

8.

South Australia

The laws

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
1840s	<p>An Ordinance for the Protection, Maintenance and Upbringing of Orphans and other Destitute Children and Aborigines Act 1844</p> <p><i>Key provisions</i></p> <p>The Protector of Aborigines made the legal guardian of every 'aboriginal and half-caste child' whose parents are dead or unknown, or one of whom agrees, until the age of 21. Any two Justices, with the consent of the Governor and one of the parents, may apprentice 'any half-caste or other aboriginal child having obtained a suitable age' until the age of 21 provided that 'due and reasonable provision is made for the maintenance, clothing and humane treatment of any apprentice.'</p> <p><i>Repealed by Aborigines Act 1911</i></p>	
1880s		<p>Destitute Persons Act 1881</p> <p><i>Definitions</i></p> <p><i>child</i> – a boy under 16 or girl under 18 years</p> <p><i>destitute child</i> – a child who has no sufficient means of subsistence apparent to the Destitute Board or two Justices or whose relatives are in indigent circumstances</p> <p><i>neglected child</i> – a child found begging, wandering, sleeping in the open air, without home or settled abode; who resides in a brothel or associates with any known or reputed prostitute (whether the mother of the child or not); who dwells with a known thief, drunkard or any person convicted of vagrancy (not being the parent of the child); who has been convicted of an offence and ought in the Justices' opinion be placed in an Institution; or an illegitimate child whose mother and/or friends cannot maintain the child</p>

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
		<p><i>Key provisions</i></p> <p>Two Justices may commit a destitute or neglected child to an industrial school to be detained until the age of 16 years (boys) or 18 years (girls). Destitute Board may apprentice children, manage their wages and property, licence foster mothers and supervise education, work and discipline.</p> <p><i>Amended by</i></p> <p><i>Destitute Persons Act Amendment Act 1886</i> – introduced term ‘State child’ for destitute and neglected children. Established the State Children’s Council to replace the Destitute Persons’ Board. Ages for detention of boys and girls made uniform (under 18 years).</p> <p><i>Repealed by State Children’s Act 1895</i></p>
1890s		<p>State Children’s Act 1895</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.</p> <p>For definitions of ‘destitute child’ and ‘neglected child’ see <i>Destitute Persons Act 1881</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</i></p>

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
		<p>Children’s Protection Act 1899</p> <p>An offence for a near relative or other person having the care, custody or control of a child to neglect to provide food, clothing and lodging for the child; to ill-treat, neglect, abandon or expose the child or cause the child to be so treated. A child found by a court to be so treated may be removed to an institution.</p> <p><i>Repealed by Children’s Protection Act 1936</i></p>
1910s	<p>Aborigines Act 1911</p> <p>Established the position of Chief Protector of Aborigines and a system of regional Protectors.</p> <p><i>Definitions</i></p> <p><i>half-caste</i> – ‘the offspring of an aboriginal mother and other than an aboriginal father’</p> <p><i>aboriginal</i> – an ‘aboriginal native of Australia or of any of the islands adjacent or belonging thereto’; ‘a half-caste who lives with such an aboriginal native as wife or husband’; ‘a half-caste who ... habitually lives or associates with such aboriginal natives’; or ‘a half-caste child whose age does not apparently exceed sixteen years’. The term ‘half-caste’ for the purposes of the definition of ‘aboriginal’ includes any person ‘either of whose parents is or was an aboriginal and any child of any such person’</p> <p><i>Key provisions</i></p> <p>Aborigines Department to provide for the ‘custody, maintenance and education of the children of aborigines’ and to ‘exercise a general supervision and care over all matters affecting the well-being of aborigines’. Chief Protector is the legal guardian of ‘every aboriginal and half-caste child, notwithstanding that any such child has a parent or other relative living’ until the age of 21 years, except while the child is a ‘State child’ within the meaning of the <i>State Children Act 1895</i>.</p>	

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
	<p>Each regional Protector is the local guardian of every child within his district. The Chief Protector 'may cause every aboriginal or half-caste to be kept within the boundaries of any reserve or aboriginal institution, or to be removed to and kept within the boundaries of any reserve or aboriginal institution, or to be removed from one reserve or aboriginal institution to another'. An 'aboriginal or half-caste who refuses to be so removed' commits an offence. A medical practitioner may order the removal of an 'aboriginal or half caste' child to any 'lock-hospital'. Regulations may be made for the 'care, custody and education of the children of aboriginals and half-castes'; 'enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution or industrial school'; and prescribing the conditions on which 'aboriginal or half-caste children' may be apprenticed.</p> <p><i>Repealed by Aborigines Act 1934</i></p>	
1920s	<p>Aborigines (Training of Children) Act 1923</p> <p>Expanded the definitions of 'aboriginal' and 'half-caste' in the 1911 Act. Provided for the removal of an 'aboriginal child' to an institution under the control of the State Children's Council.</p> <p><i>Definitions</i></p> <p><i>aboriginal</i> – also includes 'a half-caste child whose age does not apparently exceed eighteen years'</p> <p><i>half-caste</i> – also includes 'any person, any of whose progenitors (whether male or female) was an aboriginal and who in the opinion of the Chief Protector, ought to be dealt with under this Act'</p> <p><i>aboriginal child</i> – a person under the age of 18 years who is 'an aboriginal native of Australia or of any of the islands adjacent or belonging thereto' or 'a half-caste'</p>	<p>Adoption of Children Act 1925</p> <p>Introduced a system of legal adoption of children in South Australia for children under the age of 15 years.</p> <p><i>Repealed by Adoption of Children Act 1966/67.</i></p> <p>Maintenance Act 1926</p> <p>[also known as the Social Welfare Act 1926]</p> <p>Consolidated Destitute Persons Act 1881–1886 and State Children Act 1895–1918.</p> <p>Made provision for granting assistance to mothers for the maintenance of their children. State Children Council replaced by Children's Welfare and Public Relief Board.</p>

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
	<p><i>Key provisions</i></p> <p>The Chief Protector 'may ... commit any aboriginal child to any institution within the meaning of the <i>State Children Act 1895</i>, ... to be there detained or otherwise dealt with under the said Act until such child attains the age of eighteen years'. Applies to legitimate 'aboriginal' children who have obtained a qualifying certificate under the <i>Education Act 1915</i> or who are at least fourteen years old and all illegitimate children irrespective of age who in the opinion of the Chief Protector and the State Children's Council are neglected.</p> <p><i>Repealed by Aborigines Act 1934</i></p>	<p><i>Amended by</i></p> <p><i>Maintenance Act Amendment Act 1965</i> – Children's Welfare and Public Relief Board replaced by Social Welfare Advisory Board. A child may no longer be removed on the ground of destitution but an 'uncontrollable child' may be. An 'uncontrollable child' is one who has acquired or is likely to acquire habits of immorality, vice or crime and whose parents or guardians appear unable or unwilling to exercise adequate supervision or control.</p> <p><i>Repealed by Community Welfare Act 1972</i></p>
1930s	<p>Aborigines Act 1934</p> <p>Combined the provisions of the 1911 Act and the 1923 Act. No significant alterations to the powers or duties of the Chief Protector.</p> <p><i>Definitions</i></p> <p><i>aboriginal</i> – similar to definition in 1911 Act but includes a 'half-caste child' under the age of 18 years</p> <p><i>half-caste</i> – includes any person either of whose parents 'is or was an aboriginal native of Australia or of any of the islands adjacent or belonging thereto and any child of any such person'. It does not include a person who comes within the definition of 'aboriginal'</p> <p><i>Key provisions</i></p> <p>Chief Protector may commit any 'aboriginal child to any institution within the meaning of the <i>Maintenance Act 1926</i> ... to be there detained or otherwise dealt with under the said Act until such child attains the age of eighteen years'. The child may then be dealt with as a neglected child under the <i>Maintenance Act</i>. These provisions only apply to legitimate 'aboriginal' children who have either obtained a qualifying certificate within the meaning of the <i>Education Act 1915</i> or attained the age</p>	<p>Children's Protection Act 1936</p> <p>Similar to 1899 Act.</p> <p><i>Repealed by Community Welfare Act 1972</i></p>

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
	<p>of fourteen years, and illegitimate 'aboriginal' children who, in the opinion of the Chief Protector and the Children's Welfare and Public Relief Board are neglected or otherwise proper persons to be dealt with under this Act'. Chief Protector has similar powers to remove 'aboriginals' and 'half-castes' as in 1911 Act.</p> <p><i>Repealed by Aboriginal Affairs Act 1962</i></p> <p>Aborigines Act Amendment Act 1939</p> <p>Position of Chief Protector replaced by the Aborigines Protection Board. Each member of the Board to be a Protector of Aborigines for the whole of the state. System of regional Protectors continued. Definition of 'aborigine' expanded and ceased to distinguish 'half-castes'. Established a system of exemptions from the jurisdiction of the Act.</p> <p><i>Definitions</i></p> <p><i>aborigine</i> – every person 'who is of the full blood descended from the original inhabitants of Australia' or 'who being of less than full blood is descended from the original inhabitants of Australia' unless exempted</p> <p><i>Key provisions</i></p> <p>'Where the board is of the opinion that any aborigine by reason of his character and standard of intelligence and development should be exempted from the provisions of this Act, the board may ... declare that the aborigine shall cease to be an aborigine for the purposes of this Act'. Exemptions may be conditional and revokable for three years or unconditional and irrevocable.</p> <p><i>Repealed by Aboriginal Affairs Act 1962</i></p>	
1960s	<p>Aboriginal Affairs Act 1962</p> <p>Aborigines Protection Board replaced by Aboriginal Affairs Board. The new Board ceased to be the legal guardian of Aboriginal children.</p>	<p>Juvenile Courts Act 1965/6</p> <p>A Juvenile Court may commit a child to an institution or to the care of the Minister if a complaint charging a child with being a neglected or uncontrollable child is proved.</p>

Decade	Laws applying specifically to Aboriginal children	General child welfare laws/adoption laws
	<p><i>Definitions</i></p> <p><i>Aboriginal</i> – ‘every person who is of the full blood descended from the original inhabitants of Australia, other than a person whose name is removed from the Register of Aborigines’</p> <p><i>person of Aboriginal Blood</i> – every person of ‘less than full blood, ... descended from the original inhabitants of Australia, and every person whose name is removed from the Register of Aborigines and his direct descendants’</p> <p><i>Key provisions</i></p> <p>The duties of the Minister for Aboriginal Affairs include the management and regulation of reserves; general supervision and care over all matters affecting the welfare of Aborigines and persons of Aboriginal blood; ‘in his absolute discretion to provide, in cases of need, when possible, for the maintenance and education of the children of Aborigines and persons of Aboriginal blood’; and ‘to promote the social, economic and political development of Aborigines and persons of Aboriginal blood until their integration into the general community. The Board is to establish and maintain a Register of Aborigines and has the power to remove names of those persons ‘who, in its opinion, are capable of accepting the full responsibilities of citizenship’. An applicant whose name the Board refuses to remove may appeal to a special magistrate.</p> <p><i>Amended by</i></p> <p><i>Aboriginal Affairs Act Amendment Act 1966/7</i> – provided for the establishment of Aboriginal Reserve Councils.</p> <p><i>Aboriginal Affairs Act Amendment Act 1968</i> – abolished the Register of Aborigines.</p> <p><i>Repealed by Community Welfare Act 1972</i></p>	<p>To be read with <i>Maintenance Act 1926–65</i>.</p> <p><i>Repealed by Juvenile Courts Act 1971</i></p> <p>Adoption of Children Act 1966/7</p> <p>Replaces previous adoption legislation.</p> <p><i>Repealed by Adoption of Children Act 1988</i></p>

After the *Aboriginal Affairs Act 1962*, Aboriginal children were removed under the *Maintenance Act 1926* and subsequent child welfare legislation.

1970s	<p>Juvenile Courts Act 1971</p> <p>Establishes Juvenile Aid Panels to deal with truants and uncontrollable children. The Panel may recommend that a matter be referred to a Juvenile Court or may deal with the matter directly.</p> <p><i>Repealed by Children’s Protection and Young Offenders Act 1979</i></p>
	<p>Community Welfare Act 1972 [also known as Family and Community Services Act 1971]</p> <p>Repeals <i>Social Welfare Act 1926–71</i>, <i>Aboriginal Affairs Act 1962–68</i> and <i>Children’s Protection Act 1936–69</i>.</p> <p><i>Definitions</i></p> <p><i>uncontrollable child</i> – one whose parents or guardians appear unable or unwilling to exercise adequate supervision and control and who is in need of care and control</p> <p><i>Aboriginal</i> – person wholly or partly descended from those who inhabited Australia prior to European colonization</p> <p><i>Key provisions</i></p> <p>A child committed to care may be placed with his/her parents, approved foster parents, a ‘house’, hospital, mental hospital or as the case may require. In the placement of children the interests of the child are the paramount consideration. Assistance may be granted to families and persons in need.</p> <p><i>Amended by</i></p> <p><i>Community Welfare Act Amendment Act 1973</i> – removes Minister’s power to manage property of Aboriginal people and communities.</p> <p><i>Community Welfare Act Amendment Act 1976</i> – notification requirements in relation to suspected neglect, abuse.</p> <p><i>Community Welfare Act Amendment Act 1981</i> – definition of ‘Aboriginal’ deleted.</p> <p><i>Community Welfare Amendment Act 1982</i> – in the administration of the Act account to be taken of ‘the different customs, attitudes and religious beliefs of the ethnic groups within the community’.</p>
	<p>Children’s Protection and Young Offenders Act 1979</p> <p>Where the Minister is of the opinion that a child is in need of care because he/she is maltreated, neglected, the child’s guardians are unwilling or unable to exercise supervision or to maintain the child, or the child’s guardians have abandoned him/her or cannot be located, the Minister may apply to the Children’s Court for a declaration that the child is in need of care.</p> <p><i>Repealed by The Status Repeal and Amendment (Children Protection and Young Offenders) Act 1993</i></p>
1980s	<p>Adoption Act 1988</p> <p>Introduces Aboriginal Child Placement Principle. Traditional Aboriginal marriages recognised for the purpose of adoption.</p>
1990s	<p><i>Youth Court Act 1993</i>, <i>Young Offenders Act 1993</i> and <i>Children’s Protection Act 1993</i> Acts include Aboriginal Child Placement Principle.</p>