



# When can my child?

Parenting SA  
Parent Easy Guide 73

Sometimes it can be difficult for parents to give correct advice or set limits when they feel uncertain about where they stand. Parents often are unclear about the many laws that impact on their children's lives. This is understandable as there are many different laws which affect children and young people at different ages and there have been changes in recent years.

Young people are becoming more aware of their legal rights and responsibilities through opportunities such as legal studies at secondary school.

This guide does not provide legal advice, but has been written to help parents have a better understanding of some of the laws which affect their children and the young people they care for.

*This PEG uses 'he' and 'she' in turn.  
Change to suit your child's sex.*

## When do you stop being a child?

The official age of childhood varies throughout Australia. In South Australia a child is a person under 18 years of age.

At 18 your child can take on full adult responsibilities. This is often referred to as 'the age of majority', when your child is seen as an adult in the eyes of the law.

## Who is responsible for my child?

- Parents are the legal guardians of their children and are responsible for their care until the age of 18 unless court orders (usually the Family Court or Youth Court) have been made which remove that responsibility.
- As children grow older and before they reach 18, their legal rights and responsibilities gradually increase depending on how mature they are.
- Parents have a duty to provide food, clothing, a place to live, safety, supervision and control, medical care, education and financial support.
- As a parent you can give permission for your child to live with a relative (eg stepparent, grandparent, brother, sister, uncle, aunt) without anyone's approval, providing there are no court orders.
- Many parents make arrangements for friends to look after their children during holidays, hospitalisation, special occasions or when it is agreed for children to 'stay over'. You are still legally responsible for making sure your child will be well looked after including providing financial support.
- Other people can look after your children without your consent if an order has been made by a court or your child has been placed under the guardianship of the Minister for Families and Communities.
- Children are encouraged to notify Families SA within Dept. of Families and Communities, their school, doctor or police etc, if they are being neglected or abused. There should be a discussion with the family, where the young person's view is taken into account and an assessment made of the situation.
- A judge or magistrate in the Youth Court can order that your child live somewhere else. This can happen when:
  - there are fears that your child is not being cared for properly, or has been abused or neglected, or
  - your child is between 10 and 18 years and has broken the law.
- Parents can ask Families SA to look after their child up to their 18th birthday. It is necessary for children 16 or over to agree before this can happen.

## When can I leave my child alone?

This question is one that troubles many parents. See Parent Easy Guide 'Home alone', which goes into this question in detail.

- There is no actual law that states at what age a child can be left alone.
- Parents have a responsibility to make sure their child will be safe and supervised.
- Parents can be charged with an offence for placing their child in danger.

## What the law says about . . .

### Leaving home

- There is no Act that states an age when a young person can or cannot leave home. Over the years, judges have made decisions about individual cases. These decisions have served as a guide and are known as 'Common Law'. Past decisions have shown that young people can leave home at 16, but parents are still legally responsible for children until they are 18 years, unless they are married.
- Decisions about leaving home are best made with the help of parents. Young people need to consider how they can support themselves, where they will live and with whom, how they will manage their money and what to do if they run into problems.
- If young people leave home and there is concern about their welfare, Families SA can be involved.

### Sex

- The law is the same for males and females.
- Young people who are 17 or older can give their consent to sexual intercourse.
- It is an offence to have sex with a person under 17, even if both young people are under 17 and both agree.
- If a person is married and under 17 it is not an offence to have sex with the partner.
- It is an offence for a person in a position of care or authority to have sex with a person under 18.

Parents cannot 'take a person to court' for this, but they can report it to the Police and ask the police to make a charge.

### Marriage

- At 18 years people can marry without anyone's consent.
- At 16 a young person can marry with parental consent and the consent of a court. This can only happen if one young person is over 18.
- In special circumstances a court may overrule the objections of parents and allow a young couple under 18 to marry.

### Name change

- People can call themselves what they like, but for legal purposes, both parents or legal guardians have to agree to a formal name change for their child or else the matter is handled by a court.
- A child's name cannot be changed unless the child agrees or is unable to understand what changing a name means. This will then need a certificate filled out by a Justice of the Peace (JP).
- Name changes are done by the Office of Consumer and Business Affairs, Births, Deaths and Marriages (telephone (08) 8204 9599).

### Driving

- The requirements for getting L and P plates (Learner's Permit and Provisional License) to drive a car or motorbike changed on October 31st 2005. There is now a Graduated Licensing Scheme.
- At 16 years a young person can sit for a written test of road rules to qualify for a Learner's Permit (L plate) to drive a car or motor cycle.
- At 16 and a half, with a Learner's permit for at least 6 months, a young person can qualify for a P1 Provisional Driver's License (P plate).
- There are special and different conditions with both L and P licenses.
- At 16 a young person can apply for a boat operator's licence. Under 16 a special permit to operate a motor boat may be given subject to a number of conditions.
- At 17 young people can apply for a Private Pilot Licence and at 18 a Commercial Pilot Licence.

[www.transport.sa.gov.au/publications/reg\\_licence\\_permits.asp#drivershandbook](http://www.transport.sa.gov.au/publications/reg_licence_permits.asp#drivershandbook)

## Seat belts and car restraints

- Everyone must wear a seat belt or appropriate child restraint in a moving vehicle.
- For passengers under 16 it is the driver's responsibility to make sure that seat belts or restraints are worn.
- The law deals separately with children under 1 year old and those from 1 year to 16 years and those aged 16 years and over. The law is too complicated to explain here, so see the RAA's free guide *'Your guide to child restraints and seat belts'*. Telephone (08) 8202 4592.

## Passports

- A child can have an Australian passport at any age but must be an Australian citizen.
- Children are no longer included on parents' passports.
- Each child must have a separate passport (which for a child under 18 is valid for 5 years).
- Applications for passports are available at post offices and online [www.passports.gov.au](http://www.passports.gov.au)

## School

- At 6 years a child has to start school and attend until 16 years. Children can be enrolled and begin school after their fifth birthday. Between 6 and until the day before their 16th birthday children can be educated at a correspondence school depending on their age and how far they live from the nearest Government school, Home schooling is also an option.
- Children have to attend all lessons (except religious or sex education classes by a parent's request).
- Schools have the authority to set homework suitable to your child's age and ability.
- While the issue of school uniforms has never been legally decided in the courts, the school principal can enforce the school's dress code and can take disciplinary action for deliberate and persistent breaches of the dress code rules. Children cannot be suspended or stopped from taking part in the school's educational program simply because of refusal to wear a uniform.
- Teachers can give children detention at lunch time (not more than a half an hour) and after school (but not so they cause the child to miss the normal bus or train).
- Parents must be notified if their child is to be suspended, excluded or expelled.
- See Government Schools  
[www.decs.sa.gov.au](http://www.decs.sa.gov.au)  
telephone 8226 1527  
Freecall 1800 088 158  
  
Catholic Schools  
[www.ceo.adl.catholic.edu.au](http://www.ceo.adl.catholic.edu.au)  
  
Independent Schools  
[www.ais.sa.edu.au](http://www.ais.sa.edu.au)

## Travel

Children who travel alone on any transport need to be well prepared by their parents. They need to know about the system, whom they can speak to, what to do if arrangements fall through, how to contact parents and who to contact if they are unable to contact parents, especially in an emergency.

### Public transport

- Free travel (no ticket is required) to children under 5 years. A child under 5 years must be accompanied by a passenger who has responsibility for the child.
- Full time students can get concession fares. If they are 15 years and over they must carry at all times, and be able to present, an approved student ID (identification card) or travel concession pass. The concession fare is different for secondary and tertiary students and it is the student's responsibility to make sure the correct ticket is validated.
- In most circumstances the law does not require a child to give up a seat to an adult passenger, but it is encouraged as a matter of courtesy if the adult would not otherwise be able to have a seat.
- Passengers of any age with a disability, and this includes children, must be given priority to sit down where it is preferable or necessary for them to be seated, especially in those seats that are reserved for this purpose. The same applies to areas set aside for passengers with wheelchairs or mobility aids.

### Outside the metro area

- For train travel children must be 16 years to travel alone. Special arrangements may be made for younger children who need to travel in remote areas.
- For bus inter-town travel children up to 14 years travelling alone special conditions may apply, eg an 'unaccompanied child' form may need to be completed.
- Children under 12 years have certain restrictions, eg can only travel up to 400 kilometres. (Check this out at the time of booking the ticket, as it is not a requirement with all services.)

[www.adelaidemetro.com.au](http://www.adelaidemetro.com.au)

[www.transport.sa.gov.au](http://www.transport.sa.gov.au)

- The Civil Aviation Safety Authority requires the following for all domestic air travel for children:
  - under 5 years - children must be accompanied by a person 15 years or over who is an immediate family member or who has written permission from the child's parent or guardian
  - 5 to 11 years - requires 'unaccompanied minor' form to be completed
  - 12 to 15 years - children can travel as unaccompanied minors only at the request of parent or guardian. If no request is made, there will be no special arrangements.

Civil Aviation Authority - telephone 13 17 57

### Employment

- See Parent Easy Guide 'Children working'.

### Paying income tax

- Children under 18 are taxed differently from adults so it is important to contact the Australian Taxation Office - telephone 132 861 or [www.ato.gov.au/individuals](http://www.ato.gov.au/individuals)
- Special rules apply to the income of children. Under these rules, certain types of income may be taxed at higher rates.
- Children who are residents of Australia do not have to lodge a tax return if they earn less than \$772 in a year.

### Joining a political party

The age at which a young person can join a political party differs depending on the party and some do not have any age limit.

- At 14 a young person can join the Labor Party.
- At 16 a young person can join the Liberal Party or the Australian Democrats.
- At 18 a young person can join the National Party of Australia (SA).

### Joining the Army, Navy, or Air Force

- Between 13 and 18 years your child can join the Army Cadets Corps, Naval Reserve Cadets or Air Training Corps.
- At 17 young people, with their parents' consent, can apply for a trade or general entry with any of the services.

### Films, videos, magazines, music, computer games

There are classifications to help parents decide what is suitable:

- RC refused classification. All materials cannot be sold, hired or screened in public.
- G suitable for any age
- PG parental guidance recommended for children under 15
- M mature audiences, not recommended for children under 15
- MA persons 15 years or over can legally be admitted. Persons under 15 cannot be admitted unless they are with a parent or adult guardian
- R restricted. It is illegal for anyone under 18 to see or read anything marked R
- X applies only to videos of non-violent, sexual, erotic material available in the Northern Territory and Australian Capital Territory

Category 1 restricted - (applies to books, magazines, papers) restricted to persons 18 years or over and can be sold in newsagents, but must be in a sealed wrapper with a cover suitable for public display

Category 2 restricted - (applies to books, magazines, papers) and can only be sold in shops which are restricted to people over 18 years.

### Films and videos

It is an offence:

- for a parent/guardian to let your child attend a public exhibition of a film rated R
- for any child to attend a public exhibition of a film rated R

- to show in a private place in the presence of a child, a video classified X
- to show in a private place in the presence of a child, a film classified R, unless it is the parent/guardian who shows the film
- children under 15 can only be admitted to a film or hire a video rated MA if a parent/guardian is with them.

### Books and magazines

It is an offence:

- for a child to be given or sold a publication classified as 'Category 1 restricted' unless the parent or guardian gives it
- for a child to be given or sold a publication classified 'Category 2 restricted'.

### Music

- Some CDs have a warning (18+) because of explicit language or drug references and people have to be over 18 to purchase them. ID will be required.

### Computer games

It is an offence:

- to show in a public place a computer game classified RC or MA
- to show in a private place a computer game classified RC
- to sell or deliver to a child a computer game classified RC
- to sell or deliver to a child under 15 a computer game classified MA unless the parent gives it to the child.

### Sex shops

- Young people under 18 cannot go into sex shops.

### Responsibility for behaviour

Children are expected to learn that some behaviour can hurt others. They are expected to behave reasonably and if they hurt another person, including a child, legal action can follow.

#### Being charged with an offence:

- The minimum age for a child to be charged with an offence is 10 years. Children under 10 years cannot be charged with or convicted of an offence. A child under 10 years of age can be 'taken into care' if the parents cannot control or look after their child.

- For children between 10 and 18 years there is a special criminal justice system. It is not automatic that your offending child will go to a Youth Court. What happens depends on how old your child is, how serious the offence is, whether your child admits guilt and if they have been in trouble before.
- A number of things can happen. Your child may:
  - be given a police caution
  - be required to attend a family group conference with you
  - have to attend the Youth Court or, in some serious circumstances
  - attend an adult court.

### Alcohol

- A person under 18 is not permitted to buy or drink alcohol in public.
- If your child buys or is given alcohol on licensed premises both your child and the person selling or giving the alcohol commit an offence.
- Children may be asked to produce proof of their age if they are on licensed premises or if they are in possession, or recently have been in possession, of liquor in a public place. If they fail, without reasonable excuse to obey or they make a false statement or give false evidence, then they are guilty of an offence.

### Cigarettes and tobacco

- It is an offence for anyone to give, lend or sell tobacco, cigarettes or cigars to a person under 18.
- It is also an offence to buy tobacco products on behalf of (for) someone who is under 18. This also applies to vending machines.
- Young people under 18 cannot buy matches, lighters or any tobacco products including tobacco, cigarettes or cigars.

### Medical and dental treatment

The law says that children who have reached 16 years can make decisions about their own medical and dental treatment in the same way as an adult. This means giving and refusing consent.

- At 16 children are entitled to doctor-patient confidentiality.

- Children under 16 can consent if parents refuse, provided:
  - two doctors or dentists agree that the nature and risks of the treatment are understood
  - and - the treatment is in the best interests of the child
  - and - the opinion is supported in writing by at least one doctor who examines the child before the treatment.
- If a child is under 16, a doctor must consult with the child's parent or guardian before giving emergency life saving treatment, eg a blood transfusion. If parents/guardians are not available, or if they do not consent to the treatment, the doctor can still give the treatment if it is considered to be in the best interests of the child's health and well-being.
- Some people, whatever their age, cannot consent to medical treatment because of a serious disability. In these circumstances, parents, caregivers or guardians appointed by the Guardianship Board can consent on their behalf. However for some serious procedures, such as sterilisation, abortion and some brain treatment, only the Guardianship Board or the Family Court has the power to make the decision.
- While most children are on the family Medicare card, people can get one of their own at any age. There is no law about Medicare cards for those under 18, but Medicare does have certain conditions. For children under 15 Medicare prefers to gain the consent of parents/guardians.
- It is the policy of the Red Cross not to take blood donations from those under 16 years.

### **Tattoos**

- It is an offence to tattoo a young person under 18 except for medical reasons.
- People who receive illegal tattooing run the risk of infection from a contaminated needle (hepatitis B or C or HIV/AIDS).

### **Body piercing**

- It appears that the law is silent on body piercing. There is argument that 16 to 18 year olds should be able to consent according to the Consent to Medical Treatment and Palliative Care Act 1995.

- Many salons will pierce the ears of children under 18 without requiring a guardian's consent, but as a rule for the other parts of the body, young people may be asked to show the consent of a parent or guardian.

### **When parents separate**

A child's reaction to parents' separation is dependent on two main factors. The first is the child's age and stage of development and the second is the level of anger and conflict between the parents.

### **Family Law Act**

- The terms 'custody' and 'access' are no longer in use.
- The focus is now on parents making agreements, called parenting plans, outside the court in relation to residency and contact.
- The Family Law Reform Act 1996 emphasises parental care and responsibility for children rather than rights over children.
- Residency orders will say where the child lives, rather than who takes responsibility for the child, while contact orders are like the old access orders, allowing the other responsible parent (and other people such as grandparents) time with the child.
- The principles underlying the Family Law Reform Act are:
  - children have the right to know and be cared for by both of their parents regardless of whether they are married to each other
  - children have a right to regular contact with parents and other people significant to their care and development
  - parents share duties and responsibilities regarding the care and development of their children
  - parents should agree about the future parenting of their children.
- These principles hold true except when it would be contrary to the best interests of the child.
- The best interests of the child is the court's paramount consideration.
- For information about maintenance payments contact the Child Support Agency Enquiry Line - telephone 13 12 72.

## Banking

- Children under 18 cannot hold a credit card.
- Banks vary in their rules for children holding bank accounts. Generally younger children need parent's permission.
- Children under 18 may be able to have a bank account with an ATM (debit) card, but banks may have a lower withdrawal limit than for adults. Check with your bank for further information.

## Cyclists, Skateboards, Scooters

- The wearing of helmets is compulsory for a wheeled recreational toy or device, bicycle or tricycle on a road. This includes skateboards, scooters and roller skates.
- The safety helmet must comply with regulations and be properly adjusted and fastened.
- Parents (or anyone who is in charge of a child) are responsible to see that a child under 16 wears a helmet.
- The road means any place that is used by the public and to which the public can go so that includes footpaths, roadways, bikeways, parks and playgrounds. [It probably does not mean your own backyard or farm].

## Equal opportunity

- Equal opportunity laws apply at any age.
- It is against the law for children and young people to be discriminated against because of age, gender, sexuality, race or disability.
- Complaints must be in writing to the Office of the Commissioner for Equal Opportunity, telephone (08) 8207 1977. [www.eoc.sa.gov.au](http://www.eoc.sa.gov.au)

## Gambling

- Children under 18 may not be employed in any way that is to do with gambling in licenced premises.
- Children under 18 are not permitted to enter or remain in gaming areas or operate a gaming machine on licensed premises. Young people may be asked to show evidence of their age if they are suspected on reasonable grounds to be under 18. It is an offence to refuse to do this or to produce false evidence.
- If an authorised person suspects on reasonable grounds that a young person is under 18, the young person can be asked to leave the area. If the young person refuses he or she may be removed from the licensed premises.

- A holder of a gaming machine licence or an approved gaming machine manager who permits a minor to enter or remain in a gaming area on the licensed premises, or to operate a gaming machine on the premises, is guilty of an offence.
- A person under 18 who operates a gaming machine in contravention of this section is not entitled to any winnings he or she may have made on the machine and those winnings are forfeited to the Crown.
- A child who enters the casino is guilty of an offence.
- If a child enters the casino, the licensee and the staff member who is responsible for supervising entry to the casino are each guilty of an offence.
- 18 years is the legal age for playing lotteries such as Lotto, Super 66, The Pools, Oz Lotto, Powerball, Keno and instant scratchies.

## Betting with persons under 18 years

- It is an offence to make or offer to make a bet with any person who is under the age of 18.
- It is an offence if any person under the age of 18 years makes or offers to make a bet with any other person.

## Receiving money for gaming from persons under the age of 18 years

- It is against the law to receive from a person under 18, any money or anything of value which is to be used for betting or sweepstakes.

'Sweepstakes' means a scheme under which money is paid into a pool the whole or part of which is distributed as prizes to those persons who have drawn, or have acquired from the drawer, the winning chances (according to the terms of the scheme) arising out of the results of a race, game or other sporting event conducted within or outside the State.

## Internet

Controls on, or censorship of the Internet vary from country to country. In Australia an Act of Parliament was passed in June 1999 to try to make the Internet safer by regulating it in the same way as other media such as books, movies and computer games. In practice this would mean barring content that would be given a NC (not classified) or X rating, and demanding that content which would receive an R rating would include password protection. This Act, the Broadcasting Services Amendment (Online Services) Bill 1999, came into effect on January 1, 2000. The legislation is designed to apply to websites, newsgroups and other forms of online communication except email.

- The biggest problem with the new laws is how they can be put into practice.
- For material hosted on Australian servers this could be done as there is already a code of practice that asks Internet Service Providers to remove from their servers any material that is illegal.
- There are major practical difficulties in getting the same standards from sites that are hosted overseas.
- There is now a mechanism for complaints to the Australian Broadcasting Authority. This is Australia's radio, television and Internet regulator.  
[www.aba.gov.au](http://www.aba.gov.au)

### Legal agreements

Generally young people under 18 cannot make legally binding agreements. However it is confusing, for while the law recognizes that young people are obliged to pay for "necessaries" ie a necessity of life, the law is unclear about what is "necessary". For example, the law does not prevent them from going into a contract for a mobile phone.

- If someone under 18 enters into a contract to buy something that is not "necessary", the young person could keep the contract or choose to avoid it.
- Those under 18 can rent accommodation and any agreements entered into with a landlord are legally binding. (see Residential Tenancies phone 8204 9544 and [www.ocba.sa.gov.au/tenancies](http://www.ocba.sa.gov.au/tenancies))

### Physical punishment

- There is no law that prohibits physical punishment of children. In South Australia 'Common Law' permits physical punishment as long as it is 'reasonable' and 'moderate'.
- Judges decide what is 'reasonable' and 'moderate' on each case. It will depend on a number of factors including the age of the child, what the child is hit with and the part of the body hit, how hard they are hit and whether they are hurt.

- The standard to be applied is that of the community generally and not any particular cultural group.
- Parents can be charged with an offence if children are hurt.
- In State and Catholic schools adults are not allowed to hit children under any circumstances. This is often called 'corporal punishment'. In 'Independent' schools, each school can determine its own discipline. However, almost all independent schools do not use physical punishment.

### Reminders

- **There are many different ages for the many laws that affect children's lives.**
- **Try to have some understanding of the laws that affect your child's age and keep up with the changes.**
- **A better understanding helps parents feel more certain where they stand when giving guidance or setting limits.**

### Want more information?

Australian Broadcasting Authority - [www.aba.gov.au](http://www.aba.gov.au)

Legal Services Commission of SA  
- telephone (08) 8463 3555

(simple legal advice only) - telephone 1300 366 424

Website for young people - [www.lawstuff.org.au](http://www.lawstuff.org.au)

Young Media Australia:  
- [www.youngmedia.org.au](http://www.youngmedia.org.au)  
- telephone 1800 700 357

(parenting and child health information) - [www.cyh.com](http://www.cyh.com)

Parenting SA - [www.parenting.sa.gov.au](http://www.parenting.sa.gov.au)

See other Parent Easy Guides (PEGs):

The Internet  
Children working  
Home alone  
Talking sex with teens  
Child abuse  
What about parents' rights?  
Gambling

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