**BRIEFING FROM GLOBAL INITIATIVE**

**TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD**

**PRE-SESSIONAL WORKING GROUP – October 2011**

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**AUSTRALIA (fourth report – CRC/C/AUS/4)**

**Corporal punishment in the home**

Corporal punishment in the home is regulated at state level, and is lawful throughout Australia under the right of “reasonable chastisement” or similar (**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).

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.

**Corporal punishment outside the home**

***Schools:*** 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), **Tasmania** (Education Act 1994, s82A) and **Victoria** (Education and Training Reform Act 2006, s4.3, and Education and Training Reform Regulations 2007, reg14). It is prohibited in government schools in **Western Australia** (School Education Regulations, s40), 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Act and provisions for caning of boys in the Country High School Hostels Authority Act Regulations 1962 have yet to be repealed.

In **Queensland**, corporal punishment by schoolteachers is lawful under the provisions for reasonable force “by way of correction, discipline, management or control” in s280 of the Criminal Code Act. There is no explicit prohibition of corporal punishment in **Northern Territory** education law, where corporal punishment is lawful under the presumption of the delegation to a school teacher of the “power to impose domestic discipline” (Criminal Code Act, s11). In **South Australia**, provisions for corporal punishment were removed from the Education Regulations in 1991, but it was not explicitly prohibited. Draft legislation which would prohibit in all schools and early children centres was due to be introduced into the South Australian Parliament in 2009, but we have no further information.

***Penal system:*** Corporal punishment is prohibited as a sentence for crime in all states and territories.

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**.

***Alternative care:*** Corporal punishment is prohibited in child care centres in **Australian Capital Territory** (Children and Young People Act 2008, 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 1998, s39), **Victoria** (Children’s Services Act 1996, s28) and **Western Australia** (Child Care Services (Child Care) 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). 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) and in **Tasmania** under the authority to use force “by way of correction” (Criminal Code Act, s50).

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). **Australian Capital Territory** allows for “reasonable” discipline (Children and Young People Act 1999, s366) and does not prohibit corporal punishment.

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” (respectively Criminal Code Act s50 and Criminal Code Act s257) and in **Victoria** under common law.

**The Committee on the Rights of the Child has twice expressed concerns about corporal punishment in the home and other settings and recommended prohibition – in its concluding observations on the state party’s initial report in 1997 (CRC/C/15/Add.79, paras. 15 and 26) and on the second/third report in 2005 (CRC/C/15/Add.268, paras. 35 and 36). In 2008, the Committee Against Torture recommend prohibition of corporal punishment of children in all settings, including the home, in all states and territories (CAT/C/AUS/CO/1, Concluding observations on third report, para. 31).**

**In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee raise the issue again in its List of Issues for Australia, in particular asking what measures have been taken to progress towards prohibition of corporal punishment in all settings. We hope the Committee will subsequently recommend that corporal punishment is prohibited in all settings in all states and territories, including through repeal of all legal defences for its use by parents and other adults, and to support law reform with relevant public awareness raising and education.**

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

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