

## 8.

## Northern Territory

## The laws

From 1863 until 1911 the Northern Territory was annexed to South Australia. For legislation applying in the Northern Territory prior to 1895, refer to the South Australian table.

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
1890s		<p><b>State Children's Act 1895 (SA)</b></p> <p>State Children's Council established with responsibility for the care of State children.</p> <p><i>Definitions</i></p> <p><i>State child</i> – includes a destitute child, neglected child and convicted child or any child received into an institution to be apprenticed or placed out. For definitions of 'destitute child' and 'neglected child' see <i>Destitute Persons Act 1881 (SA)</i>.</p> <p><i>Key provisions</i></p> <p>State Children's Council responsible for the care, management and control of State Children and their property, including their apprenticeship, placement and attendance at school until 13 years.</p> <p><i>Repealed by Child Welfare Ordinance 1958 (Cth)</i></p>
		<p><b>Children's Protection Act 1899 (SA)</b></p> <p>Any near relative, guardian or other person who neglects, ill-treats or abandons or fails to provide food, clothing and lodgings for a child liable to imprisonment. A child who has been so treated may be removed to an institution.</p> <p><i>Repealed by Child Welfare Ordinance 1958 (Cth)</i></p>
1910s	<p><b>Northern Territory Aboriginals Act 1910 (SA)</b></p> <p>Established the Northern Territory Aboriginals Department with responsibility for the control and welfare of Aborigines and 'to provide where possible for the custody, maintenance and education of the children of aboriginals'.</p>	

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	<p><i>Definitions</i></p> <p><i>aboriginal institution</i> – includes a mission station, reformatory, orphanage school, home, reserve, or other institution ‘for the benefit, care and protection of aboriginals or half-castes of the Northern Territory’</p> <p><i>half-caste</i> – the offspring ‘of an aboriginal mother and other than an aboriginal father’ except those people deemed to be ‘aboriginal’</p> <p><i>aboriginal</i> – ‘an aboriginal native of Australia or any of the islands adjacent or belonging thereto, or a half-caste who is living with an aboriginal as wife, husband or child, or a half-caste who, otherwise than as a wife, husband or child, habitually lives or associates with aboriginals or a half-caste whose age does not exceed 16 years’</p> <p><i>Key provisions</i></p> <p>Provides for the removal, detention and re-location of Aboriginal people on reserves. Chief Protector made the legal guardian of every ‘aboriginal child’ notwithstanding that any such child has a parent or living relative, until such child attains the age of 18 except while the child is a State Child (under the <i>State Children’s Act 1895 (SA)</i>). Regulations may be made for the ‘care, custody and education of the children of aboriginals’; providing for the transfer of any ‘aboriginal’ or ‘half-caste’ child to an ‘aboriginal institution’ or industrial school; for the control, care and education of ‘aboriginal’ or ‘half-caste’ children in ‘aboriginal institutions’; for the supervision of such institutions and for the terms of apprenticeship or service for ‘aboriginal children’.</p> <p><i>Repealed by Aboriginals Act 1918</i></p>	

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	<p><b>Aboriginals Ordinance 1911 (Cth)</b></p> <p>To be read with <i>Aborigines Act 1910</i>. After the Northern Territory became a territory of the Commonwealth on 1/1/1911 all South Australian laws remained in force until altered by a Commonwealth law.</p> <p><i>Key provisions</i></p> <p>Chief Protector may undertake the care, custody or control of any 'aboriginal or half-caste' if in his opinion it is necessary or desirable. A Protector or police officer may take 'any aboriginal or half-caste' into custody if he believes that person is not being properly treated. An 'aboriginal or half-caste' remaining within a prohibited area is guilty of an offence and may be removed.</p> <p><i>Repealed by Aboriginals Ordinance 1918</i></p>	
	<p><b>Aboriginals Ordinance 1918</b></p> <p>Combined the 1910 Act (SA) and the 1911 Ordinance (Cth), giving the Chief Protector wide-ranging powers over Aboriginal people.</p> <p><i>Amended by</i></p> <p><i>Aboriginals Ordinance 1924 (No 2)</i> – amends the definition of aboriginal – a half-caste male under 18 deemed to be an 'aboriginal' until the age of 21.</p> <p><i>Aboriginals Ordinance (North Australia) 1927</i> and <i>Aboriginals Ordinance (Central Australia) 1927</i> – amends the definition of <i>aboriginal</i> – 'a male half-caste whose age exceeds 21 years who in the opinion of the Chief Protector is incapable of managing his own affairs and is declared by the Chief Protector to be subject to this Ordinance'.</p>	
1930s	<p><i>Aboriginals Ordinance 1933</i> – an offence for any males, other than an 'aboriginal or half-caste' to consort with a 'female aboriginal' unless lawfully married (i.e. with permission of Chief Protector).</p>	<p><b>Adoption of Children Ordinance 1935 (Cth)</b></p> <p>Provided for legal adoption of children in the NT for the first time. Court will not recognise consents signed before or within seven days of birth.</p>

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	<p><i>Aboriginals Ordinance 1936</i> – Chief Protector may declare that a ‘half-caste’ shall be deemed not to be a ‘half-caste’ (revokable).</p> <p><i>Aboriginals Ordinance 1939</i> – Director of Native Affairs replaces Chief Protector.</p> <p><i>Repealed by Welfare Ordinance 1953</i></p>	<p><i>Amended by</i></p> <p><i>Adoption of Children Amendment Act 1984</i> – recognition of traditional Aboriginal marriages.</p> <p><i>Repealed by Adoption of Children Act 1994</i></p>
1950s	<p><b>Aboriginals Ordinance 1953 (No 2)</b></p> <p>Amended definition of ‘aboriginal’ to remove references to ‘half-castes’.</p> <p><i>Key provisions</i></p> <p>Director made the legal guardian of all ‘aboriginals’. Director may declare a person with an ‘aboriginal’ ancestor to be an ‘aboriginal’ if it is in that person’s ‘best interests’ and that person requests the Director to do so. Director to keep a register of persons declared to be ‘aboriginals’.</p> <p><i>Repealed by Welfare Ordinance 1953</i></p> <p><b>Welfare Ordinance 1953–60</b></p> <p>Director of Welfare given extensive powers over the lives of people declared to be ‘wards’. Although the Ordinance made no reference to Aboriginality, the exception of people eligible to vote from the class of people that could be declared to be wards meant that it could only apply to Aboriginal people.</p> <p><i>Key provisions</i></p> <p>The Administrator may declare a person to be a ‘ward’ because that person ‘stands in need of special care and assistance’ owing to that person’s ‘manner of living’; ‘inability, without assistance, adequately to manage his own affairs’; ‘standard of social habit and behaviour’; or ‘personal associations’.</p> <p>No person entitled to vote may be declared a ward. The Director of Welfare made the legal guardian of all wards. The Director to keep a Register of Wards. The Wards Appeal Tribunal to hear appeals against a wardship declaration.</p>	<p><b>Child Welfare Ordinance 1958</b></p> <p>Replaced <i>State Children’s Act 1895</i> (SA). Similar definitions of ‘destitute’ and ‘neglected’ as in the 1895 Act.</p> <p><i>Key provisions</i></p> <p>Director is the legal guardian of every State child to the exclusion of the child’s parent or other guardian. A court may declare a child to be destitute, neglected, incorrigible or uncontrollable and commit the child to the care of the Director or another person, to be sent to an institution or released on probation. A State child who absconds from an institution or other placement is guilty of an offence. The Territory Administrator may declare a mission station, reformatory, orphanage, school, home or other establishment whether within the NT or not as an institution for the purposes of the Ordinance. A State child may be sent to a place within the Commonwealth to be placed under control, trained, educated, cared for and maintained.</p> <p><i>Amended by</i></p> <p><i>Child Welfare Ordinance 1969</i> – Ministers in other States may send State children to the Northern Territory (reciprocal arrangements).</p> <p><i>Repealed by Community Welfare Act 1983</i></p>

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	<p>If the Director considered it to be in the best interests of the ward, a ward may be taken into custody; detained on a reserve or in an institution; or removed from one reserve or institution to another.</p> <p>The Administrator's authorisation required for the removal of a child under 14 years if it means removal from his/her parents. Director may make orders authorising police to enter, search and remove a child. A non-ward may not habitually live with a ward unless the non-ward is a relation. Director may order a ward not to live with another ward. A male non-ward may not live with or be in the company of a female ward after sunset. A ward may not marry without the consent of the Director. Director may manage property of wards.</p> <p><i>Repealed by Social Welfare Ordinance 1964</i></p>	
1960s	<p><b>Welfare Ordinance 1961</b></p> <p>Extends the definition of ward to include an Aboriginal person under the control of the Qld, WA or SA legislation entering the NT and allows for the removal of wards from the NT.</p> <p><i>Key provisions</i></p> <p>If the removal of a ward would mean the separation of a child under 14 years from his/her parents or the separation of a parent from a child under the age of 15 years, then the court must be satisfied that 'necessary and adequate arrangements have been made for the 'maintenance, education and care of the child'.</p> <p><i>Repealed by Social Welfare Ordinance 1964</i></p>	

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	<p><b>Social Welfare Ordinance 1964</b></p> <p>Restricted entry to reserves and assistance of the Department of Social Welfare to people who 'in the opinion of the Director are socially or economically in need of assistance'. A welfare officer can suspend the right of an 'aboriginal' to enter or remain on a reserve.</p> <p><i>Repealed by Community Welfare Act 1983</i></p>	

After the *Social Welfare Ordinance 1964*, Aboriginal children were removed under the *Child Welfare Ordinance 1958* and subsequent child welfare legislation.

1980s	<p><b>Community Welfare Act 1983</b></p> <p>Introduced the Aboriginal Child Placement Principle for the first time in legislation in Australia.</p> <p><i>Definitions</i></p> <p><i>child</i> – under 18 years</p> <p><i>child in need of care</i> – 'a child whose parents or guardian have abandoned the child and cannot be found; whose parents are unwilling to maintain the child; who has suffered maltreatment or has engaged in conduct constituting a serious danger to his health and safety; who is excused from criminal responsibility but has persistently engaged in conduct which is harmful to the general welfare of the community measured by commonly accepted community standards as to warrant action'</p> <p><i>maltreatment</i> – includes physical or emotional abuse, severe body malfunctioning and sexual abuse</p> <p><i>Key provisions</i></p> <p>The Minister may grant assistance to a person, family or group. The Minister is to act in accordance with the welfare of the child. In making orders in relation to a child in need of care the court must take account of the Aboriginal Child Placement Principle.</p>	
1990s	<p><b>Adoption of Children Act 1994</b></p> <p>Included the Aboriginal Child Placement Principle. Recognised traditional Aboriginal marriages for the purpose of adoption.</p> <p><i>Regulations</i></p> <p><i>Adoption of Children Regulation 1994</i> – a parent may record wishes regarding the suitability of the adoptive parents and regarding access to the child or giving or receiving information about the child.</p>	