

**BRIEFING ON AUSTRALIA FOR THE HUMAN RIGHTS COMMITTEE, 121st session (October - November 2017)**

*From the Global Initiative to End All Corporal Punishment of Children, September 2017*

**This briefing describes the legality of corporal punishment of children in Australia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development and the recommendations made to Australia by the Committee on the Rights of the Child, the Committee Against Torture and during the UPRs of Australia in 2011 and 2015, we hope the Human Rights Committee will recommend, in the concluding observations on the sixth report of Australia, that all efforts are made to enact legislation clearly prohibiting all corporal punishment of children, however light, in all settings and repealing any legal defences for its use, including the right of “reasonable chastisement”.**

**1 Australia’s report to the Human Rights Committee**

* 1. The sixth state party report of Australia provides some information on its policies to protect women and children from violence, but it does not directly address the issue of violence against children and violent punishment.
  2. **Australia holds an international obligation to explicitly prohibit, in law, all corporal punishment of children. The state party must fulfil this obligation as a matter of priority. We hope the Committee will recommend that Australia enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children and repeal any legal defences for its use in childrearing including the right of “reasonable chastisement”.**

**2 The legality of corporal punishment of children in Australia**

2.1 ***Summary:***Corporal punishment of children in Australia is unlawful as a sentence for a crime, but children may lawfully be subjected to physical punishment in the home, alternative care and day care settings and schools in some states, and in penal institutions in Western Australia.

2.2 ***Home (lawful):*** Corporal punishment in the home is regulated at state level, and is lawful throughout Australia under the right of “reasonable chastisement” and similar provisions: in Australian Capital Territory and in Victoria under common law, in Northern Territory under the Criminal Code Act (s27), in Queensland under the Criminal Code Act 1899 (s280), in South Australia under the Criminal Law Consolidation Act 1935 (s20), in Tasmania under the Criminal Code Act 1924 (s50), in New South Wales under the Crimes Act (s61AA, amended 2001), and in Western Australia under the Criminal Code 1913 (s257). The Australian Family Violence Law 1975 protects a child from being exposed to family violence but not from direct suffering of violence in the form of physical punishment.

2.3 Under section 61AA 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 2010, the NSW Government reviewed section 61AA and recommended that it be retained.

2.4 The aims of the National Framework for Protecting Australia’s Children 2009-2020[[1]](#footnote-1) include ensuring children live in supportive families and communities and addressing risk factors for child abuse and neglect but it makes no reference to violent punishment of children. The National Plan to Reduce Violence against Women and their Children 2010 – 2022[[2]](#footnote-2) also does not address corporal punishment.

2.5 In May 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”.[[3]](#footnote-3) In 2013, the Paediatric & Child Health Division of the Royal Australasian College of Physicians issued a position statement also calling for the repeal of the legal provisions defending the use of corporal punishment against children so that “the law protects children from assault to the same extent that it does all people”.[[4]](#footnote-4)

2.6 Reporting to the UN Committee on the Rights of the Child in 2012, the Australian Government stated that it had not taken any steps towards prohibiting all corporal punishment, but that it does promote positive parenting.[[5]](#footnote-5) The Government later effectively rejected the recommendation to prohibit corporal punishment in the home made during the Universal Periodic Review of Australia in 2015, stating that it “notes” the recommendation “but will not further consider [it] at this time”.[[6]](#footnote-6) In March 2016, a ruling by the South Australian Supreme Court found in favour of “reasonable” corporal punishment of children by parents.[[7]](#footnote-7)

2.7 ***Alternative care settings (partially lawful):***Corporal punishment is prohibited in New South Wales, in Queensland, in South Australia and in Australian Capital Territory. It is lawful in the Northern Territory under provisions for the use of force “to discipline, manage or control” a child in the Criminal Code Act (s27), in Tasmania and Western Australia under the authority to use force “by way of correction” in the respective Criminal Code Acts (s50 and s257) and in Victoria under common law.

2.8 ***Day care (partially lawful):*** Corporal punishment is prohibited in child care centres in Australian Capital Territory, in New South Wales, in Queensland, in South Australia, in Victoria and in Western Australia. Corporal punishment is lawful in the Northern Territory and in Tasmania. It is also prohibited for some but not all education and care settings and for children under 13 only, in South Australia, Northern Territory, Tasmania, Victoria, New South Wales and Western Australia.

2.9 ***Schools (partially lawful):***It is prohibited in government and independent schools in Australian Capital Territory, in New South Wales, in Tasmania, in South Australia, and in Victoria. It is prohibited in government schools in Western Australia but the use of force “by way of correction” is lawful for schoolteachers under the Criminal Code Act and provisions for caning have yet to be repealed. 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.

2.10 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.[[8]](#footnote-8) However, the Framework is silent on the issue of corporal punishment.

2.11 ***Penal institutions (mostly unlawful):***Corporal punishment is unlawful as a disciplinary measure in penal institutions in New South Wales, in Northern Territory, in Queensland, in South Australia, in Tasmania and in Victoria. 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.

2.12 ***Sentence for crime (unlawful):*** Corporal punishment is prohibited as a sentence for crime in all states and territories.

| **State/territory** | **Prohibited in the home** | **Prohibited in alternative care settings** | **Prohibited in day care** | **Prohibited in schools** | **Prohibited in penal institutions** | **Prohibited as sentence for crime** |
| --- | --- | --- | --- | --- | --- | --- |
| **Australian Capital Territory** | NO | YES | [YES][[9]](#footnote-9) | YES | YES[[10]](#footnote-10) | YES |
| **New South Wales** | NO | YES | [YES][[11]](#footnote-11) | YES | YES | YES |
| **Northern Territory** | NO | NO | SOME[[12]](#footnote-12) | SOME[[13]](#footnote-13) | YES | YES |
| **Queensland** | NO | YES | [YES][[14]](#footnote-14) | NO[[15]](#footnote-15) | YES | YES |
| **South Australia** | NO[[16]](#footnote-16) | YES | [YES][[17]](#footnote-17) | YES | YES | YES |
| **Tasmania** | NO | NO | SOME[[18]](#footnote-18) | YES | YES | YES |
| **Victoria** | NO | NO | [YES][[19]](#footnote-19) | YES | YES | YES |
| **Western Australia** | NO | NO | [YES][[20]](#footnote-20) | SOME[[21]](#footnote-21) | NO | YES |

**3 Recommendations by human rights treaty bodies and during the UPR**

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,[[22]](#footnote-22) on the second/third report in 2005[[23]](#footnote-23) and on the fourth report in 2012.[[24]](#footnote-24)

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”.[[25]](#footnote-25)

3.3 ***UPR:*** At the first cycle Universal Periodic Review of Australia in 2011, the Government rejected the recommendation to prohibit corporal punishment in the family in all states and territories.[[26]](#footnote-26) At the second cycle UPR in 2015, recommendations were made to “remove the reservation to the Convention on the Rights of the Child, and prohibit corporal punishment of children in the home and all other settings” and to “reinforce the measures to improve conditions of detention, especially for persons with disabilities and the young, as well as to eliminate corporal punishment”.[[27]](#footnote-27) The Government accepted the second of these but rejected the first.[[28]](#footnote-28)

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

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1. Council of Australian Governments (2009), *Protecting Children is Everyone’s Business, National Framework for Protecting Australia’s Children 2009–2020* [↑](#footnote-ref-1)
2. Council of Australian Governments (2010), *National Plan to Reduce Violence against Women and their Children 2010 – 2022*; and Commonwealth of Australia Department of Social Services (2016) [↑](#footnote-ref-2)
3. Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, in correspondence with the Global Initiative, March 2015 [↑](#footnote-ref-3)
4. The Royal Australasian College of Physicians, Paediatric & Child Health Division (2013), *Position Statement on Physical Punishment of Children* [↑](#footnote-ref-4)
5. 9 May 2012, CRC/C/AUS/Q/4/Add.1, Reply to list of issues, para. 53 [↑](#footnote-ref-5)
6. 29 February 2016, A/HRC/31/14/Add.1, Report of the working group: Addendum, paras. 47 and 48 [↑](#footnote-ref-6)
7. *Police v Gray, [2016] SASC 39*, Judgment issued 21 March 2016 [↑](#footnote-ref-7)
8. 9 May 2012, CRC/C/AUS/Q/4/Add.1, Reply to list of issues, para. 66 [↑](#footnote-ref-8)
9. Prohibition in childminding unconfirmed [↑](#footnote-ref-9)
10. But no explicit prohibition [↑](#footnote-ref-10)
11. Prohibition in childminding unconfirmed [↑](#footnote-ref-11)
12. Prohibited in some education and care settings for under 13s [↑](#footnote-ref-12)
13. Prohibited in some education settings under NT Education and Care Services (National Uniform Legislation) Act 2011 [↑](#footnote-ref-13)
14. Prohibition in childminding unconfirmed [↑](#footnote-ref-14)
15. Prohibited in government schools as a matter of policy [↑](#footnote-ref-15)
16. 2016 South Australian Supreme Court ruling found in favour of “reasonable” corporal punishment by parents [↑](#footnote-ref-16)
17. Prohibition in childminding unconfirmed [↑](#footnote-ref-17)
18. Prohibited in some education and care settings for under 13s [↑](#footnote-ref-18)
19. Prohibition in childminding unconfirmed [↑](#footnote-ref-19)
20. Prohibition in childminding unconfirmed [↑](#footnote-ref-20)
21. Prohibited in government schools [↑](#footnote-ref-21)
22. 10 October 1997, CRC/C/15/Add.79, Concluding observations on initial report, paras. 15 and 26 [↑](#footnote-ref-22)
23. 20 October 2005, Concluding observations on second and third report, CRC/C/15/Add.268, paras. 5, 35 and 36 [↑](#footnote-ref-23)
24. 28 August 2012, CRC/C/AUS/CO/4, Concluding observations on fourth report, paras. 7, 8, 43, 44, 45, 46 and 47 [↑](#footnote-ref-24)
25. 22 May 2008, CAT/C/AUS/CO/1, Concluding observations on third report, para. 31 [↑](#footnote-ref-25)
26. 31 May 2011, A/HRC/17/10/Add.1, Report of the working group: Addendum [↑](#footnote-ref-26)
27. 13 January 2016, A/HRC/31/14, Report of the working group, paras. 136(165) and 136(193) [↑](#footnote-ref-27)
28. 29 February 2016, A/HRC/31/14/Add.1, Report of the working group: Addendum, paras. 47 and 48 [↑](#footnote-ref-28)