



Australian Government

Department of Foreign Affairs and Trade



DFAT CHILD PROTECTION POLICY

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INTRODUCTION

The Department of Foreign Affairs and Trade (DFAT) has a zero tolerance approach to child exploitation or abuse. DFAT recognises that it is the shared responsibility of all adults to prevent child exploitation and abuse. In Australia, there is recognition that organisations that work with children also have a role in protecting them, and need policies and procedures to enable them to do so. The Child Protection Policy is part of DFAT's child protection framework. The policy is principles based, articulates DFAT's zero tolerance of child exploitation and abuse, and includes expectations of DFAT staff and DFAT funded partners in the management of child protection risks. It enables DFAT to meet community expectations and uphold the United Nations Convention on the Rights of the Child to which Australia is a signatory.

In support of DFAT's zero tolerance of child exploitation and abuse, all DFAT staff and DFAT funded partners must report immediately any suspected or alleged case of child exploitation, abuse or policy non-compliance by anyone within scope of this policy in connection with official duties or business. All reports should be made to childwelfare@dfat.gov.au which is managed by DFAT's Conduct and Ethics Unit. All information provided will be treated in accordance with relevant Commonwealth legislation, including the *Privacy Act 1988*. Details of what to report are on page 6.

While DFAT staff responsible for the management of DFAT funded activities and programs must familiarise themselves with this policy and the principles it contains, all DFAT staff, including Australian Public Service (APS) and locally engaged staff (LES) are bound by the APS Code of Conduct and policies contained in the DFAT Conduct and Ethics Manual.

If you are unsure about what constitutes child exploitation and abuse or policy non-compliance, you can contact the Child Protection Compliance Section for confidential advice via telephone +61 2 6178 5100.

SCOPE OF THIS POLICY

The policy applies to all DFAT funded partners that receive DFAT funding including:

- Contractors
- Consultants, advisers and contracted individuals
- Non-Government Organisation (NGO), Civil society Organisation (CSO) and contractor organisations and their personnel
- Downstream partners or organisations who are subcontracted by DFAT funded NGOs, CSOs, consultants, contractors or advisers and their respective personnel
- Australian Volunteers program participants and host organisations
- Recipients and awardees under the Australia Awards, Scholarships and Fellowships program
- DFAT grant recipients, including under the Australian NGO Cooperation Program (ANCP), Direct Aid Program (DAP) and Public Diplomacy programs.

Multilateral organisations and bilateral donor partners funded by DFAT are expected to act in accordance with the policy principles outlined in this document. They must also abide by their own relevant policies, international declarations, conventions, agreements, and domestic legal frameworks, which seek to protect children.



DFAT Portfolio Partners (Australian Centre for International Agricultural Research (ACIAR), Australian Trade and Investment Commission (Austrade), Export Finance and Insurance Corporation (Efic) and Tourism Australia), may give practical effect to DFAT's Child Protection Policy through their own internal processes. Staff from DFAT Portfolio Partners should consult with their organisation for further details.

POLICY PRINCIPLES

Principle 1: Zero tolerance of child exploitation and abuse

DFAT has a zero tolerance approach to child exploitation and abuse. Child exploitation and abuse will attract criminal, civil and disciplinary sanctions.

DFAT will not knowingly engage—directly or indirectly—anyone who poses a risk to children.

DFAT works to minimise the risks of child exploitation and abuse associated with its functions and programs, and trains its staff and partners on their obligations under this policy.

Principle 2: Assess and manage child protection risk and impact

While it is not possible to entirely eliminate risks of child exploitation and abuse, careful management can identify, mitigate, manage or reduce the risks to children that may be associated with DFAT functions and programs.

Principle 3: Sharing responsibility for child protection

To effectively manage risks to children, DFAT requires the commitment, support and cooperation of partner organisations and individuals who help to deliver programs administered by DFAT.

Principle 4: Procedural fairness

DFAT will apply procedural fairness when making decisions that affect a person's rights or interests. DFAT's partners are expected to adhere to this principle when responding to concerns or allegations of child exploitation and abuse.¹

Principle 5: Recognition of the best interests of the child

Australia is a signatory to the United Nations Convention on the Rights of the Child. DFAT is committed to upholding the rights of the child and Australia's obligations under this convention. In all actions concerning children, the best interests of the child shall be a primary consideration.

¹ Australian Government Attorney-General's Department 2012, *Procedural fairness guidelines*.

RISK BASED APPROACH

The policy provides a risk-based approach to the management of child protection in DFAT business activities.

To decide if this approach needs to be taken, the first question to ask is ‘does the program, activity or grant involve potential contact with children², impact³ on children, or working with children⁴’? If the answer is yes, an assessment of child protection risk must be conducted. Relevant risk and decision-making processes and documents must reflect this assessment. This does not need to be a stand-alone process, and can be incorporated into existing activity planning and risk management processes.

If the program, activity or grant is determined to be ‘working with children’, then an assessment of child protection risk is required, including the application of all minimum child protection standards (at **Attachment A and B**). DFAT requires its funded partners to build on these minimum standards as appropriate to their activity or organisation.

If the program, activity or grant is determined to be ‘contact with children’ or impacts children then an assessment of child protection risk is required and, depending on the level of risk identified, apply the appropriate minimum child protection standards to manage the risk.

Where it is determined there is no ‘impact on or contact with children’, the minimum compliance standards at Attachment A will not apply. It is anticipated that a number of domestic whole-of-government panel and corporate contracts will fit this scenario.

DFAT has these minimum child protection standards to ensure that all funded partners (as defined under this policy) understand and act on their obligations to manage risks to children.

Guidance on establishing the risk context is provided to assist DFAT staff and DFAT funded partners. Regular monitoring for any change in risk and reporting on the effectiveness of the management of child protection risk must also occur.

² Refer to Glossary Definitions.

³ Refer to Glossary Definitions.

⁴ Refer to Glossary Definitions.

RESPONSIBILITIES UNDER THE POLICY

DFAT Staff

DFAT staff must ensure child protection risk is considered, and is managed in accordance with DFAT's risk management practices. DFAT will identify child protection obligations of funded partners in Requests for Tender as well as contracts and agreements for activities that have child protection impacts.

DFAT Funded Partners

All DFAT funded individuals or organisations are expected to act in accordance with the policy principles outlined in this document.

Where working with children is identified, partners must undertake an assessment of child protection risk and apply – and build on (where appropriate) – all nine minimum standards at Attachment A and B.

Where contact with children is identified in delivery of DFAT business, DFAT requires funded partners to:

- undertake their own risk assessment of each DFAT funded activity to ensure they identify and manage risks to children appropriately. This can be incorporated into existing activity planning and risk management practices. Child protection safeguards should be in keeping with the minimum child protection standards at Attachment A and B including appropriate recruitment, screening, and employment practices
- ensure personnel are trained in child protection awareness and understand their obligation to protect children when carrying out their work
- have clear internal reporting mechanism or procedure for their personnel to report concerns, and
- immediately report any suspected or alleged instances of child abuse, exploitation, harm or child protection policy non-compliance to the Conduct and Ethics Unit via childwelfare@dfat.gov.au.

Any suspicion or disclosure of child abuse and exploitation must be reported immediately through the organisation's internal processes and to DFAT. When responding to allegations, employers have a responsibility to ensure their employees are treated fairly, and that the rights of each individual are respected during an investigation and any applicable disciplinary process.

For activities that have no contact or impact on children, partners are not required to implement the minimum standards. However, DFAT funded organisations that are child focussed are required to meet the minimum standards irrespective of whether the DFAT funded activity involves working or contact with children.

Sub-Contractors

The requirement to develop and implement a child-safe approach also applies to all downstream personnel, partners and subcontractors who are engaged by a funded partner to perform any part of a DFAT funded activity where working with or contact with children is identified. The managing partner must ensure the downstream organisation or individual subcontractor complies with the relevant minimum child protection standards.

SPECIFIC REQUIREMENTS FOR DFAT PROGRAMS

DFAT has identified that contact with children is possible in the following programs and requires funded partners conducting these activities on DFAT's behalf to meet the stated requirements:

Australian Volunteers program

DFAT requires the Australian Volunteers program managing contractor to develop and implement a child protection policy. The contractor must ensure that the Australian Volunteers program participants and partners comply with the relevant child protection standards, including ensuring eligible partners in country have a DFAT-compliant child protection policy and have implemented child protection practices. The child protection approach must apply to all personnel, volunteers, partner organisations and subcontractors who are engaged by the managing contractor under the Australian Volunteers program.

Australia Awards, Scholarships, Fellowships, Short Courses

Australia Awards and Scholarships are prestigious international Scholarships and Fellowships funded by the Australian Government. To ensure the highest standards of behaviour are maintained, DFAT requires awardees to sign up to a code of conduct which gives effect to the Child Protection – Professional Behaviours (Attachment B) as part of their agreement.

Humanitarian

Australia's long-standing commitment to protecting people affected by natural disasters and human-induced crises reflects DFAT's desire to prevent and reduce the violence, exploitation and deprivation faced by people in such situations.

DFAT recognises that children living in areas affected by humanitarian crises are particularly vulnerable. All organisations implementing DFAT's disaster risk reduction and humanitarian preparedness and response activities must assess child protection risks, and apply – and build on (where appropriate) – the policy's minimum child protection standards. Risks to children must always be considered when developing humanitarian response activities.

DFAT COMPLIANCE MECHANISMS

DFAT monitors compliance with policy requirements through performance assessments, reviews, civil society organisation accreditation, and a program of audits and spot checks. Where minimum child protection standards are required, DFAT requires documentary evidence to demonstrate that funded partners are

meeting these standards. Non-compliance with the minimum child protection standards where required may lead to suspension or termination of funding arrangements.

Under DFAT contracts, DFAT can ask to remove individuals from working on an activity when an individual has been accused, charged, arrested or convicted of a criminal offence relating to child exploitation and abuse, or when DFAT considers that an individual poses a risk to a child's safety or well-being. DFAT also requires anyone under formal investigation for offences relating to child exploitation and abuse to be suspended from duty or transferred to other duties during an investigation.

DFAT reserves the right to terminate contract negotiations, refuse to engage an individual, or require an individual to be replaced if appropriate criminal record checks are not undertaken, or cannot be undertaken for roles that are identified as working with or having contact with children.

REPORTING

It is mandatory for all DFAT staff and partners to report immediately any suspected or alleged case of child exploitation, abuse or policy non-compliance by anyone within scope of the policy in connection with official duties or business. Members of the community can also report. All reports should be made to childwelfare@dfat.gov.au.

What to report

Staff and partners must report any behaviour that is suspected of being child exploitation or abuse (including possession of child exploitation material) or policy non-compliance by:

- > a DFAT staff member, including locally engaged staff
- > personnel of a DFAT funded contractor or civil society organisation, including subcontractors
- > personnel of a DFAT funded multilateral organisation
- > a DFAT funded volunteer
- > an employee of another Commonwealth Government Agency
- > any report made to you by anyone relating to child exploitation and abuse or policy non-compliance by a DFAT staff or DFAT funded partners
- > an Australian Volunteers for International Development Program participant or host organisation
- > a DFAT Scholarship or Fellowship awardee including Australia Awards program recipients
- > a DFAT grant recipient, including under the Direct Aid Program (DAP) and Public Diplomacy programs
- > any Australian citizen, Australian permanent resident or Australian company⁵.

Where an individual or organisation has already reported, but becomes aware of additional information, the individual or organisation must also report that information.

⁵ See Commonwealth Legislation page 18

DATE OF EFFECT

The policy is effective from January 2017. This policy will be reviewed every three years, and lessons will be incorporated into subsequent versions.

MANAGEMENT OF THE POLICY

DFAT will ensure:

- > effective implementation of the policy, including regular review
- > all reports of child exploitation and abuse, policy non-compliance and code of conduct breaches are responded to by DFAT
- > monitoring of partner investigations, outcomes and lessons learned is undertaken
- > monitoring of the child protection systems of DFAT funded partner organisations is undertaken, including through audits and spot checks, and
- > regular child protection training and capacity building is provided by the Child Protection Compliance Section.

IMPLEMENTATION SUPPORT

The following documents, guidance and tools provide the mechanisms for implementation of the Policy:

- > Conduct and Ethics Manual (DFAT Staff)
- > DFAT digital/social media policy (DFAT Staff)
- > Guide to Better Risk Management (DFAT staff)
- > Child Protection Procedures Manual 2017
- > Child Protection Guidance Notes
- > Establishing Child Protection Risk Context
- > Child protection training to support business and program areas implement the Policy
- > A range of laws relevant to this policy (included at Attachment C).

Child protection advice and peer review services on risks to children in activities (including the adequacy and effectiveness of organisational systems and controls to manage risks to children) are available for both DFAT staff and DFAT funded partners. For further information:

Email: childprotection@dfat.gov.au
Telephone: +61 2 6178 5100
Web: www.dfat.gov.au/childprotection

Minimum Child Protection Standards

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
Having a Child Protection Policy and reporting procedure in place	<p>1.</p> <p>Partners</p> <p>The organisation has a child protection policy that applies to all personnel, partner's downstream personnel and subcontractors that are engaged by the organisation to perform any part of a DFAT funded activity.</p> <p>The managing partner must ensure the downstream organisation or individual subcontractor complies with the relevant minimum child protection standards.</p> <p>Individuals</p> <p>An individual contractor is not required to have a child protection policy. However, they will be required to sign a code of conduct that applies and builds on where appropriate DFAT's Child Protection Professional Behaviours and provide evidence of their commitment to child protection.</p>	<p>Partners</p> <ul style="list-style-type: none"> - Child protection policy in place - Personnel aware of the organisation's child protection policy (e.g. through internal communication and training) - Documented plan for ensuring downstream DFAT funded partners are meeting the minimum standards - Initial risk assessment of organisation and activities to inform policy development <p>Individuals</p> <ul style="list-style-type: none"> Attend child protection training Sign code of conduct Commitment to child protection Current Criminal Record Check 	<p>A child protection policy provides clear guidance and demonstrates how the organisation, across its operations, will ensure that children are protected from child exploitation and abuse in the delivery of DFAT funded programs.</p>	<p>An organisation is unaware of the risks to children within their organisation and the activities they manage and/or implement.</p> <p>Having a sub-contractor sign up to a code of conduct as the only control does not provide sufficient contractual effect to address child protection issues.</p>

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
	<p>2.</p> <p>The organisation's child protection policy includes a documented reporting procedure for child exploitation and abuse allegations, code of conduct and policy non-compliance, including available sanctions for breaches.</p>	<ul style="list-style-type: none"> - Organisation's guidelines for managing concerns or allegations of child exploitation and abuse, and policy non-compliance - Documentary evidence that personnel can raise concerns about a child's safety or well-being or unacceptable behaviour by personnel - Documentary evidence outlining the organisation's details of available sanctions - Documentary evidence that policy and reporting information is publically available and accessible to community members 	<p>An effective child protection policy requires a report handling procedure.</p> <p>One of the biggest hurdles to personnel reporting child exploitation and abuse is that there is no formal system in place to do so, or that personnel or community members are not aware of a formal system to report concerns or allegations.</p> <p>Reporting systems must respect the rights of both the alleged victim and the alleged offender.</p>	<p>Personnel are unaware how to report concerning behaviour.</p> <p>Community members are unaware how to report concerning behaviour.</p>

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
	<p>3.</p> <p>The organisation provides child protection training for personnel, including downstream partners.</p>	<ul style="list-style-type: none"> - Training attendance records - Training agendas and timeframes for training - Materials used in training 	<p>Personnel must be fully aware of their responsibilities to protect children and how to report concerns or allegations about child exploitation and abuse.</p>	<p>Personnel are unaware of behaviour that would arouse concern.</p> <p>Personnel are unaware of how to build child protection practices into their work.</p> <p>Personnel do not know how to report concerning behaviour.</p>
	<p>4.</p> <p>The organisation's child protection policy includes a commitment to preventing a person from working with children if they pose an unacceptable risk to children.</p>	<ul style="list-style-type: none"> - Referenced in relevant documentation, including policies, contracts and human resource guidelines 	<p>The organisation, as an employer, must have clear grounds to determine whether a person is the most appropriate to work with children.</p>	<p>A lack of leadership and governance and the right culture undermine personnel efforts to implement a child protection environment.</p>
	<p>5.</p> <p>The organisation's child protection policy is subject to regular review, at least every five years or earlier if needed.</p>	<ul style="list-style-type: none"> - Policy is subject to regular review in accordance to the policy commitment, or at least every five years 	<p>Contexts change, particularly in the development sector. There must be a commitment to review and update the policy as required.</p>	<p>Lessons learned from previous incidents are not taken into account, increasing the likelihood that those risks will be repeated.</p>

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
Undertaking assessment and management of risk	<p>6.</p> <p>The organisation undertakes a risk assessment to reduce the risk of any child being harmed as a result of operations or activities funded by DFAT. The assessment must identify risks, and document steps being taken to reduce or remove these risks.</p>	<ul style="list-style-type: none"> - Risk plan identifying activities and measures to reduce or remove the risk to children - Documentation that risk assessments are reviewed and updated regularly during the life of the activity - Evidence of adaption to local context (when a different approach to standard risk controls is required) 	Some activities are higher risk than others. This may be due to the nature of the activity or the location. For example, working with children with disability or in an emergency situation involve higher risks.	Risks to children are missed during activity design and implementation.
Recruitment and screening, and employment practices in place	<p>7.</p> <p>The organisation's employment contracts contain provisions for suspension or transfer to other duties of any employee who is under investigation and provisions to dismiss any employee after an investigation.</p>	<ul style="list-style-type: none"> - Employment contracts for personnel/consultants contain appropriate provisions 	Robust recruitment, screening and employment practices reinforce the importance of the organisation's child protection policy to personnel.	Personnel that pose unacceptable risks to children are unable to be removed (suspended, transferred or terminated) without a criminal conviction.
	<p>8.</p> <p>Contact with children positions</p>	<ul style="list-style-type: none"> - Documented criminal record checks for personnel in contact with children 	Child-safe recruitment and screening processes	Your organisation may be targeted by adults

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
	<p>The organisation has robust recruitment screening processes for all personnel in contact with children. These recruitment procedures include:</p> <ul style="list-style-type: none"> - criminal record checks before engagement - verbal referee checks <p>Working with children positions</p> <p>Additional screening measures (such as interview plans that incorporate behavioural-based interview questions) must be used when candidates are applying for positions that involve working with children.</p>	<ul style="list-style-type: none"> - Documented verbal referee checks - Documented request for an applicant to disclose whether they have been charged with child exploitation offences, and their response - Interview plans incorporating behavioural-based interview questions that are specific to positions that involve working with children - Review checks when personnel have a change in circumstances - In limited circumstances it may prove impossible to obtain a reliable criminal record check. A statutory declaration, or local legal equivalent, outlining efforts made to obtain a foreign police check, and disclosing any charges and spent convictions related to child exploitation, may be accepted instead - Checks must be conducted for each country in which the individual has lived for 12 months or longer over the last 5 years, and for the individual's countries of citizenship 	<p>are essential to enable an organisation to choose the most appropriate person for a position that involves contact with children.</p> <p>Recruitment and selection can prevent access to children by those with a known history of harming children.</p> <p>Child safe recruitment and selection processes can discourage individuals who pose an unacceptable risk to children from applying for positions.</p>	<p>who wish to harm children (due to weak recruitment and screening practices)</p> <p>A person who poses an unacceptable risk of harm to children (as indicated by their background) is unknowingly appointed to a position within the organisation.</p>
	<p>9.</p> <p>The organisation has a child protection code of conduct that meets and – builds on (where</p>	<ul style="list-style-type: none"> - A risk based child protection code of conduct based on DFAT's Child Protection – Professional Behaviours - Signed codes of conduct or a register 	<p>A code of conduct makes clear the organisation's standards for acceptable and unacceptable behaviour in relation to</p>	<p>Lack of clear, well-advertised rules allows concerning behaviour to go unchallenged.</p>

Requirement	Minimum standard	Minimum standard – evidence	Why is this required?	What is the risk without it?
	appropriate) – the minimum standard set by DFAT (see Attachment B – DFAT’s Child Protection –Professional Behaviours).	<p>documenting details of personnel who have signed the code of conduct, or inclusion in employment contracts</p> <ul style="list-style-type: none"> - Signed image consent forms/ verbal consent file notes 	<p>children, including use of images and must be signed by all personnel.</p> <p>It protects personnel by providing guidance on how to avoid situations that may be perceived as harmful to children.</p> <p>It also provides employers with a sound basis on which to conduct disciplinary action.</p>	Identification of a child and/or their whereabouts.

Child Protection – Professional Behaviours

DFAT funded partners undertaking business on behalf of DFAT that involves working or contact with children are expected to adhere to the following behaviours while they are performing those duties:

- > treat all children with respect
- > not use language or behaviour towards children that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate
- > not engage children under the age of 18⁶ in any form of sexual intercourse⁷ or sexual activity,⁸ including paying for sexual services
- > wherever possible, ensure that another adult is present when working near children
- > not invite unaccompanied children into private residences, unless they are at immediate risk of injury or in physical danger
- > not sleep close to unsupervised children unless absolutely necessary, in which case the supervisor's permission must be obtained, and ensuring that another adult is present if possible (noting that this does not apply to an individual's own children)
- > never use any computers, mobile phones, video cameras, cameras or social media to exploit or harass children, or access child exploitation material through any medium
- > not use physical punishment on children
- > not hire children for domestic or other labour: which is inappropriate given their age or developmental stage; which interferes with their time available for education and recreational activities; or which places them at significant risk of injury
- > comply with all relevant Australian and local legislation, including labour laws in relation to child labour
- > immediately report concerns or allegations of child exploitation and abuse and policy non-compliance in accordance with appropriate procedures
- > immediately disclose all charges, convictions and other outcomes of an offence that relates to child exploitation and abuse, including those under traditional law, which occurred before or occurs during association with DFAT

⁶ Where the child is 16 years or older and the other party is not more than 2 years older; and it can be established that the child consented to the relationship, an exception can be recorded promptly on personnel files.

⁷ As defined under the Criminal Code Act 1995.

⁸ As defined under the Criminal Code Act 1995.

- > be aware of behaviour and avoid actions or behaviours that could be perceived by others as child exploitation and abuse

These behaviours are not intended to interfere with normal family interactions

When photographing or filming a child or using children's images for work-related purposes:

- > take care to ensure local traditions or restrictions for reproducing personal images are adhered to before photographing or filming a child
- > obtain informed consent from the child and parent or guardian of the child before photographing or filming a child. An explanation of how the photograph or film will be used must be provided
- > ensure photographs, films, videos and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive manner. Children should be adequately clothed and not in poses that could be seen as sexually suggestive
- > ensure images are honest representations of the context and the facts
- > ensure file labels, meta data or text descriptions do not reveal identifying information about a child when sending images electronically or publishing images in any form

DFAT funded partners must use the Child Protection – Professional Behaviours as a Child Protection Code of Conduct, or embed those behaviours into their existing policies and processes.

Legislation relevant to child protection

A range of laws are relevant to this policy, including Australian Commonwealth, state and territory laws, and local laws in countries where DFAT works. A number of international child protection instruments also apply.

1. Relevant Australian legislation

Under Commonwealth law an Australian citizen or resident can be prosecuted for an offence committed against a child in another country under laws that have an extra-territorial application.

Commonwealth legislation

<i>Criminal Code Act 1995</i>		
Legislation	Examples of offences	Maximum penalty
<i>Division 272 (child sex offences outside Australia)</i>	Engaging in sexual intercourse outside of Australia with a child under 16 years of age	20 years imprisonment
	Engaging in sexual activity outside of Australia with a child under 16 years of age	15 years imprisonment
	Engaging in sexual intercourse or sexual activity outside of Australia with a child under 16 years of age and the child has a mental impairment or is under the care, supervision or authority of the defendant	25 years imprisonment
	Engaging in sexual intercourse outside of Australia with a young person aged 16 or 17 years and the defendant is in a position of trust or authority	10 years imprisonment
	Engaging in sexual activity outside of Australia with a young person aged 16 or 17 years and the defendant is in a position of trust or authority	7 years imprisonment
	Grooming a child under 16 years of age to engage in sexual activity outside of Australia	12 years imprisonment
<i>Division 273 (offences involving child pornography material or child abuse material outside Australia)</i>	Possessing, controlling, producing, distributing or obtaining child pornography or child abuse material outside Australia	15 years imprisonment
<i>Division 474 (telecommunications offences, subdivision C)</i>	Accessing, soliciting or transmitting child pornography or child abuse material using a carriage service	15 years imprisonment
	Engaging in sexual activity with a child under 16 years of age using a carriage service	15 years imprisonment
	Online grooming of a child under 16 years of age	15 years imprisonment

Crimes Act 1914

The Crimes Act 1914 sets out the laws that govern the way legal proceedings under the *Criminal Code Act 1995* are conducted, including the conduct of investigations and the protection of children involved in proceedings for sexual offences (under Part 1AD).

2. Local Legislation

Most countries in which DFAT works have legislation relating to child exploitation and abuse.

When working in-country, DFAT staff and individuals or the personnel of contractors and organisations undertaking activities funded by DFAT are required to abide by local legislation, including labour laws about child labour.

3. State and territory child protection legislation

State and territory laws provide legal protection to children and families that are affected by child exploitation and abuse that occurs in Australia.

State or territory	Legislation	Source
New South Wales	Child Protection (Working with Children) Act 2012	www.legislation.nsw.gov.au
Victoria	Working With Children Act 2005	www.legislation.vic.gov.au
Queensland	Commission for Children and Young People and Child Guardian Act 2000	www.legislation.qld.gov.au/OQPChome.htm
Western Australia	Working with Children (Criminal Record Checking) Act 2004	www.slp.wa.gov.au/legislation/statutes.nsf/default.html
South Australia	Children's Protection Act 1993	www.legislation.sa.gov.au
Tasmania	<i>Education and Care Services National Regulations 2011; Education and Care Services National Law (Tas) [See s 4 of Education and Care Services National Law (Application) Act 2011 (Tas)]</i>	www.thelaw.tas.gov.au
Australian Capital Territory	Working with Vulnerable People (Background Checking) Act 2011 Children and Young Persons Act 2008	www.legislation.act.gov.au

State or territory	Legislation	Source
Northern Territory	Care and Protection of Children Act 2007	www.nt.gov.au/dcm/legislation/current.html

4. International child protection instruments that Australia is a signatory to

Instrument	Source
The United Nations Convention on the Rights of the Child	www.unicef.org/crc
Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	www.unhcr.org/refworld/docid/50b353232.html
Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict	www.unhcr.org/refworld/docid/47fdfb180.html
Geneva Declaration of the Rights of the Child	www.un-documents.net/gdrc1924.htm
International Labour Organization Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	www.ilo.org/ilolex/english/convdisp1.htm

Glossary

Abuse	<p>physical abuse—the use of physical force against a child that results in harm to the child. Physically abusive behaviour includes shoving, hitting, slapping, shaking, throwing, punching, kicking, biting, burning, strangling and poisoning</p> <p>neglect—the failure by a parent or caregiver to provide a child (where they are in a position to do so) with the conditions that are culturally accepted as being essential for their physical and emotional development and wellbeing</p> <p>emotional abuse—refers to a parent or caregiver’s inappropriate verbal or symbolic acts toward a child, or a pattern of failure over time to provide a child with adequate non-physical nurture and emotional availability. Such acts have a high probability of damaging a child’s self-esteem or social competence</p> <p>sexual abuse—the use of a child for sexual gratification by an adult or significantly older child or adolescent. Sexually abusive behaviours can include fondling genitals; masturbation; oral sex; vaginal or anal penetration by a penis, finger or any other object; fondling breasts; voyeurism; exhibitionism; and exposing the child to, or involving the child in, pornography⁹</p> <p>ill-treatment—disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate degrading comments or behaviour towards a child</p> <p><i>Note: the above includes a child or children being present (hearing or seeing) while a parent or sibling is subjected to any of the above</i></p>
Awardee	Awardee includes recipients of an Australia Awards Scholarship or Fellowship
Behavioural-based interview questions	Interview questions that probe the applicant’s past behaviour in specific situations relevant to the position. Behavioural-based questions give interviewers additional information about the applicant’s suitability to work with children
Changes in circumstances	<p>Personnel should report the following changes in circumstances to management:</p> <ul style="list-style-type: none"> - involvement in criminal activity - disciplinary procedures and criminal or civil court proceedings relating to child exploitation and abuse

⁹ Fact Sheet No. 12 *What is child abuse and neglect?* National Children’s Clearinghouse, Australian Institute of Family Studies.

Child or children	In accordance with the United Nations Convention on the Rights of the Child, 'child' means every human being under the age of 18 unless under the law applicable to the child, majority is attained earlier. For the purposes of this policy, DFAT considers a child to be a person under the age of 18 years
Child abuse material	Material that depicts (expressly or implicitly) a child under 18 years of age as a victim of torture, cruelty or physical abuse
Child exploitation	One or more of the following: <ul style="list-style-type: none"> - committing or coercing another person to commit an act or acts of abuse against a child - possessing, controlling, producing, distributing, obtaining or transmitting child exploitation material - committing or coercing another person to commit an act or acts of grooming or online grooming - using a minor for profit, labour, sexual gratification, or some other personal or financial advantage
Child exploitation material	Material, irrespective of its form, which is classified as child abuse material or child pornography material
Child pornography	In accordance with the Optional Protocol to the Convention on the Rights of the Child, 'child pornography' means 'any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.' For further information about child pornography offences, refer to the <i>Criminal Code Act 1995</i>
Child pornography material	Material that depicts a person, or is a representation of a person, who is, or appears to be, under 18 years of age and is engaged in, or appears to be engaged in, a sexual pose or sexual activity, or is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or activity, and does this in a way that a reasonable person would regard as being, in all the circumstances, offensive ¹⁰
Child protection	An activity or initiative designed to protect children from any form of harm, particularly that arising from child exploitation and abuse
Child protection policy	A statement of intent that demonstrates a commitment to safeguard children from harm and makes clear to all what is required in relation to the protection of children. It helps to create a safe and positive environment for children and to show that the organisation is taking its duty and responsibility of care seriously
Child safeguarding	The broad obligation on staff and partners to ensure that the design and delivery of DFAT programs and organisational operations do not expose children to adverse impacts, including the risk of abuse and exploitation, and that any

¹⁰ This definition has been extracted from the *Criminal Code Act 1995*. See Part 10.6 of the criminal code for the full definition.

	concerns about children's safety within the communities where they work are appropriately reported
Contact with children	Working on an activity or in a position that involves or may involve contact with children, either under the position description or due to the nature of the work environment (also see <i>Working with children</i> definition)
Contractor	The individuals engaged to perform specific services under a contract and includes: <ul style="list-style-type: none"> (a) specified personnel nominated in a head agreement with an intermediary company (the contractor) to which payment is made; or (b) if the person performing the service is the service provider, he/she is an individual contractor
Criminal record check	A check of an individual's criminal history record. In Australia, national criminal record checks are available through state and territory police departments. They take around 20 working days. The type of employment should be specified as 'overseas employment'. Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to consent to a criminal record check and should be informed of the purpose for which the resulting police clearance certificate will be used, including sighting by DFAT
DFAT funded partner	Includes an individual or organisation that receives DFAT administered funding, as well as other contract arrangements funded by DFAT, including any partners engaged through the lead partner that DFAT has the legal agreement with
DFAT staff	People employed by DFAT on a permanent, contract or temporary basis in Australia or overseas
Grooming	Generally, refers to behaviour that makes it easier for an offender to procure a child for sexual activity. For example, an offender might build a relationship of trust with the child, and then seek to sexualise that relationship (for example by encouraging romantic feelings, or exposing the child to sexual concepts through pornography)
Harm	Any detrimental effect on a child's physical, psychological or emotional wellbeing. Harm may be caused by financial, physical or emotional abuse, neglect, and/or sexual abuse or exploitation whether intended or unintended
Impact	The overall long-term effect produced by an investment. This includes positive and negative changes produced by an investment (directly or indirectly, intended or unintended)
Individual contractor	See Contractor
Informed consent	Ensures the child and the parent or guardian understand the implications, purpose and potential uses of photographs or videos
Online grooming	The act of sending an electronic message to a child, with the intention of procuring the recipient to engage in or submit to sexual activity with another person, including but not necessarily the sender; or of sending an electronic

	message with indecent content to a recipient who the sender believes to be a child.
Personnel	Personnel are either employed by an organisation, engaged by an organisation on a subcontract basis, or engaged by an organisation on a voluntary or unpaid basis. Personnel can include paid staff, volunteers, interns, trustees, board members
Police clearance certificate	The certificate showing the results of a criminal record check, which is issued by the police or other authority responsible for conducting such checks
Policy non-compliance	The failure to abide by DFAT's policy
Statutory Declaration	A written statement which you sign and declare to be true before an authorised witness
Unacceptable risk	The portion of identified risk that cannot be tolerated, and that must be either eliminated or controlled. For people deemed an unacceptable risk, control mechanisms are not considered appropriate
Working with children	Working with children means being engaged in an activity with a child where the contact would reasonably be expected as a normal part of the activity and the contact is not incidental to the activity. Working includes volunteering or other unpaid works