



Global Initiative to  
**End All Corporal Punishment  
of Children**

## **AUSTRALIA**

### **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 10<sup>th</sup> session, 2011**

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*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.*

*The Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

### **Summary**

**This briefing describes the legality of corporal punishment of children in Australia despite the repeated recommendations of the Committee on the Rights of the Child and other treaty monitoring bodies. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including the home, and urge the Government to ensure that legislation to achieve this is adopted in all states and territories, including through the repeal of all relevant legal defences.**

## **1 Legality of corporal punishment in Australia**

1.1 Corporal punishment in the **home** is regulated at state level, and is lawful throughout Australia under the right of “reasonable chastisement” and similar provisions.<sup>1</sup> Under s61AA of the New South Wales Crimes Act, as amended in 2001, physical punishment by a parent or caregiver is considered unreasonable if the force is applied to a child’s head or neck, or the force is applied to any part of the body in such a way as to cause, or threaten to cause, harm to the child which lasts more than a short period; in such cases the defence of “lawful correction” does not apply. In Tasmania in 2003, the Law Reform Institute recommended the abolition of the defence of “reasonable correction” from criminal and civil law, but no changes in the law have been made.

1.2 Corporal punishment in **schools** is regulated at state level. It is prohibited in government and independent schools in Australian Capital Territory, New South Wales, Tasmania and Victoria. It is prohibited in government schools in Western Australia, but the use of force “by way of correction” is lawful for schoolteachers under s257 of the Criminal Code Act and provisions for caning of boys in the Country High School Hostels Authority Act Regulations 1962 have yet to be repealed. It is not prohibited in Queensland, the Northern Territory or South Australia.

1.3 In the **penal system**, corporal punishment is prohibited as a sentence for crime in all states and territories. It is unlawful as a disciplinary measure in penal institutions in New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria, but it is not explicitly prohibited in Australian Capital Territory and Western Australia.

1.4 With regard to **alternative care settings**, corporal punishment is lawful in childcare centres in the Northern Territory and Tasmania, in residential centres in the Northern Territory, Tasmania, Victoria, Western Australia and Australian Capital Territory, and in foster care in the Northern Territory, Tasmania, Western Australia and Victoria.

## **2 Recommendations by human rights treaty monitoring bodies**

2.1 The **Committee on the Rights of the Child** has twice recommended that corporal punishment of children be prohibited by law in homes and schools throughout Australia – in 1997 in concluding observations on the state party’s initial report (CRC/C/15/Add.79, para. 26) and in 2005 on the second/third report (CRC/C/15/Add.268, para. 36). In 2008, the **Committee Against Torture** recommended the adoption of legislation prohibiting corporal punishment at home and in all other settings (CAT/C/AUS/CO/1, Concluding observations on third report, para. 31).

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<sup>1</sup> Australian Capital Territory under common law; Northern Territory Criminal Code Act s27; Queensland Criminal Code Act 1899, s280; South Australia Criminal Law Consolidation Act 1935, s20; Tasmania Criminal Code Act 1924, s50; Western Australia Criminal Code 1913, s257; Victoria under common law rule