

Corporal punishment of children in Australia: Briefing for the Universal Periodic Review, 23rd session, 2015

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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Australia, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and during the 1st cycle UPR in 2011 rejected by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Australia. We hope states will raise the issue during the review in 2015 and make a specific recommendation that Australia clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal all legal defences for its use in childrearing in all states and territories.

1 Review of Australia in the 1st cycle UPR (2011) and progress since then

1.1 Australia was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² During the review, the following recommendations were made:³

“Introduce a full prohibition of corporal punishment within the family in all states and territories (Russian Federation)”

1.2 The Government rejected the recommendation, stating: “While Australia has programs in place to protect children against family violence, and laws against assault, it remains lawful for parents in all States and Territories to use reasonable corporal punishment to discipline their children.”⁴

1.3 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. While there has been considerable progress in Australia in prohibiting corporal punishment of

¹ 15 November 2010, A/HRC/WG.6/10/AUS/2, Compilation of UN information, para. 25

² 11 November 2010, A/HRC/WG.6/10/AUS/3, Summary of stakeholders' information, para. 31

³ 4 January 2011, A/HRC/16/7, Report of the working group, paras. 100(55) and 100(58)

⁴ 31 May 2011, A/HRC/17/10/Add.1, Report of the working group: Addendum

children in settings outside the home, including reforms in 2011/2012 confirming prohibition in education and early childhood services, there remains resistance to prohibiting corporal punishment by parents and carers within the family home. We note that in 2010, the Australian Children’s Commissioners and Guardians (ACCG) group agreed to a resolution which stated that children have a right to protection from all forms of violence “and that this extends to protection from physical punishment”. It stated that the ACCG “encourages all Australian Governments to ... collaborate to ensure that laws across Australia relating to the physical punishment of children are consistent with international human rights standards” and concluded with a note that “members of ACCG agree to pursue strategies to promote these rights ... in their individual jurisdictions”.⁵ However, currently the Government promotes positive parenting but has taken no steps towards clearly prohibiting corporal punishment and repealing the right to impose “reasonable chastisement” on children.

2 Legality of corporal punishment in Australia

- 2.1 **Summary:** In Australia, corporal punishment of children is unlawful as a sentence for crime throughout the country; in penal institutions, schools, day care and alternative care settings it is partially prohibited. Corporal punishment in the home is lawful in all states and territories.
- 2.2 **Home (lawful):** Corporal punishment in the home is lawful throughout Australia under the right of “reasonable chastisement” and similar provisions in state and territory laws – in **Australian Capital Territory** under common law, **Northern Territory** the Criminal Code Act (s27), **Queensland** the Criminal Code Act 1899 (s280), **South Australia** the Criminal Law Consolidation Act 1935 (s20), **Tasmania** the Criminal Code Act 1924 (s50), **Western Australia** the Criminal Code 1913 (s257) and **Victoria** under common law rule. In 2001, law reform in **New South Wales** limited the defence of “awful correction” in the Crimes Act (s61AA) but did not repeal it.
- 2.3 **Alternative care settings (partially prohibited):** In residential centres, corporal punishment is prohibited in **New South Wales** (Children and Young Persons (Care and Protection) Regulation 2000, s35), **Queensland** (Child Protection Act 1999, s122), **South Australia** (Family and Community Services Regulations 1996, s13) and **Australian Capital Territory** (Children and Young People Act 2008, s741). It is lawful in the **Northern Territory** under provisions for the use of force “to discipline, manage or control” a child (Criminal Code Act, s27), in **Tasmania** under the authority to use force “by way of correction” (Criminal Code Act, s50), in **Victoria** under common law and in **Western Australia** under the authority to use force “by way of correction” (Criminal Code Act, s257).
- 2.4 In foster care, corporal punishment is prohibited in **New South Wales** (Children and Young Persons (Care and Protection) Regulation 2000, s35), **Queensland** (Child Protection Act 1999, s122), **South Australia** (by licensing requirements) and **Australian Capital Territory** (Children and Young People Act 2008, s741). It is lawful in the **Northern Territory** under provisions for the use of force “to discipline, manage or control” a child (Criminal Code Act, s27), in **Tasmania** and **Western Australia** under the authority to use force “by way of correction” (respective Criminal Code Acts, s50 and s257) and in **Victoria** under common law.
- 2.5 **Day care (partially prohibited):** Corporal punishment is prohibited in child care centres in **Australian Capital Territory** (Children and Young People Act 200, s741), **New South Wales** (Children’s Services Regulation 2004, s65), **Queensland** (Child Protection Act 1999, s122), **South Australia** (Children’s Services (Child Care Centres) Regulations 199, s39), **Victoria** Children’s Services Act 1996, s28) and **Western Australia** (Child Care Services (Child Care)

⁵ Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, in correspondence with the Global Initiative, March 2015

Regulations 2006, s85; Child Care Services (Family Day Care) Regulations 2006, s69; Child Care Services (Outside School Hours Care) Regulations 2006, s66; Child Care Services (Outside School Hours Family Day Care) Regulations 2006, s52). Corporal punishment is lawful in the **Northern Territory** under provisions for the use of force “to discipline, manage or control” a child (Criminal Code Act, s27) and in **Tasmania** under the authority to use force “by way of correction” (Criminal Code Act, s50).

- 2.6 As a result of legal reform in 2011/2012, explicit prohibition is also to be found in article 166 of the Education and Early Childhood Services (Registration and Standards) Act 2011 in **South Australia**, the Education and Care Services (National Uniform Legislation) Act 2011 in **Northern Territory**, the Education and Care Services National Law (Application) Act 2011 in **Tasmania**, and the Education and Care Services National Law Act 2010 in **Victoria** and the Children (Education and Care Services) National Law (NSW) No 104a 2010 in **New South Wales**. In **Western Australia** it is prohibited in the Education and Care Services National Law (WA) Act 2012. These laws apply to some but not all education and care settings and for children under 13 only.
- 2.7 **Schools (*partially prohibited*)**: In 2012, the Australian Government stated that it “does not endorse” corporal punishment in schools and that in 2011 it had launched the National Safe Schools Framework which promotes children’s safety from violence in schools and is endorsed by all education ministers.⁶ However, the Framework is silent on the issue of corporal punishment.
- 2.8 Legally, corporal punishment in schools is regulated at state level. It is prohibited in government and independent schools in **Australian Capital Territory** (Education Act 2004, s7), **New South Wales** (Education Act 1990, s3 and s47; Children (Education and Care Services) National Law (NSW) No 104a 2010), **Tasmania** (Education Act 1994, s82A; Education and Care Services National Law (Application) Act 2011), and **Victoria** (Education and Training Reform Act 2006, s4.3; Education and Training Reform Regulations 2007, reg14; Education and Care Services National Law Act 2010). It is prohibited in government schools in **Western Australia** (School Education Regulations, s40; Education and Care Services National Law (WA) Act 2012), but the use of force “by way of correction” is lawful for schoolteachers under section 257 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.
- 2.9 In **Queensland**, corporal punishment is lawful in schools under the provisions for reasonable force “by way of correction, discipline, management or control” in section 280 of the Criminal Code Act. In **Northern Territory** corporal punishment is prohibited in some but not all education settings in the Education and Care Services (National Uniform Legislation) Act 2011. In **South Australia**, provisions for corporal punishment were removed from the Education Regulations in 1991, but it was not prohibited: prohibition is now included in the Education and Early Childhood Services (Registration and Standards) Act 2011.
- 2.10 **Penal institutions (*partially prohibited*)**: Corporal punishment is unlawful as a disciplinary measure in penal institutions in **New South Wales** (Children (Detention Centres) Regulations 2005, s50), **Northern Territory** (Youth Justice Act, s153), **Queensland** (Juvenile Justice Regulations 2003, s17), **South Australia** (Family and Community Services Regulations 1996, s7), **Tasmania** (Youth Justice Act 1997, s132) and **Victoria** (Children, Youth and Families Act 2005, s487). In **Australian Capital Territory**, corporal punishment is not among permitted disciplinary measures in the Children and Young People Act 2008 but is not explicitly prohibited. It is not prohibited in **Western Australia**.
- 2.11 **Sentence for crime (*unlawful*)**: Corporal punishment is unlawful as a sentence for crime in all states and territories.

⁶ 9 May 2012, CRC/C/AUS/Q/4/Add.1, Reply to list of issues, para. 66

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has recommended that corporal punishment of children in Australia be prohibited in the home and other settings on three occasions – in its concluding observations on the initial report in 1997,⁷ on the second/third report in 2005⁸ and on the fourth report in 2012.⁹
- 3.2 **CAT:** In 2008, the Committee Against Torture recommended to Australia that it should “adopt and implement legislation banning corporal punishment at home and in public and private schools, detention centres, and all alternative care settings in all States and Territories”.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

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March 2015

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁷ 10 October 1997, CRC/C/15/Add.79, Concluding observations on initial report, paras. 15 and 26

⁸ 20 October 2005, Concluding observations on second and third report, CRC/C/15/Add.268, paras. 5, 35 and 36

⁹ 28 August 2012, CRC/C/AUS/CO/4, Concluding observations on fourth report, paras. 7, 8, 43, 44, 45, 46 and 47

¹⁰ 22 May 2008, CAT/C/AUS/CO/1, Concluding observations on third report, para. 31