (Table 35; see also Table G7, Appendix G). This defence is primarily applicable to offences in which a victim is presumed to be incapable of consent because of their age. It generally requires the defendant to prove another element of the defence (eg that they were of a similar age to the victim). The offences to which these defences may be applied include contact and non-contact sexual offences (ACT, Tas and Vic), procuring offences (Tas), recording or distributing intimate images offences (ACT, SA, Tas and Vic) and CSAM offences (Vic).

Table 35: Consent as a defence to certain sexual offences in Australian legislation		
Jurisdiction	Legislation	Relevant offences
ACT	<i>Crimes Act 1900</i> (ACT)	s 55 (Sexual intercourse with a young person) ^a
		s 61 (Acts of indecency with young people) ^a
		s 61B (Intimate observations or capturing visual data etc)
		s 72D (Distribution of intimate image of young person) ^a
SA	<i>Summary Offences Act 1953</i> (SA)	s 26B (Humiliating or degrading filming)
		s 26D (Indecent filming)
		s 26DA (Threat to distribute invasive image or image obtained from indecent filming)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 124 (Penetrative sexual abuse of child or young person) ^a
		s 125B (Indecent act with child or young person) ^a
		s 125C (Procuring child or young person for sexual abuse) ^a
		s 126 (Penetrative sexual abuse of person with mental impairment)
	s 127 (Indecent assault) ^a	
	<i>Police Offences Act 1935</i> (Tas)	s 13A (Observation or recording in breach of privacy)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49B (Sexual penetration of a child under the age of 16) ^a
		s 51B (Involving a child in the production of child abuse material) ^a
		s 51C (Producing child abuse material) ^a
		s 51D (Distributing child abuse material) ^a
		s 51G (Possession of child abuse material) ^a
		s 51H (Accessing child abuse material) ^a
		s 53R (Producing intimate image) ^a
	s 53S (Distributing intimate image) ^a	
	<i>Summary Offences Act 1966</i> (Vic)	s 41A (Observation of genital or anal region)

a: Requires another element of a defence to be proven (eg similar age of victim and defendant)

Acting in the course of one's occupational duties

There are a number of defences to sexual offences that relate to circumstances in which the defendant was acting in the course of their occupational duties. These include law enforcement, legal or related purposes, medical purposes and other purposes for the public's benefit.

Conduct carried out for law enforcement, legal or related purposes

Carrying out conduct for law enforcement, legal or related purposes is a defence that is legislated in all jurisdictions. These defences are applicable to CSAM (all jurisdictions except for the ACT and SA) and IBSA offences (all jurisdictions except for Cth; Table 36; see also Table G8, Appendix G). These defences cover situations in which engaging in the relevant conduct is necessary for law enforcement, intelligence or security officers, government employees or court officers to enforce or investigate a contravention of a law or otherwise administer justice. The conduct must also be reasonable in those circumstances. Under Commonwealth legislation, this defence may also be applied to those engaging in conduct in good faith to assist the eSafety Commissioner. In some jurisdictions (ACT, Qld and SA), it is also a defence for a licensed security provider to engage in reasonable conduct required for the performance of their duties.

Table 36: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Relevant offences
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
		s 273A.1 (Possession of child-like sex dolls etc)
		s 474.22 (Using a carriage service for child abuse material)
		s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service)
		s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
		s 474.23A (Conduct for the purposes of electronic service used for child abuse material)
Cth	Customs (Prohibited Exports) Regulations 1958 (Cth)	Regulation 3 (Exportation of objectionable goods)
	Customs (Prohibited Imports) Regulations 1956 (Cth)	Regulation 4A (Importation of objectionable goods)
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)
		s 72C (Non-consensual distribution of intimate images)
		s 72D (Distribution of intimate image of young person)

Table 36: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Legislation	Relevant offences
NSW	<i>Crimes Act 1900</i> (NSW)	s 91H (Production, dissemination or possession of child abuse material)
		s 91HAA (Administering a digital platform used to deal with child abuse material)
		s 91HAB (Encouraging use of a digital platform to deal with child abuse material)
		s 91HAC (Providing information about avoiding detection)
		s 91P (Record intimate image without consent)
		s 91Q (Distribute intimate image without consent)
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)
		s 208AB (Distribution of intimate image without consent)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 223 (Distributing intimate images)
		s 228A (Involving child in making child exploitation material)
		s 228B (Making child exploitation material)
		s 228C (Distributing child exploitation material)
		s 228D (Possessing child exploitation material)
		s 228DA (Administering child exploitation material website)
		s 228DB (Encouraging use of child exploitation material website)
		s 228DC (Distributing information about avoiding detection)
SA	<i>Summary Offences Act 1953</i> (SA)	s 26B (Humiliating or degrading filming)
		s 28C (Distribution of invasive image)
		s 26D (Indecent filming)
		s 26DA (Threat to distribute invasive image or image obtained from indecent filming)
		s 130 (Involving person under 18 years in production of child exploitation material)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130A (Production of child exploitation material)
		s 130B (Distribution of child exploitation material)
		s 130C (Possession of child exploitation material)
		s 130D (Accessing child exploitation material)
	<i>Police Offences Act 1935</i> (Tas)	s 13A (Observation or recording in breach of privacy)
		s 13B (Publishing or distributing prohibited visual recording)

Table 36: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences in Australian legislation (cont.)		
Jurisdiction	Legislation	Relevant offences
Vic	<i>Crimes Act 1958</i> (Vic)	s 51B (Involving a child in the production of child abuse material)
		s 51C (Producing child abuse material)
		s 51D (Distributing child abuse material)
		s 51E (Administering a website used to deal with child abuse material)
		s 51F (Encouraging use of a website to deal with child abuse material)
		s 51G (Possession of child abuse material)
		s 51H (Accessing child abuse material)
		s 51I (Assisting a person to avoid apprehension)
	<i>Summary Offences Act 1966</i> (Vic)	s 41A (Observation of genital or anal region)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 217 (Involving child in child exploitation)
		s 218 (Producing child exploitation material)
		s 219 (Distributing child exploitation material)
		s 220 (Possession of child exploitation material)
		s 221BD (Distribution of intimate image)

Conduct carried out for medical purposes

Across all jurisdictions, it is legislated as a defence that the defendant engaged in the conduct for a medical or hygienic purpose, including medical research (Table 37; see also Table G9, Appendix G). There is little variation across jurisdictions in these defences, other than the offences to which they are applicable. This defence is applicable primarily to CSAM offences (Cth, NSW, NT, Qld, Tas, Vic and WA) and IBSA offences (ACT, NSW, NT, Qld, SA and WA). It is also applicable to some contact sexual offences (Cth, NSW and Vic) and non-contact sexual offences (Vic). Importantly, conduct carried out solely for medical purposes may be excluded from the definition of unlawful sexual acts in some jurisdictions (eg *Crimes Act 1900* (NSW) s 61HA(2) states: ‘Penetration carried out solely for proper medical or hygienic purposes is not *sexual intercourse* for the purposes of this Division’).

Table 37: Conduct carried out for medical purposes as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Relevant offences
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 71.8 (Unlawful sexual penetration)
		s 273A.1 (Possession of child-like sex dolls etc)
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)
		s 72C (Non-consensual distribution of intimate images)
		s 72D (Distribution of intimate image of young person)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)
		s 91G (Children not to be used for production of child abuse material)
		s 91H (Production, dissemination or possession of child abuse material)
		s 91HAA (Administering a digital platform used to deal with child abuse material)
		s 91HAB (Encouraging use of a digital platform to deal with child abuse material)
		s 91HAC (Providing information about avoiding detection)
		s 91P (Record intimate image without consent)
NT	<i>Criminal Code Act 1983</i> (NT)	s 91Q (Distribute intimate image without consent)
		s 125B (Possession of child abuse material)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 208AB (Distribution of intimate image without consent)
		s 223 (Distributing intimate images)
		s 228A (Involving child in making child exploitation material)
		s 228B (Making child exploitation material)
		s 228C (Distributing child exploitation material)
		s 228D (Possessing child exploitation material)
		s 228DA (Administering child exploitation material website)
		s 228DB (Encouraging use of child exploitation material website)
		s 228DC (Distributing information about avoiding detection)
		s 228I (Producing or supplying child abuse object)
SA	<i>Summary Offences Act 1953</i> (SA)	s 228J (Possessing child abuse object)
		s 26B (Humiliating or degrading filming)
		s 26C (Distribution of invasive image)
		s 26D (Indecent filming)
		s 26DA (Threat to distribute invasive image or image obtained from indecent filming)

Table 37: Conduct carried out for medical purposes as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Legislation	Relevant offences
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130 (Involving person under 18 years in production of child exploitation material)
		s 130A (Production of child exploitation material)
		s 130B (Distribution of child exploitation material)
		s 130C (Possession of child exploitation material)
		s 130D (Accessing child exploitation material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 38 (Rape)
		s 39 (Rape by compelling sexual penetration)
		s 40 (Sexual assault)
		s 41 (Sexual assault by compelling sexual touching)
		s 49A (Sexual penetration of a child under the age of 12)
		s 49B (Sexual penetration of a child under the age of 16)
		s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)
		s 50C (Sexual penetration of a child or lineal descendant)
		s 50D (Sexual penetration of a step-child)
		s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)
		s 50F (Sexual penetration of a sibling or half-sibling)
		s 51B (Involving a child in the production of child abuse material)
		s 51C (Producing child abuse material)
		s 51D (Distributing child abuse material)
s 51E (Administering a website used to deal with child abuse material)		
s 51F (Encouraging use of a website to deal with child abuse material)		
s 51G (Possession of child abuse material)		
s 51H (Accessing child abuse material)		
s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)		
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 217 (Involving child in child exploitation)
		s 218 (Producing child exploitation material)
		s 219 (Distributing child exploitation material)
		s 220 (Possession of child exploitation material)
		s 221BD (Distribution of intimate image)

Conduct carried out for public benefit

That the conduct was carried out for the public benefit is legislated as a defence in all jurisdictions. Public benefit is defined differently between jurisdictions (Table 38; see also Table G10, Appendix G). The definitions generally refer to reasonable conduct that is carried out for a scientific, educational, artistic, cultural or literary purpose. Public benefit defences are applicable to CSAM offences (Cth, NSW, Qld, Tas, Vic and WA), IBSA offences (ACT, NSW, NT, Qld, SA and WA) or non-contact sexual offences (WA).

	Cth ^a	ACT ^b	NSW ^c	NT ^b	Qld ^d	SA ^b	Tas ^a	Vic ^a	WA ^e
Scientific ^f	✓	✓	✓	✓	✓	✓	✓	✓	✓
Educational ^f	✓	✓	✓	✓	✓	✓		✓	✓
Artistic	✓				✓		✓	✓	✓
Cultural	✓								
Literary									✓
Public benefit not further defined					✓	✓	✓		

a: Applies to CSAM offences only

b: Applies to IBSA offences only

c: In New South Wales, the defence of 'scientific' public benefit applies to both CSAM and IBSA offences and the defence of 'educational' public benefit applies to CSAM offences only

d: Applies to CSAM and IBSA offences

e: In Western Australia, the defences of 'artistic' and 'literary' public benefit apply to CSAM offences only, 'educational' public benefit applies to IBSA offences only, 'scientific' public benefit applies to CSAM and IBSA offences, and 'public benefit not further defined' applies to non-contact sexual offences only

f: Includes conduct carried out for research and other purposes

Other occupational duties

So far, defences specified in legislation that are related to conduct carried out while acting in the course of one's occupational duties, including law enforcement, medicine, science, education and other duties of public benefit, have been outlined. Conduct carried out in the course of other occupational duties, such as internet service provision or software development, may also be raised as a defence under Commonwealth, Australian Capital Territory, Northern Territory, Queensland and Tasmanian legislation (Table 39; see also Table G11, Appendix G). Such defences typically apply to CSAM offences (Cth, NT and Tas), IBSA material offences (NT and Tas), procuring offences (ACT) and non-contact sexual offences (Qld).

Table 39: Other occupational duties as a defence to certain sexual offences in Australian legislation			
Jurisdiction	Legislation	Occupation	Relevant offences
Cth	<i>Criminal Code Act 1995</i> (Cth)	Software development	s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
			s 474.22 (Using a carriage service for child abuse material)
			s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service)
			s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
ACT	<i>Crimes Act 1900</i> (ACT)	Internet service provider	s 66 (Grooming and depraving young people), subsection (3) (making pornographic material available to a young person)
NT	<i>Criminal Code Act 1983</i> (NT)	Classification of material	s 125B (Possession of child abuse material)
		Internet service provider	s 208AB (Distribution of intimate image without consent)
Qld	<i>Criminal Code Act 1899</i> (Qld)	Authority of an adult entertainment permit	s 227 (Indecent acts)
Tas	<i>Criminal Code Act 1924</i> (Tas)	Classification of material	s 130 (Involving person under 18 years in production of child exploitation material)
			s 130A (Production of child exploitation material)
			s 130B (Distribution of child exploitation material)
			s 130C (Possession of child exploitation material)
	<i>Police Offences Act 1935</i> (Tas)	Occupation not further classified	s 130D (Accessing child exploitation material)
			s 13A (Observation or recording in breach of privacy)
			s 13B (Publishing or distributing prohibited visual recording)

Reasonable excuse not to report child sexual abuse or sexual assault

Defences related to failing to report child sexual abuse offences are legislated at the Commonwealth level and across all states and territories. In all jurisdictions other than the Northern Territory, reasonable excuses not to report child sexual abuse or sexual assault are detailed in legislation (Table 40; see also Table G12, Appendix G). In the Northern Territory, the *Care and Protection of Children Act 2007* (NT) provides no further explanation of what constitutes a reasonable excuse.

Table 40: Reasonable excuses not to report child sexual abuse or sexual assault offences in each jurisdiction

	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Reasonable belief that the information has already been reported	✓	✓	✓		✓	✓	✓	✓	✓
Reasonable belief that disclosure would risk safety of victim or another person (other than the offender)	✓	✓	✓				✓	✓	
Information in public domain	✓	✓					✓	✓	
Reasonable belief that victim (now adult) does not want information reported		✓	✓		✓		✓	✓ ^a	
Disclosure of information for which privilege may be claimed		✓					✓	✓	
Reporter received information while a child			✓				✓	✓	
Other specified reasonable excuse						✓ ^b	✓ ^c	✓ ^d	
Reasonable excuse not further defined ^e		✓	✓	✓	✓	✓	✓	✓	

✓ = Specified in legislation as a reasonable excuse

Blank = Not specified in legislation as a public benefit

a: Victoria refers to victims of or over the age of 16 years who provide information to any person and request that it is not further disclosed

b: South Australia has legislated additional reasonable excuses not outlined in this table; see Table G12, Appendix G

c: Tasmania has legislated additional reasonable excuses not outlined in this table; see Table G12, Appendix G

d: Victoria has legislated additional reasonable excuses not outlined in this table; see Table G12, Appendix G

e: Refers to non-exhaustive lists (eg s 316A (Concealing child abuse offence) in the *Crimes Act 1900* (NSW) specifies that 'Subsection (2) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force'), as well as reasonable excuses that are not further defined in legislation (eg s 26 (Reporting obligations) of the *Care and Protection of Children Act 2007* (NT) specifies that 'it is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse')

The reasonable excuse that is legislated most consistently between jurisdictions (all, other than NT) is a person's reasonable belief that the information about the alleged offence had already been reported to a state or territory police agency, the AFP or another relevant person, body or scheme. This may include the person having reported the information themselves or having a reasonable belief that another person reported it. Other commonly legislated reasonable excuses include a reasonable belief that reporting the information would put the victim or another person at risk (Cth, ACT, NSW, Tas and Vic); a reasonable belief that the victim, now an adult, did not want the information to be reported (ACT, NSW, Qld, Tas and Vic); and that the relevant information is already in the public domain (Cth, ACT, Tas and Vic). Legislation in all jurisdictions other than the Commonwealth and Western Australia specifies that there may be other reasonable excuses not to report child sexual abuse that are not further specified in legislation (ie the list of reasonable excuses in Table 39 may not be exhaustive).

Failing to disclose information relating to a serious indictable offence (including sexual assault) is a separate offence in New South Wales, for which a defence is legislated. Specifically, it is a defence to not report such information if it relates to a victim of sexual or domestic violence who is an adult at the time the information was obtained, and the person believes on reasonable grounds that the victim does not want the information to be reported. The legislation further notes that this specification does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to report a serious indictable offence. This defence is excluded from Table 40, but included in Table G12, Appendix G.

Lack of intent to derive sexual gratification

Lack of intent to derive sexual gratification defences pertain to circumstances in which an alleged defendant engages in conduct that constitutes a sexual offence, but lacks the necessary intent to derive gratification of a sexual nature from this conduct. Such defences may apply to non-contact sexual offences in Victoria and at the Commonwealth level. The way that lack of intent to derive sexual gratification is defined varies between jurisdictions and is dependent on the type of offence to which the defence applies (see Table G13, Appendix G).

Defendant's conduct was reasonably acceptable or lawful

That the defendant's conduct was reasonably acceptable or lawful is legislated as a defence in all jurisdictions other than the Commonwealth. This defence predominately applies to IBSA offences (ACT, NSW, NT, SA, Vic and WA). It may also be applied to CSAM offences in New South Wales, Queensland and Tasmania and to contact sexual offences in Queensland (specifically abuse of persons with an impairment of the mind). The definition of reasonably acceptable or lawful varies between jurisdictions and offences (see Table G14, Appendix G) and has implications for what the defendant is required to prove in raising this defence. In Queensland, for example, this provision recognises that those with an impairment of the mind can have sexual autonomy and be capable of engaging in a sexual relationship that is not exploitative. In raising this defence, the defendant would be required to prove that the relationship in the circumstances was not exploitative.

Defendant's mistaken but honest and reasonable belief that they had not engaged in unlawful conduct

That the defendant had a mistaken but honest and reasonable belief that they had not engaged in unlawful conduct is a defence in most jurisdictions. This defence is applicable to CSAM offences (ACT, NSW, NT, Vic and WA), non-contact sexual offences (sexual exposure; Vic) and sex work offences (specifically, allowing premises to be used for child prostitution; NSW). How this defence is defined and applied varies between jurisdictions and depends on the type of offence to which the defence applies (see Table G15, Appendix G); for example, this defence may be applied to the offence of possessing child exploitation material in the Australian Capital Territory (*Crimes Act 1900* (ACT) s 65). Here, the defendant must prove that they 'had no reasonable grounds for suspecting that the pornography concerned was child exploitation material'.

Reasonable steps taken to prevent unlawful conduct

Jurisdictions other than the Commonwealth, the Australian Capital Territory and the Northern Territory legislate as a defence that the defendant took all reasonable steps to prevent a sexual offence from occurring. This defence primarily applies to CSAM offences, including where CSAM came into the defendant’s possession unsolicited, and they took all reasonable steps to get rid of it (NSW, SA, Tas, Vic and WA), and circumstances in which a defendant has taken reasonable steps to prevent others from using a digital platform that they administer to access or distribute CSAM (eg shutting down the website; NSW, Qld, SA and Vic). In New South Wales, reasonable steps taken to prevent the unlawful conduct may also be used as a defence against a charge of allowing premises to be used for child prostitution (ie where the defendant satisfies the court that they used all due diligence to prevent the child from participating in the act). The definition of ‘reasonable steps’ varies between jurisdictions and is dependent on the offence to which the defence applies (Table 41; see also Table G16, Appendix G).

Table 41: Definition of reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences in Australian legislation

Jurisdiction	Legislation	Section	Definition
		s 91F (Premises not to be used for child prostitution)	...used all due diligence to prevent the child from participating in the act.
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HA (Defences)	...took all reasonable steps in the circumstances to prevent other persons from being able to use the digital platform to access child abuse material. <i>Note: applies to s 91HAA (Administering a digital platform used to deal with child abuse materials)</i>
			...took reasonable steps to get rid of it. <i>Note: applies to s 91H (Production, dissemination and possession of child abuse material)</i>
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228DA (Administering child exploitation material website)	...took all reasonable steps in the circumstances to prevent other persons from being able to use the website to access child exploitation material. <i>Examples of steps that may be reasonable in the circumstances—</i> telling a police officer the website is being used to distribute child exploitation material and complying with any reasonable direction given by the police officer about what to do in relation to the website shutting the website down modifying the operation of the website so it cannot be used to distribute or access child exploitation material

Table 41: Definition of reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 63A (Possession of child exploitation material)	...took reasonable steps to get rid of it.
		s 63AB (Offences relating to websites)	<p>...took all reasonable steps, in the circumstances, to prevent any person from being able to use the website to deal with child exploitation material.</p> <p>...In determining whether a person has taken all reasonable steps...regard must be had as to whether the person, as soon as it was reasonably practicable, did any of the following:</p> <p>(a) shut the website down;</p> <p>(b) modified the operation of the website so that it could not be used to deal with child exploitation material;</p> <p>(c) notified a police officer that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by a police officer as to action to be taken by the person in relation to that use of the website;</p> <p>(d) notified a relevant industry regulatory authority that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by the authority as to action to be taken by the person in relation to that use of the website.</p>
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 130E (Defences in relation to child exploitation material)	<p>...took reasonable steps to dispose of that material.</p> <p><i>Note: applies to s 130C (Possession of child exploitation material)</i></p>

Table 41: Definition of reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 51S (Defence—reasonable steps to prevent use of a website for child abuse material)	<p>...takes all reasonable steps in the circumstances to prevent any person from being able to use the website to deal with child abuse material.</p> <p>...regard must be had to whether A did any of the following as soon as it was practicable to do so—</p> <p>(a) shut the website down;</p> <p>(b) modified the operation of the website so that it could not be used to deal with child abuse material;</p> <p>(c) notified a police officer that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by a police officer as to what to do in relation to that use of the website;</p> <p>(d) notified a relevant industry regulatory authority that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by that authority as to what to do in relation to that use of the website.</p> <p><i>Note: applies to s 51E (Administering a website used to deal with child abuse material)</i></p>
		s 51T (Defence—unsolicited possession)	<p>...took all reasonable steps in the circumstances to cease possessing the material.</p> <p><i>Note: applies to s 51G (Possession of child abuse material)</i></p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>...took reasonable steps to get rid of it.</p> <p><i>Note: applies to s 220 (Possession of child exploitation material)</i></p>

No knowledge of victim cognitive or mental impairment

It is legislated as a defence to a charge involving a victim who has a cognitive or mental impairment that the defendant had no knowledge of this impairment. This defence is legislated in the Commonwealth, New South Wales, the Northern Territory, Queensland and Victoria. It primarily applies to contact and non-contact sexual offences against people with a mental or cognitive impairment (Table 42; see also Table G17, Appendix G). This defence may also apply to a circumstance of aggravation for contact and non-contact sexual offences in which the victim is a child with a mental or cognitive impairment in the Commonwealth, the Northern Territory and Queensland. This does not preclude the defendant from being convicted of the relevant offence without the circumstance of aggravation. In the Northern Territory, use of the defence in response to charges including aggravating circumstances requires the defendant to also prove that the child was of or above 14 years at the time of the alleged conduct.

Table 42: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences in Australian legislation		
Jurisdiction	Legislation	Relevant offences
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)
		s 474.29 (Defences to offences against this Subdivision)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)
NT	<i>Criminal Code Act 1983</i> (NT)	s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)
		s 215 (Engaging in penile intercourse with child under 16)
		s 216 (Abuse of persons with an impairment of the mind)
Vic	<i>Crimes Act 1958</i> (Vic)	s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)
		s 52C (Sexual assault of a person with a cognitive impairment or mental illness)
		s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness)
		s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)

Coercion

A defence specific to a charge of incest is legislated in the Australian Capital Territory, the Northern Territory, Queensland and Victoria, identifying that the defendant was acting under the coercion of the other person (Table 43; see also Table G18, Appendix G). In Victoria, this defence does not use the terminology ‘coercion’, instead referring to situations in which the defendant did not consent to the conduct.

Table 43: Coercion as a defence to certain sexual offences in Australian legislation		
Jurisdiction	Legislation	Relevant offences
ACT	<i>Crimes Act 1900</i> (ACT)	s 62 (Incest and similar offences)
NT	<i>Criminal Code Act 1983</i> (NT)	s 134 (Incest)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 222 (Incest)
Vic	<i>Crimes Act 1958</i> (Vic)	s 50C (Sexual penetration of a child or lineal descendant)
		s 50D (Sexual penetration of a step-child)
		s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)
		s 50F (Sexual penetration of a sibling or half-sibling)

That the defendant acted under coercion or duress is legislated as a defence to any charge in the Northern Territory (s 40 of the *Criminal Code Act 1983* (NT)), Queensland (s 31 of the *Criminal Code Act 1899* (Qld)), South Australia (s 15D of the *Criminal Law Consolidation Act 1935* (SA)), Tasmania (s 20 of the *Criminal Code Act 1924* (Tas)), Victoria (s 322O and s 322P of the *Crimes Act 1958* (Vic)) and Western Australia (s 32 of the *Criminal Code Act Compilation Act 1913* (WA)). Such defences may also fall under self-defence.

Other defences specific to child sexual abuse material and image-based sexual abuse offences

While most defences to CSAM and IBSA offences are also applicable to other sexual offences, some are specific to these offences.

Accessing material classified as something other than refused classification

It is a defence to CSAM offences under New South Wales, Queensland, Tasmania, Victoria and Western Australia legislation that the material was classified as something other than refused classification under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (see Table 44). Material that is refused classification typically contains content that falls outside accepted standards of ‘morality, decency and propriety generally accepted by reasonable adults’ (*National Classification Code*) and cannot be sold, hired, advertised or legally imported into Australia. These defences are defined and applied consistently between these jurisdictions. In the Northern Territory, the definition of CSAM excludes classified material (s 125A of the *Criminal Code Act 1983*), so this defence is not required.

Table 44: Accessing material classified as something other than refused classification as a defence to child sexual abuse material offences in Australian legislation

Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HA (Defences)	<p>(7) Classified material It is a defence in proceedings for an offence against section 91H, 91HAA, 91HAB or 91HAC that the material concerned was classified (whether before or after the commission of the alleged offence) under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> of the Commonwealth, other than as refused classification (RC).</p> <p><i>Note: applies to s 91H (Production, dissemination or possession of child abuse material), s 91HAA (Administering a digital platform used to deal with child abuse material), s 91HAB (Encouraging use of a digital platform to deal with child abuse material) and s 91HAC (Providing information about avoiding detection)</i></p>

Table 44: Accessing material classified as something other than refused classification as a defence to child sexual abuse material offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228E (Defences for ss 228A–228DC)	<p>(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC.</p> <p>(5) It is a defence for the person to prove that the material alleged to be child exploitation material is a computer game, film or publication that is classified as something other than RC.</p> <p><i>Note: applies to s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); and s 228DC (Distributing information about avoiding detection)</i></p>
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(1) It is a defence to a charge under section 130, 130A, 130B, 130C or 130D to prove that—</p> <p>(a) the material which is the subject of the charge was classified (whether before or after the commission of the alleged offence) under the Classification (Publications, Films and Computer Games) Act 1995 of the Commonwealth, other than as refused classification (RC)</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130B (Distribution of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>
Vic	<i>Crimes Act 1958</i> (Vic)	s 51K (Exception—classification)	<p>A does not commit a child abuse material offence (other than an offence against section 51I(1)) in respect of material that, at the time at which the offence is alleged to have been committed, was classified other than RC or would, if classified, have been classified other than RC.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51E (Administering a website used to deal with child abuse material); s 51F (Encouraging use of a website to deal with child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table 44: Accessing material classified as something other than refused classification as a defence to child sexual abuse material offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that—</p> <p>(a) the material to which the charge relates was classified (whether before or after the commission of the alleged offence) under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> (Cth), other than as refused classification (RC)</p> <p><i>Note: applies to s 217 (Involving child in child exploitation); s 218 (Producing child exploitation material); s 219 (Distributing child exploitation material); and s 220 (Possession of child exploitation material)</i></p>

Young people producing, disseminating or possessing images of themselves

It is a defence for young people to produce, disseminate or possess material of a sexual or intimate nature depicting only themselves in New South Wales and Victoria (Table 45). In Victoria, there is an additional defence available to young people who produce, disseminate or possess an image of themselves that constitutes CSAM and depicts them as a victim of a criminal offence punishable by imprisonment.

Table 45: Young people producing, disseminating or possessing images of themselves as a defence to child sexual abuse material offences in Australian legislation

Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HA (Defences)	<p>(9) Person producing, disseminating or possessing depictions of himself or herself It is a defence in proceedings for an offence against section 91H of possessing child abuse material if the only person depicted in the material is the accused person.</p> <p>(10) It is a defence in proceedings for an offence against section 91H of producing or disseminating child abuse material if—</p> <p>(a) the production or dissemination of the material occurred when the accused person was under the age of 18 years, and</p> <p>(b) the only person depicted in the material is the accused person.</p> <p><i>Note: applies to s 91H (Production, dissemination or possession of child abuse material)</i></p>

Table 45: Young people producing, disseminating or possessing images of themselves as a defence to child sexual abuse material offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	Crimes Act 1958 (Vic)	s 51M (Exceptions applying to children)	<p>(1) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) A is a child; and</p> <p>(b) the child abuse material is an image; and</p> <p>(c) the image depicts A alone.</p> <p>(2) A does not commit an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) A is a child; and</p> <p>(b) the child abuse material is an image; and</p> <p>(c) A is the victim of a criminal offence punishable by imprisonment and the image depicts that offence.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
		s 51O (Defence—image of oneself)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image depicts A as a child; and</p> <p>(c) the image does not depict A committing a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any other person.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Distribution of intimate image to person depicted in the image only

In the Northern Territory and Victoria, it is a defence to a charge of distributing an intimate image without consent if the image is distributed to the person depicted in the image only (see Table 46). In the Northern Territory, this defence does not specify a need for the victim to consent to the distribution. In Victoria, it is a defence to a CSAM offence that the material is distributed to only the person depicted in the image. Use of this defence requires proof of further elements, including the nature of the material, the ages of, and relationship between, the victim and defendant and the consent of the victim.

Table 46: Distribution of intimate image only to person depicted in the image as a defence to child sexual abuse material offences in Australian legislation

Jurisdiction	Legislation	Section	Definition
NT	<i>Criminal Code Act 1983</i> (NT)	s 208AB (Distribution of intimate image without consent)	(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances: (a) to only the person depicted in the image
Vic	<i>Crimes Act 1958</i> (Vic)	s 51Q (Defence—marriage or domestic partnership)	(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if— (a) the child abuse material is an image; and (b) the image is child abuse material because of its depiction of another person (B); and (c) the image does not depict a criminal offence punishable by imprisonment; and (d) A does not distribute the image to any person other than B; and (e) at the time at which the image was first made— (i) B was 16 or 17 years of age; and (ii) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Cth or A was B's domestic partner and was no more than 2 years older than B; and (iii) where A was B's domestic partner, if B was under A's care, supervision or authority, the domestic partnership commenced before B came under A's care, supervision or authority; and (f) at the time of the conduct constituting the offence— (i) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Cth or A was B's domestic partner and was no more than 2 years older than B; and (ii) A reasonably believed that B consented to the conduct constituting the offence. <i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i>

Table 46: Distribution of intimate image only to person depicted in the image as a defence to child sexual abuse material offences in Australian legislation (cont.)

Jurisdiction	Legislation	Section	Definition
		s 51R (Defence—reasonable belief in marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image is child abuse material because of its depiction of another person (B); and</p> <p>(c) the image does not depict a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) at the time at which the image was first made, A reasonably believed that—</p> <p>(i) B was 16 or 17 years of age; and</p> <p>(ii) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Cth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and</p> <p>(f) at the time of the conduct constituting the offence, A reasonably believed that—</p> <p>(i) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Cth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(ii) B consented to that conduct.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Summary—defences and excuses

This subsection has considered defences and excuses to sexual offences in Australian Commonwealth, state and territory legislation. While there are consistencies in the types of defences that may be raised in each jurisdiction (ie defendant’s reasonable belief in victim’s age, marriage and other domestic partnerships, acting in the course of one’s occupational duties and reasonable excuse not to report child sexual abuse or sexual assault), the way that defences are defined and applied varies, both within and between jurisdictions—perhaps because of the different offences to which these defences apply. Further, defences may not be legislated consistently between jurisdictions, because of how offences themselves are defined (see *Conduct*) and because they may instead be included in common law, which is beyond the scope of this review.

Summary

There is significant consistency across the Commonwealth, states and territories in consent provisions and in the adoption of communicative models of consent in legislation. Jurisdictions are more variably moving towards the enshrinement of elements of an affirmative model of consent in their legislation, following recent state reviews that this approach would be a step towards important cultural change and would shift unfair scrutiny away from victims and survivors in court. However, other recent state and territory reviews and inquiries have argued against the adoption of a 'pure' affirmative model, out of concern that it reverses the burden of proof too dramatically. Other, narrower inconsistencies between jurisdictions were also identified, although it was noted that these tend to relate more to differences in how legal proceedings operate and play out between Code and non-Code jurisdictions, rather than to actual gaps in understanding of consent.

The analysis also reveals a high degree of consistency across Australian jurisdictions overall in terms of much of the conduct covered under sexual offences in statute. Significant forms of unlawful sexual conduct (ie penetrative and non-penetrative offending, persistent child sexual abuse, CSAM and IBSA offences) are comprehensively criminalised in statute across Australia, although there is some variety in the extent to which standalone offences exist for this conduct in relation to specific groups (eg victims with a cognitive or mental impairment) or under specific circumstances (eg within the context of a relationship of care or authority), which may or may not be treated in statute as aggravating circumstances. There is greater variety in the coverage by standalone offences of other forms of conduct that enable or contribute to sexual offending in some way, and some inconsistencies persist in the terminology used for some forms of conduct.

Some aggravating and specific circumstances—including younger victims, relationships of care or authority, coercion and conduct undertaken in company with others—are consistently specified in legislation across jurisdictions in relation to penetrative and non-penetrative sexual offences. However, these circumstances are less consistently applied in statute to other forms of conduct across jurisdictions. Additionally, there is greater variation across jurisdictions in the specification of other aggravating and specific circumstances in statute. However, most defences and excuses analysed are statutorily enshrined across most, if not all, jurisdictions. Some inconsistencies are apparent in how these defences are defined and the offences to which they apply. Importantly, gaps and inconsistencies about aggravating and specific circumstances may reflect differences in how offences themselves are defined in statute. Some jurisdictions may, for example, have standalone offences for sexual or enabling conduct under particular aggravating or mitigating circumstances, or for aggravating circumstances themselves (eg general violence with intent offences). Apparent gaps and inconsistencies may also reflect the enshrinement of aggravating and specific circumstances, and defences and excuses, in common law.

Victim and survivor consultations

Introduction

Most victims and survivors of sexual violence and abuse never report these offences to police (ABS 2021). Explanations for low rates of reporting include feelings of shame, fear of retribution, fear of not being believed and low levels of confidence in the criminal justice system (Kennedy & Prock 2016). Sexual violence and abuse laws in Australia have been subject to significant reform over recent years, as has been noted, to bring legislation into greater alignment with contemporary community standards and expectations.

This section explores victim and survivor experiences navigating their matters through the criminal justice system, with a particular focus on experiences that stem, in some way, from the design of current sexual violence and abuse legislation.

Respondent details

Nineteen victims and survivors consented to participate in this study. All respondents chose to complete the online survey, although one respondent also provided an additional written submission. Most respondents were female (90%, $n=17$). Most identified as heterosexual (69%, $n=13$) followed by bisexual (16%, $n=3$), pansexual (5%, $n=1$), asexual (5%, $n=1$) and unknown (5%, $n=1$).

More than one-third (37%, $n=7$) were living with disability. All but two respondents were born in Australia (90%, $n=17$). Most were university educated (postgraduate 32%, $n=6$; undergraduate 47%, $n=9$); three had a vocational/TAFE qualification (16%) and one respondent had completed year 11 or equivalent (5%). Most were employed part time (32%, $n=6$) or studying full time (26%, $n=5$), in full-time employment (16%, $n=3$) or not working because of a health condition (16%, $n=3$). One respondent was casually employed, and another was semi-retired.

Seven respondents experienced the abuse they reported to police before the age of 12 (37%). Four respondents were aged between 12 and 13 (21%), three between 16 and 19 (16%), two between 20 and 29 (11%), one between 30 and 34 (5%) and one between 45 and 49 (5) at the time of the reported abuse.

Table 47 demonstrates that most respondents reported at least one offence of attempted or actual penetrative sex without consent to police in their jurisdiction (84%). It should be noted that this is reflective of the nature of sexual offences that are reported to police, rather than the prevalence of this particular offence compared with other forms of sexual violence in the community.

At least half of the cases reported were historical (53%, $n=10$), with eight respondents reporting the sexual abuse for the first time over 16 years after the incident(s) occurred (Respondents 4, 7, 8, 10, 12, 16, 18, 19), and two respondents first reporting sexual abuse between ten and 15 years later (Respondents 13 and 14).

	<i>n</i>	% ^a
Attempted or actual penetrative sex without consent	16	84
Attempted or actual sexual activity (not including penetrative sex) without your consent	11	58
Attempted or actual sexual activity of any kind by an adult while you were under 16 years of age	10	53
Attempts to manipulate, blackmail or intimidate you into sexual activity of any kind	9	48
Exposure to sexual materials, behaviours, activity or harassment by an adult while you were under 16 years of age	8	42
Exposure to sexual materials, behaviours, activity or harassment without your consent	6	32
Attempts to manipulate, blackmail or intimidate you into sexual activity by an adult while you were under 16 years of age	6	32
Attempted or actual penetrative sex without protection without your consent (stealth)	5	26
Making or distributing sexually explicit recordings (images, video etc) of you without your consent	2	11
Making or distributing sexually explicit recordings (images, video etc) of you while you were under 18 years of age	1	5

a: 15 respondents reported multiple incidents of abuse, meaning that percentages will not add to 100

Source: AIC Legislative review victims and survivors survey 2023 (computer file)

Most respondents had a case that involved more than one incident of sexual abuse (79%, $n=15$) and had experienced abuse perpetrated by a single male perpetrator (58%, $n=11$). In one case, a person had experienced multiple incidents of abuse perpetrated by both male and female abusers. Eight respondents reported abuse from a single perpetrator over a period of less than one year (42%), and seven respondents reported abuse by multiple perpetrators over multiple years (37%). The remainder reported abuse from a single perpetrator over multiple years (16%, $n=3$), although one respondent (5%) reported abuse by multiple perpetrators over a period of less than a year.

Seventeen respondents (90%) had experienced abuse that occurred in one jurisdiction, most commonly Victoria (32%, *n*=6) followed by Queensland (21%, *n*=4), New South Wales (16%, *n*=3), Tasmania (11%, *n*=2), South Australia (5%, *n*=1) and Western Australia (5%, *n*=1). Two respondents experienced abuse in multiple jurisdictions, specifically the Australian Capital Territory and New South Wales (5%, *n*=1) and South Australia and Victoria (5, *n*=1). All but one respondent reported in one jurisdiction only. One respondent reported in multiple jurisdictions, specifically Queensland and Tasmania. The only Australian jurisdiction not represented in the experience of respondents was the Northern Territory; these findings may be less applicable to this jurisdiction.

Table 48 outlines the relationship between the respondent and the perpetrator. Respondents described a broad range of perpetrator relationships. The most common relationship was a partner (*n*=8, 42%) followed by a friend (*n*=4, 21%), an adult family friend (*n*=3, 16%), a brother (*n*=3, 16%: biological *n*=1; step *n*=1; foster *n*=1), another family member (*n*=3, 16%) or a teacher (*n*=3, 16%).

Table 48: Victims and survivors and perpetrator relationships

	<i>n</i>	%
Partner	8	42
Friend	4	21
Adult family friend	3	16
Brother (biological, step or foster)	3	16
Another family member	3	16
Teacher	3	16
Non-adult family member	2	11
Youth group leader	2	11
Religious official	2	11
Stranger	2	11
Doctor	1	5

Note: Respondents could select multiple responses

Source: AIC Legislative review victims and survivors survey 2023 (computer file)

Findings

The findings reveal that all victims and survivors of sexual violence and abuse had negative experiences while navigating their matters through the criminal justice system. These experiences were commonly associated with investigative difficulties relating to the collection of evidence and meeting the standard of proof required in criminal proceedings. While this standard of proof applies to all criminal matters, matters involving sexual violence and abuse present unique difficulties to police investigators and prosecutors. This includes circumstances commonly characteristic of sexual assault, such as where it is one person's word against another, there are no witnesses (other than the complainant), and there is a lack of medical evidence of physical injuries (Tidmarsh & Hamilton 2020). These factors influence why, compared to other kinds of crime, sexual assault investigations are less likely to proceed to charge or conviction and, when charges are laid against accused persons, they are frequently downgraded or dropped (Bright et al. 2021; Pattavina, Morabito & Williams 2016).

The voices of victims and survivors who have directly experienced sexual violence and abuse are represented here, in their own words. It is critical that the lived experiences of victims and survivors are heard and juxtaposed with the 'complainant' as abstractly described in legislation and considered in the opinions of stakeholders. These experiences also lend weight to some of the findings regarding Australian legislation for sexual violence and abuse identified elsewhere in this review. However, the nature of the information provided by respondents to this survey about their experiences cannot be definitively linked to any specific legislation or directly associated with jurisdictional differences in how sexual assault is legislated. Further, given the nature of the sampling strategy used, these experiences cannot be treated as representative of all victims and survivors navigating the criminal justice system in their respective states and territories.

The experiences of victims and survivors, summarised below, broadly suggest that certain characteristics of ways sexual violence and abuse is criminalised in statute may (inadvertently) exacerbate some of the investigative difficulties inherent to investigations of sexual offences, outlined above. This was particularly evident in matters involving persistent child sexual abuse and institutional abuse, which are often also historical in nature and characterised by evidentiary challenges associated with the passage of time and memory recall. Relatedly, inconsistencies in legislative terminology for the same offence across different jurisdictions were reported by one respondent as increasing the challenges of investigating and prosecuting their case. Other issues specific to terminology were also evident.

This section begins with an overview of the challenges that respondents commonly encountered as their matters were being investigated. Importantly, while legislation sets the context for criminal investigations, some of the challenges discussed here go beyond issues with legislation. Subsequently, this section delves further into how victims and survivors perceived specific elements of legislation as adding to these challenges.

General investigative difficulties

Positive and negative experiences reporting to police were consistently associated with the quality of communication respondents received from police and the extent to which they felt that their report was taken seriously. Respondents who described good experiences of reporting frequently mentioned having regular communication and updates on their case from police, feeling believed, officers taking time to listen, and being connected with support services.

Conversely, feelings of stress and trauma were associated with poor communication from police, particularly in the context of extended and indefinite timeframes. Negative experiences included police not returning calls or rushing through conversations on the phone. Some respondents reported victim-blaming behaviours by officers and officers coming across as insensitive, minimising or suspicious of the complainant. Several respondents reported that police attempted to discourage them from making a formal report because of their awareness of the low likelihood of an investigation being successful:



The police officer was very adamant it would re-traumatise me and create a lot of paperwork for him. He tried very hard to get me to reconsider reporting it. (Respondent 13, Vic)

Many victims and survivors do not report immediately. Sometimes, they report many years after the abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse (2017) found that it took victims and survivors of child sexual abuse an average of 23.9 years to disclose. This impacts on the availability and quality of evidence that can be collected to meet the standard of proof required for criminal prosecution. Matters involving sexual abuse commonly present unique difficulties to police investigators, including a common lack of physical evidence and witnesses (Tidmarsh & Hamilton 2020). This can be particularly challenging in cases of historical abuse. Indeed, about half the respondents had first reported to police more than 10 years after their abuse (53%, $n=10$). It was especially common for these respondents to say that police provided advice to manage their expectations around the report, such as informing them that such cases are very hard to investigate and prove or advising that, if the alleged perpetrator did not cooperate, it would be difficult to pursue the case:



They mentioned that I had no evidence and it was my word against the offender's. They mentioned that the offender had the right not to speak, which would provide another hurdle. They really drove home the reality that SA [sexual assault] cases are notoriously difficult to investigate and prosecute, and that my case would not go anywhere. They did not say this to dissuade me from reporting, rather to inform me of the reality of the situation. (Respondent 15, Tas)

More than half of respondents' cases were investigated (58%, $n=11$); however, of 19 respondents who completed the survey, only four (21%) had cases that resulted in charges being pursued in court. This is a slightly lower rate than identified in other recent studies examining attrition through the criminal justice system in Victoria, which found that one in four sexual assaults reported to police result in charges being pursued (Bright et al. 2021).

Issues of consent

Two respondents highlighted issues that explicitly related to the consideration of consent during investigations. One respondent described how they reported the assault to police three hours after it occurred and, subsequently, had a medical assessment conducted. Despite feeling happy with their early contact with police, they perceived that misconceptions around consent influenced investigators' assessment of their reliability as a witness:

“

Also, why had I taken my jeans off before going to sleep (I was raped in my sleep, I assume they must mean he couldn't have raped me if I'd left my jeans on, or that I couldn't have been raped because I'd willingly removed my jeans). (Respondent 6, WA)

In Western Australia, consent is defined under s 319(2) of the *Criminal Code Act Compilation Act 1913 (WA)* as 'freely and voluntarily given' and also in the list of circumstances of non-consent (s 319(2)(a) *Criminal Code Act Compilation Act 1913 (WA)*). While not limiting the definition of consent as free and voluntary, the five circumstances listed in the legislation (force, threat, intimidation, deceit or any fraudulent means) comprise a less exhaustive list than in other states and territories. While there may be several different reasons why the respondent's matter did not progress, it is noted that the circumstance where a person cannot consent through being asleep or intoxicated is not currently included in the list in Western Australia.

Another respondent reporting in Victoria (Respondent 1) provided information about an incident of non-penetrative sex without consent that was perpetrated against them by a partner whom they were dating for a short time. They reported the incident nearly three years later and provided video evidence of two assaults (sexual and physical) perpetrated against them. They were disappointed to learn that the evidence was not sufficient for police to investigate:

“

Police informed me that they would not pursue it because they had to prioritise matters where they felt they had a better chance of a conviction... My understanding was that this was because it started out consensually, that my no meant nothing. (Respondent 1, Vic)

Legislation in all Australian jurisdictions provides a list of circumstances where consent to sexual activity is negated, and these were discussed earlier. The content and detail provided by each jurisdiction varies considerably. In the Australian Capital Territory, Queensland and Victoria, when a person says or does something to communicate withdrawing agreement to the act, either before or during the act, this is one of the circumstances where there is no consent to sexual activity. Currently, New South Wales is the only jurisdiction where the definition of consent specifies that sexual activity that occurs after consent has been withdrawn occurs without consent (s 61HI *Crimes Act 1900* (NSW)).

It is not possible to establish whether the perceptions of these respondents about the reasons their cases did not progress were accurate estimations of police decision-making. However, uncertainty about this probably corresponds to inadequate communication from the investigating officers. Changes to the definition of consent and list of circumstances, to include specific details about the withdrawal of consent after initially giving consent, are relatively new. It is unclear what impact such legislation may have on the investigation and prosecution of matters such as the experience of Respondent 1.

Substantiating historical abuse

There was a high proportion of historical reports of child sexual abuse among respondents in the survey, with around half (53%, $n=10$) reporting multiple incidents that had occurred in childhood (ie before age 16). Eight of these matters were investigated by police, but only one resulted in charges being pursued. This was for an offence against s 125A (Persistent sexual abuse of a child (or young person) of the *Criminal Code Act 1924* (Tas)) (Respondent 16, Tas).

A large proportion of survey respondents in this research delayed reporting their experience of sexual abuse to police, with many (63%, $n=12$) first reporting incidents that had occurred at least 10 years earlier. This is consistent with international research showing that it is common for victims and survivors of child sexual abuse to delay disclosure of their experience until adulthood (55–69%; London et al. 2008) or to wait at least five years before disclosing the abuse (Hébert et al. 2009). However, the passage of time can affect recall of details that are important for police investigation and prosecution:

“

I initially couldn't recall the exact date or location of my abuse. When I did recall it, my [area] SOCIT police officer didn't seem to care and it made no difference. (Respondent 18, Vic)

“

Due to the legislation/rules we needed to find the specific location one of the many assaults occurred, if we couldn't find it the case would need to be dropped. Being I was a child at the time, it was feeling literally impossible for us to do this, we spent a lot of time revisiting the area as well as resources to find the area. (Respondent 5, ACT & NSW)

Respondent 18 reported to police over 30 years after multiple incidents of sexual abuse were perpetrated against her by an adult male congregant when she was aged between 12 and 13:

“

The CCYP [Commission for Children and Young People] failed to investigate. They wanted to know which congregations the perpetrators were currently in, and I didn't have that information. (Respondent 18, Vic)

The respondent said that the police officer they reported to was not interested because the case was historic and 'she had a high caseload of current children' (Respondent 18). Persistent or repeated sexual abuse offences have been introduced across all Australian jurisdictions, in part, to address these issues (Dallaston & Mathews 2021; see also the section *Legislative analysis* in the current review). These offences relax requirements that the details of each incident constituting a pattern of persistent or repeated sexual abuse be particularised in the same level of detail as if each were being pursued as separate charges. Nevertheless, research has found that victims and survivors can struggle to provide even basic details such as the number and locations of abuse and the number or details of perpetrators (Woiwod & Connolly 2017). This is evident in the respondent experiences quotes above. It can make pursuing charges for persistent or repeated sexual abuse, or any sexual offences, challenging.

Institutional abuse

Over one-third of respondents (37%, $n=7$) reported sexual assault and child sexual abuse in an institutional context. This included reports of abuse occurring in religious institutions (Respondents 16, 18 and 19), school (Respondents 8 and 12), child care (Respondent 17) and other youth organisations (Respondent 7).

There were three reports of historical abuse that occurred within a religious organisation across three jurisdictions (SA, Tas and Vic). Respondents 18 and 19 were aged between 12 and 13 at the time of the first incident and reported the incident(s) when they were between the ages of 50 and 59. The incidents were reported after 2018, between 32 and 39 years after the abuse first occurred. It is common for child sexual abuse, particularly abuse within institutions, to be disclosed decades later (Royal Commission into Institutional Responses to Child Sexual Abuse 2017). The findings and recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse were made public in 2017, and the timeframe for Commonwealth, state and territory jurisdictions to respond to the recommendations was December 2022. All jurisdictions have introduced offences for failing to report child sexual abuse, and all but the Northern Territory have introduced offences for failing to protect (see *Conduct*). These new offences acknowledge that there is a power imbalance between children and persons in positions of authority within institutions. They aim to shift the responsibility for reporting and protection away from children and their carers and onto the broader community.

However, information provided by some respondents suggests that these reforms have not been able to overcome the fundamental difficulties investigating sexual violence and abuse, especially historical abuse occurring within institutions, and have not lived up to expectations:

“

I was very disappointed and frustrated. I thought the burden of proof would be easier to establish after the Royal Commission into Institutional Response to Child Sexual Abuse. (Respondent 18, Vic)

“

I was told that unless the abuser confesses that nothing will come of it. Weeks later I had still not received any information about the investigation and I was informed that the investigation was already closed and the abuser was free to return to work at the childcare. (Respondent 17, SA)

Specifically, despite the new raft of failure to report and protect offences introduced across Australia, designed to hold institutions accountable, respondents noted ongoing issues, either with perpetrators being allowed to continue in their employment or with institutions working to protect perpetrators:

“

The [congregation] leaders put pressure on their congregants not to report. [Congregants] who knew about the abuse refused to make police statements. (Respondent 18, Vic)

“

I felt disappointed by reason that my rapist was therefore not charged and subsequently continued to keep his working with children card and maintained his high-ranking religious position. (Respondent 19, Vic)

Under s 327 (Failure to disclose sexual offence committed against child under the age of 16 years) of the *Crimes Act 1958* (Vic), any adult that has information about a reasonable belief that another adult has sexually offended against a child under 16 must disclose this to police. However, laws in Victoria are not retrospective if the complainant was not a child under 16 at the time after laws came into effect in 2014. Because respondents 18 and 19 reported the abuse more than 30 years after the incidents occurred, they were not covered by the change in legislation.

All the respondents' experiences of institutional abuse were historical except for Respondent 17, who reported about an incident that occurred within the last three years. The report involved allegations of sexual abuse disclosed by her four-year-old daughter against a male child care worker. Respondent 17 reported that police advised the investigation was dropped because her daughter 'contradicted herself too much in the second interview' and that she didn't have the language skills to continue. Certainly, the case shows how distressing disclosures of child sexual abuse are for carers and how investigators need to be sensitive to this fact. It also highlights the unique challenges for investigations when children disclose sexual abuse when their cognitive and language capacity is still developing (Martschuk et al. 2021). Their assessment of their experience after reporting was consistent with that of respondents more broadly: strongly associated with the quality of communication they received from police and whether they felt believed.

Two respondents reported sexual violence and abuse that occurred across multiple jurisdictions, one internationally and one across domestic jurisdictions. The latter case reveals some investigative challenges about differences in legislation across jurisdictions. This was particularly clear when an alleged perpetrator had moved away from the jurisdiction where the report was made or where there were investigations into the same alleged perpetrator for similar offences in multiple jurisdictions.

Ten respondents (53%) reported historical sexual abuse cases. However, only one of these respondents said that charges were pursued. Their case involved multiple victims and survivors alleging abuse against the same offender in multiple jurisdictions:

“

She told me that a man was being investigated in Queensland for child sexual abuse occurring in the last decade. Other persons had come forward reporting abuse in the early eighties in Tasmania by the same man.
(Respondent 16, Tas)

The experience of Respondent 16 supports prior work showing that long delays do not always impact adversely on prosecution (Cashmore, Taylor & Parkinson 2020). However, this provides insight into the added complexity in cases involving multiple victims and survivors in different jurisdictions. Respondent 16 reported sexual abuse which resulted in charges of persistent sexual abuse of child or young person (s 125A of the *Criminal Code Act 1924* (Tas)) being pursued. The incidents were reported to Tasmanian police 38 years later, when the alleged perpetrator was also under investigation by police in Queensland. Because of the differences in legislation across the two jurisdictions, Tasmanian police advised Respondent 16 that the cases could not be combined, and they would have to wait until the case in Queensland was finalised before the trial in Tasmania could begin. They described the challenging, indefinite nature of the process, the experience of waiting for several months for updates from police, and years passing without a trial taking place:

“

Tassie won't proceed until Queensland had completed, and their case (as far as I know) hasn't gone to court yet...the growing pressure of having these two cases hanging over my head, not knowing, and wondering whether it has been worth it. (Respondent 16, Tas)

These quotes highlight how victims and survivors can be negatively impacted by delay and uncertainty during multiple investigations and potential prosecution of the same alleged offender in multiple jurisdictions.

Appropriateness of language/terminology

Much reform to sexual violence and abuse laws over recent years has focused on amending outdated and inappropriate language. This includes simplifying and modernising definitions of consent, reducing the use of gendered language and renaming certain offences to reflect their severity (Australian Law Reform Commission 2010; Boxall, Tomison & Hulme 2014). Nevertheless, some respondents in this review highlighted ongoing issues with legislative terminology. One respondent who reported an incident of sexual assault allegedly perpetrated against them when they were under 16 expressed an issue with the term 'indecent treatment', saying this term:

“

...does not describe the abuse I experienced. It minimalises the nature of the act and protects the abuser's shame. (Respondent 14, Qld)

The legislative analysis identified that, while most jurisdictions have offences that reference indecent acts, some jurisdictions rely on terminology such as ‘sexual touching’ (ACT, NSW and Vic) for comparable offences. While the meaning of ‘indecent’ is not defined in statute, it is broadly conceptualised in common law as behaviours that are unacceptable or against community standards and relating to unwanted or non-consensual non-penetrative sexual activity such as sexualised touching or sexual acts that do not involve physical contact or touching.

Another respondent expressed frustration that the sexual assault allegedly perpetrated by their ex-partner was downgraded to a charge of common assault, to which the perpetrator plead guilty and received a fine without a conviction recorded:

“

In 2019 my ex-husband sexually assaulted me and this went to court as common assault...My ex-husband was given a \$500 fine for assaulting me and no conviction...The prosecution team never spoke to me about what was happening. I was never allowed to address the court...No one explained to me why my ex-husband was not charged with attempted rape. If my ex-husband had assaulted a stranger I doubt he would have got off so lightly.
(Respondent 11, Vic)

Broadly speaking, it is a common practice for legal professionals such as police and prosecutors in Australia to pursue a reduced or different charge if a conviction for the reported sexual offence is unlikely, with the expectation that the offender will be more likely to plead guilty (Pattavina, Morabito & Williams 2016). However, as the quote above demonstrates, some victims and survivors find that having the charges against them changed without their knowledge can make them feel devalued. They believe that the severity and nature of their victimisation is not reflected.

Summary

Victims and survivors of sexual violence and abuse who participated in the consultation process for this review described a mixture of positive and negative experiences during the reporting and investigation of their matters. However, one in five of the respondents had a matter that resulted in charges being laid, with a lack of appropriate evidence being a key reason for attrition. For the small proportion of victims and survivors who experienced a trial, the process was characterised by long time frames and a significant emotional burden.

This section of the review has highlighted, as far as possible, the experiences of respondents that may stem, in some way, from legislative conceptions of sexual violence and abuse. The findings of these consultations suggest that there continue to be considerable investigative difficulties associated with instances of historical and institutional sexual abuse in particular. Ongoing issues regarding consent, the appropriateness of some terminology used in legislation, and cross-jurisdictional matters were also noted.

Stakeholder consultations

Introduction

This section canvasses the views of stakeholders with working experience or expertise in legislation regarding sexual violence and abuse, with a specific focus on:

- actual and perceived inconsistencies in Australian sexual assault and child sexual abuse legislation;
- the impact of identified inconsistencies on the investigation and prosecution of sexual assault and child sexual abuse matters;
- the impact of identified inconsistencies on the ability of victims and survivors to receive the support they need to recover from their experiences; and
- best practice sexual assault and child sexual abuse legislation operating in Australia or overseas.

Respondent details

Eight stakeholders made submissions. Seven of these stakeholders worked across a number of areas, including sexual assault and/or child sexual abuse prevention and advocacy and provision of support services for victims and survivors. Of these seven stakeholders, two operated across multiple jurisdictions, two operated in Queensland, and one each operated in New South Wales, Tasmania and Western Australia. The remaining stakeholder was a legal body operating in South Australia.

Findings

Broadly, consultations with stakeholders highlighted ways in which legislative conceptions of consent and certain sexual offences could be strengthened, as well as inconsistencies in state and territory legislation. These inconsistencies relate specifically to models of consent and consent provision, legislative principles, non-consensual removal, non-use or tampering of a condom without consent (stealthing), child sexual abuse offences and offences for failing to report or protect children from sexual abuse. Overall, stakeholders argued that harmonising legislation was important for simplifying it, modelling clear and nationally consistent standards for consensual sexual activity and improving reporting and conviction rates. One stakeholder cited the Grace Tame Foundation's assertion:

“

...if the nation achieves consistent sexual assault legislation, we will be better equipped to prevent and respond to this complex issue; to protect survivors and deter perpetrators. (Grace Tame Foundation nd)

Finally, stakeholders addressed strategies for preventing and responding to sexual violence beyond legislative reform.

Inconsistencies in legislation regarding consent

Two stakeholders discussed jurisdictional differences in the nature of consent legislation and implications for victims and survivors of sexual violence. These stakeholders were concerned that inconsistencies could impact victims and survivors' access to justice:

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The current plurality of legislative schemes on consent and sexual violence across the country creates confusion, profoundly impacting [victims and survivors'] ability to access justice and engage in an informed and empowered way with the justice system. This, in turn, impacts reporting and conviction rates. (Stakeholder 6, multijurisdictional)

The main inconsistencies identified by these stakeholders related to models of consent and consent principles and provisions, particularly regarding what does and does not constitute consent.

Model of consent

Two stakeholders argued for the adoption of an affirmative consent model in all jurisdictions. An affirmative consent model requires that each person actively (through words and/or actions) seek the consent of other participants (see the section *Legislative analysis*). Stakeholders provided three primary arguments for an affirmative consent model. Firstly, it shifts the focus of legal proceedings to what the defendant did to obtain consent and away from the actions of victims in demonstrating non-consent. Secondly, an affirmative consent model may make it easier to identify, investigate and prosecute more nuanced forms of sexual violence and abuse not currently covered by other models of consent (eg where a victim consents to one sexual activity but not another). Finally, alongside better criminalising different forms of violence and abuse, an affirmative consent model would ‘enshrine respectful, mutual and communicative sexual relationships in law’ (Stakeholder 6, multijurisdictional). This would better capture the significance and nuance of consent, support community understanding of what consent is (and is not) and help to address harmful myths about consent. One stakeholder summarised this when reflecting on their own consultations with victims and survivors of sexual violence:



One of the key messages when [victims and survivors] reflected about consent was—‘Consent is an everyday practice that extends beyond sex. It is mutually communicated, agreed upon and ongoing’... Consent can also be withdrawn at any time. A yes to one thing is not a yes to all forms of sexual activity. Nor is [it] a yes in perpetuity. Legislation in its current form does not adequately support the significance and nuance of consent. (Stakeholder 2, Qld)

In Australia, affirmative consent is generally operationalised as part of the fault element of sexual offences (see the section *Legislative analysis*). Jurisdictions that have legislated an affirmative consent model (ACT, NSW and Vic) specify that the defendant’s belief in consent is not reasonable unless they said or did something to ascertain that the other person was consenting (*Crimes Act 1900* (ACT) s 67(5) (When a person does not consent to an act); *Crimes Act 1900* (NSW) s 61HK(2) (Knowledge about consent); *Crimes Act 1958* (Vic) s 36A(2) (Reasonable belief in consent)). Tasmania may be argued to have adopted an affirmative consent model by legislating limitations on the use of the mistake of fact defence. In Tasmania, a defendant cannot employ the defence of a mistaken but honest and reasonable belief in consent if they were intoxicated and would not have otherwise made the mistake, were reckless as to consent, or did not take reasonable steps to ascertain consent (*Criminal Code Act 1924* (Tas) s 14A (Mistake as to consent in certain sexual offences)).

Stakeholders in this review argued that the mistake of fact defence can perpetuate ‘rape myths’ (eg that the victim’s behaviour indicated consent) and places additional scrutiny on the actions of the victim (eg their level of intoxication). Stakeholder 6 (multijurisdictional) cited Crowe and Lee’s (2020) work on the mistake of fact defence in Queensland, which argued that consent provisions are undermined by the defendant’s ability to cite ‘prejudicial or irrelevant social or contextual factors...as inducing or rationalising his mistaken belief as to consent’ when employing the mistake of fact defence (Crowe & Lee 2020: 4). Stakeholders thought that legislating an affirmative consent model that requires demonstration of actions taken to give and obtain voluntary consent would allow for the mistake of fact defence to be repealed in Code jurisdictions. However, acknowledging the significant reform required to repeal the mistake of fact defence, one stakeholder noted that it could instead be amended in Queensland and Western Australia to limit how it may be used, as has been done in Tasmania. Stakeholders suggested that such amendments would bring legislation into line with the community and sexual violence support and advocacy services’ understanding of sexual violence.

Principles and provisions of consent legislation

One stakeholder acknowledged that the benefits of an affirmative consent model (among other consent and sexual violence related reforms) may only be realised when legal actors consistently implement legislation. They noted that this is not yet happening in jurisdictions with affirmative consent models:

“

[Rape] myths remain disturbingly prevalent, including among those responsible for determining sexual violence matters. This month, in an article in *The Australian*, a judge was quoted questioning the credibility of a [victim or survivor] because she alleged that some sexual activity with two men was nonconsensual, whereas other activity on the same night with one of the men was consensual. This is a bizarre view, which shows a profound misunderstanding of affirmative consent laws. It is especially disturbing given that the judge in question is based in NSW, and was commenting on a NSW case (with NSW being one of the jurisdictions that has adopted explicit legislative guidance on this point). The fact that rape myths are still being perpetuated by members of the judiciary, in a leading national publication, shows how much work remains to undo them. (Stakeholder 6, multijurisdictional)

Given these challenges, the stakeholder recommended incorporating an objective of consent provisions and guiding principles for applying sexual offence legislation into state and territory legislation. An objective for consent provisions is currently legislated in the Australian Capital Territory, New South Wales and Victoria (*Crimes Act 1900* (ACT) s 50A (Objects—pt 3); *Crimes Act 1900* (NSW) s 61HF (Objective); *Crimes Act 1958* (Vic) s 37A (Objectives of Subdivisions (8A) to (8G))). In these jurisdictions, it is specified that the objective of sexual offence provisions is to recognise the right to choose whether or not to participate in a sexual activity, that consent is not presumed, and that consensual sexual activity involves ongoing and mutual decision-making and communication. Such provisions may help influence community expectations and understandings of consent and address harmful myths about consent (eg that consent is assumed unless expressly negated).

One stakeholder also recommended that all jurisdictions incorporate guiding principles for applying sexual offence legislation. This is currently done in Victoria only, where the guiding principles recognise that:

- There is a high incidence of sexual violence within society.
- Sexual offences are significantly under-reported.
- Sexual offences are primarily perpetrated against women, children and other vulnerable persons, including persons with a cognitive impairment or mental illness.
- Sexual offenders are commonly known to their victim.
- Sexual offences often occur in situations where there are unlikely to be any physical signs of an offence having occurred (*Crimes Act 1958* (Vic) s 37B (Guiding principles)).

It was further recommended that an additional guiding principle be included to challenge contemporary rape myths. The stakeholder specifically recommended stating that sexual offences most frequently occur in residential locations, that victims may not physically resist assault for legitimate reasons including fear, and that victims and survivors may not immediately report an assault to police or another person.

Stakeholders also recommended acknowledging trauma responses (ie 'fight, flight or freeze', see Galliano et al. 1993; Kalaf et al. 2017) in relation to consent within legislation. Victims of sexual violence may 'freeze' in these traumatic situations and may not actively resist assault. That a lack of physical or verbal resistance does not constitute consent (ie the freeze response) is recognised in legislation in the Australian Capital Territory, New South Wales, Queensland and Victoria (*Crimes Act 1900* (ACT) s 67(2) (When a person does not consent to an act); *Crimes Act 1900* (NSW) s 61HI(4) (Consent generally); *Criminal Code Act 1899* (Qld) s 348(3) (Meaning of consent); *Crimes Act 1958* (Vic) s 36(2) (Consent)). In Western Australia, legislation specifies that a lack of physical resistance does not constitute consent, but it does not refer to verbal resistance (*Criminal Code Act Compilation Act 1913* (WA) s 319(2)(b) (Terms used)). The remaining jurisdictions (NT, SA and Tas) do not acknowledge trauma responses and/or lack of resistance within their legislation. Stakeholders 2 (Qld) and 6 (multijurisdictional) argued that acknowledging trauma responses would make legal and court processes more trauma informed. Importantly, some jurisdictions have legislated jury directions that acknowledge trauma responses; however, these fall outside the scope of this review.

Stakeholders also discussed the importance of legislation specifying that consent can be withdrawn at any time. In the Australian Capital Territory, New South Wales, Queensland, South Australia and Victoria, legislation specifies that consent may be withdrawn at any time by words or by conduct (*Crimes Act 1900* (ACT) s 67(1)(a) (When a person does not consent to an act); *Crimes Act 1900* (NSW) s 61HI(2)–(3) (Consent generally); *Criminal Code Act 1899* (Qld) s 348(4) (Meaning of *consent*); *Criminal Law Consolidation Act 1935* (SA) s 48(1)(b) (Rape); *Crimes Act 1958* (Vic) s 36AA(1)(p) (Circumstances in which a person does not consent)). Consequently, sexual activity that continues after consent has been withdrawn constitutes a sexual offence. While common law in the Northern Territory, Tasmania and Western Australia covers this situation, stakeholders argue that specification in legislation would clarify and unify how the law responds to these situations, increasing understanding of, and access to, the criminal justice system for victims and survivors.

Finally, stakeholders recommended that legislation more consistently clarify where consent does not exist (see Table 3). Stakeholder 6 (multijurisdictional) argued that legislation should clarify that consent to one sexual act with one person or on one occasion does not amount to consent to a different sexual act or person or on a different occasion. This is currently legislated in the Australian Capital Territory, New South Wales and Victoria (*Crimes Act 1900* (ACT) s 67(2)(b) (When a person does not consent to an act); *Crimes Act 1900* (NSW) s 61HI(5)–(6) (Consent generally); *Crimes Act 1958* (Vic) s 36(3) (Consent)). This stakeholder further argued that legislation should specify situations in which consent cannot be given, such as where someone is intoxicated or unconscious. This is currently done in all jurisdictions other than Queensland and Western Australia. However, while these specifications may not be explicitly included as situations in which consent does not exist, they may be covered in other provisions. For example, Queensland legislation defines consent as ‘given by a person with the *cognitive capacity* to give consent’ (emphasis added; *Criminal Code Act 1899* (Qld) s 348(1) (Meaning of *consent*)). Nonetheless, it was argued that incorporating these specifications would enhance consistency in decision-making between jurisdictions and would address prevalent stereotypes about sexual violence currently perpetuated in society and within the legal system.

Inconsistencies in legislation of sexual conduct

Five stakeholders discussed legislative inconsistencies related to sexual conduct. Two of these stakeholders were multijurisdictional agencies, and one each operated in Queensland, Tasmania and Western Australia. The inconsistencies discussed related specifically to stealthing, persistent or repeated sexual abuse of a child and failing to report or protect children offences. Stakeholders were primarily concerned that legislative inconsistencies may mean that the rights and choices of victims and survivors are determined on the basis of the state or territory in which the incident occurred. One stakeholder further noted that legislative inconsistencies may promote confusion that perpetrators take advantage of. Finally, as noted above, consistency in legislation about sexual conduct has been argued to demonstrate clear standards for consensual sexual activity and improve reporting and conviction rates.

Stealthing

As discussed in the *Consent* subsection of this report, stealthing is the term commonly used to refer to the non-consensual tampering with, or removal of, a condom during sexual intercourse. Two stakeholders emphasised that this conduct is not explicitly criminalised in all jurisdictions. Currently, stealthing is specified as a factor negating consent in the Australian Capital Territory, South Australia, Tasmania and Victoria (*Crimes Act 1900* (ACT) s 67(j) (When a person does not consent to an act); *Criminal Law Consolidation Act 1935* (SA) s 46(ga) (Consent to sexual activity); *Criminal Code Act 1924* (Tas) s 2A(2A) (Consent); *Crimes Act 1958* (Vic) s 36AA(o) (Circumstances in which a person does not consent)). In New South Wales, it is cited as an example of the broader provision specifying that consent to a particular sexual activity should not be taken as consent to any other sexual activity (*Crimes Act 1900* (NSW) s 61HI(5) (Consent generally)). In July 2023, the Northern Territory passed the Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023 which will criminalise stealthing as a factor negating consent in late 2023. In Queensland and Western Australia, stealthing is not expressly criminalised. Instead, whether or not this conduct constitutes sexual assault depends on how courts interpret consent provisions in these jurisdictions. Stakeholders argued that consistently criminalising stealthing would result in greater consistency in decision-making between states and territories and improve associated justice outcomes for victims and survivors. One stakeholder further noted that the majority of Australian residents support the criminalisation of stealthing (81% of representative sample; see Parrott & Chesser 2022).

Persistent sexual abuse of a child

Two stakeholders discussed the terminology used to describe the persistent sexual abuse of a child in each state and territory. While this conduct is criminalised in all Australian states and territories (see the section *Legislative analysis*), there are, as previously noted, some differences in how it is described (ie offence titles). The Australian Capital Territory, New South Wales, Queensland, Tasmania, Victoria and Western Australia use either 'persistent sexual abuse', 'persistent sexual conduct' or 'repeated sexual conduct', and South Australia refers to 'sexual abuse of a child' (*Crimes Act 1900* (ACT) s 56 (Persistent sexual abuse of a child or young person under special care); *Crimes Act 1900* (NSW) s 66EA (Persistent sexual abuse of a child); *Criminal Code Act 1899* (Qld) s 229B (Repeated sexual conduct with a child); *Criminal Law Consolidation Act 1935* (SA) s 50 (Sexual abuse of a child); *Criminal Code Act 1924* (Tas) s 125A (Persistent sexual abuse of a child or young person); *Crimes Act 1958* (Vic) s 49J (Persistent sexual abuse of a child under the age of 16); *Criminal Code Compilation Act 1913* (WA) s 321A (Child under 16, persistent sexual conduct with)). The Northern Territory currently refers to this conduct as the maintenance of a 'sexual relationship' (*Criminal Code Act 1983* (NT) s 131A (Sexual relationship with child)). Recent advocacy has argued that the word 'relationship' implies consent where none can be given (see, for example, Grace Tame Foundation 2022). One stakeholder who provides support to, and advocacy for, victims and survivors summarised such concerns:

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The language maintaining a relationship with a child/young person is problematic. The word & connotations of ‘relationship’ does not adequately highlight the power imbalance and that the experience is violence/abuse. ‘Relationship’ implies participation of at least two people and contributes to victim blaming attitudes and beliefs. [Child sexual abuse] is something that is done to a child/young person. (Stakeholder 2, Qld)

This highlights the role that terminology can play in how victims and survivors of child sexual abuse, as well as the broader community, understand victimisation experiences. Importantly, as outlined above (see also the section *Legislative analysis*), most jurisdictions have introduced amendments that remove the term ‘relationship’ from their offence titles. Most recently, the Northern Territory passed the Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023 in July 2023; it amends the title of the offence to ‘Repeated sexual abuse—child under 16 years’ and removes references to a ‘relationship’ from the body of the offence. At the time of writing, this has received assent but has not commenced.

Failing to report or protect children from unlawful sexual conduct

Three stakeholders who work in the prevention, support and advocacy spaces discussed the inconsistent nature of failure to report child sexual abuse provisions between jurisdictions. They noted that these provisions vary as to who is required to report suspected child abuse, thresholds for reporting (ie knowledge vs suspicion of abuse) and the perceived utility of information required to make a report (see the section *Legislative analysis*). For example, s 316A(1) (Concealing child abuse offence) of the *Crimes Act 1900* (NSW) requires that a person believe the information ‘might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence’. One stakeholder was concerned that these provisions may require reporting to one or both of police and child protective services, despite these agencies having requirements to report to each other, increasing their administrative burdens. Another stakeholder noted that ‘failure to report’ laws may result in service users disengaging from services through concern that their experiences will be reported to police without permission, impacting their sense of autonomy. Finally, stakeholders indicated that such inconsistencies may make it challenging for victim and survivor support services that operate nationally to comply with legislation in each state and territory.

Given these concerns, stakeholders recommended the introduction of legislative provisions that clearly identify mandated professions, reporting thresholds and the perceived utility of information required to make a report. Section 316A(1) (Concealing child abuse offence) of the *Crimes Act 1900* (NSW) was referred to as an example of good practice. One stakeholder argued that mandated professions should include all those who work with children. In making these recommendations, stakeholders also emphasised the need for all reports of child sexual abuse to be thoroughly followed up and investigated by police and/or child protective services.

One stakeholder also recommended establishing a national database of child sexual abuse offences and offenders to aid in such investigations. Ultimately, one stakeholder argued that ‘the foundation of any legislative changes needs to be the protection and safety of children across Australia’ (Stakeholder 1, multijurisdictional).

Failure to protect children offences were discussed by two stakeholders. One emphasised the importance of institutions and organisations (eg religious organisations, schools and government bodies) having a legislative responsibility to prevent child abuse, including sexual abuse, in all states and territories. They identified the Victorian *Wrongs Amendment (Organisational Child Abuse) Act 2017* (Vic) as an example of good practice in Australia. This Act reversed the onus of proof in child abuse matters to require institutions and organisations to prove that they had taken steps to prevent abuse within their organisations. The stakeholder argued that such legislation:

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reduces barriers and previous burdens on victims-survivors to be able to seek justice from institutions where there is liability and increases responsibility on institutions themselves in preventing child abuse.
(Stakeholder 1, multijurisdictional)

However, another stakeholder based in Queensland cautioned that, while such legislation better criminalises those protecting perpetrators, it may also create barriers for victims and survivors of child sexual abuse to access support.

Preventing and responding to sexual violence

Stakeholders did note several issues and responses outside of legislation and not within scope of the current review. These are summarised here in recognition of the fact that reform to consent and sexual offence provisions, while important, is ‘only one piece of the puzzle’ (Stakeholder 6, multijurisdictional). They include:

- harmonised approaches to evidence law, particularly for the terminology and use of sexual reputation and sexual experience and activities evidence, and the admissibility of tendency and coincidence evidence;
- harmonised jury directions for sexual assault and child sexual abuse trials, including directions about consent, trauma responses to sexual violence, the appearance and conduct of the victim, the relationship between the victim and defendant, differences in complainant’s accounts and complainant responses to giving evidence;
- obligating technology companies to better prevent and respond to online child sexual abuse, for example, the *Online Safety (Basic Online Safety Expectations) Determination 2022* (Cth), which outlines reasonable steps that social media platforms, apps and websites are expected to take to keep users safe;
- protecting the rights and safety of transgender, gender diverse and non-binary children, young people and adults against discrimination in schools, workplaces and service settings;
- strengthening information sharing and collaborative practices between police, child protective services and support services (when responding to child sexual abuse);
- improving resourcing to government and non-government victim and survivor support services;
- improving consent education; and
- conducting further research on sexual violence perpetration and victimisation, particularly among minority populations.

Summary

Consultations with stakeholders identified inconsistencies in sexual offence legislation, including in how consent and specific sexual offences are legislated. Stakeholders argued for the introduction of an affirmative consent model in all jurisdictions and made recommendations to ensure that legal actors consistently implement the principles of this model. Stakeholders also argued that stealthing, persistent sexual abuse of a child and failure to report and protect children from unlawful sexual conduct should be criminalised in more consistent ways across jurisdictions. Harmonising legislation was seen as important to simplifying legislation, modelling clear and consistent standards for consensual sexual activity, improving reporting and conviction rates and improving victims and survivors’ experience with the criminal justice system. Finally, stakeholders argued that improving outcomes for victims and survivors of sexual assault and child sexual abuse also required various non-legislative reforms.

Conclusion

This review examines how sexual violence and abuse is criminalised in statute across Australian jurisdictions. It explores any gaps and inconsistencies in this legislative landscape and their implications for victims and survivors who have contact with the criminal justice system. It investigates the barriers and challenges to achieving greater consistency in legislation. This examination is contextualised with an overview of prior domestic reviews and inquiries, academic research and literature on international developments, which are also drawn on to inform discussion of good or 'best practices'.

An analysis of current (as of 31 August 2023) Commonwealth, state and territory legislation reveals notable overall consistency in consent provisions. In particular, all jurisdictions have explicitly adopted a communicative model of consent in legislation, which requires parties to sexual activity to freely and voluntarily communicate, through words and/or actions, on a continuous basis and through mutual decision-making, their consent to participate in the activity. This model, which has also been adopted in many other countries, better emphasises the right that all people have to choose whether or not to participate in sexual activity and the importance of communicating this. Traditional consent models have been shown to too readily take an absence of clear non-consent as consent. This includes cases where victims and survivors' trauma reactions cause them to 'freeze', which has been shown to be a common response to sexual violence and abuse. These changes also represent an attempt to shift scrutiny during legal proceedings away from the behaviours of victims and survivors, although research has found that this has not had significant success in practice.

Jurisdictions in Australia are moving more unevenly towards enshrining an affirmative model of consent into legislation. This model, on top of the requirements of a communicative model of consent, also requires participants in sexual activity to take steps, through words and/or actions, to affirm the consent of other participants. It is designed to shift the focus away from whether victims and survivors communicated their own consent onto whether the defendant said or did anything to ensure that they had consent before and during sexual activity. Critics of this model argue that it shifts the burden of proof onto the defendant, removes the availability of mistake of fact defences and favours absolute liability for sexual offences; they argue that it potentially will result in the prosecution of morally innocent people. The model's proponents, including a number of the stakeholders consulted directly as part of this review, argue that it reduces the potential for scrutiny of victim and survivor behaviours during legal proceedings, makes it easier to prosecute more nuanced forms of sexual violence and abuse (eg where a victim consents to one sexual activity but not another) and promotes healthy sexual relationships more broadly. Critically, concerns about the ongoing scrutiny of victim and survivor behaviour as part of criminal investigations were borne out in the victim and survivor consultations undertaken as part of this review: such scrutiny impacted negatively on the justice outcomes they were able to secure. The arguments put forward in favour of an affirmative consent model have underpinned moves towards such a model internationally, most notably in Canada, Scotland and some jurisdictions in the United States.

At present, the Australian Capital Territory, New South Wales and Victoria have incorporated elements of an affirmative consent model into their statutory consent provisions. In Tasmania, a defendant needs to provide evidence of reasonable steps taken to ascertain consent before they can rely on the defence of mistaken belief in consent. Other jurisdictions are investigating the strengthening of consent provisions with elements of an affirmative consent model or have, at the time of writing, introduced amendments to incorporate an affirmative consent model.

Importantly, while states and territories are essentially similar in their incorporation of a communicative model of consent and their movements, if at different rates, towards incorporation of an affirmative model of consent, notable differences arise from the different ways that sexual offences are structured and operate. These differences are particularly stark between jurisdictions where criminal law is completely codified in statute ('Code' jurisdictions) and those where the common law criminal system still operates to some degree ('non-Code' jurisdictions). In the Australian Capital Territory, New South Wales and Victoria, any steps taken by the defendant to ascertain consent must be considered as part of the fault element of the offence. Similarly, in South Australia, steps taken by the defendant are considered as part of the test of whether the defendant was recklessly indifferent to whether the victim consented. In Queensland, Tasmania and Western Australia, steps taken by the defendant are considered through the excuse or defence of mistake of fact, if employed. In the Northern Territory, to the extent that the defendant's actions to affirm consent are considered, the prosecution must prove that the defendant knew that the alleged victim was not consenting or was reckless as to whether they consented to sexual activity.

There is also some inconsistency across jurisdictions in the lists of circumstances specified in legislation under which consent to sexual activity is negated. Some circumstances, broadly, are consistently represented on these lists, including a person not saying or doing anything to communicate consent; violence or detainment; abuse of a relationship of trust or authority; and impairment or incapacitation of the victim. How, and in what detail, such circumstances are included varies. This reflects variation in the extent to which specification of these circumstances is relied on to frame consent in statute. Some jurisdictions rely heavily on these, while others rely more on provisions defining what consent is or on standalone offences that criminalise sexual activity under particular circumstances.

Together, these sources of variation also have the potential to complicate efforts to ensure greater national consistency in standards and models of consent enshrined in legislation. Nevertheless, while acknowledging these difficulties, a number of stakeholders consulted as part of this review argued that mistake of fact defences, as they currently operate, too often place scrutiny onto the behaviours of victims. On this basis, they recommended the enshrinement of an affirmative consent model in legislation across all jurisdictions, through either provision or amendments to limit how mistake of fact defences can be used (as has been done in Tas).

Ages of consent, or the minimum age at which a person can legally give their consent to engage in sexual conduct with another person, are set in statute at 16 years across all jurisdictions except South Australia and Tasmania, where they are set at 17 years. This is consistent with widely accepted international standards for best practice. The provision of sex work by persons under 18 years of age is also criminalised in statute across all jurisdictions, as is sexual conduct with young people aged 16–17 under the care or authority of defendants. Where victims are 11–12 or older, there are commonly certain circumstances specified in statute where sexual conduct may not be criminalised, assuming that it can be demonstrated that all parties to the sexual conduct agreed freely and voluntarily to participate. These include where parties are similar in age—normally within two years of each other—and where defendants were mistaken as to the age of the victim. While this represents a positive element of legislation in Australia, some studies have recommended variation in these age gaps: wider where parties to sexual activity are both older adolescents, and narrower where parties to sexual activity are younger children, to ensure more developmentally appropriate standards.

The review revealed a high overall degree of consistency across Australian jurisdictions in terms of much of the conduct covered by sexual offences in statute. Significant forms of unlawful sexual conduct (ie penetrative and non-penetrative sexual offending, persistent sexual abuse, CSAM and IBSA offences) are comprehensively criminalised in statute across Australia; however, there is some variety in the extent to which standalone offences exist for conduct in relation to specific groups (eg cognitively or mentally impaired victims) or under specific circumstances (eg within the context of a relationship of care or authority). There is also greater variety in the coverage of other forms of conduct that enable, or contribute to, sexual offending in some way by standalone offences. Some aggravating and specific circumstances, including younger victims, relationships of care or authority, coercion and conduct undertaken in company with others are consistently specified in legislation across jurisdictions in relation to penetrative and non-penetrative sexual offences. However, these circumstances are less consistently applied in statute to other forms of conduct across jurisdictions. Additionally, there is greater variation across jurisdictions in the specification of other aggravating and specific circumstances in statute. Most defences and excuses analysed are statutorily enshrined across most, if not all, jurisdictions, but some inconsistencies exist in how these defences are defined and the offences to which they apply.

Importantly, apparent gaps and inconsistencies in the coverage of different forms of conduct and in aggravating and other specific circumstances reflect, in many cases, variation in *how*, rather than *whether*, these are captured in legislation. Some jurisdictions have standalone offences for sexual conduct under a particular circumstance, such as sexual conduct with an intellectually impaired person. Others specify this in statute as a circumstance of aggravation applicable to one or more sexual offences. Yet others specify this as a circumstance negating consent or incorporate it into their legislative definitions of consent applicable to certain sexual offences. In many instances, multiple approaches are taken. These gaps and inconsistencies may also reflect the enshrinement of aggravating and specific circumstances—and defences and excuses—in common law. Again, this makes jurisdictions difficult to compare, while also posing potential challenges to efforts to harmonise legislation nationally.

Consultations with victims and survivors suggest ongoing difficulties securing criminal justice outcomes for cases of historical sexual abuse. These difficulties stem from the challenges police and prosecutors experience gathering the evidence required to substantiate charges. All jurisdictions in Australia have introduced offences for persistent or repeated sexual abuse which relax the requirement to particularise specific incidents that constitute a pattern of abuse in the same level of detail as if each incident were being charged as a separate offence. This has been done, in large part, to overcome the investigative challenges inherent to many cases of persistent or repeated abuse, which often involve incidents that occurred many years before a report. Nevertheless, victim and survivor consultations undertaken for this review, along with empirical research, suggest that even basic details of specific incidents of abuse, including the identity of perpetrators and the location of an incident of abuse, can be difficult for victims and survivors to recall and for police to substantiate. Without discounting the necessity of statutory offences for persistent or repeated sexual abuse, this points to the limitations inherent in purely legislative efforts to address this issue. Further innovations in preventative and reporting mechanisms and investigative methodologies are needed.

This review also points to ongoing inconsistencies in the new statutory offences for failing to report and protect offences introduced across all jurisdictions, along with possible limitations in their operation. These offences, introduced or strengthened in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017), are designed to place greater onus on institutions to prevent the abuse of children under their authority or care and to combat institutional efforts to conceal abuse from authorities. This review has highlighted some ongoing inconsistencies across jurisdictions regarding aspects of these offences, including who must report and whom the report must be made to, along with inconsistencies and a lack of clarity about thresholds for reporting (ie the level of confidence one must have that abuse has occurred before being required to report). Concerningly, consultations with victims and survivors also noted one recent instance of an institution working to hinder a police investigation of child sexual abuse.

Finally, this report notes some variation across jurisdictions in the terminology and the definitions of key terms used in legislation about certain forms of sexual violence and abuse. Recent advocate-driven efforts to amend terminology in relation to persistent or repeated sexual abuse offences have resulted in the removal, or impending removal, of references to the problematic term 'relationship' in the titles of these offences across all jurisdictions. However, ongoing inconsistencies in terminology, particularly in relation to terms used to describe unlawful non-penetrative contact and non-contact sexual conduct, have been highlighted. Further, despite substantive similarities in the definitions of key terms across jurisdictions, some more superficial differences in the scope, breadth and detail of these definitions remain, and some jurisdictions have more comprehensive definitions of certain terms than others. Critically, some terms, most notably those about unlawful non-penetrative contact and non-contact sexual conduct, remain undefined or poorly defined in the legislation of many jurisdictions. Feedback from some victims and survivors consulted as part of this review also highlighted the potential for certain widely used terms to minimise, in their view, the severity of sexual violence and abuse.

This review, undertaken in support of the SCAG's *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027*, has examined sexual violence and abuse laws in Australia. It has explored the coverage, gaps and inconsistencies of these laws, how they compare with internationally recognised 'best practices' and their implications for victims and survivors. Findings are intended to support the efforts of Commonwealth, state and territory governments to strengthen laws against sexual violence and abuse across the country, inform discussions regarding the necessity and feasibility of legislative consistency and, ultimately, support better outcomes for victims and survivors.

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Appendix A: Victim and survivor semi-structured survey

Most recent sexual assault/child sexual abuse matter

These next questions ask about your most recent child sexual abuse/sexual assault matter with the criminal justice system. Some of these questions might be distressing. Remember, you don't have to answer any questions you don't want to, but we appreciate any information that you provide.

If you feel distressed and no longer wish to participate, you can close the Internet browser and your responses will not be submitted. We welcome and encourage you to complete the survey with a support person or someone who can help you understand and translate the questions, including a family member, friend or professional support. Several services are available if you want to connect with a professional support person who can help you while participating, or if you need help or feel upset or distressed at any time.

National support services:

- Lifeline Australia: 13 11 14 or www.lifeline.org.au
- Beyond Blue: 1300 22 4636 or www.beyondblue.org.au
- Relationships Australia: 1300 364 277
- National Sexual Assault and Domestic Family Violence Counselling Service (1800RESPECT): 1800 737 732 or www.1800respect.org.au
- SANE Australia: 1800 187 263 or www.sane.org
- 13YARN: 13 92 76 (for Aboriginal and/or Torres Strait Islander people)

State and territory support services:

- Australian Capital Territory—[Canberra Rape Crisis Centre](#) (02 6247 2525)
- New South Wales—NSW Sexual Violence Helpline (1800 424 017) or visit the [NSW Health Sexual Assault Services](#) webpage to find a contact number for your area
- Northern Territory—visit the [NT Sexual Assault Referral Centres](#) webpage to find a contact number for your area
- Queensland—[DVConnect Sexual Assault Helpline](#) (1800 010 120)
- South Australia—[Yarrow Place Rape and Sexual Assault Service](#) (1800 817 421)
- Tasmania—[Sexual Assault Support Service](#) (1800 697 877)
- Victoria—[Sexual Assault Crisis Line](#) (1800 806 292)
- Western Australia—[Sexual Assault Resource Centre](#) (08 6458 1828 or 1800 199 888—free call from landlines)

[Note for the reader: ‘!=’ means ‘not equal to’ in the following table]

Most recent sexual assault/child sexual abuse matter			
Question number	Question text	Response categories	Notes
B1	Did the matter concern one or more than one incident of sexual abuse/assault?	One More than one Don't want to say	
B2	In what state/territory did the sexual abuse/assault occur?	Australian Capital Territory New South Wales Northern Territory Queensland South Australia Tasmania Victoria Western Australia Multiple (please specify) Don't want to say	
B3	What year(s) did the abuse/assault occur in?	Open (numeric)	

Most recent sexual assault/child sexual abuse matter (cont.)			
Question number	Question text	Response categories	Notes
B4	How old (in years) were you when you were sexually abused/assaulted (or sexually abused/assaulted for the first time if more than one incident)?	Under 10	
		10–11	
		12–13	
		14–15	
		16–17	
		18–19	
		20–24	
		25–29	
		30–34	
		35–39	
		40–44	
		45–49	
		50–54	
		55–59	
		60+	
Don't know			
Don't want to say			

Most recent sexual assault/child sexual abuse matter (cont.)			
Question number	Question text	Response categories	Notes
B5	<p>How did you know your abuser(s)/assaulter(s)?</p> <p><i>If you were abused/assaulted by more than one person, please select one category for each person</i></p>	Father	
		Stepfather	
		Mother	
		Stepmother	
		Foster father	
		Foster mother	
		Other adult family member	
		Other non-adult family member	
		Adult family friend	
		Biological brother	
		Biological sister	
		Stepbrother	
		Stepsister	
		Adoptive brother	
		Adoptive sister	
		Foster brother	
		Foster sister	
		Partner (eg spouse, girlfriend/boyfriend)	
		Friend/peer	
		Colleague	
Acquaintance (known to you but not a friend)			
Sporting coach			
Teacher			
Religious official			
Other (please specify)			
I didn't know my abuser(s)/assaulter(s)			
Don't know			
Don't want to say			
B6	<p>How did the person or people who abused/assaulted you describe their gender?</p>	Man or male	
		Woman or female	
		Non-binary	
		They used a different term	
		There were multiple abusers/assaulters of mixed genders	
		Don't know	
		Don't want to say	

Most recent sexual assault/child sexual abuse matter (cont.)			
Question number	Question text	Response categories	Notes
B7	<p>Please select the response options that you feel describes the abuse/assault.</p> <p><i>Please select all that apply. If you would rather describe the abuse/assault in your own words, please select 'I would rather describe the abuse/assault in my own words'</i></p>	<p>Attempted or actual penetrative sex without your consent</p> <p>Attempted or actual penetrative sex without protection without your consent</p> <p>Attempted or actual sexual activity (not including penetrative sex) without your consent</p> <p>Attempts to manipulate, blackmail or intimidate you into sexual activity of any kind</p> <p>Exposure to sexual materials, behaviours, activity or harassment without your consent</p> <p>Attempted or actual sexual activity of any kind by an adult while you were under 16 years of age</p> <p>Attempts to manipulate, blackmail or intimidate you into sexual activity by an adult while you were under 16 years of age</p> <p>Exposure to sexual materials, behaviours, activity or harassment by an adult while you were under 16 years of age</p> <p>Making or distributing sexually explicit recordings (images, video etc) of you without your consent</p> <p>Making or distributing sexually explicit recordings (images, video etc) of you while you were under 18 years of age</p> <p>I would rather describe the abuse/assault in my own words</p> <p>Don't want to say</p>	<p>Skip to C1 if B5!=I would rather describe the abuse/assault in my own words</p>
B8_a	<p>Please describe the abuse/assault. You may include whatever details you like (except for names or any other identifying information).</p>	<p>Open</p>	

Experiences with the criminal justice system

These next questions ask about your experiences with the criminal justice system for this matter. Some of these questions might be distressing. Remember, you don't have to answer any questions you don't want to, but we appreciate any information you are willing to provide.

If you feel distressed and no longer wish to participate, you can close the Internet browser and your responses will not be submitted. We welcome and encourage you to complete the survey with a support person or someone who can help you understand and translate the questions, including a family member, friend or professional support. Several services are available if you want to connect with a professional support person who can help you while participating, or if you need help or feel upset or distressed at any time.

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- 13YARN: 13 92 76 (for Aboriginal and/or Torres Strait Islander people)

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- Queensland—[DVConnect Sexual Assault Helpline](#) (1800 010 120)
- South Australia—[Yarrow Place Rape and Sexual Assault Service](#) (1800 817 421)
- Tasmania—[Sexual Assault Support Service](#) (1800 697 877)
- Victoria—[Sexual Assault Crisis Line](#) (1800 806 292)
- Western Australia—[Sexual Assault Resource Centre](#) (08 6458 1828 or 1800 199 888—free call from landlines)

[Note for the reader: ‘!=’ means ‘not equal to’ in the following table]

Experiences with the criminal justice system			
Question number	Question text	Response categories	Notes
C1	How long after you were sexually abused/assaulted (or sexually abused/assaulted for the first time if more than once) was it reported to police? <i>Please estimate as best you can</i>	Open	
C2	In what state/territory was the matter reported to police?	Australian Capital Territory New South Wales Northern Territory Queensland South Australia Tasmania Victoria Western Australia Multiple (please specify) Don't want to say	
C3	How did you feel about the matter being reported, and about your early contacts with police? Why did you feel this way?	Open	
C4	Did police investigate the matter any further?	Yes – it was investigated in the same state/territory where it was reported Yes – it was investigated in a different state/territory No Don't want to say	Skip to C5 if C4= Yes – the matter was investigated by police in the state/territory in which it was reported Skip to C4_a if C4=Yes – the matter was investigated by police in another state/territory to the one in which it was reported Skip to C4_b if C4=No Skip to C7 if C4=Prefer not to say

Experiences with the criminal justice system (cont.)			
Question number	Question text	Response categories	Notes
C4_a	In what state/territory was the matter further investigated by police?	Australian Capital Territory New South Wales Northern Territory Queensland South Australia Tasmania Victoria Western Australia Multiple (please specify) Don't want to say	Skip to C5
C4_b	What reason(s) were you given for police not investigating the matter any further?	Open	Skip to end
C5	Did police and/or prosecutors tell you at any stage that the matter was difficult to investigate?	Yes No Don't want to say	Skip to C6 if C5!=Yes
C5_a	What difficulties did they mention?	Open	
C6	How did you feel about the investigation of your matter? Why did you feel this way?	Open	
C7	Were one or more charges laid against your abuser(s)/assaulter(s)?	Yes No Don't want to say	Skip to C7_a if C7=Yes Skip to C7_b if C7=No Skip to C8 if C7=Prefer not to say
C7_a	Did you feel that these charge(s) reflected how serious your abuse/assault was? Why did you feel this way?	Open	Skip to C8
C7_b	What reasons were you given for charges not being laid against your abuser(s)/assaulter(s)?	Open	Skip to end
C8	Did police and/or prosecutors tell you at any stage that it was difficult to prosecute your matter?	Yes No Don't want to say	Skip to C9 if C8!=Yes
C8_a	What difficulties did they mention?	Open	Skip to C10

Experiences with the criminal justice system (cont.)			
Question number	Question text	Response categories	Notes
C9	Did the matter go to court?	Yes	Skip to C9_a if C9=Yes
		No	Skip to C9_b if C9=No
		Don't want to say	Skip to C10 if C9=Prefer not to say
C9_a	How did you feel about the court process? Why did you feel this way?	Open	Skip to C10
C9_b	What reasons were you given for the matter not going to court?	Open	Skip to end
C10	Were any of the charges (or the charge if only one) changed before your matter was closed?	Yes	Skip to C11 if C10!=Yes
		No	
		Don't want to say	
C10_a	What reasons were you given for the charge(s) being changed?	Open	
C10_b	Did you feel that the changed charge(s) reflected how serious your abuse/assault was? Why did you feel this way?	Open	
C11	Were any of the charges (or charge if only one) dropped before your matter was closed?	Yes	Skip to C12 if C11!=Yes
		No	
		Don't want to say	
C11_a	What reasons were you given for the charge(s) being dropped?	Open	
C12	Did your abuser/assaulter (or at least one if multiple) plead guilty, or were they found guilty, of any of the charges?	Yes	Skip to end if C12=No or Prefer not to say
		No	
		Don't want to say	
C13	Did you feel that the charge(s) your abuser(s)/assaulter(s) were found guilty of reflected how serious your abuse/assault was? Why did you feel this way?	Open	
C14	Did you feel that your abuser(s)/assaulter(s) sentence reflected how serious your abuse/assault was? Why did you feel this way?	Open	
C15	Did you feel able to access support and feel safe while your matter was being investigated, prosecuted or otherwise processed? Why did you feel this way?	Open	

Appendix B: Victim and survivor written submission

Thank you. In this next section, you can lodge your written submission. The following points have been provided to help guide your response, but please include whatever information you want. Just remember that we are not asking for any identifying information. You are reminded that you can also lodge a written submission that you have made as part of a previous review or consultation into sexual assault and child sexual abuse, or an application or submission to a support service such as the National Redress Scheme. The time you need to complete this will depend on how much information you choose to provide, but please allow at least an hour.

Please be aware that after you submit, you will not be able to withdraw your submission, but you can withdraw at any point before submitting.

- Did your most recent child sexual abuse/sexual assault matter involve a single incident of abuse/assault or multiple incidents?
- What year(s) did it occur?
- Did you know your abuser(s)/assaulter(s)? If so, how?
- Around how old were you when this abuse/assault occurred?
- What state/territory (or states/territories if more than one) was this matter reported to police, investigated, prosecuted or otherwise processed in?
- How did you feel about your matter being reported to police, and about your early contacts with police? Why did you feel this way?
- (If the matter was further investigated) How did you feel about the investigation of your matter? Why did you feel this way?
- (If charges were laid) Did you feel that the charges laid reflected how serious your abuse/assault was? Why did you feel this way?
- (If the matter went to court) How did you feel about the court process and the prosecution of your matter? Why did you feel this way?
- (If your abuser(s)/assaulter(s) plead or were found guilty) Did you feel that the charge(s) your abuser(s)/assaulter(s) were found guilty of reflected how serious your abuse/assault was? Why did you feel this way?

- (If your abuser(s)/assaulter(s) plead or were found guilty) Did you feel that your abuser(s)/assaulter(s) sentence reflected how serious your abuse/assault was? Why did you feel this way?
- Did you feel able to access support and feel safe while your matter was being investigated, prosecuted or otherwise processed? Why did you feel this way?

If you feel distressed and no longer wish to participate, you can close the Internet browser and your responses will not be submitted. We welcome and encourage respondents to complete the written submission with a support person, including a family member, friend or professional support. Several services are available if you want to connect with a professional support person who can help you while participating, or if you need help or feel upset or distressed at any time.

National support services:

- Lifeline Australia: 13 11 14 or www.lifeline.org.au
- Beyond Blue: 1300 22 4636 or www.beyondblue.org.au
- Relationships Australia: 1300 364 277
- National Sexual Assault and Domestic Family Violence Counselling Service (1800RESPECT): 1800 737 732 or www.1800respect.org.au
- SANE Australia: 1800 187 263 or www.sane.org
- 13YARN: 13 92 76 (for Aboriginal and/or Torres Strait Islander people)

State and territory support services:

- Australian Capital Territory—[Canberra Rape Crisis Centre](#) (02 6247 2525)
- New South Wales—NSW Sexual Violence Helpline (1800 424 017) or visit the [NSW Health Sexual Assault Services](#) webpage to find a contact number for your area
- Northern Territory—visit the [NT Sexual Assault Referral Centres](#) webpage to find a contact number for your area
- Queensland—[DVConnect Sexual Assault Helpline](#) (1800 010 120)
- South Australia—[Yarrow Place Rape and Sexual Assault Service](#) (1800 817 421)
- Tasmania—[Sexual Assault Support Service](#) (1800 697 877)
- Victoria—[Sexual Assault Crisis Line](#) (1800 806 292)
- Western Australia—[Sexual Assault Resource Centre](#) (08 6458 1828 or 1800 199 888—free call from landlines)

Written submission

Question number	Question text	Response categories
W1	Please upload your written submission here.	File upload

Once you have uploaded your submission, please click Next below.

Appendix C: Victim and survivor screening and demographic questions

Screening questions

We are only accepting submissions from those who are currently 18 years of age or older. Additionally, you must have reported a sexual assault or child sexual abuse matter to the police since 2018. This is to ensure that your experiences can be used to draw conclusions on current laws in Australia.

[Note for the reader: '!=' means 'not equal to' in the following table]

Screening questions			
Question number	Question text	Response categories	Notes
S1	How old are you (in years)?	17 or younger 18 or older Don't want to say	Screen out if S1!=18 or older
S2	Since 2018, have you reported a sexual assault or child sexual abuse matter to police in Australia?	Yes No Don't want to say	Screen out if S2!=Yes

Demographics

Before completing the survey or writing your submission, we would like to ask you some questions about yourself. Please remember that you can stop at any time prior to submitting your responses, and you can skip questions if you don't want to answer them.

Demographic questions		
Question number	Question text	Response categories
A1	What is your current age (in years)?	Open (numeric)
A2	How do you describe your gender?	Man or male
	Gender refers to current gender, which may be different to sex recorded at birth and may be different to what is indicated on legal documents	Woman or female Non-binary I use a different term (please specify) Don't want to say
A3	What was your sex recorded at birth?	Male Female Another term (please specify) Don't want to say
A4	How would you describe your sexual orientation?	Straight (heterosexual) Gay or lesbian Bisexual I use a different term (please specify) Don't want to say
A5	Do you identify as Aboriginal and/or Torres Strait Islander?	Yes – Aboriginal Yes – Torres Strait Islander Yes – Both Aboriginal and Torres Strait Islander No Don't want to say
A6	Do you have a disability? The definition of disability includes sensory, intellectual, neuro-diverse, physical and mental illness where the disability is permanent or likely to be permanent	Yes No Don't want to say
A7	Were you born in Australia?	Yes No Don't want to say

Demographic questions (cont.)		
Question number	Question text	Response categories
A8	Which language do you speak most of the time at home?	<ul style="list-style-type: none"> English Mandarin Arabic Cantonese Vietnamese Italian Greek Hindi Spanish Punjabi Other Don't want to say
A9	How would you describe your ethnic background?	<ul style="list-style-type: none"> Open
A10	What is your highest level of education?	<ul style="list-style-type: none"> Year 9 or below Year 10 or equivalent Year 11 or equivalent Year 12 or equivalent University (undergraduate) University (postgraduate) Vocational qualification (eg TAFE) Other (please specify) Don't know Don't want to say
A11	What is your employment status?	<ul style="list-style-type: none"> Working full time (ie 35 or more hours per week in one or more jobs, including self-employment) Working part time Casual work Semi-retired Unemployed, not looking for work Unemployed, looking for work Full-time homemaker In full-time education only Retired Not working due to health condition, illness or injury Full-time carer Other (please specify) Don't know Don't want to say

Thank you. Please click 'Next' to continue.

Appendix D: Stakeholder written submission

The purpose of this research is to seek your professional opinion about the actual and perceived inconsistencies within Australian child sexual abuse/sexual assault laws, any implications you think these inconsistencies have for the investigation and prosecution of child sexual abuse/sexual assault matters, and the ability of victims and survivors to receive appropriate support. Remember, we are interested in your views on legislation in the jurisdiction(s) within which you work or feel you have the deepest understanding of.

In your submission, we request that you address the following points and questions. Please feel free to include whatever information you feel comfortable providing, although remember that we are not asking for any identifying information, including the name or other identifying information on the specific organisation you work for. You may choose to lodge a written submission that you have made as part of a previous review or consultation into sexual assault and child sexual abuse if you wish. Please be aware that after you submit, you will not be able to withdraw your submission, but you can withdraw at any point before submitting.

- A brief outline of your role as it relates to child sexual abuse/sexual assault, and the jurisdiction within which you fill this role or have the deepest knowledge of.
- What impact (if any) do the differences between sexual assault and child sexual abuse legislative frameworks in Australia (if any) have on;
 - the investigation and prosecution of sexual assault and child sexual abuse matters in the criminal justice system; and,
 - the ability of victims and survivors to receive the support they require?
- What are the gaps in current legislation for responding to new and emerging trends in sexual violence?
- How do you think that this legislation can be improved?
- What are the barriers/challenges to achieving consistency in child sexual abuse/sexual assault legislation in Australia?
- What are examples of best practice regarding child sexual abuse/sexual assault legislation operating in Australia or overseas that you are aware of?

Thank you for taking the time to participate in our research.

Please be reminded that, once you submit your responses, you will not be able to withdraw this information from our research.

Appendix E: Sexual conduct in legislation, by jurisdiction

Table E1: Penetrative sexual conduct offences

Jurisdiction	Legislation	Section
Penetrative sexual conduct involving any person		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 71.8 (Unlawful sexual penetration)
		s 268.14 (Crime against humanity—rape)
		s 268.59 (War crime—rape)
		s 268.82 (War crime—rape)
ACT	<i>Crimes Act 1900</i> (ACT)	s 54 (Sexual intercourse without consent)
NSW	<i>Crimes Act 1900</i> (NSW)	s 61I (Sexual assault)
		s 61J (Aggravated sexual assault)
		s 61JA (Aggravated sexual assault in company)
NT	<i>Criminal Code Act 1983</i> (NT)	s 192 (Sexual intercourse and gross indecency without consent)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 349 (Rape) ^a
		s 352 (Sexual assaults)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 48 (Rape)
		s 48A (Compelled sexual manipulation)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 185 (Rape)
Vic	<i>Crimes Act 1958</i> (Vic)	s 38 (Rape)
		s 39 (Rape by compelling sexual penetration)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 325 (Sexual penetration without consent)
		s 326 (Aggravated sexual penetration without consent)

Table E1: Penetrative sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
Penetrative sexual conduct involving a child or young person		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.8 (Sexual intercourse with child outside Australia)
ACT	<i>Crimes Act 1900</i> (ACT)	s 55 (Sexual intercourse with young person)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66A (Sexual intercourse—child under 10) ^b
		s 66C (Sexual intercourse—child between 10 and 16)
NT	<i>Criminal Code Act 1983</i> (NT)	s 127 (Sexual intercourse or gross indecency involving child under 16 years)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 215 (Engaging in penile intercourse with child under 16)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 124 (Penetrative sexual abuse of child or young person)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49A (Sexual penetration of a child under the age of 12)
		s 49B (Sexual penetration of a child under the age of 16)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 320 (Child under 13, sexual offences against)
		s 321 (Child of or over 13 and under 16, sexual offences against)
	<i>Prostitution Act 2000</i> (WA)	s 15 (Acting as prostitute for child)
Penetrative sexual conduct involving a child or young person under supervision, care or authority		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority)
ACT	<i>Crimes Act 1900</i> (ACT)	s 55A (Sexual intercourse with young person under special care)
NSW	<i>Crimes Act 1900</i> (NSW)	s 73 (Sexual intercourse—young person between 16 and 18 under special care)
NT	<i>Criminal Code Act 1983</i> (NT)	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
		s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 124A (Penetrative sexual abuse of child or young person by person in position of authority)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 322 (Child of or over 16, sexual offences against by person in authority etc)

Table E1: Penetrative sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
Penetrative sexual conduct involving a vulnerable or impaired person		
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)
NT	<i>Criminal Code Act 1983</i> (NT)	s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 216 (Abuse of persons with an impairment of the mind)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)
		s 51 (Sexual exploitation of person with a cognitive impairment)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 126 (Penetrative sexual abuse of person with mental impairment)
Vic	<i>Crimes Act 1958</i> (Vic)	s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 330 (Incapable person, sexual offences against)
Penetrative sexual conduct involving a familial relation		
ACT	<i>Crimes Act 1900</i> (ACT)	s 62 (Incest and similar offences)
NSW	<i>Crimes Act 1900</i> (NSW)	s 78A (Incest) ^c
NT	<i>Criminal Code Act 1983</i> (NT)	s 134 (Incest)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 222 (Incest)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 72 (Incest)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 133 (Incest)
Vic	<i>Crimes Act 1958</i> (Vic)	s 50C (Sexual penetration of a child or lineal descendant)
		s 50D (Sexual penetration of a step-child)
		s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)
		s 50F (Sexual penetration of a sibling or half-sibling)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 329 (Relatives and the like, sexual offences by)

a: attempts covered in s 350 (Attempt to commit rape)

b: attempts covered in s 66B (Attempting, or assaulting with intent, to have sexual intercourse with child under 10)

c: attempts covered in s 78B (Incest attempts)

Table E2: Non-penetrative sexual conduct offences		
Jurisdiction	Legislation	Section
Non-penetrative sexual conduct involving any person		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 268.19 (Crime against humanity—sexual violence)
		s 268.64 (War crime—sexual violence)
		s 268.87 (War crime—sexual violence)
ACT	<i>Crimes Act 1900</i> (ACT)	s 60 (Act of indecency without consent)
NSW	<i>Crimes Act 1900</i> (NSW)	s 61KC (Sexual touching)
		s 61KD (Aggravated sexual touching)
		s 61KE (Sexual act)
		s 61KF (Aggravated sexual act)
		s 80A (Sexual assault by forced self-manipulation)
NT	<i>Criminal Code Act 1983</i> (NT)	s 192 (Sexual intercourse and gross indecency without consent)
		s 192B (Coerced sexual self-manipulation)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 352 (Sexual assaults)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 56 (Indecent assault)
		s 48A (Compelled sexual manipulation)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 127 (Indecent assault)
Vic	<i>Crimes Act 1958</i> (Vic)	s 39 (Rape by compelling sexual penetration)
		s 40 (Sexual assault)
		s 41 (Sexual assault by compelling sexual touching)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 48 (Sexual activity directed at another person)
		s 323 (Indecent assault)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 324 (Aggravated indecent assault)
		s 324 (Aggravated indecent assault)
Non-penetrative sexual conduct involving a child or young person		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)
		s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)
ACT	<i>Crimes Act 1900</i> (ACT)	s 61 (Acts of indecency with young people)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66DA (Sexual touching—child under 10)
		s 66DB (Sexual touching—child between 10 and 16)
		s 66DC (Sexual act—child under 10)
		s 66DD (Sexual act—child between 10 and 16)
		s 66DE (Aggravated sexual act—child between 10 and 16)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66DF (Sexual act for production of child abuse material—child under 16)
		s 66DF (Sexual act for production of child abuse material—child under 16)

Table E2: Non-penetrative sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
NT	<i>Criminal Code Act 1983</i> (NT)	s 127 (Sexual intercourse or gross indecency involving child under 16 years)
		s 132 (Indecent dealing with child under 16 years)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 58 (Acts of gross indecency)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 125B (Indecent act with a child or young person)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49A (Sexual penetration of a child under the age of 12)
		s 49B (Sexual penetration of a child under the age of 16)
		s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)
		s 49D (Sexual assault of a child under the age of 16)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 49F (Sexual activity in the presence of a child under the age of 16)
		s 320 (Child under 13, sexual offences against)
	<i>Prostitution Act 2000</i> (WA)	s 321 (Child of or over 13 and under 16, sexual offences against)
		s 15 (Acting as prostitute for child)
Non-penetrative sexual conduct involving a child or young person under supervision, care or authority		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority)
ACT	<i>Crimes Act 1900</i> (ACT)	s 61A (Act of indecency with young person under special care)
NSW	<i>Crimes Act 1900</i> (NSW)	s 73A (Sexual touching—young person between 16 and 18 under special care)
NT	<i>Criminal Code Act 1983</i> (NT)	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority)
		s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority)
		s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 322 (Child of or over 16, sexual offences against by person in authority etc)

Table E2: Non-penetrative sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
Non-penetrative sexual conduct involving a vulnerable or impaired person		
NT	<i>Criminal Code Act 1983</i> (NT)	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
		s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 216 (Abuse of persons with an impairment of the mind)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 51 (Sexual exploitation of person with a cognitive impairment)
Vic	<i>Crimes Act 1958</i> (Vic)	s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)
		s 52C (Sexual assault of person with cognitive impairment or mental illness)
		s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness)
		s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 330 (Incapable person, sexual offences against)
Non-penetrative sexual conduct involving a familial relation		
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 329 (Relatives and the like, sexual offences by)
Non-penetrative sexual conduct involving exposing a child or a vulnerable or impaired person to sexual material		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 471.26 (Using a postal or similar service to send indecent material to person under 16)
		s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age)
ACT	<i>Crimes Act 1900</i> (ACT)	s 66 (Grooming and depraving young people)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)
NT	<i>Criminal Code Act 1983</i> (NT)	s 132 (Indecent dealing with child under 16 years)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)
		s 216 (Abuse of persons with an impairment of the mind)
SA	<i>Summary Offences Act 1953</i> (SA)	s 33 (Indecent or offensive material)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 125D (Communications with intent to procure child or young person)

Table E2: Non-penetrative sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 204A (Showing offensive material to child under 16)
		s 204B (Using electronic communication to procure, or expose to indecent matter, child under 16)
Non-penetrative sexual conduct involving indecency in public or indecent exposure		
ACT	<i>Crimes Act 1900</i> (ACT)	s 393 (Indecent exposure)
NSW	<i>Summary Offences Act 1988</i> (NSW)	s 5 (Obscene exposure)
NT	<i>Criminal Code Act 1983</i> (NT)	s 133 (Gross indecency in public)
	<i>Summary Offences Act 1923</i> (NT)	s 50 (Penalty for indecent exposure of the person)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 227 (Indecent acts)
	<i>Summary Offences Act 2005</i> (Qld)	s 9 (Wilful exposure)
SA	<i>Summary Offences Act 1953</i> (SA)	s 23 (Indecent behaviour and gross indecency)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 137 (Indecency)
Vic	<i>Summary Offences Act 1966</i> (Vic)	s 17 (Obscene, indecent, threatening language and behaviour etc in public)
		s 19 (Sexual exposure)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 202 (Obscene act in public)
		s 203 (Indecent act with intent to offend)
		s 204 (Indecent act with intent to offend)
Non-penetrative sexual conduct involving indecent observation		
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91J (Voyeurism) ^a
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 227A (Observations or recordings in breach of privacy)
Vic	<i>Summary Offences Act 1966</i> (Vic)	s 41A (Observation of genital or anal region)

a: Includes a subsection for attempts

Table E3: Persistent and repeated child sexual abuse offences		
Jurisdiction	Legislation	Section
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.11 (Persistent sexual abuse of a child outside Australia)
ACT	<i>Crimes Act 1900</i> (ACT)	s 56 (Persistent sexual abuse of child or young person under special care)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66EA (Persistent sexual abuse of a child)
NT	<i>Criminal Code Act 1983</i> (NT)	s 131A (Sexual relationship with a child) ^a
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229B (Repeated sexual conduct with a child)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 50 (Sexual abuse of a child)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 125A (Persistent sexual abuse of child or young person)
Vic	<i>Crimes Act 1958</i> (Vic)	s 49J (Persistent sexual abuse of a child under the age of 16)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 321A (Child under 16, persistent sexual conduct with)

a: At the time of writing, the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (NT) which, among other things, replaces the title of s 131A with 'Repeated sexual abuse', had received assent but had yet to commence

Table E4: Image-based sexual abuse offences		
Jurisdiction	Legislation	Section
Possessing intimate material		
Tas	<i>Police Offences Act 1935</i> (Tas)	s 13C (Possession of prohibited visual recording)
Capturing intimate material		
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91K (Filming a person engaged in private act) ^a
		s 91L (Filming a person's private parts) ^a
		s 91P (Record intimate image without consent)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 227A (Observations or recordings in breach of privacy)
		s 216 (Abuse of persons with an impairment of the mind)
SA	<i>Summary Offences Act 1953</i> (SA)	s 26D (Indecent filming)
Tas	<i>Police Offences Act 1935</i> (Tas)	s 13A (Observation or recording in breach of privacy)
Vic	<i>Crimes Act 1958</i> (Vic)	s 53R (Producing intimate image)

Table E4: Image-based sexual abuse offences (cont.)		
Jurisdiction	Legislation	Section
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 330 (Incapable person, sexual offences against)
Distributing intimate material		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 474.17A (Aggravated offences involving private sexual material—using a carriage service to menace, harass or cause offence)
ACT	<i>Crimes Act 1900 (ACT)</i>	s 72C (Non-consensual distribution of intimate images)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91Q (Distribute intimate image without consent)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 208AB (Distribution of intimate image without consent)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 223 (Distributing intimate images) s 227B (Distributing prohibited visual recordings)
SA	<i>Summary Offences Act 1953 (SA)</i>	s 26C (Distribution of invasive image) s 26D (Indecent filming)
Tas	<i>Police Offences Act 1935 (Tas)</i>	s 13B (Publishing or distributing prohibited visual recording)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 53S (Distributing intimate image)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 221BD (Distribution of intimate image)
Threats to capture or distribute intimate material		
ACT	<i>Crimes Act 1900 (ACT)</i>	s 72E (Threaten to capture or distribute intimate images)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91R (Threaten to record or distribute intimate image)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 208AC (Threaten to distribute intimate images)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 229A (Threats to distribute intimate image or prohibited visual recording)
SA	<i>Summary Offences Act 1953 (SA)</i>	s 26DA (Threat to distribute invasive image or image obtained from indecent filming)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 53T (Threat to distribute intimate image)

a: Includes a subsection for attempts

Table E5: Child sexual abuse material offences		
Jurisdiction	Legislation	Section
Accessing child sexual abuse material		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 474.22 (Using a carriage service for child abuse material)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63A (Possession of child exploitation material)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130D (Accessing child exploitation material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51H (Accessing child abuse material)
Possession of child sexual abuse material		
	Customs (Prohibited Imports) Regulations 1956 (Cth)	s 4A (Importation of objectionable goods)
		s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)
		s 273A.1 (Possession of child-like sex dolls etc)
		s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
		s 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
Cth		s 471.2 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service)
	<i>Criminal Code Act 1995</i> (Cth)	s 471.22 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		s 474.22 (Using a carriage service for child abuse material)
		s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service)
		s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
		s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service)
		s 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
ACT	<i>Crimes Act 1900</i> (ACT)	s 65 (Possessing child exploitation material)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91H (Production, dissemination or possession of child abuse material)
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228D (Possessing child exploitation material) s 228J (Possessing child abuse object)

Table E5: Child sexual abuse material offences (cont.)		
Jurisdiction	Legislation	Section
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63A (Possession of child exploitation material)
		s 63AAB (Possession of child-like sex dolls)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130C (Possession of child exploitation material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51G (Possession of child abuse material)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 219 (Distributing child exploitation material)
		s 220 (Possession of child exploitation material)
Distribution of child sexual abuse material		
Cth	Customs (Prohibited Exports) Regulations 1958 (Cth)	s 3 (Exportation of objectionable goods)
		s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
	<i>Criminal Code Act 1995</i> (Cth)	s 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		s 471.19 (Using a postal or similar service for child abuse material)
		s 471.22 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		s 474.22 (Using a carriage service for child abuse material)
		s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
		s 474.23A (Conduct for the purposes of electronic service used for child abuse material)
		s 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		ACT
s 72D (Distribution of intimate image of young person)		
NSW	<i>Crimes Act 1900</i> (NSW)	s 91H (Production, dissemination or possession of child abuse material)
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228C (Distributing child exploitation material)
		s 228I (Producing or supplying child abuse object)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63 (Production or dissemination of child exploitation material)
		s 63AA (Production or dissemination of child-like sex dolls)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130B (Distribution of child exploitation material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51D (Distributing child abuse material)

Table E5: Child sexual abuse material offences (cont.)		
Jurisdiction	Legislation	Section
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 219 (Distributing child exploitation material)
Production of child sexual abuse material		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
		s 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		s 471.2 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service)
		s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service)
ACT	<i>Crimes Act 1900 (ACT)</i>	s 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)
		s 64 (Using child for production of child exploitation material etc)
		s 64A (Trading in child exploitation material)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 66DF (Sexual act for production of child abuse material—child under 16)
		s 91G (Children not to be used for production of child abuse material)
		s 91H (Production, dissemination or possession of child abuse material)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 132 (Indecent dealing with child under 16 years)
		s 125B (Possession of child abuse material)
		s 125E (Using child for production of child abuse material or pornographic or abusive performance)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 210 (Indecent treatment of children under 16)
		s 228A (Involving child in making child exploitation material)
		s 228B (Making child exploitation material)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 228I (Producing or supplying child abuse object)
		s 63 (Production or dissemination of child exploitation material)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 63AA (Production or dissemination of child-like sex dolls)
		s 130 (Involving person under 18 years in production of child exploitation material)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 130A (Production of child exploitation material)
		s 49Q (Causing or allowing a sexual performance involving a child)
		s 51B (Involving a child in the production of child abuse material)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 51C (Producing child abuse material)
		s 218 (Producing child exploitation material)
		s 320 (Child under 13, sexual offences against)
		s 321 (Child of or over 13 and under 16, sexual offences against)
		s 330 (Incapable person, sexual offences against)

Table E6: Violence and coercion to enable unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
Violence and threats		
ACT	<i>Crimes Act 1900 (ACT)</i>	s 51 (Sexual assault in the first degree)
		s 52 (Sexual assault in the second degree)
		s 53 (Sexual assault in the third degree)
		s 57 (Act of indecency in the first degree)
		s 58 (Act of indecency in the second degree)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 59 (Act of indecency in the third degree)
		s 61K (Assault with intent to have sexual intercourse)
		s 66B (Attempting, or assaulting with intent, to have sexual intercourse with child under 10)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 66D (Assault with intent to have sexual intercourse—child between 10 and 16)
		s 218 (Procuring sexual acts by coercion etc)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 351 (Assault with intent to commit rape)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 60 (Procuring sexual intercourse)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 129 (Procuring a person for penetrative sexual abuse by threats or fraud)
		s 42 (Assault with intent to commit a sexual offence)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 44 (Procuring sexual act by threat)
		s 192 (Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug)
		s 327 (Sexual coercion)
		s 328 (Aggravated sexual coercion)
Abduction and kidnapping		
ACT	<i>Crimes Act 1900 (ACT)</i>	s 63 (Abduction)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 201 (Abduction, enticement or detention of child under 16 years for immoral purpose)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 219 (Taking child for immoral purposes)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 59 (Abduction of a male or female person)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 186 (Abduction)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 47 (Abduction or detention for a sexual purpose)
		s 49P (Abduction or detention of a child under the age of 16 for a sexual purpose)

Table E6: Violence and coercion to enable unlawful sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
Violence and coercion to enable sexual services		
ACT	<i>Sex Work Act 1992</i> (ACT)	s 17 (Duress)
		s 20 (Causing child to provide commercial sexual services etc)
NSW	<i>Summary Offences Act 1988</i> (NSW)	s 15A (Causing or inducing prostitution)
	<i>Crimes Act 1900</i> (NSW)	s 91B (Procuring person by drugs etc)
NT	<i>Sex Industry Act 2019</i> (NT)	s 10 (Inducing person to perform sex work)
		s 12 (Causing or allowing child to perform sex work or work in sex services business)
Qld	<i>Prostitution Act 1999</i> (Qld)	s 77 (Duress)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 66 (Sexual servitude and related offences)
Tas	<i>Sex Industry Offences Act 2005</i> (Tas)	s 7 (Offences against sex workers)
		s 9 (Participation of children)
Vic	<i>Sex Work Act 1994</i> (Vic)	s 8 (Forcing person into or to remain in sex work)
	<i>Crimes Act 1958</i> (Vic)	s 53B (Using force, threat etc to cause another person to provide commercial sexual services)
WA	<i>Prostitution Act 2000</i> (WA)	s 7 (Seeking to induce person to act as prostitute)
		s 16 (Causing, permitting, or seeking to induce child to act as prostitute)

Table E7: Deception and fraud to enable unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
Deception and fraud for the procurement of sexual acts		
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 218 (Procuring sexual acts by coercion etc)
		s 221 (Conspiracy to defile)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 60 (Procuring sexual intercourse)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 129 (Procuring a person for penetrative sexual abuse by threats or fraud)
Vic	<i>Crimes Act 1958</i> (Vic)	s 45 (Procuring sexual act by fraud)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 192 (Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug)
Deceptive recruitment for sexual services		
ACT	<i>Crimes Act 1900</i> (ACT)	s 80 (Deceptive recruiting for sexual services)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91B (Procuring person by drugs etc)
NT	<i>Criminal Code Act 1983</i> (NT)	s 202D (Deceptive recruiting for sexual services)
	<i>Sex Industry Act 2019</i> (NT)	s 10 (Inducing person to perform sex work)
Qld	<i>Prostitution Act 1999</i> (Qld)	s 77 (Duress)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 67 (Deceptive recruiting for commercial sexual services)
Tas	<i>Sex Industry Offences Act 2005</i> (Tas)	s 7 (Offences against sex workers)
Vic	<i>Crimes Act 1958</i> (Vic)	s 53F (Deceptive recruiting for commercial sexual services)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 331D (Deceptive recruiting for commercial sexual service)
Deception about sexual health status of sex worker		
ACT	<i>Sex Work Act 1992</i> (ACT)	s 26 (Medical tests and examinations)
NT	<i>Sex Industry Act 2019</i> (NT)	s 16 (Medical examinations)

Table E8: Use of substances to enable unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
ACT	<i>Sex Work Act 1992</i> (ACT)	s 17 (Duress)
NSW	<i>Crimes Act 1900</i> (NSW)	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)
		s 91B (Procuring person by drugs etc)
NT	<i>Sex Industry Act 2019</i> (NT)	s 10 (Inducing person to perform sex work)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 218 (Procuring sexual acts by coercion etc)
Tas	<i>Sex Industry Offences Act 2005</i> (Tas)	s 7 (Offences against sex workers)
Vic	<i>Crimes Act 1958</i> (Vic)	s 46 (Administration of an intoxicating substance for a sexual purpose)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 192 (Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug)
	<i>Prostitution Act 2000</i> (WA)	s 7 (Seeking to induce person to act as prostitute)

Table E9: Procuring, grooming and encouraging to enable unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
Procuring a person for sexual activity		
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 352 (Sexual assaults)
Procuring a vulnerable or impaired person for sexual activity		
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 216 (Abuse of persons with an impairment of the mind)
		s 217 (Procuring young person etc for penile intercourse)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 330 (Incapable person, sexual offences against)
Procuring a person for prostitution		
ACT	<i>Sex Work Act 1992</i> (ACT)	s 20 (Causing child to provide commercial sexual services etc)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229G (Procuring engagement in prostitution)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91A (Procuring etc)
		s 91B (Procuring person by drugs etc)
SA	<i>Summary Offences Act 1953</i> (SA)	s 25A (Procurement for prostitution)
Tas	<i>Sex Industry Offences Act 2005</i> (Tas)	s 9 (Participation of children)

Table E9: Procuring, grooming and encouraging to enable unlawful sexual conduct offences (cont.)

Jurisdiction	Legislation	Section
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 191 (Procuring person to be prostitute etc)
Grooming or encouraging a child for sexual activity		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 272.15 (“Grooming” child to engage in sexual activity outside Australia)
		s 272.15A (“Grooming” person to make it easier to engage in sexual activity with a child outside Australia)
		s 471.25 (Using a postal or similar service to “groom” persons under 16)
		s 471.25A (Using a postal or similar service to “groom” another person to make it easier to procure persons under 16)
		s 474.27 (Using a carriage service to “groom” persons under 16 years of age)
		s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age)
ACT	<i>Crimes Act 1900 (ACT)</i>	s 66 (Grooming and depraving young people)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)
		s 66EC (Grooming a person for unlawful sexual activity with a child under the person’s authority)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 218B (Grooming child under 16 years or parent or carer of child under 16 years)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 63B (Procuring child to commit indecent act etc)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 125D (Communications with intent to procure child or young person)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 49K (Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity)
		s 49M (Grooming for sexual conduct with a child under the age of 16)
Procuring a child for sexual activity		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 272.14 (Procuring child to engage in sexual activity outside Australia)
		s 471.24 (Using a postal or similar service to procure persons under 16)
		s 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16)
		s 474.26 (Using a carriage service to procure persons under 16 years of age)

Table E9: Procuring, grooming and encouraging to enable unlawful sexual conduct offences (cont.)

Jurisdiction	Legislation	Section
NSW	<i>Crimes Act 1900 (NSW)</i>	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 131 (Attempts to procure child under 16 years)
		s 132 (Indecent dealing with child under 16 years)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 210 (Indecent treatment of children under 16)
		s 217 (Procuring young person etc for penile intercourse)
		s 218A (Using internet etc to procure children under 16)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 63B (Procuring child to commit indecent act etc)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 125C (Procuring child or young person for sexual abuse)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 204B (Using electronic communication to procure, or expose to indecent matter, child under 16)
		s 320 (Child under 13, sexual offences against)
		s 321 (Child of or over 13 and under 16, sexual offences against)
		s 322 (Child of or over 16, sexual offences against by person in authority etc)
		s 329 (Relatives and the like, sexual offences by)
Procuring a child for the production of sexual abuse material		
ACT	<i>Crimes Act 1900 (ACT)</i>	s 64 (Using child for production of child exploitation material etc)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91G (Children not to be used for production of child abuse material)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 125E (Using child for production of child abuse material or pornographic or abusive performance)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 228A (Involving child in making child exploitation material)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 130 (Involving person under 18 years in production of child exploitation material)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 51B (Involving a child in the production of child abuse material)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 217 (Involving child in child exploitation)

Table E10: Incitement to commit unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
Incitement to engage in unlawful sexual conduct		
NSW	<i>Crimes Act 1900</i> (NSW)	s 61KC (Sexual touching)
		s 61KD (Aggravated sexual touching)
		s 61KE (Sexual act)
		s 61KF (Aggravated sexual act)
		s 66DA (Sexual touching—child under 10)
		s 66DB (Sexual touching—child between 10 and 16)
		s 66DC (Sexual act—child under 10)
		s 66DD (Sexual act—child between 10 and 16)
		s 66DE (Aggravated sexual act—child between 10 and 16)
		s 66DF (Sexual act for production of child abuse material—child under 16)
		s 73A (Sexual touching—young person between 16 and 18 under special care)
s 80G (Incitement to commit sexual offence)		
Vic	<i>Crimes Act 1958</i> (Vic)	s 41 (Sexual assault by compelling sexual touching)
		s 44 (Procuring sexual act by threat)
		s 45 (Procuring sexual act by fraud)
		s 46 (Administration of an intoxicating substance for a sexual purpose)
		s 49A (Sexual penetration of a child under the age of 12)
		s 49B (Sexual penetration of a child under the age of 16)
		s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)
s 49D (Sexual assault of a child under the age of 16)		
s 52C (Sexual assault of a person with a cognitive impairment or mental illness)		
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 187 (Facilitating sexual offence against child outside WA)
Incitement to engage with child sexual abuse material		
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HAB (Encouraging use of a digital platform to deal with child abuse material)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228DB (Encouraging use of child exploitation material website)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63AB (Offences relating to websites)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51F (Encouraging use of a website to deal with child abuse material)

Table E11: Facilitation of unlawful sexual conduct offences		
Jurisdiction	Legislation	Section
Facilitating a child sexual offence		
NSW	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	s 227 (Child and young person abuse)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 219 (Taking child for immoral purposes)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 49H (Causing a child under the age of 16 to be present during sexual activity)
		s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity)
		s 49Q (Causing or allowing a sexual performance involving a child)
		s 49R (Inviting or offering a sexual performance involving a child)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 49S (Facilitating a sexual offence against a child)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 187 (Facilitating sexual offence against child outside WA)
Allowing premises to be used for child sexual offence		
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91F (Premises not to be used for child prostitution)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 213 (Owner etc permitting abuse of children on premises)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 61 (Householder etc not to permit unlawful sexual intercourse on premises)
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 125 (Person permitting penetrative sexual abuse of child or young person on premises)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 186 (Occupier or owner allowing young person to be on premises for unlawful carnal knowledge)
Facilitating production or distribution of child sexual abuse material		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)
ACT	<i>Crimes Act 1900 (ACT)</i>	s 64 (Using child for production of child exploitation material etc)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91G (Children not to be used for production of child abuse material)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 125E (Using child for production of child abuse material or pornographic or abusive performance)
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 228A (Involving child in making child exploitation material)

Table E11: Facilitation of unlawful sexual conduct offences (cont.)		
Jurisdiction	Legislation	Section
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130 (Involving person under 18 years in production of child exploitation material)
		s 130A (Production of child exploitation material)
		s 130B (Distribution of child exploitation material)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51B (Involving a child in the production of child abuse material)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 217 (Involving child in child exploitation)
Facilitating administration of digital platform that deals with child sexual abuse material		
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 474.23A (Conduct for the purposes of electronic service used for child abuse material)
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HAA (Administering a digital platform used to deal with child abuse material)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228DA (Administering child exploitation material website)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63AB (Offences relating to websites)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51E (Administering a website used to deal with child abuse material)
Facilitating the avoidance of detection of, or prosecution for, CSAM offences		
NSW	<i>Crimes Act 1900</i> (NSW)	s 91HAC (Providing information about avoiding detection)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228DC (Distributing information about avoiding detection)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63AB (Offences relating to websites)
Vic	<i>Crimes Act 1958</i> (Vic)	s 51I (Assisting a person to avoid apprehension)
Facilitating unlawful observation or filming		
NSW	<i>Crimes Act 1900</i> (NSW)	s 91M (Installing device to facilitate observation or filming)

Table E12: Trafficking in persons, sexual servitude and causing a child to perform sexual service offences

Jurisdiction	Legislation	Section
Trafficking person for sexual services or servitude		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 271.2 (Offence of trafficking in persons)
		s 271.3 (Trafficking in persons—aggravated offence)
		s 271.4 (Offence of trafficking in children)
		s 271.5 (Offence of domestic trafficking in persons)
		s 271.6 (Domestic trafficking in persons—aggravated offence)
		s 271.7 (Offence of domestic trafficking in children)
Sexual servitude		
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 268.15 (Crime against humanity—sexual slavery)
		s 268.16 (Crime against humanity—enforced prostitution)
		s 268.60 (War crime—sexual slavery)
		s 268.61 (War crime—enforced prostitution)
		s 268.83 (War crime—sexual slavery)
		s 268.84 (War crime—enforced prostitution)
ACT	<i>Crimes Act 1900 (ACT)</i>	s 79 (Sexual servitude offences)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 80D (Causing sexual servitude)
		s 80E (Conduct of business involving sexual servitude)
NT	<i>Criminal Code Act 1983 (NT)</i>	s 202B (Sexual servitude)
		s 202C (Conducting business involving sexual servitude)
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 66 (Sexual servitude and related offences)
Vic	<i>Crimes Act 1958 (Vic)</i>	s 53B (Using force, threat etc to cause another person to provide commercial sexual services)
		s 53C (Causing another person to provide commercial sexual services in circumstances involving sexual servitude)
		s 53D (Conducting a business in circumstances involving sexual servitude)
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 331B (Sexual servitude)
		s 331C (Conducting business involving sexual servitude)
Causing a child to perform sexual service		
ACT	<i>Sex Work Act 1992 (ACT)</i>	s 20 (Causing child to provide commercial sexual services etc)
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91D (Promoting or engaging in acts of child prostitution)
NT	<i>Sex Industry Act 2019 (NT)</i>	s 12 (Causing or allowing child to perform sex work or work in sex services business)
		s 14 (Agreeing to sex work by child)

Table E12: Trafficking in persons, sexual servitude and causing a child to perform sexual service offences (cont.)

Jurisdiction	Legislation	Section
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229FA (Obtaining prostitution from person who is not an adult)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 68 (Use of children in commercial sexual services)
Tas	<i>Sex Industry Offences Act 2005</i> (Tas)	s 9 (Participation of children)
Vic	<i>Sex Work Act 1994</i> (Vic)	s 5 (Causing or inducing child to take part in sex work)
		s 7 (Agreement for provision of sexual services by a child)
		s 11 (Allowing child to take part in sex work)
WA	<i>Prostitution Act 2000</i> (WA)	s 16 (Causing, permitting, or seeking to induce child to act as prostitute)
		s 18 (Agreement for prostitution by child)

Table E13: Failure to report child sexual abuse

Jurisdiction	Legislation	Section
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273B.5 (Failing to report child sexual abuse offence)
	<i>Family Law Act 1975</i> (Cth)	s 67ZA (Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc)
ACT	<i>Crimes Act 1900</i> (ACT)	s 66AA (Failure to report child sexual offence)
	<i>Children and Young People Act 2008</i> (ACT)	s 356 (Offence—mandatory reporting of abuse)
NSW	<i>Crimes Act 1900</i> (NSW)	s 316A (Concealing child abuse offence)
	<i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)	s 27 (Mandatory reporting)
	<i>Children's Guardian Act 2019</i> (NSW)	s 27 (Who must give report of reportable allegation or conviction)
NT	<i>Care and Protection of Children Act 2007</i> (NT)	s 26 (Reporting obligations)

Table E13: Failure to report child sexual abuse (cont.)		
Jurisdiction	Legislation	Section
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229BC (Failure to report belief of child sexual offence committed in relation to child)
	<i>Education (General Provisions) Act 2006</i> (Qld)	s 365 (Obligation to report sexual abuse of person under 18 years at State school)
		s 365A (Obligation to report likely sexual abuse of person under 18 years at State school)
		s 366 (Obligation to report sexual abuse of person under 18 years at non-State school)
	s 366A (Obligation to report likely sexual abuse of person under 18 years at non-State school)	
<i>Child Protection Act 1999</i> (Qld)	s 13E (Mandatory reporting by persons engaged in particular work) s 13F (Mandatory reporting relating to children in care)	
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 64A (Failure to report suspected child sexual abuse)
	<i>Children and Young People (Safety) Act 2017</i> (SA)	s 31 (Reporting of suspicion that child or young person may be at risk)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 105A (Failing to report the abuse of a child)
	<i>Children, Young Persons and Their Families Act 1997</i> (Tas)	s 14 (Informing of concern about abuse or neglect or certain behaviour)
Vic	<i>Crimes Act 1958</i> (Vic)	s 327 (Failure to disclose sexual offence committed against child under the age of 16 years)
	<i>Children, Youth and Families Act 2005</i> (Vic)	s 184 (Mandatory reporting)
WA	<i>Children and Community Services Act 2004</i> (WA)	s 124B (Duty of certain people to report sexual abuse of children)
	<i>Family Court Act 1997</i> (WA)	s 160 (Where member of Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc)

Table E14: Failure to protect a child or vulnerable person from sexual abuse		
Jurisdiction	Legislation	Section
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273B.4 (Failing to protect child at risk of child sexual abuse offence)
ACT	<i>Crimes Act 1900</i> (ACT)	s 36B (Failure to protect vulnerable person from criminal offence)
		s 66A (Failure by person in authority to protect child or young person from sexual offence)
NSW	<i>Crimes Act 1900</i> (NSW)	s 43B (Failure to reduce or remove risk of child becoming victim of child abuse)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229BB (Failure to protect child from child sexual offence)
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 65 (Failure to protect child from sexual abuse)
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 125E (Failure by a person in authority to protect a child from a sexual offence)
	<i>Children, Young Persons and Their Families Act 1997</i> (Tas)	s 13 (Responsibility to prevent abuse or neglect or certain behaviour)
		s 91 (Offence to fail to protect child from harm)
Vic	<i>Crimes Act 1958</i> (Vic)	s 490 (Failure by a person in authority to protect a child from a sexual offence)
WA	<i>Children and Community Services Act 2004</i> (WA)	s 101 (Failing to protect child from harm)

Appendix F: Aggravating and other specific circumstances in legislation, by jurisdiction

Table F1: Victim age as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 271.4 (Offence of trafficking in children)	Standalone offence for trafficking victims under 18 years of age, longer term of imprisonment specified
		s 271.4 (Offence of domestic trafficking in children)	Standalone offence for trafficking victims under 18 years of age, longer term of imprisonment specified
		s 272.30 (Sentencing)	Victims under 10 years of age treated as an aggravating circumstance Applicable to the following offences in the same Act: s 272.8 (Sexual intercourse with child outside Australia); s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia); s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority); s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority); 272.14 (Procuring child to engage in sexual activity outside Australia); s 272.15 (“Grooming” child to engage in sexual activity outside Australia); and s 272.15A (“Grooming” person to make it easier to engage in sexual activity with a child outside Australia)

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
		s 471.29A (Sentencing)	<p>Victims under 10 years of age treated as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 471.24 (Using a postal or similar service to procure persons under 16); s 471.25 (Using a postal service to “groom” persons under 16); s 471.25A (Using a postal or similar service to “groom” another person to make it easier to procure persons under 16); s 471.26 (Using a postal or similar service to send indecent material to person under 16)</p>
		s 474.29AA (Sentencing)	<p>Victims under 10 years of age treated as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 474.25A (Using a carriage service for sexual activity with person under 16 years of age); s 474.25B (Aggravated offence—using a carriage service for sexual activity with a person under 16 years of age); s 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16); s 474.26 (Using a carriage service to procure persons under 16 years of age); s 474.27 (Using a carriage service to “groom” persons under 16 years of age); s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age); and s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age)</p>
ACT	<i>Crimes Act 1900 (ACT)</i>	s 55 (Sexual intercourse with young person)	<p>Longer term of imprisonment specified where the victim was under 10 years of age</p> <p>Longer terms of imprisonment specified where the victim was under 10 years of age, and where the victim was between 10 and 15 years of age</p> <p>Longer term of imprisonment specified where the victim was under 12 years of age</p>
		s 61 (Act of indecency with young people)	
		s 66 (Grooming and depraving young people)	
		s 62 (Incest and similar offences)	
		s 64 (Using child for production of child exploitation material etc)	

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
		s 79 (Sexual servitude offences)	Longer term of imprisonment specified where the victim was under 18 years of age
		s 80 (Deceptive recruiting for sexual services)	
	<i>Sex Work Act 1992 (ACT)</i>	s 20 (Causing child to provide commercial sexual services etc)	Longer maximum terms of imprisonment specified where victim was under 12 years of age
NSW	<i>Crimes Act 1900 (NSW)</i>	s 61J (Aggravated sexual assault)	Victims under 16 years of age specified as an aggravating circumstance
		s 80A (Sexual assault by forced self-manipulation)	
		s 91J (Voyeurism)	
		s 91K (Filming a person engaged in a private act)	
		s 91L (Filming a person's private parts)	
		s 66A (Sexual intercourse—child under 10)	
		s 66B (Attempting, or assaulting with intent, to have sexual intercourse with child under 10)	
		s 66DA (Sexual touching—child under 10)	
s 66DC (Sexual act—child under 10)	Offences that specify longer maximum terms of imprisonment for unlawful sexual conduct against victims under 10 years of age than their equivalent offences for victims between 10 and 15 years of age		

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)				
Jurisdiction	Legislation	Section	Definition and application	
		s 66C (Sexual intercourse—child between 10 and 16)	Longer maximum term of imprisonment specified for victims under 14 years of age	
		s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)		
		s 66EC (Grooming a person for unlawful sexual activity with a child under the person’s authority)		
		s 91D (Promoting or engaging in acts of child prostitution)		
		s 91G (Children not to be used for production of child abuse material)		
		s 73 (Sexual intercourse—young person between 16 and 18 under special care)		Longer maximum term of imprisonment specified for victims under 17 years of age
		s 73A (Sexual touching—young person between 16 and 18 under special care)		
		s 80D (Causing sexual servitude)		Victims under 18 years of age specified as an aggravating circumstance in s 80C (Meaning of ‘circumstances of aggravation’)
		s 80E (Conduct of business involving sexual servitude)		
		NT		<i>Criminal Code Act 1983</i> (NT)
s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)				
s 132 (Indecent dealing with child under 16 years)				

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
		s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)	Longer liable term of imprisonment specified for victims of or over the age of 16 years and under the age of 17 years
		s 134 (Incest)	Longer liable terms of imprisonment where the victim was under 10 years of age, and where the victim was between 10 and 15 years of age
		s 202B (Sexual servitude)	Longer liable terms of imprisonment where the victim was under 12 years of age, and where the victim was between 12 and 15 years of age
		s 202C (Conducting business involving sexual servitude)	
		s 202D (Deceptive recruiting for sexual services)	Longer liable term of imprisonment specified for victims under 16 years of age
	<i>Sex Industry Act 2019 (NT)</i>	s 12 (Causing or allowing child to perform sex work or work in sex services business)	Longer maximum term of imprisonment specified for victims under 14 years of age
	s 14 (Agreeing to sex work by child)		
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 210 (Indecent treatment of children under 16)	Longer maximum term of imprisonment specified for victims under 12 years of age
		s 213 (Owner etc permitting abuse of children on premises)	
		s 215 (Engaging in penile intercourse with child under 16)	
		s 218A (Using internet etc to procure children under 16)	
		s 218B (Grooming child under 16 years or parent or carer of child under 16 years)	
		s 219 (Taking child for immoral purposes)	
		s 228 (Obscene publications and exhibitions)	
s 229FA (Obtaining prostitution from person who is not an adult)	Longer maximum term of imprisonment specified for victims under 16 years of age		

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
		s 229G (Procuring engagement in prostitution)	Longer maximum term of imprisonment specified for victims under 18 years of age
		s 229H (Knowingly participating in provision of prostitution)	
		s 229HB (Carrying on business of providing unlawful prostitution)	
		s 229K (Having an interest in premises used for prostitution)	
		s 5AA (Aggravated offences)	<p>Victims under 12 years of age and over 60 years of age specified as an aggravating circumstance</p> <p>Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); and s 60 (Procuring sexual intercourse)</p> <p>Victims under 14 years of age also specified as an aggravating circumstance</p> <p>Applicable to the following sexual offences in the same Act: s 63B (Procuring child to commit indecent act etc)</p>
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)	Longer liable term of imprisonment specified for victims under 14 years of age
		s 56 (Indecent assault)	Longer liable term of imprisonment specified for victims under 17 years of age and under 14 years of age
		s 66 (Sexual servitude and related offences)	Longer liable term of imprisonment specified for victims under 18 years of age and under 14 years of age
		s 67 (Deceptive recruiting for commercial sexual services)	Longer liable term of imprisonment specified for victims under 18 years of age
		s 68 (Use of children in commercial sexual services)	

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
Tas	Sentencing Act 1997 (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	<p>Victims under 13 years of age to be taken into account during sentencing</p> <p>Applicable to the following sexual offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)</p> <p>Victims under 18 years of age and the offender being a person in a position of authority in relation to the victim also to be taken into account during sentencing</p> <p>Applicable to the following sexual offences in the <i>Criminal Code Act 1924</i> (Tas): s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 133 (Incest); 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)</p>
		<p>s 49A (Sexual penetration of a child under the age of 12)</p> <p>s 50C (Sexual penetration of a child or lineal descendant)</p> <p>s 50D (Sexual penetration of a step-child)</p>	<p>Longer liable and standard sentence specified for victims under 12 years of age</p> <p>Longer standard sentences specified for victims under 18 years of age than those for incest offences against parents, lineal ancestors, step-parents, siblings or half-siblings</p>
Vic	Crimes Act 1958 (Vic)	s 53E (Aggravated sexual servitude)	<p>Victims under 18 years of age treated as an aggravated circumstance</p> <p>Applicable to the following offences in the same Act: s 53B (Using force, threat etc to cause another person to provide commercial sexual services); s 53C (Causing another person to provide commercial sexual services in circumstances involving sexual servitude); and s 53D (Conducting a business in circumstances involving sexual servitude)</p>

Table F1: Victim age as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
		s 53G (Aggravated deceptive recruiting for commercial sexual services)	Victims under 18 years of age treated as an aggravated circumstance Applicable to the following offences in the same Act: s 53F (Deceptive recruiting for commercial sexual services)
WA	<i>Criminal Code Act 1913 (WA)</i>	s 319 (Terms used)	A victim of or over 13 years of age and under 16 years of age specified as one possible aggravating circumstance Applicable to the following sexual offences in the same Act: s 324 (Aggravated indecent assault); s 326 (Aggravated sexual penetration without consent); and s 328 (Aggravated sexual coercion)
		s 320 (Child under 13, sexual offences against)	Offence that specifies longer maximum terms of imprisonment for unlawful sexual conduct against victims under 13 years of age than their equivalent offences for victims between 14 and 15 years of age
		s 329 (Relatives and the like, sexual offences by)	Longer liable sentences specified for victims under 16 years of age
		s 331B (Sexual servitude)	Longer liable sentences specified for victims under 18 years of age
		s 331C (Conducting business involving sexual servitude)	
		s 331D (Deceptive recruiting for commercial sexual service)	

Table F2: Relationships of care or authority as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)	Victim under the care, supervision, authority or trust of the offender at the time of the offence specified as an aggravating circumstance Applicable to the following offences in the same Act: s 272.8 (Sexual intercourse with child outside Australia); and s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)
		s 474.25B (Aggravated offence—using a carriage service for sexual activity with person under 16 years of age)	Victim under the care, supervision, authority or trust of the offender at the time of the offence specified as an aggravating circumstance Applicable to the following offences in the same Act: s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)

Table F2: Relationships of care or authority as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
ACT	<i>Crimes Act 1900</i> (ACT)	s 56 (Persistent sexual abuse of child or young person under special care)	An adult engaging in a relationship with a child under the age of 16 years, or young person between 16 and 17 years of age under special care of the adult, that involves more than 1 sexual act
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Abuse of a position of trust or authority in relation to the victim specified as an aggravating circumstance Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence
		s 61J (Aggravated sexual assault)	Victim under the authority of the offender specified as one of the aggravating circumstances in these offences
		s 61KD (Aggravated sexual touching)	
		s 61KF (Aggravated sexual act)	
		s 66C (Sexual intercourse—child between 10 and 16)	
	s 66DE (Aggravated sexual act—child between 10 and 16)		
	<i>Crimes Act 1900</i> (NSW)	s 80A (Sexual assault by forced self-manipulation)	Standalone offences for sexual conduct against a young person under special care of the offender
		s 91G (Children not to be used for production of child abuse material)	
		s 73 (Sexual intercourse—young person between 16 and 18 under special care)	
		s 73A (Sexual touching—young person between 16 and 18 under special care)	

Table F2: Relationships of care or authority as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)	Longer liable sentence specified where the offender is the guardian of the victim or, for the time being, has the victim under his or her care
		s 215 (Engaging in penile intercourse with child under 16)	Victims who are not the lineal descendant of the offender but are under the guardianship or care of the offender specified as an aggravating circumstance of these offences
		s 216 (Abuse of persons with an impairment of the mind)	
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	Abuse of a position of authority or trust by the offender specified as an aggravating circumstance Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	Victims under the care, supervision or authority of the offender specified as an aggravating circumstance Applicable to the following sexual offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 124A (Penetrative sexual abuse of child or young person by person in position of authority); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)

Table F2: Relationships of care or authority as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
			<p>The victim being under the age of 18 years and the offender being a person in a position of authority in relation to the victim specified as an aggravating circumstance</p> <p>Applicable to the following sexual offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)</p> <p>This is also an element of the offence s 124A (Penetrative sexual abuse of a child or young person by person in position of authority)</p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	<p>s 321 (Child of or over 13 and under 16, sexual offences against)</p> <p>s 330 (Incapable person, sexual offences against)</p>	<p>The victim being under the care, supervision or authority of the offender is specified as an aggravating circumstance</p>

Table F3: Victim impairment or vulnerability as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995</i> (Cth)	<p>s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)</p> <p>s 474.25B (Aggravated offence—using a carriage service for sexual activity with person under 16 years of age)</p>	<p>Victim having a mental impairment at the time of the offence specified as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 272.8 (Sexual intercourse with child outside Australia); and s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)</p> <p>Victim having a mental impairment at the time of the offence specified as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)</p>

Table F3: Victim impairment or vulnerability as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
ACT	<i>Crimes (Sentencing) Act 2005</i> (ACT)	s 33 (Sentencing—relevant considerations)	Where the victim was a vulnerable person, whether the offender knew or ought reasonably to have known that the victim was a vulnerable person, the extent of the person’s vulnerability, and the loss or harm to the vulnerable person, specified as a sentencing consideration Applicable to all sexual offences in the <i>Crimes Act 1900</i> (ACT)
	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Victim vulnerability specified as an aggravating circumstance Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence
NSW	<i>Crimes Act 1900</i> (NSW)	s 61J (Aggravated sexual assault) s 61KD (Aggravated sexual touching) s 61KF (Aggravated sexual act) s 66C (Sexual intercourse—child between 10 and 16) s 66DE (Aggravated sexual act—child between 10 and 16) s 80A (Sexual assault by forced self-manipulation) s 91G (Children not to be used for production of child abuse material) s 66F (Sexual offences—cognitive impairment)	Victims with a serious physical disability or cognitive impairment specified as one of the aggravating circumstances of these offences Standalone offences that apply when the victim has a cognitive impairment
NT	<i>Criminal Code Act 1983</i> (NT)	s 127 (Sexual intercourse or gross indecency involving child under 16 years)	A victim between 10 and 15 years of age with a serious physical or intellectual disability, or who was taken advantage of while under the influence of alcohol or a drug, specified as aggravating circumstances of this offence

Table F3: Victim impairment or vulnerability as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)	Victims who have an impairment of the mind specified as an aggravating circumstance of these offences
		s 215 (Engaging in penile intercourse with child under 16)	
		s 229G (Procuring engagement in prostitution)	Longer maximum term of imprisonment specified where victims have an impairment of the mind
		s 229H (Knowingly participating in provision of prostitution)	
		229HB (Carrying on business of providing unlawful prostitution)	
229K (Having an interest in premises used for prostitution)			
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	Specifies commission of relevant offences against a victim who the offender knew was, at the time of the offence, in a position of particular vulnerability because of physical disability or cognitive impairment as an aggravating circumstance Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)
		s 49 (Unlawful sexual intercourse)	A victim who the offender knows, by reason of their intellectual disability, is unable to understand the nature or consequences of sexual intercourse, specified as an aggravating circumstance of this offence

Table F3: Victim impairment or vulnerability as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	<p>Victims with a disability specified as an aggravating circumstance</p> <p>Applicable to the following offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)</p>
		<i>Criminal Code Act 1924</i> (Tas)	<p>s 126 (Penetrative sexual abuse of person with mental impairment)</p> <p>Standalone offence for penetrative sexual conduct against a person with a mental impairment who is under the care of the offender</p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 331B (Sexual servitude)	Victim who is an incapable person specified as an aggravating circumstance
		s 331C (Conducting business involving sexual servitude)	Victim who is an incapable person specified as an aggravating circumstance
		s 331D (Deceptive recruiting for commercial sexual service)	Victim who is an incapable person specified as an aggravating circumstance

Table F4: Violence and coercion as an aggravating or specific circumstance of sexual offences			
Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 71.13 (Aggravated offences)	Commission by the use or threatened use of an offensive weapon, or during the deliberate and systematic infliction of severe pain over a period time, specified as an aggravating circumstance Applicable to the following sexual offences in the same Act: s 71.4 (Unlawful sexual penetration)
		s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)	Victim death as a result of physical harm suffered in connection with the sexual activity specified as an aggravating circumstance Applicable to the following offences in the same Act: s 272.8 (Sexual intercourse with child outside Australia); and s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Actual or threatened use of violence, a weapon and explosives or a chemical or biological agent all specified as aggravating circumstances Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence
		s 61J (Aggravated sexual assault)	Intentional or reckless infliction of actual bodily harm on the victim or any other person, or threatening to do so, or depriving the victim of his or her liberty, before, at the time of, or after the commission of the offence specified as elements of these offences
		s 61JA (Aggravated sexual assault in company)	
	<i>Crimes Act 1900</i> (NSW)	s 66DE (Aggravated sexual act—child between 10 and 16)	Intentional or reckless infliction of actual bodily harm on the victim or any other person, or threatening to do so, or depriving the victim of his or her liberty, before, at the time of, or after the commission of the offence specified as aggravating circumstances of these offences
		s 66C (Sexual intercourse—child between 10 and 16)	
s 91G (Children not to be used for production of child abuse material)		Intentional or reckless infliction of actual bodily harm on the victim or any other person, or threatening to do so by means of an offensive weapon or instrument, before, at the time of, or after the commission of the offence specified as aggravating circumstances of these offences	
s 80A (Sexual assault by forced self-manipulation)			

Table F4: Violence and coercion as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
NT	<i>Sentencing Act 1995</i> (NT)	s 6A (Aggravating factors)	Actual or threatened violence, and being armed with a weapon while committing an offence, specified as aggravating circumstances Applicable to all sexual offences in the <i>Criminal Code Act 1983</i> (NT)
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 352 (Sexual assaults)	Being, or pretending to be, armed with a weapon before, during or after offence commission specified as an aggravating circumstance of this offence
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	Deliberately and systematically inflicting severe pain on the victim, and using or threatening to use an offensive weapon, specified as aggravating circumstances Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); s 63B (Procuring child to commit indecent act etc)
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	Subjecting the victim to violence or the threat of violence specified as an aggravating circumstance Applicable to the following sexual offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)
	<i>Criminal Code Act 1924</i> (Tas)	s 129 (Procuring a person for penetrative sexual abuse by threats or fraud)	Procuring a victim to have unlawful sexual intercourse through threats, intimidation, false pretence or false representation

Table F4: Violence and coercion as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 319 (Terms used)	<p>Being or pretending to be armed with a dangerous or offensive weapon, doing bodily harm to any person, and threatening to kill the victim, during or immediately before or after the offence specified as aggravating circumstances</p> <p>Applicable to the following sexual offences in the same Act: s 324 (Aggravated indecent assault); s 326 (Aggravated sexual penetration without consent); s 328 (Aggravated sexual coercion)</p>
		s 400 (Terms used)	<p>Aggravated home burglary specified as one of the circumstances of aggravation, which includes burglaries committed by offenders who are armed with, or pretend to be armed with, an offensive weapon or instrument, are armed with, or pretend to be armed with, an explosive substance, do bodily harm to any person or detain any person, as defined in s 400 (Terms used) of the same Act</p> <p>Applicable to the following sexual offences in the same Act: s 320 (Child under 13, sexual offences against); s 321 (Child of or over 13 and under 16, sexual offences against); s 324 (Aggravated indecent assault); s 325 (Sexual penetration without consent); s 326 (Aggravated sexual penetration without consent); s 327 (Sexual coercion); and s 328 (Aggravated sexual coercion)</p>

Table F5: Excessive humiliation, degradation and cruelty as an aggravating or specific circumstance of sexual offences			
Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 271.3 (Trafficking in person—aggravated offence)	<p>Subjecting the victim to cruel, inhuman or degrading treatment specified as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 271.2 (Offence of trafficking in persons)</p>
		s 271.6 (Domestic trafficking in person—aggravated offence)	<p>Subjecting the victim to cruel, inhuman or degrading treatment specified as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 271.5 (Offence of domestic trafficking in persons)</p>
		s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)	<p>Subjecting the victim to cruel, inhuman or degrading treatment in connection with the sexual activity specified as an aggravating circumstance</p> <p>Applicable to the following offences in the same Act: s 272.8 (Sexual intercourse with child outside Australia); and s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)</p>

Table F5: Excessive humiliation, degradation and cruelty as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
		s 474.25B (Aggravated offence—using a carriage service for sexual activity with person under 16 years of age)	Subjecting the victim to cruel, inhuman or degrading treatment in connection with the sexual activity specified as an aggravating circumstance Applicable to the following offences in the same Act: s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Gratuitous cruelty specified as an aggravating circumstance Applicable to all sexual offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	Acts to seriously and substantially degrade or humiliate the victim specified as an aggravating circumstance Applicable to the following offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 319 (Terms used)	Doing an act which is likely to seriously and substantially degrade or humiliate the victim specified as an aggravating circumstance Applicable to the following sexual offences in the same Act: s 324 (Aggravated indecent assault); s 326 (Aggravated sexual penetration without consent); and s 328 (Aggravated sexual coercion)

Table F6: Intimate partner and family violence as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
ACT	<i>Crimes Act 1900</i> (ACT)	s 72AA (Aggravated offences—pt 3 offences involving family violence)	<p>Specifies that a sexual offence is aggravated if it involves family violence</p> <p>In s 72AA (Aggravated offences—pt 3 offences involving family violence), ‘family violence’ includes the following sexual offences against a current or former family member: s 51 (Sexual assault in the first degree); s 52 (Sexual assault in the second degree); s 53 (Sexual assault in the third degree); s 54 (Sexual intercourse without consent); s 55 (Sexual intercourse with young person); s 57 (Act of indecency in the first degree); s 58 (Act of indecency in the second degree); s 59 (Act of indecency in the third degree); s 60 (Act of indecency without consent); s 61 (Acts of indecency with young people); s 61B (Intimate observations or capturing visual data etc); s 63 (Abduction); s 64 (Using child for production of child exploitation material etc); s 64A (Trading in child exploitation material); s 65 (Possessing child exploitation material); s 66 (Grooming and depraving young people); and s 66AB (Making false report about child sexual offence)</p>
		s 72EA (Aggravated offences—pt 3A offences involving family violence)	<p>In s 72EA (Aggravated offences—pt 3A offences involving family violence), ‘family violence’ includes the following sexual offences against a current or former family member: s 72C (Non-consensual distribution of intimate images); s 72D (Distribution of intimate image of young person); and s 72E (Threaten to capture or distribute intimate images)</p>
Qld	<i>Penalties and Sentencing Act 1992</i> (Qld)	s 9 (Sentencing guidelines)	<p>Domestic violence offences specified as an aggravating factor to be considered in sentencing</p> <p>Includes sexually abusive behaviour, coercing a person to engage in sexual activity or attempting to do so, as outlined in s 8 (Meaning of domestic violence) of the <i>Domestic and Family Violence Protection Act 2012</i> (Qld)</p>
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	<p>Specifies offences committed against a victim that the offender was in a relationship with at the time of the offence, or had formerly been in a relationship with, as aggravated</p> <p>Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)</p>

Table F6: Intimate partner and family violence as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 170A (Persistent family violence)	An offender commits unlawful family violence act in relation to his or her spouse or partner on at least three occasions 'Unlawful family violence act' constitutes an act that is defined as family violence under s 7 (Family violence) of the <i>Family Violence Act 2004</i> (Tas), which includes the following sexual acts: sexual assault; indecent assault; rape; and penetrative sexual abuse of a child, a young person or a person with a mental impairment. No specific offences identified
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 221 (Term used: circumstances of aggravation)	A family relationship between the offender and victim specified as an aggravating circumstance Applicable to all sexual offences in Part 5 (Offences against the person and relating to parental rights and duties and against the reputation of individuals) of the same Act, except where the offender was a child at the time of the offence and the only aggravating circumstance was a family relationship between the offender and victim
		s 300 (Persistent family violence)	A person persistently engages in family violence 'Family violence' acts, for the purposes of this analysis, are sexual acts done in relation to another person with whom the offender is in a designed family relationship that constitute an offence against the following in the Act: s 221BD (Distribution of intimate image); s 323 (Indecent assault); and s 324 (Aggravated indecent assault)

Table F7: Conduct in company as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
ACT	<i>Crimes Act 1900</i> (ACT)	s 51 (Sexual assault in the first degree)	Acting in company with any other person specified as an aggravating circumstance of these offences
		s 52 (Sexual assault in the second degree)	
		s 53 (Sexual assault in the third degree)	
		s 54 (Sexual intercourse without consent)	
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Offender being in company when committing an offence specified as an aggravating circumstance Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence

Table F7: Conduct in company as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application	
NSW	<i>Crimes Act 1900</i> (NSW)	s 66DE (Aggravated sexual act—child between 10 and 16)	Offender being in the company of another person or persons specified as an element of these offences	
		s 61J (Aggravated sexual assault)		
		s 61JA (Aggravated sexual assault in company)		
		s 61KD (Aggravated sexual touching)		
		s 61KF (Aggravated sexual act)		
		s 66C (Sexual intercourse—child between 10 and 16)		Offender being in the company of another person or persons specified as an aggravating circumstance for these offences
		s 80A (Sexual assault by forced self-manipulation)		
s 91G (Children not to be used for production of child abuse material)				
NT	<i>Sentencing Act 1995</i> (NT)	s 6A (Aggravating factors)	Offender being in company with one or more persons while committing the offence specified as an aggravating circumstance Applicable to all sexual offences in the <i>Criminal Code Act 1983</i> (NT), excluding those in which this circumstance is an element of the offence	
	<i>Criminal Code Act 1983</i> (NT)	s 127 (Sexual intercourse or gross indecency involving child under 16 years)	Offender being in the company of another person specified as an aggravating circumstance where the offence is committed against a child of or over the age of 10 years and under the age of 16 years	
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 352 (Sexual assaults)	Being in company with any other person before, during or immediately after the offence specified as an aggravating circumstance of this offence	
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	Specifies commission of relevant offences in company with 1 or more other persons (including persons who are children) as an aggravating circumstance Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)	

Table F7: Conduct in company as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	<p>Specifies commission of the offence in whole or in part in the presence of any other person or persons, besides the victim, as an aggravating circumstance</p> <p>Applicable to the following offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)</p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 319 (Terms used)	<p>Being in company with another person or persons at or immediately before or after the commission of the offence specified as one of the circumstances of aggravation in these offences, as defined in s 319 (Terms used) of the same Act</p> <p>Applicable to the following sexual offences in the same Act: s 324 (Aggravated indecent assault); s 326 (Aggravated sexual penetration without consent); and s 328 (Aggravated sexual coercion)</p>
		s 400 (Terms used)	<p>Aggravated home burglary specified as one of the circumstances of aggravation, which includes burglaries committed in company with at least one other person, as defined in s 400 (Terms used) of the same Act</p> <p>Applicable to the following sexual offences in the same Act: s 320 (Child under 13, sexual offences against); s 321 (Child of or over 13 and under 16, sexual offences against); s 324 (Aggravated indecent assault); s 325 (Sexual penetration without consent); s 326 (Aggravated sexual penetration without consent); s 327 (Sexual coercion); and s 328 (Aggravated sexual coercion)</p>

Table F8: Breaking and entering as an aggravating or specific circumstance of sexual offences			
Jurisdiction	Legislation	Section	Definition and application
NSW	<i>Crimes Act 1900</i> (NSW)	s 61J (Aggravated sexual assault)	Break and enter specified as an aggravating circumstance in these offences. Defined within each offence as an offender breaking and entering into a dwelling-house or other building with the intention of committing the offence or another serious indictable offence
		s 66C (Sexual intercourse—child between 10 and 16)	
		s 66DE (Aggravated sexual act—child between 10 and 16)	
		s 91G (Children not to be used for production of child abuse material)	
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11A (Matters to be taken or not taken into account in sentencing certain sexual offenders)	Specifies the forced or uninvited entry of an offender into a victim’s home or other premises as an aggravating circumstance Applies to the following offences in the <i>Criminal Code Act 1924</i> (Tas): s 124 (Penetrative sexual abuse of child or young person); s 125 (Person permitting penetrative sexual abuse of child or young person on premises); s 125A (Persistent sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 125C (Procuring child or young person for sexual abuse); s 126 (Penetrative sexual abuse of person with mental impairment); s 127 (Indecent assault); s 129 (Procuring a person for penetrative sexual abuse by threats or fraud); s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 133 (Incest); s 170A (Persistent family violence)—where at least one of the acts was an offence against any of the other offences specified here; and s 185 (Rape)

Table F8: Breaking and entering as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 400 (Terms used)	<p>Aggravated home burglary specified as one of the circumstances of aggravation. Defined in s 400 (Terms used) of the same Act as burglaries committed by offenders who 1) are armed with, or pretend to be armed with, an offensive weapon or instrument; 2) are armed with, or pretend to be armed with, an explosive substance; 3) are in company with at least one other person; 4) do bodily harm to any person; 5) detain any person; or 6) knew, or ought to have known, immediately before the commission of the offence that there was another person (other than any co-offenders)</p> <p>Applicable to the following sexual offences in the same Act: s 320 (Child under 13, sexual offences against); s 321 (Child of or over 13 and under 16, sexual offences against); s 324 (Aggravated indecent assault); s 325 (Sexual penetration without consent); s 326 (Aggravated sexual penetration without consent); s 327 (Sexual coercion); s 328 (Aggravated sexual coercion)</p>

Table F9: Victims acting in the course of their occupational or official duties as an aggravating or specific circumstance of sexual offences

Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 71.8 (Unlawful sexual penetration)	Offence for non-consensual sexual penetration of a United Nations (UN) or associated person while they are engaged in a UN operation that is not an enforcement action
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	<p>Specifies commission of an offence against a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official exercising public or community functions as an aggravating circumstance where the offence arose because of the victim's occupation or voluntary work</p> <p>Also specifies commission of an offence against vulnerable victims, which includes victims who were vulnerable because of their occupation (such as a person working at a hospital (other than a health worker), taxi driver, bus driver or other public transport worker, bank teller or service station attendant) as an aggravating circumstance</p> <p>Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence</p>

Table F9: Victims acting in the course of their occupational or official duties as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
NT	<i>Sentencing Act 1995</i> (NT)	s 6A (Aggravating factors)	<p>Specifies commission against a police officer or emergency worker in the execution of the officer’s or worker’s duty as an aggravating circumstance</p> <p>Applicable to all sexual offences in the <i>Criminal Code Act 1983</i> (NT)</p>
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	<p>Specifies commission against a police, correctional or community corrections officer, employee in a training centre (as defined in the <i>Youth Justice Administration Act 2016</i> (SA)), youth justice worker, or other law enforcement officer by an offender who either knew that they were acting in the course of their professional duties, or as retribution for something connected with their official duties, as an aggravating circumstance</p> <p>Also specifies commission against those engaged in a prescribed occupation or employment (paid or volunteer) while acting in the course of their official duties, and those who were in a position of particular vulnerability because of the nature of their occupation or employment, as aggravating circumstances</p> <p>Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)</p>

Table F10: Hatred or prejudice as an aggravating or specific circumstance of sexual offences			
Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995</i> (Cth)	<p>s 268.14 (Crime against humanity—rape)</p> <p>s 268.15 (Crime against humanity—sexual slavery)</p> <p>s 268.16 (Crime against humanity—enforced prostitution)</p> <p>s 268.19 (Crime against humanity—sexual violence)</p>	<p>Separate offences for conduct undertaken as part of a widespread or systematic attack directed against a civilian population</p>

Table F10: Hatred or prejudice as an aggravating or specific circumstance of sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition and application
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	<p>Specifies offence commission motivated by hatred for or prejudice against a group of people to which an offender believed a victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability) as an aggravating circumstance to be considered in sentencing</p> <p>Applicable to all sexual offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence</p>
NT	<i>Sentencing Act 1995</i> (NT)	s 6A (Aggravating factors)	<p>Treats offences that were motivated by hate against a group of people as aggravated</p> <p>Applicable to all sexual offences in the <i>Criminal Code Act 1983</i> (NT)</p>
SA	<i>Sentencing Act 2017</i> (SA)	s 11 (Individual sentencing factors)	<p>Specifies offence commission that was wholly or partly motivated by hatred for, or prejudice against, a group of people to which an offender believed a victim belonged (including, without limiting this paragraph, people of a particular race, religion, sex, sexual orientation, gender identity or age, or people having an intersex variation or a particular disability) as a sentencing consideration</p> <p>Applicable to all sexual offences in the <i>Criminal Law Consolidation Act 1935</i> (SA)</p>
Tas	<i>Sentencing Act 1997</i> (Tas)	s 11B (Racial motivation to be taken into account in sentencing offenders)	<p>Specifies offence commission motivated to any degree by: (a) hatred for or prejudice against, on racial grounds, any victim of the offence; or (b) hatred for or prejudice against, on racial grounds, a person or group of persons with whom at the relevant time any victim of the offence was associated or believed by the offender to have been associated, as a sentencing consideration</p> <p>Applicable to all sexual offences in the <i>Criminal Code Act 1924</i> (Tas)</p>
Vic	<i>Sentencing Act 1991</i> (Vic)	s 5 (Sentencing guidelines)	<p>Specifies offence commission motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated as a sentencing consideration</p> <p>Applicable to all sexual offences in the <i>Crimes Act 1958</i> (Vic)</p>

Table F11: Criminal organisation as an aggravating or specific circumstance of sexual offences			
Jurisdiction	Legislation	Section	Definition and application
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273.7 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)	Specify commission of the relevant offence on 3 or more separate occasions by 2 or more persons as an aggravating circumstance Applicable to the following offence in the same Act: s 273.6 (Possessing etc child abuse material outside Australia)
		s 471.22 (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)	Specify commission of the relevant offence on 3 or more separate occasions by 2 or more persons as an aggravating circumstance Applicable to the following offences in the same Act: s 471.19 (Using a postal or similar service for child abuse material); and s 471.20 (Possessing etc child abuse material for use through a postal or similar service)
		s 474.24A (Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people)	Specify commission of the relevant offence on 3 or more separate occasions by 2 or more persons as an aggravating circumstance Applicable to the following offences in the same Act: s 474.22 (Using a carriage service for child abuse material); s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service); and s 474.3 (Possessing etc child abuse material for use through a carriage service)
NSW	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW)	s 21A (Aggravating, mitigating and other factors in sentencing)	Specifies an offence occurring as part of a planned or organised criminal activity as an aggravating circumstance Applicable to all offences in the <i>Crimes Act 1900</i> (NSW), excluding those in which this circumstance is an element of the offence or an aggravating circumstance specific to the offence
NT	<i>Sentencing Act 1995</i> (NT)	s 6A (Aggravating circumstances)	Specifies an offence involving substantial planning and organisation as an aggravating circumstance Applicable to all sexual offences in the <i>Criminal Code Act 1983</i> (NT)

Table F11: Criminal organisation as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
Qld	<i>Penalties and Sentencing Act 1992</i> (Qld)	s 161Q (Meaning of serious and organised crime circumstance of aggravation)	<p>Defines an aggravating circumstance pertaining to the offender’s participation in a criminal organisation at the time of the offence, who knew, or ought reasonably to have known, that the offence was being committed for or with that organisation</p> <p>Applicable to the following sexual offences in the <i>Criminal Code Act 1899</i> (Qld): s 210 (Indecent treatment of a child under 16); s 213 (Owner etc permitting abuse of children on premises); s 215 (Engaging in penile intercourse with child under 16); s 217 (Procuring young person etc for penile intercourse); s 218 (Procuring sexual acts by coercion etc); s 218A (Using internet etc to procure children under 16); s 218B (Grooming child under 16 years or parent or carer of children under 16 years); s 219 (Taking children for immoral purposes); s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); s 228DC (Distributing information about avoiding detection); s 228I (Producing or supplying child abuse object); s 228J (Possessing child abuse object); s 229B (Repeated sexual conduct with a child); s 349 (Rape); s 350 (Attempted rape); and s 351 (Assault with intent to commit rape); and s 352 (Sexual assaults)</p>
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 5AA (Aggravated offences)	<p>Specifies acting with or for a criminal organisation, and while identifying with a criminal organisation, as aggravating circumstances</p> <p>Applicable to the following sexual offences in the same Act: s 48A (Compelled sexual manipulation); s 56 (Indecent assault); s 59 (Abduction of male or female person); s 60 (Procuring sexual intercourse); and s 63B (Procuring child to commit indecent act etc)</p>

Table F11: Criminal organisation as an aggravating or specific circumstance of sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition and application
WA	<i>Sentencing Act 1995</i> (WA)	s 9D (Mandatory minimum sentences where declared criminal organisations involved)	<p>Specifies acting at the direction of a declared criminal organisation, acting in association with one or more persons whom the offender knew to be, at the time of the act, members of a declared criminal organisation, or acting for the benefit of a declared criminal organisation, as an aggravating circumstance</p> <p>Applicable to the following sexual offences in the <i>Criminal Code Act Compilation Act 1913</i> (WA): s 320 (Child under 13, sexual offences against); s 321 (Child of or over 13 and under 16, sexual offences against); s 323 (Indecent Assault); s 324 Aggravated indecent assault; s 325 (Sexual penetration without consent); s 326 (Aggravated sexual penetration without consent); s 327 (Sexual coercion); s 328 (Aggravated sexual coercion); s 330 (Incapable person, sexual offences against); s 331B (Sexual servitude); s 331C (Conducting business involving sexual servitude); and s 331D (Deceptive recruiting for commercial sexual services)</p>

Appendix G: Defences and excuses in legislation, by jurisdiction

Table G1: Similar age of victim and defendant as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900</i> (ACT)	s 55 (Sexual intercourse with a young person)	<p>(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—</p> <p>...(b) at the time of the alleged offence—</p> <p>(i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and</p> <p>(ii) the defendant was not more than 2 years older;</p> <p>and that that person consented to the sexual intercourse.</p>
		s 55A (Sexual intercourse with young person under special care)	<p>(3) Subsection (1) does not apply to a person if the person—</p> <p>...(b) is not more than 2 years older than the young person</p>
		s 61 (Acts of indecency with young people)	<p>(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that—</p> <p>...(b) at the time of the alleged offence—</p> <p>(i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and</p> <p>(ii) the defendant was not more than 2 years older;</p> <p>and that that person consented to the committing of the act of indecency.</p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 61A (Act of indecency with young person under special care)	(2) Subsection (1) does not apply to a person if the person— ... (b) is not more than 2 years older than the young person
		s 72D (Distribution of intimate image of young person)	(2) It is a defence to a prosecution for an offence against this section if the defendant proves that— (a) at the time of the offence— ... (ii) the person against whom the offence is alleged to have been committed was— (A) at least 10 years old; and (B) not more than 2 years younger than the defendant; and (b) the person against whom the offence is alleged to have been committed consented to the distribution of the intimate image.
NSW	Crimes Act 1900 (NSW)	s 80AG (Defence of similar age)	(1) It is a defence to a prosecution for an offence under section 66C (3), 66DB, 66DD, 73 or 73A if the complainant is of or above the age of 14 years and the age difference between the complainant and the accused person is no more than 2 years. <i>Note: applies to s 66C (Sexual intercourse—child between 10 and 16); s 66DB (Sexual touching—child between 10 and 16); s 66DD (Sexual act—child between 10 and 16); s 73 (Sexual intercourse—young person between 16 and 18 under special care) and s 73A (Sexual touching—young person between 16 and 18 under special care)</i>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 49 (Unlawful sexual intercourse)	<p>(4) It shall be a defence to a charge under subsection (3) to prove that—</p> <p>(a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years; and</p> <p>(b) the accused—</p> <p>(i) was, on the date on which the offence is alleged to have been committed, under the age of seventeen years...</p> <p>(5a) It is a defence to a charge under subsection (5) if the accused was a person of a class described in subsection (9)(c) and proves that—</p> <p>(a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of 17 years; and</p> <p>(b) the accused—</p> <p>(i) was, on the date on which the offence is alleged to have been committed, under the age of 18 years...</p>
		s 63B (Procuring child to commit indecent act etc)	<p>(4) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) (other than where the defendant was in a position of authority in relation to the child) if the defendant proves that—</p> <p>(a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 16 years; and</p> <p>(b) the accused—</p> <p>(i) was, on the date on which the offence is alleged to have been committed, under the age of 17 years...</p> <p>(4a) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) if the defendant was a person of a class described in subsection (6)(c) in relation to the child and proves that—</p> <p>(a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 17 years; and</p> <p>(b) the defendant—</p> <p>(i) was, on the date on which the offence is alleged to have been committed, under the age of 18 years</p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924 (Tas)</i>	s 124 (Penetrative sexual abuse of child or young person)	<p>(3) The consent of a person against whom a crime is alleged to have been committed under this section is a defence to such a charge only where, at the time the crime was alleged to have been committed—</p> <p>(a) that person was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or</p> <p>(b) that person was of or above the age of 12 years and the accused person was not more than 3 years older than that person.</p>
		s 125B (Indecent act with child or young person)	<p>(3) The consent of a person against whom a crime is alleged to have been committed under this section is a defence to such a charge only where, at the time the crime was alleged to have been committed—</p> <p>(a) that person was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or</p> <p>(b) that person was of or above the age of 12 years and the accused person was not more than 3 years older than that person.</p>
		s 125C (Procuring child or young person for sexual abuse)	In any case in which it is provided that the consent of a person to the act charged is a defence to a charge under section 124 or 125B, the like consent to an act which is the subject of the alleged procurement given under the like conditions as to the age of the parties is a defence to a charge under this section.
		s 125D (Communications with intent to procure child or young person)	<p>(5) It is a defence to a charge under this section to prove that the person whom the accused person intended to procure to engage in an unlawful sexual act or to expose to indecent material—</p> <p>(a) was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or</p> <p>(b) was of or above the age of 12 years and the accused person was not more than 3 years older than that person.</p>
		s 127 (Indecent assault)	(2) In any case in which it is provided that the consent of a person to the act charged shall be a defence to a charge under section 124, the like consent to an act charged under this section given under the like conditions as to the age of the parties shall be a defence to a charge under this section.

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
Vic	Crimes Act 1958 (Vic)	s 49U (Exceptions to offences against children under 16—similarity in age)	<p>(1) A does not commit an offence against section 49D(1) or 49F(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A is not more than 2 years older than B; and</p> <p>(b) B is 12 years of age or more.</p> <p>(2) A does not commit an offence against section 49H(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A is not more than 2 years older than C; and</p> <p>(b) C is 12 years of age or more.</p> <p><i>Note: applies to s 49D (Sexual assault of a child under the age of 16); s 49F (Sexual activity in the presence of a child under the age of 16); and s 49H (Causing a child under the age of 16 to be present during sexual activity)</i></p>
		s 49V (Defence to offence against a child under 16—similarity in age)	<p>It is a defence to a charge for an offence against section 49B(1) if, at the time of the conduct constituting the offence—</p> <p>(a) A was not more than 2 years older than B; and</p> <p>(b) B was 12 years of age or more; and</p> <p>(c) B consented to the sexual penetration.</p> <p><i>Note: applies to s 49B (Sexual penetration of a child under the age of 16)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 49Y (Exceptions to offences against children aged 16 or 17—marriage or domestic partnership)	<p>(1) A does not commit an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A and B are married to each other and the marriage is recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) is not more than 5 years older than B; and</p> <p>(ii) is B’s domestic partner and the domestic partnership commenced before B came under A’s care, supervision or authority.</p> <p>(2) A does not commit an offence against section 49I(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A and C are married to each other and the marriage is recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) is not more than 5 years older than C; and</p> <p>(ii) is C’s domestic partner and the domestic partnership commenced before C came under A’s care, supervision or authority.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); and s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 49Z (Defences to offences against children aged 16 or 17—reasonable belief as to marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence—</p> <p>...(b) A—</p> <p>(i) was not more than 5 years older than B; and</p> <p>(ii) reasonably believed that A was B’s domestic partner and that the domestic partnership commenced before B came under A’s care, supervision or authority.</p> <p>(2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence—</p> <p>...(b) A—</p> <p>(i) was not more than 5 years older than C; and</p> <p>(ii) reasonably believed that A was C’s domestic partner and that the domestic partnership commenced before C came under A’s care, supervision or authority.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); and s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 51N (Defences applying to children)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) A is a child; and</p> <p>(b) the child abuse material is an image; and</p> <p>(c) the image depicts one or more persons (whether or not it depicts A); and</p> <p>(d) the image—</p> <p>(i) does not depict an act that is a criminal offence punishable by imprisonment; or</p> <p>(ii) depicts an act that is a criminal offence punishable by imprisonment but A reasonably believes that it does not; and</p> <p>(e) at the time of the conduct constituting the offence—</p> <p>(i) A was not more than 2 years older than the youngest child depicted in the image; or</p> <p>(ii) A reasonably believed that they were not more than 2 years older than the youngest child depicted in the image.</p> <p>Examples</p> <p>1 The image depicts A taking part in an act of sexual penetration with another child who is not more than 2 years younger. Both are consenting to the act. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.</p> <p>2 The image depicts a child being sexually penetrated. A is a child and A reasonably believes that the image depicts a consensual sexual relationship between two 16 year olds and is therefore not a criminal offence. A also reasonably believes that A is not more than 2 years older than the youngest child depicted in the image. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 51P (Defence—accused not more than 2 years older than 16 or 17 year old child and acts with child’s consent)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) at the time at which the image was first made, the child (B) whose depiction in the image makes it child abuse material—</p> <p>(i) was aged 16 or 17 years; and</p> <p>(ii) was not, or had not been, under A’s care, supervision or authority; and</p> <p>(c) the image does not depict an act that is a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) A is not more than 2 years older than B; and</p> <p>(f) at the time of the conduct constituting the offence, A reasonably believed that B consented to that conduct.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 51Q (Defence—marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image is child abuse material because of its depiction of another person (B); and</p> <p>(c) the image does not depict a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) at the time at which the image was first made—</p> <p>(i) B was 16 or 17 years of age; and</p> <p>(ii) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and</p> <p>(f) at the time of the conduct constituting the offence—</p> <p>(i) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(ii) A reasonably believed that B consented to the conduct constituting the offence.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 51R (Defence—reasonable belief in marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image is child abuse material because of its depiction of another person (B); and</p> <p>(c) the image does not depict a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) at the time at which the image was first made, A reasonably believed that—</p> <p>(i) B was 16 or 17 years of age; and</p> <p>(ii) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and</p> <p>(f) at the time of the conduct constituting the offence, A reasonably believed that—</p> <p>(i) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(ii) B consented to that conduct.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G1: Similar age of victim and defendant as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 204A (Showing offensive material to child under 16)	(4) It is a defence to a charge under subsection (2) to prove the accused person— (a) believed on reasonable grounds that the child was of or over the age of 16 years; and (b) was not more than 3 years older than the child.
		s 321 (Child of or over 13 and under 16, sexual offences against)	(9) Subject to subsection (9a) it is a defence to a charge under this section to prove the accused person— ...(b) was not more than 3 years older than the child.
		s 321A (Child under 16, persistent sexual conduct with)	(9) It is a defence to a charge of an offence under subsection (4) to prove the accused person— ...(b) was not more than 3 years older than the child.

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 272.16 (Defence based on belief about age)	<p>(1) It is a defence to a prosecution for an offence against section 272.8 or 272.9 if the defendant proves that, at the time of the sexual intercourse or sexual activity, he or she believed that the child was at least 16.</p> <p>(2) It is a defence to a prosecution for an offence against section 272.12 or 272.13 if the defendant proves that, at the time of the sexual intercourse or sexual activity, he or she believed that the young person was at least 18.</p> <p>(3) It is a defence to a prosecution for an offence against section 272.14, 272.15 or 272.15A if the defendant proves that, at the time the defendant engaged in the conduct constituting the offence, he or she believed that the child was at least 16.</p> <p>(4) In determining whether the defendant had the belief mentioned in subsection (1), (2) or (3), the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.</p> <p><i>Note: applies to s 272.8 (Sexual intercourse with child outside Australia); s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia); s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority); s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority); s 272.14 (Procuring child to engage in sexual activity outside Australia); s 272.15 (“Grooming” child to engage in sexual activity outside Australia); and s 272.15A (“Grooming” person to make it easier to engage in sexual activity with a child outside Australia)</i></p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 474.29 (Defences to offences against this Subdivision)	<p>(1) It is a defence to a prosecution for an offence against section 474.25A if the defendant proves that, at the time the sexual activity was engaged in, he or she believed that the child was at least 16 years of age.</p> <p>(2) It is a defence to a prosecution for an offence against subsection 474.25A(2) if the defendant proves that, at the time the sexual activity was engaged in, he or she believed that the participant was under 18 years of age.</p> <p>(4) It is a defence to a prosecution for an offence against subsection 474.26(2) or (3), 474.27(2) or (3) or 474.27AA(2) or (3) if the defendant proves that, at the time the communication was transmitted, he or she believed that the participant was under 18 years of age.</p> <p>(5) It is a defence to a prosecution for an offence against section 474.26, 474.27 or 474.27A if the defendant proves that, at the time the communication was transmitted, he or she believed that the recipient was at least 16 years of age.</p> <p>(5A) It is a defence to a prosecution for an offence against section 474.27AA if the defendant proves that, at the time the communication was transmitted, the defendant believed that the child was at least 16 years of age.</p> <p>(6) In determining whether the defendant had the belief mentioned in one of the preceding subsections of this section, the trier of fact may take into account whether the alleged belief was reasonable in the circumstances.</p> <p><i>Note: applies to s 474.25A (Using a carriage service for sexual activity with person under 16 years of age); s 474.26 (Using a carriage service to procure persons under 16 years of age); s 474.27 (Using a carriage service to “groom” persons under 16 years of age); s 474.27A (Using a carriage service to transmit indecent communication to person under 16 years of age); and s 474.27AA (Using a carriage service to “groom” another person to make it easier to procure persons under 16 years of age)</i></p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900 (ACT)</i>	s 55 (Sexual intercourse with young person)	(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that— (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; ...and that that person consented to the sexual intercourse.
		s 55A (Sexual intercourse with young person under special care)	(4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed on reasonable grounds that the young person was at least 18 years old.
		s 61 (Acts of indecency with young people)	(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that— (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; ...and that that person consented to the committing of the act of indecency.
		s 61A (Act of indecency with young person under special care)	(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed on reasonable grounds that the young person was at least 18 years old.
		s 66 (Grooming and depraving young people)	(6) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person was at least 16 years old.
		s 72D (Distribution of intimate image of young person)	(2) It is a defence to a prosecution for an offence against this section if the defendant proves that— (a) at the time of the offence— (i) the defendant believed on reasonable grounds that the person against whom the offence is alleged to have been committed was at least 16 years old ... (b) the person against whom the offence is alleged to have been committed consented to the distribution of the intimate image.

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
	<i>Sex Work Act 1992 (ACT)</i>	s 22 (Age of child—burden of proof)	<p>It is a defence to a prosecution under section 19 (2) or 20 if it is established that the defendant—</p> <p>(a) took reasonable steps to ascertain the age of the child concerned; and</p> <p>(b) believed on reasonable grounds that the child had attained 18 years of age.</p> <p><i>Note: applies to s 20 (Causing child to provide commercial sexual services etc)</i></p>
NSW	<i>Crimes Act 1900 (NSW)</i>	s 66EB (Procuring or grooming child under 16 for unlawful sexual activity)	<p>(7) Defence It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.</p> <p><i>Note: child is defined in s 66EB(1) as a person who is under the age of 16 years.</i></p>
NT	<i>Criminal Code Act 1983 (NT)</i>	s 127 (Sexual intercourse or gross indecency involving child under 16 years)	<p>(4) It is a defence to a charge of an offence against this section to prove:</p> <p>(a) the child was of or above the age of 14 years; and</p> <p>(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.</p>
		s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)	<p>(3C) It is a defence to a charge of an offence against subsection (3A) to prove:</p> <p>(a) the child was of or above the age of 14 years;</p> <p>(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years; and</p> <p>(c) the accused person did not know the child was mentally ill or handicapped.</p> <p><i>Note: applies to circumstance of aggravation in subsection (3A) (Any person who, being a provider of disability support services to a mentally ill or handicapped child who is under the age of 16 years: (a) has sexual intercourse with; or (b) commits any act of gross indecency upon, the child is guilty of an offence and is liable to imprisonment for 20 years)</i></p>
		s 131 (Attempts to procure child under 16 years)	<p>(3) It is a defence to a charge of an offence against this section to prove:</p> <p>(a) the child was of or above the age of 14 years; and</p> <p>(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.</p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 131A (Sexual relationship with child)	(6) It is a defence to a charge of an offence against this section to prove: (a) the child was of or above the age of 14 years; and (b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.
		s 132 (Indecent dealing with child under 16 years)	(5) It is a defence to a charge of an offence against this section to prove: (a) the child was of or above the age of 14 years; and (b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years.
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)	(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.
		s 213 (Owner etc permitting abuse of children on premises)	(4) If the proscribed act is one defined to constitute an offence in section 210 or 215 and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above 16 years.
		s 215 (Engaging in penile intercourse with child under 16)	(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.
		s 218A (Using internet etc to procure children under 16)	(9) It is a defence to a charge under this section to prove the adult believed on reasonable grounds that the person was at least 16 years. (9A) For an offence defined in subsection (1) alleged to have been committed with the circumstance of aggravation mentioned in subsection (2)(a)(i), it is a defence to the circumstance of aggravation to prove that the adult believed on reasonable grounds that the person was at least 12 years. <i>Note: subsection (9A) applies to circumstance of aggravation in subsection (2)(a)(i) (The adult is liable to 14 years imprisonment if— (a) the person is—(i) a person under 12 years)</i>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 218B (Grooming child under 16 years or parent or carer of child under 16 years)	<p>(10) It is a defence to a charge under this section to prove the adult believed on reasonable grounds that the child was at least 16 years.</p> <p>(11) For an offence defined in subsection (2) alleged to have been committed with the circumstance of aggravation mentioned in subsection (3), it is a defence to the circumstance of aggravation to prove that the adult believed on reasonable grounds that the child was at least 12 years.</p> <p><i>Note: subsection (1) applies to circumstance of aggravation in subsection (3) (The adult is liable to 10 years imprisonment if the child is— (a) a person under 12 years; or (b) a person, including a fictitious person, the adult believes is under 12 years)</i></p>
		s 219 (Taking child for immoral purposes)	(4) If the proscribed act is one defined to constitute an offence defined in section 210 or 215 and the child is of or above 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, the child was of or above 16 years.
		s 229B (Repeated sexual conduct with a child)	(5) If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to prove the adult believed on reasonable grounds the child was at least the age of 16 years.
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)	<p>(4) It shall be a defence to a charge under subsection (3) to prove that—</p> <p>(a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of sixteen years; and</p> <p>(b) the accused—</p> <p>... (ii) believed on reasonable grounds that the person with whom he is alleged to have had sexual intercourse was of or above the age of seventeen years.</p> <p>...(5a) It is a defence to a charge under subsection (5) if the accused was a person of a class described in subsection (9)(c) and proves that—</p> <p>(a) the person with whom the accused is alleged to have had sexual intercourse was, on the date on which the offence is alleged to have been committed, of or above the age of 17 years; and</p> <p>(b) the accused—</p> <p>... (ii) believed on reasonable grounds that the person with whom the accused is alleged to have had sexual intercourse was of or above the age of 18 years.</p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 63B (Procuring child to commit indecent act etc)	<p>(4) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) (other than where the defendant was in a position of authority in relation to the child) if the defendant proves that—</p> <p>(a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 16 years; and</p> <p>(b) the accused—</p> <p>... (ii) believed on reasonable grounds that the child was of or above the age of 17 years.</p> <p>(4a) It is a defence to a charge under subsection (1)(a), (1)(b)(i) or (3) if the defendant was a person of a class described in subsection (6)(c) in relation to the child and proves that—</p> <p>(a) the child was, on the date on which the offence is alleged to have been committed, of or above the age of 17 years; and</p> <p>(b) the defendant—</p> <p>... (ii) believed on reasonable grounds that the child was of or above the age of 18 years.</p>
		s 68 (Use of children in commercial sexual services)	<p>(5) However, it is a defence to a charge of an offence against this section if it is proved that the defendant believed on reasonable grounds that the victim had attained 18 years of age.</p>
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 14B (Mistake as to age of victim in relation to certain sexual offences)	<p>(2) In proceedings for a relevant offence, by an accused, in respect of a person who is under the age of 13 years, a mistaken belief by the accused as to the age of the person does not excuse the accused from criminal responsibility for any act or omission done or made under such a mistaken belief.</p> <p>(3) In proceedings for a relevant offence, by an accused, in respect of a person who is under the age of 17 years, a mistaken belief by the accused as to the age of the person is not honest or reasonable if –</p> <p>(a) the accused did not take all reasonable steps to ascertain the age of the person; or</p> <p>(b) the accused was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated.</p>
	<i>Sex Industry Offences Act 2005</i> (Tas)	s 9 (Participation of children)	<p>(4) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was of or over the age of 18 years.</p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 49W (Defences to offences against children under 16—reasonable belief as to age)	<p>(1) It is a defence to a charge for an offence against section 49B(1), 49D(1) or 49F(1) if, at the time of the conduct constituting the offence—</p> <p>(a) B was 12 years of age or more; and</p> <p>(b) A reasonably believed that B was 16 years of age or more.</p> <p>(2) It is a defence to a charge for an offence against section 49H(1) if, at the time of the conduct constituting the offence—</p> <p>(a) C was 12 years of age or more; and</p> <p>(b) A reasonably believed that C was 16 years of age or more.</p> <p>(3) It is a defence to a charge for an offence against section 49K(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 16 years of age or more.</p> <p><i>Note: applies to s 49B (Sexual penetration of a child under the age of 16); s 49D (Sexual assault of a child under the age of 16); s 49F (Sexual activity in the presence of a child under the age of 16); s 49H (Causing a child under the age of 16 to be present during sexual activity); and s 49K (Encouraging a child under the age of 16 to engage in, or be involved in, sexual activity)</i></p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 49X (Defences to offences against children aged 16 or 17 or under 18—reasonable belief as to age)	<p>(1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was 18 years of age or more.</p> <p>(2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was 18 years of age or more.</p> <p>(3) It is a defence to a charge for an offence against section 49Q(1) or 49R(1) if, at the time of the conduct constituting the offence—</p> <p>(a) B was 12 years of age or more; and</p> <p>(b) A reasonably believed that B was 18 years of age or more.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity); s 49Q (Causing or allowing a sexual performance involving a child); and s 49R (Inviting or offering a sexual performance involving a child)</i></p>
		s 50I (Exception to offences against section 50D)	<p>A does not commit an offence against section 50D(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) B is 18 years of age or more; and</p> <p>(b) A has not engaged in sexual activity with B when B was under 18 years of age; and</p> <p>(c) B has not at any time been under A’s care, supervision or authority.</p> <p><i>Note: applies to s 50D (Sexual penetration of a step-child)</i></p>
		s 5 (Causing or inducing child to take part in sex work)	<p>(3) In a proceeding for an offence against subsection (1)—</p> <p>...(b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.</p>

Table G2: Defendant’s reasonable belief in the victim’s age as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
	Sex Work Act 1994 (Vic)	s 7 (Agreement for provision of sexual services by a child)	(3) In a proceeding for an offence against subsection (1)— ... (b) if the person concerned was aged 16 years or more at the time the offence is alleged to have been committed, it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.
		s 11 (Allowing child to take part in sex work)	(3) In a proceeding for an offence against subsection (1)— ... (b) it is a defence to the charge for the accused to prove that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned was aged 18 years or more.
WA	Criminal Code Act Compilation Act 1913 (WA)	s 186 (Occupier or owner allowing young person to be on premises for unlawful carnal knowledge)	(2) It is a defence to a charge under subsection (1) to prove the accused person believed on reasonable grounds that the child was of or above the age of 16 years.
		s 204B (Using electronic communication to procure, or expose to indecent matter, child under 16)	(10) It is a defence to a charge under subsection (2)(a) to prove the accused person believed on reasonable grounds that the victim was of or over the age of 16 years. (11) It is a defence to a charge under subsection (3)(a) to prove the accused person believed on reasonable grounds that the victim was of or over the age of 13 years, but that does not prevent the person from being convicted of an offence under subsection (2). <i>Note: subsection (11) applies to circumstance of aggravation in subsection (3)(a) (An adult who uses electronic communication— (a) with intent to— (i) procure a person under the age of 13 years to engage in sexual activity; or (ii) expose a person under the age of 13 years to any indecent matter, either in Western Australia or elsewhere... is guilty of a crime and is liable to imprisonment for 10 years)</i>

Table G3: Age of defendant as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
NSW	Crimes Act 1900 (NSW)	s 78A (Incest)	(1A) A person does not commit an offence under this section if the person is of or above the age of 16 years and under the age of 18 years at the time the offence is alleged to have been committed and the other person to whom the charge relates is the person's parent or grandparent.
		s 91HA (Defences)	(9) Person producing, disseminating or possessing depictions of himself or herself It is a defence in proceedings for an offence against section 91H of possessing child abuse material if the only person depicted in the material is the accused person.
			(10) It is a defence in proceedings for an offence against section 91H of producing or disseminating child abuse material if— (a) the production or dissemination of the material occurred when the accused person was under the age of 18 years, and (b) the only person depicted in the material is the accused person. <i>Note: applies to s 91H (Production, dissemination or possession of child abuse material)</i>
s 91HB (Exception)	A person does not commit an offence under section 91H of possessing child abuse material if— (a) the possession of the material occurred when the accused person was under the age of 18 years, and (b) a reasonable person would consider the possession of the material by the accused person as acceptable having regard to each of the following (to the extent relevant)— (i) the nature and content of the material, (ii) the circumstances in which the material was produced and came into the possession of the accused person, (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the child depicted in the material, (iv) the age, intellectual capacity, vulnerability or other relevant circumstances of the accused person at the time the accused person first came into possession of the material and at the time that the accused person's possession of the material first came to the attention of a police officer, (v) the relationship between the accused person and the child depicted in the material. <i>Note: applies to s 91H (Production, dissemination or possession of child abuse material)</i>		

Table G3: Age of defendant as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 50J (Exceptions to offences against section 50E)	(2) A does not commit an offence against section 50E(1) if B engaged in sexual activity with A when A was under 18 years of age. <i>Note: applies to s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)</i>

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.17 (Defence based on valid and genuine marriage)	It is a defence to a prosecution for an offence against subsection 272.12(1) or 272.13(1) if the defendant proves that: (a) at the time of the sexual intercourse or sexual activity, there existed between the defendant and the young person a marriage that was valid, or recognised as valid, under the law of: (i) the place where the marriage was solemnised; or (ii) the place where the sexual intercourse or sexual activity is alleged to have taken place; or (iii) the place of the defendant’s residence or domicile; and (b) when the marriage was solemnised: (i) the marriage was genuine; and (ii) the young person had attained the age of 16 years. <i>Note: applies to s 272.12 (Sexual intercourse with young person outside Australia—defendant in position of trust or authority) and s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority)</i>
ACT	<i>Crimes Act 1900</i> (ACT)	s 55A (Sexual intercourse with young person)	(3) Subsection (1) does not apply to a person if the person— (a) was married to the young person at the time of the alleged offence
		s 61A (Act of indecency with young person under special care)	(2) Subsection (1) does not apply to a person if the person— (a) was married to the young person at the time of the alleged offence

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)	(7) Defences It is a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence) or an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection— (a) if, at the time of the conduct constituting the offence— ... (ii) the accused was married to the person to whom the charge relates or was the de facto partner of that person
		s 73 (Sexual intercourse—young person between 16 and 18 under special care)	(5) A person does not commit an offence under this section if the person and the young person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.
		s 73A (Sexual touching—young person between 16 and 18 under special care)	(2) A person does not commit an offence under this section if the person and the young person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.
NT	<i>Criminal Code Act 1983</i> (NT)	s 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)	(4) It is a defence to a charge of an offence against this section to prove that the accused person was, at the time of the alleged offence, the spouse or de facto partner of the child.
		s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)	(3) It is a defence to a charge of an offence against subsection (2) to prove that the accused person: (a) was, at the time of the alleged offence, the spouse or de facto partner of the mentally ill or handicapped person
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 222 (Incest)	(8) This section does not apply to penile intercourse between persons who are— (a) lawfully married; or (b) if both persons are adults—entitled to be lawfully married.
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 49 (Unlawful sexual intercourse)	(8) This section does not apply to sexual intercourse between persons who are married to each other.
		s 51 (Sexual exploitation of person with a cognitive impairment)	(3) This section does not apply in relation to a person who is legally married to the person with a cognitive impairment or is the domestic partner of that person.
		s 63B (Procuring child to commit indecent act etc)	(5) This section does not apply if the person and the child are legally married to each other.

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 124A (Penetrative sexual abuse of child or young person by person in position of authority)	(4) This section does not apply to sexual intercourse between persons who are married to each other.
		s 125A (Persistent sexual abuse of child or young person)	(3) An accused person is guilty of having committed an offence under subsection (2) if, during a particular period when the young person was under the age of 17 years— (a) the accused committed an unlawful sexual act in relation to the young person on at least 3 occasions; and (b) the young person was not married to the accused.
		s 126 (Penetrative sexual abuse of person with mental impairment)	(2) It is a defence to a charge under this section to prove that— ...(b) at the time of the act, the person was married to, or was in a significant relationship, within the meaning of the <i>Relationships Act 2003</i> , with, the person with the mental impairment.

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 49Y (Exceptions to offences against children aged 16 or 17—marriage or domestic partnership)	<p>(1) A does not commit an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A and B are married to each other and the marriage is recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) is not more than 5 years older than B; and</p> <p>(ii) is B’s domestic partner and the domestic partnership commenced before B came under A’s care, supervision or authority.</p> <p>(2) A does not commit an offence against section 49I(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A and C are married to each other and the marriage is recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) is not more than 5 years older than C; and</p> <p>(ii) is C’s domestic partner and the domestic partnership commenced before C came under A’s care, supervision or authority.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); and s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</i></p>

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 49Z (Defences to offences against children aged 16 or 17—reasonable belief as to marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence—</p> <p>(a) A reasonably believed that A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) was not more than 5 years older than B; and</p> <p>(ii) reasonably believed that A was B’s domestic partner and that the domestic partnership commenced before B came under A’s care, supervision or authority.</p> <p>(2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence—</p> <p>(a) A reasonably believed that A and C were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A—</p> <p>(i) was not more than 5 years older than C; and</p> <p>(ii) reasonably believed that A was C’s domestic partner and that the domestic partnership commenced before C came under A’s care, supervision or authority.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); and s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</i></p>

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 51Q (Defence—marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image is child abuse material because of its depiction of another person (B); and</p> <p>(c) the image does not depict a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) at the time at which the image was first made—</p> <p>(i) B was 16 or 17 years of age; and</p> <p>(ii) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and</p> <p>(f) at the time of the conduct constituting the offence—</p> <p>(i) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(ii) A reasonably believed that B consented to the conduct constituting the offence.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 51R (Defence—reasonable belief in marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) the child abuse material is an image; and</p> <p>(b) the image is child abuse material because of its depiction of another person (B); and</p> <p>(c) the image does not depict a criminal offence punishable by imprisonment; and</p> <p>(d) A does not distribute the image to any person other than B; and</p> <p>(e) at the time at which the image was first made, A reasonably believed that—</p> <p>(i) B was 16 or 17 years of age; and</p> <p>(ii) either A and B were married to each other and that the marriage was recognised as valid under the Marriage Act 1961 of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and</p> <p>(f) at the time of the conduct constituting the offence, A reasonably believed that—</p> <p>(i) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and</p> <p>(ii) B consented to that conduct.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G4: Marriage and other domestic partnerships as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 52G (Exception—marriage or domestic partnership)	<p>A does not commit an offence against a provision of this Subdivision if, at the time at which the offence is alleged to have been committed—</p> <p>(a) A and the person who has a cognitive impairment or mental illness are married to each other and the marriage is recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A is the domestic partner of the person who has a cognitive impairment or mental illness.</p> <p><i>Note: applies to s 52B (Sexual penetration of a person with a cognitive impairment or mental illness); s 52C (Sexual assault of a person with a cognitive impairment or mental illness); s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness); and s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)</i></p>
		s 52H (Defence—reasonable belief in marriage or domestic partnership)	<p>It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that—</p> <p>(a) A and the person who has a cognitive impairment or mental illness were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth; or</p> <p>(b) A was the domestic partner of the person who has a cognitive impairment or mental illness.</p> <p><i>Note: applies to s 52B (Sexual penetration of a person with a cognitive impairment or mental illness); s 52C (Sexual assault of a person with a cognitive impairment or mental illness); s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness); and s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)</i></p>
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 322 (Child of or over 16, sexual offences against by person in authority etc)	(8) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.
		s 330 (Incapable person, sexual offences against)	(9) It is a defence to a charge under this section to prove the accused person was lawfully married to the incapable person.

Table G5: Other relationships between the victim and defendant as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 78A (Incest)	(1A) A person does not commit an offence under this section if the person is of or above the age of 16 years and under the age of 18 years at the time the offence is alleged to have been committed and the other person to whom the charge relates is the person's parent or grandparent.
Vic	<i>Crimes Act 1958</i> (Vic)	s 50I (Exception to offences against section 50D)	<p>A does not commit an offence against section 50D(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) B is 18 years of age or more; and</p> <p>(b) A has not engaged in sexual activity with B when B was under 18 years of age; and</p> <p>(c) B has not at any time been under A's care, supervision or authority.</p> <p><i>Note: applies to s 50D (Sexual penetration of a step-child)</i></p>
		s 50J (Exceptions to offences against section 50E)	<p>(1) A does not commit an offence against section 50E(1) if, at the time at which the offence is alleged to have been committed—</p> <p>(a) B is A's step-parent; and</p> <p>(b) A has not at any time been under B's care, supervision or authority.</p> <p><i>Note: applies to s 50E (Sexual penetration of a parent, lineal ancestor or step-parent)</i></p>

Table G6: Reasonable belief that no relationship existed as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900 (NSW)</i>	s 78C (Defences)	<p>(1) It shall be a sufficient defence to a charge under section 78A or section 78B that the person charged did not know that the person with whom the offence is alleged to have been committed was related to him or her, as alleged.</p> <p><i>Note: applies to s 78A (Incest) and s 78B (Incest attempts)</i></p>
SA	<i>Criminal Law Consolidation Act 1935 (SA)</i>	s 72 (Incest)	<p>(2) It is a defence to a charge of an offence against this section for the accused to prove that he or she did not know, and could not reasonably have been expected to know, that the person was a close family member.</p>
Vic	<i>Crimes Act 1958 (Vic)</i>	s 49ZA (Defences to offences against children aged 16 or 17—reasonable belief as to care, supervision or authority)	<p>(1) It is a defence to a charge for an offence against section 49C(1), 49E(1), 49G(1) or 49L(1) if, at the time of the conduct constituting the offence, A reasonably believed that B was not under A's care, supervision or authority.</p> <p>(2) It is a defence to a charge for an offence against section 49I(1) if, at the time of the conduct constituting the offence, A reasonably believed that C was not under A's care, supervision or authority.</p> <p><i>Note: applies to s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority); s 49E (Sexual assault of a child aged 16 or 17 under care, supervision or authority); s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority); s 49I (Causing a child aged 16 or 17 under care, supervision or authority to be present during sexual activity); and s 49L (Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity)</i></p>
		s 52J (Defence—reasonable belief the service provider does not provide treatment or support services to the person with a cognitive impairment or mental illness)	<p>If A is a worker for a service provider, it is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the service provider was not providing treatment or support services to the person who has a cognitive impairment or mental illness.</p> <p><i>Note: applies to s 52B (Sexual penetration of a person with a cognitive impairment or mental illness); s 52C (Sexual assault of a person with a cognitive impairment or mental illness); s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness); and s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)</i></p>

Table G7: Consent as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900 (ACT)</i>	s 55 (Sexual intercourse with a young person)	<p>(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that—</p> <p>(a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or</p> <p>(b) at the time of the alleged offence—</p> <p>(i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and</p> <p>(ii) the defendant was not more than 2 years older;</p> <p>and that that person consented to the sexual intercourse.</p>
		s 61 (Acts of indecency with young people)	<p>(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that—</p> <p>(a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or</p> <p>(b) at the time of the alleged offence—</p> <p>(i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and</p> <p>(ii) the defendant was not more than 2 years older;</p> <p>and that that person consented to the committing of the act of indecency.</p>

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 61B (Intimate observations or capturing visual data etc)	<p>(4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant—</p> <p>(a) believed on reasonable grounds that the other person consented to the defendant observing or capturing visual data of the other person; or</p> <p>(b) did not know, and could not reasonably be expected to have known, that the observing or capturing of visual data of the other person was without consent.</p> <p>(7) It is a defence to a prosecution for an offence against subsection (5) if the defendant proves that the defendant—</p> <p>(a) believed on reasonable grounds that the other person consented to the defendant observing or capturing visual data of the other person’s genital or anal region or breasts; or</p> <p>(b) did not know, and could not reasonably be expected to have known, that the observing or capturing of visual data of the other person’s genital or anal region or breasts was without consent.</p>
		s 72D (Distribution of intimate image of young person)	<p>(2) It is a defence to a prosecution for an offence against this section if the defendant proves that—</p> <p>(a) at the time of the offence—</p> <p>(i) the defendant believed on reasonable grounds that the person against whom the offence is alleged to have been committed was at least 16 years old; or</p> <p>(ii) the person against whom the offence is alleged to have been committed was—</p> <p>(A) at least 10 years old; and</p> <p>(B) not more than 2 years younger than the defendant; and</p> <p>(b) the person against whom the offence is alleged to have been committed consented to the distribution of the intimate image.</p>

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
Qld	Criminal Code Act 1899 (Qld)	s 24 (Mistake of fact)	<p>(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist.</p> <p><i>Note: applies to all offences</i></p>
		s 348A (Mistake of fact in relation to consent)	<p>(1) This section applies for deciding whether, for section 24, a person charged with an offence under this chapter did an act under an honest and reasonable, but mistaken, belief that another person gave consent to the act.</p> <p>(2) In deciding whether a belief of the person was honest and reasonable, regard may be had to anything the person said or did to ascertain whether the other person was giving consent to the act.</p> <p>(3) In deciding whether a belief of the person was reasonable, regard may not be had to the voluntary intoxication of the person caused by alcohol, a drug or another substance.</p> <p><i>Note: applies to offences under Chapter 32 (Rape and sexual assaults)</i></p>
SA	Summary Offences Act 1953 (SA)	s 26B (Humiliating or degrading filming)	<p>(4) It is a defence to—</p> <p>(a) a charge of an offence against subsection (1); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (1), to prove 1 or more of the following:</p> <p>...(d) the defendant reasonably believed that the victim consented to the filming the subject of the offence</p>
		s 26D (Indecent filming)	<p>(2) It is a defence to a charge of an offence against subsection (1) to prove—</p> <p>(a) that the indecent filming occurred with the consent of the person filmed</p> <p>(4) It is a defence to a charge of an offence against subsection (3) to prove 1 or more of the following:</p> <p>(a) that the person filmed—</p> <p>(i) consented to that particular distribution of the image the subject of the offence; or</p> <p>(ii) consented to distribution of the image the subject of the offence generally; or</p> <p>(b) that the defendant did not know, and could not reasonably be expected to have known, that the indecent filming was without the person’s consent</p>

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 26DA (Threat to distribute invasive image or image obtained from indecent filming)	<p>(3) It is a defence to a charge of an offence against subsection (1) or (2) to prove—</p> <p>(a) that—</p> <p>(i) the person filmed consented to that particular distribution of the image the subject of the filming; or</p> <p>(ii) the person consented to distribution of the image the subject of the filming generally; and</p> <p>(b) that the person had not, at the time of the alleged offence, withdrawn consent to the distribution of the image.</p>
		14 (Mistake of fact)	<p>Whether criminal responsibility is entailed by an act or omission done or made under an honest and reasonable, but mistaken, belief in the existence of any state of facts the existence of which would excuse such act or omission, is a question of law, to be determined on the construction of the statute constituting the offence.</p> <p><i>Note: applies to all offences</i></p>
Tas	<i>Criminal Code Act 1924 (Tas)</i>	14A (Mistake as to consent in certain sexual offences)	<p>(1) In proceedings for an offence against section 124, 125B, 127 or 185, a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused—</p> <p>(a) was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated; or</p> <p>(b) was reckless as to whether or not the complainant consented; or</p> <p>(c) did not take reasonable steps, in the circumstances known to him or her at the time of the offence, to ascertain that the complainant was consenting to the act.</p> <p>(2) In proceedings for an offence of attempting to commit an offence against section 124, 125B or 185, absence of intention to commit the attempted offence is not a defence if it is established that the absence of intent was due to—</p> <p>(a) self-induced intoxication; or</p> <p>(b) a failure to take reasonable steps in the circumstances known to the accused at the time of the offence to ascertain that the complainant would have consented to the act constituting the offence against section 124, 125B or 185.</p> <p><i>Note: applies to s 124 (Penetrative sexual abuse of child or young person); s 125B (Indecent act with child or young person); s 127 (Indecent assault); and s 185 (Rape)</i></p>

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 124 (Penetrative sexual abuse of child or young person)	<p>(3) The consent of a person against whom a crime is alleged to have been committed under this section is a defence to such a charge only where, at the time the crime was alleged to have been committed—</p> <p>(a) that person was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or</p> <p>(b) that person was of or above the age of 12 years and the accused person was not more than 3 years older than that person.</p>
		s 125B (Indecent act with child or young person)	<p>(3) The consent of a person against whom a crime is alleged to have been committed under this section is a defence to such a charge only where, at the time the crime was alleged to have been committed—</p> <p>(a) that person was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or</p> <p>(b) that person was of or above the age of 12 years and the accused person was not more than 3 years older than that person.</p>
		s 125C (Procuring child or young person for sexual abuse)	<p>(4) In any case in which it is provided that the consent of a person to the act charged is a defence to a charge under section 124 or 125B, the like consent to an act which is the subject of the alleged procurement given under the like conditions as to the age of the parties is a defence to a charge under this section.</p>
		s 126 (Penetrative sexual abuse of person with mental impairment)	<p>(2) It is a defence to a charge under this section to prove that—</p> <p>(a) at the time of the act—</p> <p>(i) the person with the mental impairment consented to the act; and</p> <p>(ii) the giving of that consent was not unduly influenced by the fact that the person was responsible for the care of the person with the mental impairment</p>
		s 127 (Indecent assault)	<p>(2) In any case in which it is provided that the consent of a person to the act charged shall be a defence to a charge under section 124, the like consent to an act charged under this section given under the like conditions as to the age of the parties shall be a defence to a charge under this section.</p>
	<i>Police Offences Act 1935 (Tas)</i>	s 13A (Observation or recording in breach of privacy)	<p>(2A) It is a defence to proceedings for an offence against subsection (2) for the defendant to provide evidence that the observation or visual recording was carried out with the consent of the person observed or visually recorded.</p>

Table G7: Consent as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 49V (Defence to offence against a child under 16—similarity in age)	<p>It is a defence to a charge for an offence against section 49B(1) if, at the time of the conduct constituting the offence—</p> <ul style="list-style-type: none"> (a) A was not more than 2 years older than B; and (b) B was 12 years of age or more; and (c) B consented to the sexual penetration. <p><i>Note: applies to s 49B (Sexual penetration of a child under the age of 16)</i></p>
Vic	<i>Crimes Act 1958</i> (Vic)	s 51Q (Defence—marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <ul style="list-style-type: none"> (a) the child abuse material is an image; and (b) the image is child abuse material because of its depiction of another person (B); and (c) the image does not depict a criminal offence punishable by imprisonment; and (d) A does not distribute the image to any person other than B; and (e) at the time at which the image was first made— <ul style="list-style-type: none"> (i) B was 16 or 17 years of age; and (ii) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and (iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and (f) at the time of the conduct constituting the offence— <ul style="list-style-type: none"> (i) either A and B were married to each other and the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and (ii) A reasonably believed that B consented to the conduct constituting the offence. <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 51R (Defence—reasonable belief in marriage or domestic partnership)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <ul style="list-style-type: none"> (a) the child abuse material is an image; and (b) the image is child abuse material because of its depiction of another person (B); and (c) the image does not depict a criminal offence punishable by imprisonment; and (d) A does not distribute the image to any person other than B; and (e) at the time at which the image was first made, A reasonably believed that— <ul style="list-style-type: none"> (i) B was 16 or 17 years of age; and (ii) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and (iii) where A was B’s domestic partner, if B was under A’s care, supervision or authority, the domestic partnership commenced before B came under A’s care, supervision or authority; and (f) at the time of the conduct constituting the offence, A reasonably believed that— <ul style="list-style-type: none"> (i) either A and B were married to each other and that the marriage was recognised as valid under the <i>Marriage Act 1961</i> of the Commonwealth or A was B’s domestic partner and was no more than 2 years older than B; and (ii) B consented to that conduct. <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
		53R (Producing intimate image)	<p>(3) A does not commit an offence against subsection (1) if—</p> <ul style="list-style-type: none"> (a) B is not a child; and (b) at the time of the production of the intimate image, B consented to— <ul style="list-style-type: none"> (i) A producing the intimate image; and (ii) how the intimate image was produced.

Table G7: Consent as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		53S (Distributing intimate image)	<p>(3) A does not commit an offence against subsection (1) if—</p> <p>(a) B is not a child; and</p> <p>(b) at the time of the distribution of the intimate image, B consented to—</p> <p>(i) A distributing the intimate image; and</p> <p>(ii) how the intimate image was distributed.</p> <p>(4) A does not commit an offence against subsection (1) if—</p> <p>(a) B is not a child; and</p> <p>(b) the intimate image had been distributed previously in a place to which members of the public had access, irrespective of whether—</p> <p>(i) that place was accessible on the Internet or not; and</p> <p>(ii) access was free or for a payment of a fee; and</p> <p>(c) B consented, or a reasonable person would believe that B consented, to that previous distribution; and</p> <p>(d) in all the circumstances, a reasonable person would believe that B consented to the distribution of the intimate image to which the charge relates.</p>
	<i>Summary Offences Act 1966</i> (Vic)	s 41D (Exceptions to offences against section 41A)	<p>Section 41A does not apply to an observation made—</p> <p>(a) with the express or implied consent of the person whose genital or anal region is observed</p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 24 (Mistake of fact)	<p>A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.</p> <p><i>Note: applies to all offences</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273.9 (Defences to offences against this Division)	<p>(1) A person is not criminally responsible for an offence against section 273.6 because of engaging in particular conduct if the conduct:</p> <ul style="list-style-type: none"> (a) is of public benefit; and (b) does not extend beyond what is of public benefit. <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <ul style="list-style-type: none"> (a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory or a foreign country; or (c) the administration of justice (whether within or outside Australia) <p>(4) A person is not criminally responsible for an offence against section 273.6 if:</p> <ul style="list-style-type: none"> (a) the person is, at the time of the offence: <ul style="list-style-type: none"> (i) a law enforcement officer; or (ii) an intelligence or security officer; or (iii) an officer or employee of the government of a foreign country performing similar duties to an intelligence or security officer; and (b) the person is acting in the course of his or her duties; and (c) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty. <p>(5) A person is not criminally responsible for an offence against section 273.6 if the person engages in the conduct in good faith for the sole purpose of:</p> <ul style="list-style-type: none"> (a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the <i>Online Safety Act 2021</i> <p><i>Note: applies to s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 273A.2 (Defences)	<p>(1) A person is not criminally responsible for an offence against this Division because of engaging in particular conduct if the conduct:</p> <ul style="list-style-type: none"> (a) is of public benefit; and (b) does not extend beyond what is of public benefit. <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <ul style="list-style-type: none"> (a) enforcing a law of the Commonwealth, a State or a Territory; or (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or (c) the administration of justice... <p>(3) A person is not criminally responsible for an offence against this Division if:</p> <ul style="list-style-type: none"> (a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of the officer's duties; and (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty. <p><i>Note: applies to s 273A.1 (Possession of child-like sex dolls etc)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
			<p>(1) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A because of engaging in particular conduct if the conduct:</p> <p>(a) is of public benefit; and</p> <p>(b) does not extend beyond what is of public benefit.</p> <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <p>(a) enforcing a law of the Commonwealth, a State or a Territory; or</p> <p>(b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or</p> <p>(c) the administration of justice...</p> <p>(3) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A if:</p>
		s 474.24 (Defences in respect of child abuse material)	<p>(a) the person is, at the time of the offence, a law enforcement officer, or an intelligence or security officer, acting in the course of his or her duties; and</p> <p>(b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.</p> <p>(4) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A if the person engages in the conduct in good faith for the sole purpose of:</p> <p>(a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the <i>Online Safety Act 2021</i></p> <p><i>Note: applies to s 474.22 (Using a carriage service for child abuse material); s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service); s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service); and s 474.23A (Conduct for the purposes of electronic service used for child abuse material)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
	Customs (Prohibited Exports) Regulations 1958 (Cth)	Regulation 3 (Exportation of objectionable goods)	(4) The exportation of goods to which this regulation applies is prohibited unless: ... (b) the goods are being exported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).
	Customs (Prohibited Imports) Regulations 1956 (Cth)	Regulation 4A (Importation of objectionable goods)	(2) The importation of goods to which this regulation applies is prohibited unless: ... (b) the goods are being imported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).
		s 61B (Intimate observations or capturing visual data etc)	(8) Subsections (1) and (5) do not apply to— ... (b) an observation or capturing of visual data— (i) by a law enforcement officer acting reasonably in the performance of the officer’s duty; or (ii) by a licensed security provider acting reasonably in carrying on a security activity authorised under the security provider’s licence
ACT	<i>Crimes Act 1900</i> (ACT)	s 72G (Exceptions for reasonable distribution)	(1) An offence against section 72C or section 72D does not apply to the distribution of an intimate image— (a) by a law enforcement officer acting reasonably in the performance of the officer’s duty; or (b) for a lawful and common practice of law enforcement, criminal reporting or a legal proceeding; or (c) for the purpose of reporting unlawful conduct to a law enforcement officer; or (d) by a licensed security provider acting reasonably in the performance of a security activity <i>Note: applies to s 72C (Non-consensual distribution of intimate images) and s 72D (Distribution of intimate image of young person)</i>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
NSW	Crimes Act 1900 (NSW)	s 91HA (Defences)	<p>(3) Public benefit It is a defence in proceedings for an offence against section 91H, 91HAA, 91HAB or 91HAC that the conduct engaged in by the defendant—</p> <p>(a) was of public benefit, and</p> <p>(b) did not extend beyond what was of public benefit.</p> <p>(4) Conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in—</p> <p>(a) enforcing or administering a law of the State, or of another State, a Territory or the Commonwealth, or</p> <p>(b) monitoring compliance with, or investigating a contravention of, a law of the State, or of another State, a Territory or the Commonwealth, or</p> <p>(c) the administration of justice.</p> <p>(6) Law enforcement officers It is a defence in proceedings for an offence against section 91H, 91HAA, 91HAB or 91HAC that—</p> <p>(a) the defendant was, at the time of the offence, a law enforcement officer acting in the course of his or her duties, and</p> <p>(b) the conduct of the defendant was reasonable in the circumstances for the purpose of performing that duty.</p> <p><i>Note: applies to s 91H (Production, dissemination or possession of child abuse material); s 91HAA (Administering a digital platform used to deal with child abuse material); s 91HAB (Encouraging use of a digital platform to deal with child abuse material); and s 91HAC (Providing information about avoiding detection)</i></p>
		s 91T (Exceptions)	<p>(1) A person does not commit an offence against section 91P or 91Q if—</p> <p>...(b) the conduct alleged to constitute the offence was done by a law enforcement officer for a genuine law enforcement purpose, or</p> <p>(c) the conduct alleged to constitute the offence was required by a court or otherwise reasonably necessary to be done for the purpose of legal proceedings</p> <p><i>Note: applies to s 91P (Record intimate image without consent) and s 91Q (Distribute intimate image without consent)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)	(2) Nothing in this section makes it an offence: (a) for a member or officer of a law enforcement agency to have any child abuse material in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under an Act or law
		s 208AB (Distribution of intimate image without consent)	(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances: ... (b) by a law enforcement officer acting reasonably in the performance of the officer’s duty; (c) for the purpose of reporting unlawful conduct to a law enforcement officer; (d) when required by a court or reasonably required for the purpose of a legal proceeding
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 223 (Distributing intimate images)	(4) It is a defence to a charge of an offence against subsection (1) to prove that— (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... legal... purpose; and (b) the person’s conduct was, in the circumstances, reasonable for that purpose.
		s 228E (Defences for ss 228A–228DC)	(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC. (2) It is a defence for the person to prove that— (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... legal... purpose; and (b) the person’s conduct was, in the circumstances, reasonable for that purpose. <i>Note: applies to s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); and s 228DC (Distributing information about avoiding detection)</i>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 228K (Defence for ss 228I and 228J)	<p>(1) It is a defence for a person charged with an offence against section 228I or 228J to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... legal...purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p> <p><i>Note: applies to s 228I (Producing or supplying child abuse object) and s 228J (Possessing child abuse object)</i></p>
SA	Summary Offences Act 1953 (SA)	s 26B (Humiliating or degrading filming)	<p>(4) It is a defence to—</p> <p>(a) a charge of an offence against subsection (1); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (1), to prove 1 or more of the following:</p> <p>...(e) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(5) It is a defence to—</p> <p>(a) a charge of an offence against subsection (2); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (2), to prove 1 or more of the following:</p> <p>...(d) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(6) For the purposes of this section, conduct will only be taken to be for a legitimate public purpose if the conduct was in the public interest having regard to the following:</p> <p>...(b) whether the conduct was for a purpose connected to law enforcement or public safety;</p> <p>(c) whether the conduct was for a...legal... purpose</p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 28C (Distribution of invasive image)	<p>(2) It is a defence to a charge of an offence against this section to prove—</p> <p>(a) that the conduct constituting the offence—</p> <p>(i) was for a purpose connected to law enforcement; or</p> <p>(ii) was for a...legal...purpose; or</p> <p>(b) that the image was filmed by a licensed investigation agent within the meaning of the <i>Security and Investigation Agents Act 1995</i> and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some other benefit and the distribution of the image was for a purpose connected with that claim.</p>
		s 26D (Indecent filming)	<p>(2) It is a defence to a charge of an offence against subsection (1) to prove—</p> <p>...(b) that the indecent filming was undertaken by a licensed investigation agent within the meaning of the <i>Security and Investigation Agents Act 1995</i> and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some other benefit.</p> <p>(4) It is a defence to a charge of an offence against subsection (3) to prove 1 or more of the following:</p> <p>...(c) that the indecent filming was undertaken by a licensed investigation agent within the meaning of the <i>Security and Investigation Agents Act 1995</i> and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some other benefit and the distribution of the image was for a purpose connected with that claim.</p>
		s 26E (General provisions)	<p>(2) The following persons do not commit an offence against this Part:</p> <p>(a) law enforcement personnel and legal practitioners, or their agents, acting in the course of law enforcement or legal proceedings</p> <p><i>Note: applies to s 26B (Humiliating or degrading filming); s 26C (Distribution of invasive image); s 26D (Indecent filming); and s 26DA (Threat to distribute invasive image or image obtained from indecent filming)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(1) It is a defence to a charge under section 130, 130A, 130B, 130C or 130D to prove that—</p> <p>(b) the accused person engaged in the conduct that is alleged to constitute the offence for a genuine child protection...[or] legal...purpose and the accused person’s conduct was, in the circumstances, reasonable for that purpose</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130B (Distribution of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>
	<i>Police Offences Act 1935</i> (Tas)	s 13D (Persons who are not criminally responsible for an offence under section 13A or 13B)	<p>(1) A person is not criminally responsible for an offence under section 13A or 13B if—</p> <p>(a) the person is, at the time of the offence, a law enforcement officer acting in the course of the person’s duties as such an officer; and</p> <p>(b) the person’s conduct is reasonable in the circumstances for the performance of those duties.</p> <p>(2) A person is not criminally responsible for an offence under section 13A or 13B in relation to an observation or visual recording of another person who is in lawful custody if—</p> <p>(a) the person is, at the time of the offence, acting in the course of the person’s duties in relation to the other person’s lawful custody; and</p> <p>(b) the person’s conduct is reasonable in the circumstances for the performance of the duties.</p> <p><i>Note: applies to s 13A (Observation or recording in breach of privacy) and s 13B (Publishing or distributing prohibited visual recording)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	Crimes Act 1958 (Vic)	s 51J (Exception—administration of the law)	<p>A does not commit a child abuse material offence (other than an offence against section 51I(1)) if the conduct is engaged in by A in good faith in the course of official duties of A—</p> <p>(a) connected with the administration of the criminal justice system, including the investigation or prosecution of offences; or</p> <p>(b) as an employee of the Department of Justice and Regulation who is authorised to engage in that conduct by the Secretary to that Department.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51E (Administering a website used to deal with child abuse material); s 51F (Encouraging use of a website to deal with child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
		s 51L (Defence of artistic merit or public benefit)	<p>(1) It is a defence to a charge for a child abuse material offence (other than an offence against section 51I(1)) if—</p> <p>...(b) the material is of public benefit.</p> <p>(2) For the purposes of subsection (1)(b), material that is of public benefit includes material that is for a genuine...legal...purpose.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51E (Administering a website used to deal with child abuse material); s 51F (Encouraging use of a website to deal with child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
	Summary Offences Act 1966 (Vic)	s 41D (Exceptions to offences)	<p>Section 41A does not apply to an observation made—</p> <p>...(c) by a law enforcement officer acting reasonably in the performance of the officer’s duty.</p> <p><i>Note: applies to s 41A (Observation of genital or anal region)</i></p>

Table G8: Conduct carried out for law enforcement, legal or related purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
WA	Criminal Code Act Compilation Act 1913 (WA)	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that—</p> <p>... (d) the accused person was acting for a genuine child protection or legal purpose, and that the person’s conduct was reasonable for that purpose.</p> <p>(3) Nothing in section 219 or 220 makes it an offence—</p> <p>(a) for a member or officer of a law enforcement agency to possess or distribute child exploitation material when acting in the course of his or her official duties</p> <p><i>Note: applies to s 217 (Involving child in child exploitation); s 218 (Producing child exploitation material); s 219 (Distributing child exploitation material); and s 220 (Possession of child exploitation material)</i></p>
		s 221BD (Distribution of intimate image)	<p>(3) It is a defence to a charge under subsection (2) to prove that—</p> <p>... (b) the distribution of the image was reasonably necessary for the purpose of legal proceedings...</p> <p>(4) Nothing in subsection (2) makes it an offence—</p> <p>(a) for a member or officer of a law enforcement agency or their agents to distribute an intimate image when acting in the course of their official duties; or</p> <p>(b) for a person to distribute an intimate image in accordance with, or in the performance of the person’s functions under, a written law or a law of the Commonwealth or another State or Territory; or</p> <p>(c) for a person to distribute an intimate image for the purposes of the administration of justice.</p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 71.15 (Defence—medical or hygienic procedures)	<p>A person is not criminally responsible for an offence against section 71.8 in respect of any sexual penetration carried out in the course of a procedure in good faith for medical or hygienic purposes.</p> <p><i>Note: applies to s 71.8 (Unlawful sexual penetration)</i></p>
		s 273A.2 (Defences)	<p>(1) A person is not criminally responsible for an offence against this Division because of engaging in particular conduct if the conduct:</p> <p>(a) is of public benefit; and</p> <p>(b) does not extend beyond what is of public benefit.</p> <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <p>...(d) conducting...medical...research that has been approved by the AFP Minister in writing for the purposes of this section.</p> <p><i>Note: applies to Division 273A (Possession of child-like sex dolls etc)</i></p>
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)	<p>(8) Subsections (1) and (5) do not apply to—</p> <p>...(b) an observation or capturing of visual data—</p> <p>...(iv) for a...medical...purpose</p>
		s 72G (Exceptions for reasonable distribution)	<p>(1) An offence against section 72C or section 72D does not apply to the distribution of an intimate image—</p> <p>...(e) for a...medical...purpose;</p> <p>Example</p> <p>a patient consents to her a doctor providing an image of a mole on her breast to another doctor for a second opinion about the mole</p> <p><i>Note: applies to s 72C (Non-consensual distribution of intimate images) and s 72D (Distribution of intimate image of young person)</i></p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 66F (Sexual offences—cognitive impairment)	<p>(7) Defences It is a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence) or an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection—</p> <p>... (b) if the act constituting the offence was carried out for any proper medical or hygienic purpose.</p>
		s 91HA (Defences)	<p>(8) Approved research It is a defence in proceedings for an offence against section 91G, 91H, 91HAA, 91HAB or 91HAC that the conduct engaged in by the defendant—</p> <p>(a) was necessary for or of assistance in conducting... medical... research that has been approved by the Attorney-General in writing for the purposes of this section, and</p> <p>(b) did not contravene any conditions of that approval.</p> <p><i>Note: applies to s 91G (Children not to be used for production of child abuse material); s 91H (Production, dissemination or possession of child abuse material); s 91HAA (Administering a digital platform used to deal with child abuse material); s 91HAB (Encouraging use of a digital platform to deal with child abuse material); and s 91HAC (Providing information about avoiding detection)</i></p>
		s 91T (Exceptions)	<p>(1) A person does not commit an offence against section 91P or 91Q if—</p> <p>(a) the conduct alleged to constitute the offence was done for a genuine medical... purpose</p> <p><i>Note: applies to s 91P (Record intimate image without consent) and s 91Q (Distribute intimate image without consent)</i></p>
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)	<p>(4) It is a defence to a prosecution for an offence against this section to prove that the material is being used for legitimate medical or health research purposes.</p>
		s 208AB (Distribution of intimate image without consent)	<p>(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:</p> <p>... (e) for a... medical... purpose</p> <p><i>Example for subsection (2)(e)</i></p> <p><i>A doctor sends an image of a female patient's breast to another doctor for a second opinion about the patient's medical condition</i></p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 223 (Distributing intimate images)	<p>(4) It is a defence to a charge of an offence against subsection (1) to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... medical...purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p>
		s 228E (Defences for ss 228A–228DC)	<p>(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC.</p> <p>(2) It is a defence for the person to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... medical...purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p> <p><i>Note: applies to s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); and s 228DC (Distributing information about avoiding detection)</i></p>
		s 228K (Defence for ss 228I and 228J)	<p>(1) It is a defence for a person charged with an offence against section 228I or 228J to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine... medical...purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p> <p><i>Note: applies to s 228I (Producing or supplying child abuse object) and s 228J (Possessing child abuse object)</i></p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
SA	<i>Summary Offences Act 1953 (SA)</i>	s 26B (Humiliating or degrading filming)	<p>(4) It is a defence to—</p> <p>(a) a charge of an offence against subsection (1); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (1), to prove 1 or more of the following:</p> <p>...(e) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(5) It is a defence to—</p> <p>(a) a charge of an offence against subsection (2); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (2), to prove 1 or more of the following:</p> <p>...(d) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(6) For the purposes of this section, conduct will only be taken to be for a legitimate public purpose if the conduct was in the public interest having regard to the following:</p> <p>...(c) whether the conduct was for a medical... purpose</p>
		s 26C (Distribution of invasive image)	<p>(2) It is a defence to a charge of an offence against this section to prove—</p> <p>(a) that the conduct constituting the offence—</p> <p>...(ii) was for a medical...purpose</p>
		s 26E (General provisions)	<p>(2) The following persons do not commit an offence against this Part:</p> <p>...(b) medical practitioners, or their agents, acting in the course of medical practice or for genuine educational or research purposes.</p> <p><i>Note: applies to s 26B (Humiliating or degrading filming); s 26C (Distribution of invasive image); s 26D (Indecent filming); and s 26DA (Threat to distribute invasive image or image obtained from indecent filming)</i></p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(1) It is a defence to a charge under section 130, 130A, 130B, 130C or 130D to prove that—</p> <p>... (b) the accused person engaged in the conduct that is alleged to constitute the offence for a genuine...medical...purpose and the accused person's conduct was, in the circumstances, reasonable for that purpose</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130B (Distribution of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>
Vic	<i>Crimes Act 1958</i> (Vic)	s 48A (Exceptions—medical, hygienic, veterinary, agricultural or scientific purposes)	<p>(1) A does not commit an offence against—</p> <p>(a) section 38(1) or 40(1)—if the sexual penetration or touching (as the case requires) is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes; or</p> <p>(b) section 39(1) or 41(1)—if the sexual penetration or touching (as the case requires) is of a person and is caused by A to be done in the course of a procedure carried out in good faith for medical or hygienic purposes.</p> <p><i>Note: applies to s 38 (Rape); s 39 (Rape by compelling sexual penetration); s 40 (Sexual assault); and s 41 (Sexual assault by compelling sexual touching)</i></p>
		s 49T (Exception to sexual penetration offences—medical or hygienic purposes)	<p>A does not commit an offence against section 49A(1), 49B(1) or 49C(1) if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.</p> <p><i>Note: applies to s 49A (Sexual penetration of a child under the age of 12); s 49B (Sexual penetration of a child under the age of 16); and s 49C (Sexual penetration of a child aged 16 or 17 under care, supervision or authority)</i></p>
		s 50G (Exception—medical or hygienic purposes)	<p>A does not commit an offence against a provision of this Subdivision if A's conduct occurs in the course of a procedure carried out in good faith for medical or hygienic purposes.</p> <p><i>Note: applies to s 50C (Sexual penetration of a child or lineal descendant); s 50D (Sexual penetration of a step-child); s 50E (Sexual penetration of a parent, lineal ancestor or step-parent); and s 50F (Sexual penetration of a sibling or half-sibling)</i></p>

Table G9: Conduct carried out for medical purposes as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 51L (Defence of artistic merit or public benefit)	<p>(1) It is a defence to a charge for a child abuse material offence (other than an offence against section 51I(1)) if—</p> <p>...(b) the material is of public benefit.</p> <p>(2) For the purposes of subsection (1)(b), material that is of public benefit includes material that is for a genuine medical...purpose.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51E (Administering a website used to deal with child abuse material); s 51F (Encouraging use of a website to deal with child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
		s 52F (Exceptions to sexual penetration offence—medical, hygienic, veterinary, agricultural or scientific purposes)	<p>A does not commit an offence against section 52B(1) if—</p> <p>(a) the sexual penetration is of a person and is done in the course of a procedure carried out in good faith for medical or hygienic purposes</p> <p><i>Note: applies to s 52B (Sexual penetration of a person with a cognitive impairment or mental illness)</i></p>
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that—</p> <p>...(c) the material to which the charge relates was—</p> <p>...(ii) of a genuine medical character, and that the act to which the charge relates is justified as being for the public good</p> <p><i>Note: applies to s 217 (Involving child in child exploitation); s 218 (Producing child exploitation material); s 219 (Distributing child exploitation material); and s 220 (Possession of child exploitation material)</i></p>
		s 221BD (Distribution of intimate image)	<p>(3) It is a defence to a charge under subsection (2) to prove that—</p> <p>(a) the distribution of the image was for a genuine...medical purpose</p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
Cth	Criminal Code Act 1995 (Cth)	s 273.9 (Defences to offences against this Division)	<p>(1) A person is not criminally responsible for an offence against section 273.6 because of engaging in particular conduct if the conduct:</p> <p>(a) is of public benefit; and</p> <p>(b) does not extend beyond what is of public benefit.</p> <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in</p> <p>...(d) conducting scientific...or educational research.</p> <p>(3) Paragraph (2)(d) only applies if the person's conduct was, in all the circumstances, reasonable having regard to the purpose mentioned in that paragraph.</p> <p><i>Note: applies to s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)</i></p>
		s 273A.2 (Defences)	<p>(1) A person is not criminally responsible for an offence against this Division because of engaging in particular conduct if the conduct:</p> <p>(a) is of public benefit; and</p> <p>(b) does not extend beyond what is of public benefit.</p> <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <p>...(d) conducting scientific...or educational research that has been approved by the AFP Minister in writing for the purposes of this section.</p> <p><i>Note: applies to Division 273A (Possession of child-like sex dolls etc)</i></p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 474.24 (Defences in respect of child abuse material)	<p>(1) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A because of engaging in particular conduct if the conduct:</p> <p>(a) is of public benefit; and</p> <p>(b) does not extend beyond what is of public benefit.</p> <p>(2) For the purposes of subsection (1), conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:</p> <p>...(d) conducting scientific...or educational research that has been approved by the AFP Minister in writing for the purposes of this section.</p> <p><i>Note: applies to s 474.22 (Using a carriage service for child abuse material); s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service); s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service); and s 474.23A (Conduct for the purposes of electronic service used for child abuse material)</i></p>
	Customs (Prohibited Exports) Regulations 1958 (Cth)	Regulation 3 (Exportation of objectionable goods)	<p>(4) The exportation of goods to which this regulation applies is prohibited unless:</p> <p>(a) a written permission to export the goods has been given by the responsible Minister or an authorised person</p> <p>(5) In considering whether to give a permission, the responsible Minister or an authorised person must have regard to:</p> <p>(a) the purposes for which the goods are to be exported; and</p> <p>(b) the extent to which the person to whom a permission would be given conducts activities of an artistic or educational, or of a cultural or scientific, nature to which the goods relate; and</p> <p>(c) the reputation of the person referred to in paragraph (b), both generally and in relation to an activity referred to in that paragraph; and</p> <p>(d) the ability of that person to meet conditions that may be imposed under subregulation (6) in relation to the goods; and</p> <p>(e) any other relevant matters.</p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
	Customs (Prohibited Imports) Regulations 1956 (Cth)	Regulation 4A (Importation of objectionable goods)	<p>(2) The importation of goods to which this regulation applies is prohibited unless:</p> <p>(a) a written permission to import the goods has been granted by the responsible Minister or an authorised person</p> <p>...(2AA) In considering whether to grant a permission under subregulation (2), the responsible Minister or the authorised person is to have regard to:</p> <p>(a) the purposes for which the goods are to be imported; and</p> <p>(b) the extent to which the person to whom any permission to import the goods would be granted conducts activities of an artistic or educational, or of a cultural or scientific, nature to which the goods relate; and</p> <p>(c) the reputation of the person referred to in paragraph (b), both generally and in relation to an activity referred to in that paragraph; and</p> <p>(d) the ability of that person to meet conditions that may be imposed under subregulation (3) in relation to the goods; and</p> <p>(e) any other relevant matters.</p>
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)	<p>(8) Subsections (1) and (5) do not apply to—</p> <p>...(b) an observation or capturing of visual data—</p> <p>...(iv) for a scientific...or educational purpose</p>
		s 72G (Exceptions for reasonable distribution)	<p>(1) An offence against section 72C or section 72D does not apply to the distribution of an intimate image—</p> <p>...(e) for a scientific...or educational purpose</p> <p><i>Note: applies to s 72C (Non-consensual distribution of intimate images) and s 72D (Distribution of intimate image of young person)</i></p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91HA (Defences)	<p>(8) Approved research It is a defence in proceedings for an offence against section 91G, 91H, 91HAA, 91HAB or 91HAC that the conduct engaged in by the defendant—</p> <p>(a) was necessary for or of assistance in conducting scientific...or educational research that has been approved by the Attorney-General in writing for the purposes of this section, and</p> <p>(b) did not contravene any conditions of that approval.</p> <p><i>Note: applies to s 91G (Children not to be used for production of child abuse material); s 91H (Production, dissemination or possession of child abuse material); s 91HAA (Administering a digital platform used to deal with child abuse material); s 91HAB (Encouraging use of a digital platform to deal with child abuse material); and s 91HAC (Providing information about avoiding detection)</i></p>
		s 91T (Defences)	<p>(1) A person does not commit an offence against section 91P or 91Q if—</p> <p>(a) the conduct alleged to constitute the offence was done for a genuine...scientific purpose</p> <p><i>Note: applies to s 91P (Record intimate image without consent) and s 91Q (Distribute intimate image without consent)</i></p>
NT	<i>Criminal Code Act 1983 (NT)</i>	s 208AB (Distribution of intimate image without consent)	<p>(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:</p> <p>...(e) for a scientific...or educational purpose</p>
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 223 (Distributing intimate images)	<p>(4) It is a defence to a charge of an offence against subsection (1) to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational...scientific or public benefit purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 228E (Defences for ss 228A–228DC)	<p>(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC.</p> <p>(2) It is a defence for the person to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational...scientific or public benefit purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p> <p><i>Example of something made for a public benefit—</i></p> <p>A current affairs television program showing children being tortured during a civil war.</p> <p><i>Note: applies to s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); and s 228DC (Distributing information about avoiding detection)</i></p>
		s 228K (Defence for ss 228I and 228J)	<p>(1) It is a defence for a person charged with an offence against section 228I or 228J to prove that—</p> <p>(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational...scientific or public benefit purpose; and</p> <p>(b) the person’s conduct was, in the circumstances, reasonable for that purpose.</p> <p><i>Note: applies to s 228I (Producing or supplying child abuse object) and s 228J (Possessing child abuse object)</i></p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
SA	Summary Offences Act 1953 (SA)	s 26B (Humiliating or degrading filming)	<p>(4) It is a defence to—</p> <p>(a) a charge of an offence against subsection (1); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (1), to prove 1 or more of the following:</p> <p>...(e) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(5) It is a defence to—</p> <p>(a) a charge of an offence against subsection (2); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (2), to prove 1 or more of the following:</p> <p>...(d) the conduct constituting the offence was for a legitimate public purpose.</p> <p>(6) For the purposes of this section, conduct will only be taken to be for a legitimate public purpose if the conduct was in the public interest having regard to the following:</p> <p>(a) whether the conduct was for the purpose of educating or informing the public;</p> <p>...(c) whether the conduct was for a...scientific purpose;</p> <p>(d) any other factor the court determining the charge considers relevant.</p>
		s 26C (Distribution of invasive image)	<p>(2) It is a defence to a charge of an offence against this section to prove—</p> <p>(a) that the conduct constituting the offence—</p> <p>...(ii) was for a...scientific purpose</p>
Tas	Criminal Code Act 1924 (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(1) It is a defence to a charge under section 130, 130A, 130B, 130C or 130D to prove that—</p> <p>...(b) the accused person engaged in the conduct that is alleged to constitute the offence for a genuine...scientific...artistic or public benefit purpose and the accused person’s conduct was, in the circumstances, reasonable for that purpose</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130B (Distribution of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 51L (Defence of artistic merit or public benefit)	<p>(1) It is a defence to a charge for a child abuse material offence (other than an offence against section 51I(1)) if—</p> <p>(a) the material—</p> <p>(i) was not produced with the involvement of a person who was, at the time it was produced, under the age of 18 years; and</p> <p>(ii) possesses artistic merit; or</p> <p>(b) the material is of public benefit.</p> <p>(2) For the purposes of subsection (1)(b), material that is of public benefit includes material that is for a genuine...scientific or educational purpose.</p> <p>Examples</p> <p>1 A is a university lecturer in psychology. During a lecture on abnormal psychology, A shows a lecture slide with examples of textual child abuse material to illustrate the type of material associated with an abnormal psychological profile. The lecture slide is of public benefit.</p> <p>2 A is a photojournalist in a war zone. A takes a photo of a child victim of torture and submits it to a news organisation for publication. The photo is of public benefit.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51E (Administering a website used to deal with child abuse material); s 51F (Encouraging use of a website to deal with child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 202 (Obscene act in public)	(3) It is a defence to a charge of an offence under this section to prove that it was for the public benefit that the act complained of should be done.
		s 203 (Indecent act in public)	(3) It is a defence to a charge of an offence under this section to prove that it was for the public benefit that the act complained of should be done.

Table G10: Conduct carried out for public benefit as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that—</p> <p>...(c) the material to which the charge relates was—</p> <p>(i) of recognised literary, artistic or scientific merit;</p> <p>...and that the act to which the charge relates is justified as being for the public good</p> <p><i>Note: applies to s 217 (Involving child in child exploitation); s 218 (Producing child exploitation material); s 219 (Distributing child exploitation material); and s 220 (Possession of child exploitation material)</i></p>
		s 221BD (Distribution of intimate image)	<p>(3) It is a defence to a charge under subsection (2) to prove that—</p> <p>(a) the distribution of the image was for a genuine scientific, educational...purpose; or</p> <p>...(c) the person who distributed the image—</p> <p>(i) distributed the image for media activity purposes; and</p> <p>(ii) did not intend the distribution to cause harm to the depicted person; and</p> <p>(iii) reasonably believed the distribution to be in the public interest</p>

Table G11: Other occupational duties as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995 (Cth)</i>	s 273.9 (Defences to offences against this Division)	<p>(5) A person is not criminally responsible for an offence against section 273.6 if the person engages in the conduct in good faith for the sole purpose of:</p> <p>...(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:</p> <p>(i) a recognised alternative accessprevention arrangement (within the meaning of clause 40 of Schedule 5 to the <i>Broadcasting Services Act 1992</i>); or</p> <p>(ii) a designated alternative accessprevention arrangement (within the meaning of clause 60 of that Schedule).</p> <p><i>Note: applies to s 273.6 (Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia)</i></p>

Table G11: Other occupational duties as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 474.24 (Defences in respect of child abuse material)	<p>(4) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A if the person engages in the conduct in good faith for the sole purpose of:</p> <p>...(b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:</p> <p>(i) an industry code registered under Division 7 of Part 9 of the <i>Online Safety Act 2021</i>; or</p> <p>(ii) an industry standard registered under Division 7 of Part 9 of the <i>Online Safety Act 2021</i>.</p> <p><i>Note: applies to s 474.22 (Using a carriage service for child abuse material); s 474.22A (Possessing or controlling child abuse material obtained or accessed using a carriage service); s 474.23 (Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service); and s 474.23A (Conduct for the purposes of electronic service used for child abuse material)</i></p>
ACT	<i>Crimes Act 1900 (ACT)</i>	s 66 (Grooming and depraving young people)	<p>(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant—</p> <p>(a) is an Internet service provider; and</p> <p>(b) had no knowledge that the defendant’s facilities were used to commit the offence.</p>
NT	<i>Criminal Code Act 1983 (NT)</i>	s 125B (Possession of child abuse material)	<p>(2) Nothing in this section makes it an offence:</p> <p>...(b) for a person to have child abuse material in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under an Act or law.</p>
		s 208AB (Distribution of intimate image without consent)	<p>(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:</p> <p>...(f) by a person solely in the person’s capacity as an internet service provider, internet content host or a carriage service provider</p>
Qld	<i>Criminal Code Act 1899 (Qld)</i>	s 227 (Indecent acts)	<p>(3) Subsection (1) does not apply to a person who does an indecent act under the authority of an adult entertainment permit.</p>

Table G11: Other occupational duties as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(1) It is a defence to a charge under section 130, 130A, 130B, 130C or 130D to prove that—</p> <p>...(d) the accused person was acting in the course of his or her official duties in connection with the classification of the material which is the subject of the charge under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> of the Commonwealth.</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130B (Distribution of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>
	<i>Police Offences Act 1935</i> (Tas)	s 13D (Persons who are not criminally responsible for an offence under section 13A or 13B)	<p>(3) A person is not criminally responsible for an offence under section 13A or 13B if—</p> <p>(a) the person is, at the time of the offence, acting in the course of the person’s occupation or employment; and</p> <p>(b) the person’s conduct is reasonable in the circumstances for the performance of the occupation or employment.</p> <p><i>Note: applies to s 13A (Observation or recording in breach of privacy) and s 13B (Publishing or distributing prohibited visual recording)</i></p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 273B.5 (Failing to report child sexual abuse)	<p>(4) Subsection (1) or (2) does not apply if:</p> <p>(a) the defendant reasonably believes that the information is already known:</p> <p>(i) to the police force or police service of a State or Territory; or</p> <p>(ii) to the Australian Federal Police; or</p> <p>(iii) to a person or body to which disclosure of such information is required by a scheme established under, or for the purposes of, a law of a State or Territory, or of a foreign country (or part of a foreign country); or</p> <p>(b) the defendant has disclosed the information to a person or body for the purposes of a scheme mentioned in subparagraph (a)(iii); or</p> <p>(c) the defendant reasonably believes that the disclosure of the information would put at risk the safety of any person, other than the potential offender; or</p> <p>(d) the information is in the public domain.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
	<i>Family Law Act 1975</i> (Cth)	s 67ZA (Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc)	(4) The person need not notify a prescribed child welfare authority of his or her suspicion that a child has been abused, or is at risk of being abused, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or subsection 67Z(3), but the person may notify the authority of his or her suspicion.
	<i>Children and Young People Act 2008</i> (ACT)	s 357 (Mandatory reporting—exceptions)	<p>(1) Section 356 does not apply to a person if the person believes on reasonable grounds that—</p> <p>(a) someone else has made a report to the director-general about the same child or young person in relation to the same abuse or non-accidental physical injury; and</p> <p>(b) the other person has reported the same reasons for their belief as the person has for their belief.</p>
ACT	<i>Crimes Act 1900</i> (ACT)	s 66AA (Failure to report child sexual offence)	<p>(2) Subsection (1) does not apply if—</p> <p>(a) the person—</p> <p>(i) obtains the information when the alleged victim was no longer a child; and</p> <p>(ii) reasonably believes the alleged victim does not want a police officer to be told about the person’s belief; or</p> <p>(b) the person reasonably believes that giving the information to a police officer would endanger the safety of a person (other than a person reasonably believed to have committed the sexual offence); or</p> <p>(c) the person reasonably believes a police officer already has the information; or</p> <p>(d) the person—</p> <p>(i) is a mandated reporter under the <i>Children and Young People Act 2008</i>, section 356 (2); and</p> <p>(ii) has reported the information under that Act, Division 11.1.2 (Reporting abuse and neglect of children and young people) or reasonably believes someone else has done so; or</p> <p>(e) subject to subsection (3), giving the information to a police officer would disclose information in relation to which privilege may be claimed under a law in force in the Territory; or</p> <p>(f) the information is generally available in the public domain; or</p> <p>(g) the person has another reasonable excuse.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 316 (Concealing serious indictable offence)	<p>(1A) For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force or other appropriate authority if—</p> <p>(a) the information relates to a sexual offence or a domestic violence offence against a person (the alleged victim), and</p> <p>(b) the alleged victim was an adult at the time the information was obtained by the person, and</p> <p>(c) the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police or another appropriate authority.</p> <p>(1B) Subsection (1A) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force or other appropriate authority.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
NSW	<i>Crimes Act 1900</i> (NSW)	s 316A (Concealing child abuse offence)	<p>(2) For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force if—</p> <p>(a) the person believes on reasonable grounds that the information is already known to police, or</p> <p>(b) the person has reported the information in accordance with the applicable requirements under Part 2 of Chapter 3 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> or Part 4 of the <i>Children’s Guardian Act 2019</i> or believes on reasonable grounds that another person has done so, or</p> <p>(c) immediately before the repeal of Part 3A of the <i>Ombudsman Act 1974</i> by the <i>Children’s Guardian Act 2019</i>, the person had reported the information to the Ombudsman under that Part, or believed on reasonable grounds that another person had done so, or</p> <p>(d) the person has reasonable grounds to fear for the safety of the person or any other person (other than the offender) if the information were to be reported to police, or</p> <p>(e) the information was obtained by the person when the person was under the age of 18 years, or</p> <p>(f) the alleged victim was an adult at the time that the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police</p> <p>(3) Subsection (2) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force.</p>
NT	<i>Care and Protection of Children Act 2007</i> (NT)	s 26 (Reporting obligations)	<p>(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 229BC (Failure to report belief of child sexual offence committed in relation to child)	<p>(4) Without limiting what may be a reasonable excuse for subsection (2), an adult has a reasonable excuse if—</p> <p>(a) the adult believes on reasonable grounds that the information has already been disclosed to a police officer; or</p> <p>(b) the adult has already reported the information under any of the following provisions, or believes on reasonable grounds that another person has done or will do so—</p> <p>(i) the <i>Child Protection Act 1999</i>, chapter 2, part 1AA;</p> <p>(ii) the <i>Education (General Provisions) Act 2006</i>, chapter 12, part 10;</p> <p>(iii) the <i>Youth Justice Act 1992</i>, part 8 or 9; or</p> <p>(c) the adult gains the information after the child becomes an adult (the alleged victim), and the adult reasonably believes the alleged victim does not want the information to be disclosed to a police officer; or</p> <p>(d) both of the following apply—</p> <p>(i) the adult reasonably believes disclosing the information to a police officer would endanger the safety of the adult or another person, other than the alleged offender, regardless of whether the belief arises because of the fact of the disclosure or the information disclosed;</p> <p>(ii) failure to disclose the information to a police officer is a reasonable response in the circumstances.</p>
SA	<i>Children and Young People (Safety) Act 2017</i> (SA)	s 31 (Reporting of suspicion that child or young person may be at risk)	<p>(2) However, a person need not report a suspicion under subsection (1)—</p> <p>(a) if the person believes on reasonable grounds that another person has reported the matter in accordance with that subsection; or</p> <p>(b) if the person’s suspicion was due solely to having been informed of the circumstances that gave rise to the suspicion by a police officer or child protection officer acting in the course of their official duties; or</p> <p>(c) in any other circumstances prescribed by the regulations for the purposes of this subsection.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 64A (Failure to report suspected child sexual abuse)	<p>(4) It is a defence to a charge of an offence under this section if the defendant had a reasonable excuse for the refusal or failure to report.</p> <p>(5) Without limiting the circumstances in which a person might be found to have had a reasonable excuse for a refusal or failure to report, a person will be taken to have had a reasonable excuse if the person refused or failed to report the matter to the police because the person believed on reasonable grounds that the matter had already been reported to the police or had been reported under Chapter 5 Part 1 of the <i>Children and Young People (Safety) Act 2017</i>.</p>
Tas	<i>Children, Young Persons and Their Families Act 1997</i> (Tas)	s 14 (Informing of concern about abuse or neglect or certain behaviour)	<p>(6) It is a defence to a charge for an offence against subsection (2)–</p> <p>(a) if the person charged can prove that he or she honestly and reasonably believed that the Secretary or a Community-Based Intake Service had been informed of all the reasonable grounds on which his or her belief, suspicion or knowledge was based by another person; or</p> <p>(b) if the person charged has complied with guidelines issued under subsection (4) that apply to him or her in respect of the organisation, body or other person for whom or in which the person works.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
	<i>Criminal Code Act 1924</i> (Tas)	s 105A (Failing to report the abuse of a child)	<p>(3) A person is not guilty of an offence under subsection (2) if–</p> <p>(a) the information was obtained by that person when he or she was a child; or</p> <p>(b) the alleged victim of the offence to which the information relates had attained the age of 18 years at the time the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to a police officer.</p> <p>(4) Without limiting the matters that may constitute a reasonable excuse for the purposes of subsection (2), a person has a reasonable excuse for failing to comply with that subsection if–</p> <p>(a) the person fears on reasonable grounds that disclosing the information would endanger the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the child abuse offence); or</p> <p>(b) subject to subsection (5), reporting the information would disclose information in respect of which there is a lawful claim or right of privilege; or</p> <p>(c) the person believes on reasonable grounds that–</p> <p>(i) another person has already reported the information to a proper authority; or</p> <p>(ii) a proper authority already has the information; or</p> <p>(d) the information is generally available to members of the public.</p>
Vic	<i>Children, Youth and Families Act 2005</i> (Vic)	s 184 (Mandatory reporting)	<p>(2) It is a defence to a charge under subsection (1) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person.</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
			<p>(3) For the purposes of subsection (2) and without limiting that subsection, a person has a reasonable excuse for failing to comply with that subsection if—</p> <p>(a) the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the sexual offence) were the person to disclose the information to police (irrespective of whether the fear arises because of the fact of disclosure or the information disclosed) and the failure to disclose the information to police is a reasonable response in the circumstances; or</p> <p>(b) the person believes on reasonable grounds that the information has already been disclosed to police by another person and the first mentioned person has no further information.</p> <p>Example</p> <p>A person may believe on reasonable grounds that the information has already been disclosed to police by another person if the person has made a report disclosing all of the information in his or her possession in compliance with mandatory reporting obligations under the <i>Children, Youth and Families Act 2005</i>.</p>
	<i>Crimes Act 1958</i> (Vic)	s 327 (Failure to disclose sexual offence committed against child under the age of 16 years)	<p>(5) A person does not contravene subsection (2) if—</p> <p>(a) the information forming the basis of the person’s belief that a sexual offence has been committed came from the victim of the alleged offence, whether directly or indirectly; and</p> <p>(b) the victim was of or over the age of 16 years at the time of providing that information to any person; and</p> <p>(c) the victim requested that the information not be disclosed.</p> <p>(7) A person does not contravene subsection (2) if—</p> <p>(a) the person comes into possession of the information referred to in subsection (2) when a child; or</p> <p>(b) the information referred to in subsection (2) would be privileged under Part 3.10 (other than section 127) of Chapter 3 of the <i>Evidence Act 2008</i>; or</p> <p>(c) the information referred to in subsection (2) is a confidential communication within the meaning of section 32B of the <i>Evidence (Miscellaneous Provisions) Act 1958</i>; or</p>

Table G12: Reasonable excuse not to report child sexual abuse or sexual assault as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
			<p>(d) the person comes into possession of the information referred to in subsection (2) solely through the public domain or forms the belief referred to in subsection (2) solely from information in the public domain; or</p> <p>(e) the person is a police officer acting in the course of his or her duty in respect of the victim of the alleged sexual offence; or</p> <p>(f) the victim of the alleged sexual offence has attained the age of 16 years before the commencement of section 4 of the <i>Crimes Amendment (Protection of Children) Act 2014</i>.</p>
WA	<i>Children and Community Services Act 2004</i> (WA)	s 124B (Duty of certain people to report sexual abuse of children)	<p>(3) In a prosecution for an offence under subsection (1) it is a defence for the person charged to prove that he or she honestly and reasonably believed that—</p> <p>(a) all of the reasonable grounds for his or her belief were the subject of a report made by another person; or</p> <p>(b) the CEO had caused, or was causing, inquiries to be made under section 31 about the child’s wellbeing; or</p> <p>(c) the CEO had taken, or was taking, action under section 32 in respect of the child’s wellbeing.</p>
	<i>Family Court Act 1997</i> (WA)	s 160 (Where member of Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc)	<p>(4) If a person mentioned in subsection (1) knows that the CEO has previously been notified under subsection (2) or section 159(2) that a child has been abused or is at risk of being abused—</p> <p>(a) the person need not notify the CEO of a suspicion that the child has been abused or is at risk of being abused; but</p> <p>(b) the person may notify the CEO of the suspicion.</p>

Table G13: Lack of intent to derive sexual gratification as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995</i> (Cth)	s 272.9 (Sexual activity (other than sexual intercourse) with child outside Australia)	(5) It is a defence to a prosecution for an offence against subsection (1) or (2) if: (a) the conduct constituting the offence consists only of the child being in the presence of the defendant while sexual activity is engaged in; and (b) the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.
		s 272.13 (Sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority)	It is a defence to a prosecution for an offence against subsection (1) or (2) if: (a) the conduct constituting the offence consists only of the young person being in the presence of the defendant while sexual activity is engaged in; and (b) the defendant proves that he or she did not intend to derive gratification from the presence of the young person during that activity.
		s 474.25A (Using a carriage service for sexual activity with person under 16 years of age)	(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if: (a) the conduct constituting the offence consists only of the child being in the presence of a person while sexual activity is engaged in; and (b) the defendant proves that he or she did not intend to derive gratification from the presence of the child during that activity.
Vic	<i>Crimes Act 1958</i> (Vic)	s 49D (Sexual assault of a child under the age of 16)	(3) Whether or not the touching is contrary to community standards of acceptable conduct depends on the circumstances. (4) For the purposes of subsection (3)— (a) the circumstances include— (i) the purpose of the touching; and (ii) whether A seeks or gets sexual arousal or sexual gratification from the touching; (b) the circumstances do not include— (i) whether B consents to the touching; or (ii) whether A believes that B consents to the touching.

Table G13: Lack of intent to derive sexual gratification as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 49F (Sexual activity in the presence of a child under the age of 16)	<p>(3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.</p> <p>(4) For the purposes of subsection (3)—</p> <p>(a) the circumstances include—</p> <p>(i) the purpose of the activity; and</p> <p>(ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;</p> <p>(b) the circumstances do not include—</p> <p>(i) whether B consents—</p> <p>(A) to being present when A engages in the activity; or</p> <p>(B) to A engaging in the activity; or</p> <p>(ii) whether A believes that B consents—</p> <p>(A) to being present when A engages in the activity; or</p> <p>(B) to A engaging in the activity.</p>
		s 49G (Sexual activity in the presence of a child aged 16 or 17 under care, supervision or authority)	<p>(3) Whether or not engaging in the activity in the presence of B is contrary to community standards of acceptable conduct depends on the circumstances.</p> <p>(4) For the purposes of subsection (3)—</p> <p>(a) the circumstances include—</p> <p>(i) the purpose of the activity; and</p> <p>(ii) whether A seeks or gets sexual arousal or sexual gratification from engaging in the activity or from the presence of B;</p> <p>(b) the circumstances do not include—</p> <p>(i) whether B consents—</p> <p>(A) to being present when A engages in the activity; or</p> <p>(B) to A engaging in the activity; or</p> <p>(ii) whether A believes that B consents—</p> <p>(A) to being present when A engages in the activity; or</p> <p>(B) to A engaging in the activity.</p>

Table G13: Lack of intent to derive sexual gratification as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
		s 49H (Causing a child under the age of 16 to be present during sexual activity)	<p>(3) Whether or not causing or allowing C to be present when B engages in the activity is contrary to community standards of acceptable conduct depends on the circumstances.</p> <p>(4) For the purposes of subsection (3)—</p> <p>(a) the circumstances include—</p> <p>(i) the purpose of the activity; and</p> <p>(ii) whether A seeks or gets sexual arousal or sexual gratification from B engaging in the activity or from the presence of C;</p> <p>(b) the circumstances do not include—</p> <p>(i) whether C consents—</p> <p>(A) to being present when B engages in the activity; or</p> <p>(B) to B engaging in the activity; or</p> <p>(ii) whether A believes that C consents—</p> <p>(A) to being present when B engages in the activity; or</p> <p>(B) to B engaging in the activity.</p>

Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900</i> (ACT)	s 61B (Intimate observations or capturing visual data etc)	<p>(8) Subsections (1) and (5) do not apply to—</p> <p>(a) an observation made by viewing data that was previously captured; or</p> <p>(b) an observation or capturing of visual data—</p> <p>... (iii) of a child or other person incapable of giving consent in circumstances in which a reasonable person would regard the observing or capturing of visual data as acceptable</p> <p>Example</p> <p>taking a photograph or movie of a naked newborn relative</p> <p>... (v) by a person in the course of reasonably protecting premises owned by the person; or</p> <p>(vi) in circumstances or for a purpose prescribed by regulation.</p>

Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 72G (Exceptions for reasonable distribution)	<p>(1) An offence against section 72C or section 72D does not apply to the distribution of an intimate image—</p> <p>...(f) by a person in the course of reasonably protecting premises owned by the person; or</p> <p>(g) of a child or other person incapable of giving consent in circumstances in which a reasonable person would regard the distribution of the intimate image as acceptable</p> <p>Example</p> <p>sharing a photograph or movie of a naked newborn relative</p> <p>(h) in circumstances or for a purpose prescribed by regulation.</p> <p><i>Note: applies to s 72C (Non-consensual distribution of intimate images) and s 72D (Distribution of intimate image of young person)</i></p>
NSW	Crimes Act 1900 (NSW)	s 91HB (Exception)	<p>A person does not commit an offence under section 91H of possessing child abuse material if—</p> <p>(a) the possession of the material occurred when the accused person was under the age of 18 years, and</p> <p>(b) a reasonable person would consider the possession of the material by the accused person as acceptable having regard to each of the following (to the extent relevant)—</p> <p>(i) the nature and content of the material,</p> <p>(ii) the circumstances in which the material was produced and came into the possession of the accused person,</p> <p>(iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the child depicted in the material,</p> <p>(iv) the age, intellectual capacity, vulnerability or other relevant circumstances of the accused person at the time the accused person first came into possession of the material and at the time that the accused person’s possession of the material first came to the attention of a police officer,</p> <p>(v) the relationship between the accused person and the child depicted in the material.</p> <p><i>Note: applies to s 91H (Production, dissemination or possession of child abuse material)</i></p>

Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 91T (Exceptions to recording and distributing intimate images offences)	<p>(1) A person does not commit an offence against section 91P or 91Q if—</p> <p>...(d) a reasonable person would consider the conduct of the accused person acceptable, having regard to each of the following (to the extent relevant)—</p> <p>(i) the nature and content of the image,</p> <p>(ii) the circumstances in which the image was recorded or distributed,</p> <p>(iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the person depicted in the image,</p> <p>(iv) the degree to which the accused person's actions affect the privacy of the person depicted in the image,</p> <p>(v) the relationship between the accused person and the person depicted in the image.</p> <p><i>Note: applies to s 91P (Record intimate image without consent) and s 91Q (Distribute intimate image without consent)</i></p>
NT	<i>Criminal Code Act 1983</i> (NT)	s 208AB (Distribution of intimate image without consent)	<p>(2) Subsection (1) does not apply to the distribution of an intimate image in the following circumstances:</p> <p>...(g) of a child, or other person incapable of giving consent, in circumstances that a reasonable person would regard as acceptable.</p> <p><i>...Example for subsection (2)(g)</i></p> <p><i>Sharing a photograph or movie of a naked newborn relative.</i></p>
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 216 (Abuse of persons with an impairment of the mind)	<p>(4) It is a defence to a charge of an offence defined in this section to prove—</p> <p>...(b) that the doing of the act or the making of the omission which, in either case, constitutes the offence did not in the circumstances constitute sexual exploitation of the person with an impairment of the mind.</p>

Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
		s 228E (Defences for ss 228A–228DC)	<p>(1) Subsections (2), (3) and (5) prescribe defences available to a person charged with an offence against section 228A, 228B, 228C, 228D, 228DA, 228DB or 228DC.</p> <p>(3) It is a defence for the person to prove that, at the time of the alleged offence—</p> <p>(a) the material that is alleged to be child exploitation material was subject to a conditional cultural exemption in relation to a relevant showing; and</p> <p>(b) the person engaged in the conduct that is alleged to constitute the offence for the purpose of the relevant showing.</p> <p><i>Note: applies to s 228A (Involving child in making child exploitation material); s 228B (Making child exploitation material); s 228C (Distributing child exploitation material); s 228D (Possessing child exploitation material); s 228DA (Administering child exploitation material website); s 228DB (Encouraging use of child exploitation material website); and s 228DC (Distributing information about avoiding detection)</i></p>
SA	<i>Summary Offences Act 1935 (SA)</i>	s 26B (Humiliating or degrading filming)	<p>(4) It is a defence to—</p> <p>(a) a charge of an offence against subsection (1); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (1), to prove 1 or more of the following:</p> <p>(c) the defendant did not knowingly film the images the subject of the offence</p> <p>Example—</p> <p>The filming took place accidentally or the filming took place in circumstances where the defendant did not know what images were being filmed.</p> <p>(5) It is a defence to—</p> <p>(a) a charge of an offence against subsection (2); or</p> <p>(b) a charge of an offence against subsection (3) where the defendant is alleged to have engaged in conduct constituting an offence against subsection (2), to prove 1 or more of the following:</p> <p>(c) the defendant’s distribution of the image was neither intentional nor reckless</p>

Table G14: Conduct of the defendant was reasonably acceptable or lawful as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(2) It is also a defence to a charge under section 130, 130A, 130C or 130D to prove that the material which is the subject of the charge depicts sexual activity between the accused person and a person under the age of 18 years that is not an unlawful sexual act.</p> <p><i>Note: applies to s 130 (Involving person under 18 years in production of child exploitation material); s 130A (Production of child exploitation material); s 130C (Possession of child exploitation material); and s 130D (Accessing child exploitation material)</i></p>
Vic	<i>Summary Offences Act 1966</i> (Vic)	s 41D (Exceptions to offences)	<p>Section 41A does not apply to an observation made—</p> <p>...(b) by accessing the Internet or a broadcasting service (within the meaning of the Broadcasting Services Act 1992 of the Commonwealth) or datacasting service (within the meaning of that Act)</p>
WA	<i>Criminal Code Act Compilation Act 1913</i> (WA)	s 221BD (Distribution of intimate image)	<p>(3) It is a defence to a charge under subsection (2) to prove that—</p> <p>...(d) a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant)—</p> <ul style="list-style-type: none"> (i) the nature and content of the image; (ii) the circumstances in which the image was distributed; (iii) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person; (iv) the degree to which the accused’s actions affect the privacy of the depicted person; (v) the relationship between the accused and the depicted person; (vi) any other relevant matters.

Table G15: Defendant’s mistaken but honest and reasonable belief that they had not engaged in unlawful conduct as a defence to certain sexual offences			
Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900</i> (ACT)	s 65 (Possessing child exploitation material)	(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the pornography concerned was child exploitation material.
NSW	<i>Crimes Act 1900</i> (NSW)	s 91F (Premises not to be used for child prostitution)	(3) A person is not guilty of an offence under this section relating to an act of child prostitution if the person satisfies the court— (a) that the person did not know about the act, or (b) that the person did not know that a child was participating in the act or, for any other reason, did not know that the act was an act of child prostitution
		s 91HA (Defences)	(1) Innocent production, dissemination or possession It is a defence in proceedings for an offence against section 91H that the defendant did not know, and could not reasonably be expected to have known, that he or she produced, disseminated or possessed (as the case requires) child abuse material. <i>Note: applies to s 91H (Production, dissemination or possession of child abuse material)</i>
NT	<i>Criminal Code Act 1983</i> (NT)	s 125B (Possession of child abuse material)	(3) In respect of a charge against a person of having committed an offence against this section, proof that child abuse material was at the material time in or on a place of which the person was: (a) the occupier; or (b) concerned in the management or control, is evidence that the child abuse material was then in the person’s possession unless it is shown that the person then neither knew nor had reason to suspect that the child abuse material was in or on that place.

Table G15: Defendant’s mistaken but honest and reasonable belief that they had not engaged in unlawful conduct as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 51N (Defences applying to children)	<p>(1) It is a defence to a charge for an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) if—</p> <p>(a) A is a child; and</p> <p>(b) the child abuse material is an image; and</p> <p>(c) the image depicts one or more persons (whether or not it depicts A); and</p> <p>(d) the image—</p> <p>(i) does not depict an act that is a criminal offence punishable by imprisonment; or</p> <p>(ii) depicts an act that is a criminal offence punishable by imprisonment but A reasonably believes that it does not; and</p> <p>(e) at the time of the conduct constituting the offence—</p> <p>(i) A was not more than 2 years older than the youngest child depicted in the image; or</p> <p>(ii) A reasonably believed that they were not more than 2 years older than the youngest child depicted in the image.</p> <p>Examples</p> <p>1 The image depicts A taking part in an act of sexual penetration with another child who is not more than 2 years younger. Both are consenting to the act. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.</p> <p>2 The image depicts a child being sexually penetrated. A is a child and A reasonably believes that the image depicts a consensual sexual relationship between two 16 year olds and is therefore not a criminal offence. A also reasonably believes that A is not more than 2 years older than the youngest child depicted in the image. A is not guilty of an offence against section 51B(1), 51C(1), 51D(1), 51G(1) or 51H(1) in respect of the image.</p> <p><i>Note: applies to s 51B (Involving a child in the production of child abuse material); s 51C (Producing child abuse material); s 51D (Distributing child abuse material); s 51G (Possession of child abuse material); and s 51H (Accessing child abuse material)</i></p>
			<p>(4) It is a defence to a charge for an offence against subsection (1) that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that the exposure was not in, or within the view of, a public place.</p>
	<i>Summary Offences Act 1966</i> (Vic)	s 19 (Sexual exposure)	

Table G15: Defendant’s mistaken but honest and reasonable belief that they had not engaged in unlawful conduct as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(1) It is a defence to a charge of an offence under section 217, 218, 219 or 220 to prove that—</p> <p>...(b) the accused person did not know, and could not reasonably be expected to have known, that the material to which the charge relates describes, depicts or represents a person or part of a person in a way likely to offend a reasonable person</p> <p><i>Note: applies to s 217 (Involving child in child exploitation); s 218 (Producing child exploitation material); s 219 (Distributing child exploitation material); and s 220 (Possession of child exploitation material)</i></p>

Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
		s 91F (Premises not to be used for child prostitution)	<p>(3) A person is not guilty of an offence under this section relating to an act of child prostitution if the person satisfies the court—</p> <p>...(c) that the person used all due diligence to prevent the child from participating in the act.</p>
NSW	<i>Crimes Act 1900 (NSW)</i>	s 91HA (Defences)	<p>(1A) Reasonable steps to prevent dealing with child abuse material It is a defence in proceedings for an offence against section 91HAA that the defendant, on becoming aware that the digital platform was being used to deal with child abuse material, took all reasonable steps in the circumstances to prevent other persons from being able to use the digital platform to access child abuse material.</p> <p>(2) It is a defence in proceedings for an offence against section 91H not involving the production or dissemination of child abuse material that the material concerned came into the defendant’s possession unsolicited and the defendant, as soon as he or she became aware of its nature, took reasonable steps to get rid of it.</p> <p><i>Note: applies to s 91H (Production, dissemination or possession of child abuse material) and s 91HAA (Administering a digital platform used to deal with child abuse material)</i></p>

Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 228DA (Administering child exploitation material website)	<p>(4) It is a defence to a charge under this section to prove that the person, on becoming aware the website was being used to distribute child exploitation material, took all reasonable steps in the circumstances to prevent other persons from being able to use the website to access child exploitation material.</p> <p>Examples of steps that may be reasonable in the circumstances—</p> <ul style="list-style-type: none"> telling a police officer the website is being used to distribute child exploitation material and complying with any reasonable direction given by the police officer about what to do in relation to the website shutting the website down modifying the operation of the website so it can not be used to distribute or access child exploitation material

Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences (cont.)			
Jurisdiction	Legislation	Section	Definition
SA	<i>Criminal Law Consolidation Act 1935</i> (SA)	s 63A (Possession of child exploitation material)	(2) It is a defence to a charge of an offence against subsection (1) to prove that the material to which the charge relates came into the defendant’s possession unsolicited and that the defendant, as soon as he or she became aware of the material and its pornographic nature, took reasonable steps to get rid of it.
		s 63AB (Offences relating to websites)	<p>(2) It is a defence to a charge of an offence against subsection (1) to prove that the person, on becoming aware that the website was being used, or had been used, by another person to deal with child exploitation material, took all reasonable steps, in the circumstances, to prevent any person from being able to use the website to deal with child exploitation material.</p> <p>(3) In determining whether a person has taken all reasonable steps, in the circumstances, for the purposes of subsection (2), regard must be had as to whether the person, as soon as it was reasonably practicable, did any of the following:</p> <ul style="list-style-type: none"> (a) shut the website down; (b) modified the operation of the website so that it could not be used to deal with child exploitation material; (c) notified a police officer that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by a police officer as to action to be taken by the person in relation to that use of the website; (d) notified a relevant industry regulatory authority that the website was being, or had been, used to deal with child exploitation material, and complied with any reasonable directions given by the authority as to action to be taken by the person in relation to that use of the website.
Tas	<i>Criminal Code Act 1924</i> (Tas)	s 130E (Defences in relation to child exploitation material)	<p>(3) It is also a defence to a charge under section 130C to prove that–</p> <ul style="list-style-type: none"> (a) the material which is the subject of the charge came into the accused person’s possession unsolicited; and (b) as soon as the accused person became aware that it was child exploitation material, he or she took reasonable steps to dispose of that material. <p><i>Note: applies to s 130C (Possession of child exploitation material)</i></p>

Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 51S (Defence—reasonable steps to prevent use of a website for child abuse material)	<p>(1) It is a defence to a charge for an offence against section 51E(1) if A, on becoming aware that the website is being used, or has been used, by another person to deal with child abuse material, takes all reasonable steps in the circumstances to prevent any person from being able to use the website to deal with child abuse material.</p> <p>(2) In determining whether A has taken all reasonable steps in the circumstances for the purposes of subsection (1), regard must be had to whether A did any of the following as soon as it was practicable to do so—</p> <p>(a) shut the website down;</p> <p>(b) modified the operation of the website so that it could not be used to deal with child abuse material;</p> <p>(c) notified a police officer that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by a police officer as to what to do in relation to that use of the website;</p> <p>(d) notified a relevant industry regulatory authority that the website is being, or has been, used to deal with child abuse material and complied with any reasonable directions given to A by that authority as to what to do in relation to that use of the website.</p> <p><i>Note: applies to s 51E (Administering a website used to deal with child abuse material)</i></p>
		s 51T (Defence—unsolicited possession)	<p>It is a defence to a charge for an offence against section 51G(1) for A to prove on the balance of probabilities that—</p> <p>(a) A did not intentionally come into possession of child abuse material; and</p> <p>(b) on becoming aware of having come into possession of child abuse material, A, as soon as it was practicable to do so, took all reasonable steps in the circumstances to cease possessing the material.</p> <p><i>Note: applies to s 51G (Possession of child abuse material)</i></p>

Table G16: Reasonable steps taken to prevent unlawful conduct as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
WA	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	s 221A (Defences and exclusions for s. 217, 218, 219 and 220)	<p>(2) It is a defence to a charge of an offence under section 220 to prove that—</p> <p>(a) the material to which the charge relates came into the accused person’s possession unsolicited; and</p> <p>(b) as soon as the accused person became aware of the nature of the material the accused person took reasonable steps to get rid of it.</p> <p><i>Note: applies to s 220 (Possession of child exploitation material)</i></p>

Table G17: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
Cth	<i>Criminal Code Act 1995 (Cth)</i>	<p>s 272.10 (Aggravated offence—sexual intercourse or other sexual activity with child outside Australia)</p> <p>s 474.29 (Defences to offences against this Subdivision)</p>	<p>(6) Subparagraph (1)(b)(i) does not apply if the defendant proves that, at the time he or she committed the underlying offence, he or she believed that the child did not have a mental impairment.</p> <p>(3) It is a defence to a prosecution for an offence against subsection 474.25B(1) (as that subsection applies because of subparagraph 474.25B(1)(b)(i)) if the defendant proves that, at the time the defendant committed the offence, he or she believed that the child did not have a mental impairment.</p> <p><i>Note: applies to s 474.25B (Aggravated offence—using a carriage service for sexual activity with person under 16 years of age)</i></p>
NSW	<i>Crimes Act 1900 (NSW)</i>	s 66F (Sexual offences—cognitive impairment)	<p>(7) Defences It is a defence to a charge for an offence under subsection (2) or (3) (or under section 344A in connection with such an offence) or an offence referred to in subsection (6) in which the prosecution relies on the operation of that subsection—</p> <p>(a) if, at the time of the conduct constituting the offence—</p> <p>(i) the accused did not know the person to whom the charge relates had a cognitive impairment</p>

Table G17: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
NT	<i>Criminal Code Act 1983</i> (NT)	s 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)	<p>(3) It is a defence to a charge of an offence against subsection (2) to prove that the accused person:</p> <p>...(b) did not know that the person was a mentally ill or handicapped person.</p> <p>(3C) It is a defence to a charge of an offence against subsection (3A) to prove:</p> <p>(a) the child was of or above the age of 14 years;</p> <p>(b) the accused person believed on reasonable grounds that the child was of or above the age of 16 years; and</p> <p>(c) the accused person did not know the child was mentally ill or handicapped.</p> <p><i>Note: subsection (3A) is a circumstance of aggravation (A person who, being a provider of disability support services to a mentally ill or handicapped child under the age of 16 years, has sexual intercourse with or commits an act of gross indecency upon, the child, is guilty of a crime, and is liable to imprisonment for 20 years)</i></p>
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 210 (Indecent treatment of children under 16)	<p>(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.</p> <p><i>Note: applies to circumstance of aggravation in subsection (4A) (If the child is a person with an impairment of the mind, the defendant is guilty of a crime, and is liable to imprisonment for 20 years)</i></p>
		s 215 (Engaging in penile intercourse with child under 16)	<p>(5A) If the offence is alleged to have been committed with the circumstance of aggravation mentioned in subsection (4A), it is a defence to the circumstance of aggravation to prove that the accused person believed on reasonable grounds that the child was not a person with an impairment of the mind.</p> <p><i>Note: applies to circumstance of aggravation in subsection (4A) (If the child is a person with an impairment of the mind, the defendant is guilty of a crime, and is liable to imprisonment for life)</i></p>
		s 216 (Abuse of persons with an impairment of the mind)	<p>(4) It is a defence to a charge of an offence defined in this section to prove—</p> <p>(a) that the accused person believed on reasonable grounds that the person was not a person with an impairment of the mind</p>

Table G17: No knowledge of victim cognitive or mental impairment as a defence to certain sexual offences (cont.)

Jurisdiction	Legislation	Section	Definition
Vic	<i>Crimes Act 1958</i> (Vic)	s 52I (Defence—reasonable belief a person does not have a cognitive impairment or mental illness)	<p>It is a defence to a charge for an offence against a provision of this Subdivision for A to prove on the balance of probabilities that, at the time of the conduct constituting the offence, A reasonably believed that the person who has a cognitive impairment or mental illness did not have a cognitive impairment or mental illness.</p> <p><i>Note: applies to s 52B (Sexual penetration of a person with a cognitive impairment or mental illness); s 52C (Sexual assault of a person with a cognitive impairment or mental illness); s 52D (Sexual activity in the presence of a person with a cognitive impairment or mental illness); and s 52E (Causing a person with a cognitive impairment or mental illness to be present during sexual activity)</i></p>

Table G18: Coercion as a defence to certain sexual offences

Jurisdiction	Legislation	Section	Definition
ACT	<i>Crimes Act 1900</i> (ACT)	s 62 (Incest and similar offences)	(4) A person shall not be convicted of an offence against subsection (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless the evidence is rebutted by the prosecution.
NT	<i>Criminal Code Act 1983</i> (NT)	s 134 (Incest)	(4) It is a defence to a charge of an offence against this section to prove that the accused person was acting under the coercion of the close family member.
Qld	<i>Criminal Code Act 1899</i> (Qld)	s 222 (Incest)	(4) It is a defence to a charge under this section to prove that the accused person was, at the time when the act or attempted act of penile intercourse happened, acting under the coercion of the other person.
Vic	<i>Crimes Act 1958</i> (Vic)	s 50H (Defence—accused did not consent)	<p>It is a defence to a charge for an offence against a provision of this Subdivision if A did not consent to the conduct constituting the offence.</p> <p><i>Note: applies to s 50C (Sexual penetration of a child or lineal descendant); s 50D (Sexual penetration of a step-child); s 50E (Sexual penetration of a parent, lineal ancestor or step-parent); and s 50F (Sexual penetration of a sibling or half-sibling)</i></p>

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