**Special Rapporteur on violence against women, its causes and consequences – call for submissions on the criminalisation and prosecution of rape**

**Submission by Australia**

Thank you for the opportunity to provide input to the UN Special Rapporteur on Violence Against Women (SRVAW) thematic report on rape as a grave and systematic human rights violation and gender-based violence against women. We trust the following information will be of assistance.

**Criminalisation of sexual assault (Australian state and territory legislation)**

In Australia, which has a federal system of government, the criminalisation of sexual assault is generally the responsibility of states and territories rather than the federal government (however, the criminalisation of sexual assault as a war crime/crime against humanity is the responsibility of the federal government – see below).

Australia has six states (New South Wales, Victoria, South Australia, Western Australia, Queensland and Tasmania) and two territories (the Northern Territory and the Australian Capital Territory). The elements of sexual assault offences, including definitions of sexual assault and legal age of sexual consent, and their sanctions therefore vary according to the criminal law of that jurisdiction. All of Australia’s states and territories have their relevant criminal laws set out in legislation. However, in the case of New South Wales, Victoria and South Australia, criminal law is also partially contained in the common law of those states.

The following examples illustrate how some of the elements of offences for sexual assault vary according to the relevant state or territory legislation:

Legal age for sexual consent

There are a range of laws which relate to the age of consent in Australia – a brief outline of these in a [resource sheet](https://aus01.safelinks.protection.outlook.com/?url=https:%2F%2Faifs.gov.au%2Fcfca%2Fpublications%2Fage-consent-laws%23:~:text%3DThe%2520age%2520of%2520consent%2520is%2CQueensland%252C%2520Victoria%2520and%2520Western%2520Australia.&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104969967%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=tVi8DUGRR0qPdtiRA4bpsz6MXCUHH0erv%2F8oc2f51UM%3D&reserved=0) prepared by the Australian Institute of Family Studies (July 2017).   Within the criminal law, sometimes the age of the participants can be relevant to whether consent can be given.

For example, the relevant offence in the Australian Capital Territory provides that:

* A person who engages in sexual intercourse with another person who is under the age of 16 years is guilty of an offence unless at the time of the alleged offence, the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and the defendant was not more than 2 years older; and that that person consented to the sexual intercourse (section 55 Crimes Act 1900 (ACT)).

The relevant definition in Tasmania provides that:

* Any person who has unlawful sexual intercourse with another person who is under the age of 17 years is guilty of a crime. 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 –

(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

(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 (section 124, *Criminal Code Act 1924* (Tas)).

Sanctions and aggravating circumstances

The penalty for unlawful sexual activity with a minor varies from jurisdiction to jurisdiction, however penalties are generally very serious.

For example, in New South Wales the relevant offences provide that:

* Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 14 years (section 54, *Crimes Act 1900* (NSW)).
* Whereas sexual assault in the first degree, is where a person who inflicts grievous bodily harm on another person with intent to engage in sexual intercourse with that other person, can be imprisoned for 17 years (section 61J, *Crimes Act 1900* (NSW)).

In Western Australia the relevant offences provide that:

* Sexual penetration without consent can result in imprisonment for 14 years (section 325, *Criminal Code Act Compilation Act 1913* (WA)).
* Whereas aggravated sexual penetration without consent can result in imprisonment for 20 years (section 326, *Criminal Code Act Compilation Act 1913* (WA)).

Links to all relevant state and territory legislation are provided below to assist in your inquiries:

New South Wales

*Crimes Act 1900* (NSW)

* Division 10 - Sexual offences against adults and children
  + Sections 61HA- 61KF (contains provisions relating to sexual assault classifications)
  + Sections 66A-78A (contains provisions relating to age of consent and offences involving minors)

The *Crimes Act 1900* (NSW) can be accessed here: [https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1900-040#pt.3-div.10](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.nsw.gov.au%2Fview%2Fhtml%2Finforce%2Fcurrent%2Fact-1900-040%23pt.3-div.10&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104979955%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=SMhQvtQ7ddG48ZEIrv0NADCFOBXbeyRjVuJOAYSaJvg%3D&reserved=0).

Victoria

*Crimes Act 1958* (VIC)

* Section 8  - Sexual offences (general provisions)
* Section 8A - Rape, sexual assault and associated sexual offences
* Section 8B - Sexual offences against children (contains provisions relating to age of consent and offences involving minors)

The *Crimes Act 1958* (VIC) can be accessed here: [https://www.legislation.vic.gov.au/in-force/acts/crimes-act-1958/292](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.vic.gov.au%2Fin-force%2Facts%2Fcrimes-act-1958%2F292&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104979955%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=xYw%2BoYCQVPltliiIOorNyPSEsicHvlUppKO6298eeVs%3D&reserved=0)

South Australia

*Criminal Law Consolidation Act 1935* (SA)

* Division 11—Rape and other sexual offences

The *Criminal Law Consolidation Act 1935* (SA) can be accessed here: [https://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOLIDATION%20ACT%201935.aspx](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.sa.gov.au%2FLZ%2FC%2FA%2FCRIMINAL%2520LAW%2520CONSOLIDATION%2520ACT%25201935.aspx&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104989947%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=hpUH68uTiyHpWJT9GZqcncI2vFi%2FK4LYlmsQpWQ3Nb0%3D&reserved=0)

Western Australia

*Criminal Code Act Compilation Act 1913* (WA)

* Chapter XXXI – Sexual offences
  + Section 319 (contains provisions relating to sexual assault classifications)
  + Sections 323-331D
  + Sections 320-322 (contains provisions relating to age of consent and offences involving minors)

The *Criminal Code Act Compilation Act 1913* (WA) can be accessed here: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\_mrtitle\_218\_homepage.html](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.wa.gov.au%2Flegislation%2Fstatutes.nsf%2Fmain_mrtitle_218_homepage.html&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104989947%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=sa%2BjvCScBIdF7CN4rQv%2B6oEIkv4jUvpKRj41v0PvqwI%3D&reserved=0)

Northern Territory

*Criminal Code Act 1983* (NT)

* Part I Division I (contains provisions relating to sexual assault classifications)
* Part VI Division5 - Assaults
  + Sections 192-192B
  + Sections 127-132 (contains provisions relating to age of consent and offences involving minors).

The *Criminal Code Act 1983* (NT) can be accessed here:[https://legislation.nt.gov.au/en/Legislation/CRIMINAL-CODE-ACT-1983](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Flegislation.nt.gov.au%2Fen%2FLegislation%2FCRIMINAL-CODE-ACT-1983&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104989947%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=gFuiFjSRjvOFfNdsqfUfLd9Ebt8%2BVFJynQ8vv6ZlPJM%3D&reserved=0)

Queensland

*Criminal Code Act 1899* (QLD)

* Chapter 32-Rape and sexual assaults
  + Sections 347-248 (contains provisions relating to sexual assault classifications)
  + Sections 349-352
* Chapter *22-Offences against morality*
  + Sections 207A-221 (contains provisions relating to age of consent and offences involving minors)

The *Criminal Code Act 1899* (QLD)can be accessed here: [https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.qld.gov.au%2Fview%2Fhtml%2Finforce%2Fcurrent%2Fact-1899-009&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104999946%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=ElmdHqvzi21jSmv95gl50orVnEUCvODYGOClYLgbN3U%3D&reserved=0)

Tasmania

*Criminal Code Act 1924* (TAS)

* Chapter XIV *–* Sexual crimes
  + Sections 124-126 (contains provisions relating to age of consent and offences involving minors)
* Chapter XX- Rape: Abduction: Stalking and Bullying
  + Section 185 - Rape

The *Criminal Code Act 1924* (TAS)can be accessed here: [https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.tas.gov.au%2Fview%2Fhtml%2Finforce%2Fcurrent%2Fact-1924-069&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497104999946%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=X%2FC%2BWqom1UhIRXD99a5lvq%2Ft0T4KVajtPJvl%2FHTiBis%3D&reserved=0)

Australian Capital Territory

*Crimes Act 1900* (ACT)

* Part 3 – Sexual offences

The *Crimes Act 1900* (ACT) can be accessed here:[https://www.legislation.act.gov.au/a/1900-40/](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.act.gov.au%2Fa%2F1900-40%2F&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497105009937%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=AA477fWtFSCxAjv3bKzxVI7mc3YH%2BXHeimgOFF%2Fl09c%3D&reserved=0)

**Criminalisation of sexual assault as a war crime (Commonwealth legislation)**

In Australia, the criminalisation of war crimes is the responsibility of the federal (Commonwealth) government. Under Australia’s federal laws, sexual assault can be a war crime and a crime against humanity in certain circumstances (for example, where committed as part of a widespread or systemic attack directed against a civilian population). There is no statute of limitation that applies to these crimes. Offences for war crimes and crimes against humanity are set out in Chapter 8 of the Schedule to the *Criminal Code Act 1995* (Cth) (Criminal Code).

The Criminal Code can be accessed here: [https://www.legislation.gov.au/Series/C2004A04868](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.gov.au%2FSeries%2FC2004A04868&data=04%7C01%7CAlexandra.Delofski%40dfat.gov.au%7C2571d2edf87a4961934508d89c91bf4e%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C637431497105009937%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=1MIee3gdMzVJKQQqzR24%2FgACR4wL2IOSxToSP1%2Fkf0E%3D&reserved=0).

The following sections of the Criminal Code may assist in your inquiries:

* Sections 268.14-15 – Crimes against humanity (rape; sexual slavery)
* Sections 268.59-268.64 – War crimes that are committed in the course of an international armed conflict  (rape; sexual slavery; enforced prostitution; enforced sterilisation; sexual violence)
* Sections 268.82 -268.87 – War crimes that are other serious violations of the laws and customs applicable in an armed conflict that is not an international armed conflict (rape; sexual slavery; enforced prostitution; enforced sterilisation; sexual violence)

Australia ratified the Rome Statute of the International Criminal Court on 1 September 2002.

We trust the above information will be of assistance.