BRIEFING ON AUSTRALIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE – October/November 2012

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1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality and practice of corporal punishment of children in Australia, as well as Australia’s rejection of the recommendation to prohibit made during the UPR. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, and the repeated recommendations to Australia by the Committee on the Rights of the Child and those of the Committee Against Torture, we hope the Human Rights Committee will:

• raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Australia, in particular asking what measures have been taken to ensure the law explicitly prohibits corporal punishment in all settings, including the home, and

• recommend to Australia, following its examination of the state party, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Legality of corporal punishment of children in Australia

2.1 Corporal punishment of children in Australia is unlawful as a sentence for crime but it is not prohibited throughout the state in schools, penal institutions or care settings. It is lawful in the home in all states and territories.

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

2.3 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.

2.4 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.

2.5 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.

3 Research on corporal punishment of children in Australia

3.1 Numerous research studies, reports and less formal polls attest to the nature, prevalence, social acceptance and consequences of corporal punishment of children in Australia. For example, a 2009 study looked at all identified child homicides in New South Wales from 1991 to 2005 (165 homicides by 157 offenders). It found that the most common cause of death was physical punishment, which accounted for 36% (59 deaths) over the 14 year period. In almost three in four cases, children had been beaten, thrown or shaken to death by their parents/carers. Children below the age of one are more likely to be killed than older children. The average age of the 59 children killed through physical punishment was 1.5 years. A Government review of “domestic discipline” cases under section 280 of the Criminal Code – which allows parents to use “reasonable force” on their children – found that of the 134 cases of “excessive discipline”

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1 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

in 2006-7, more than half (80) involved the use of implements, including cattle prods. In 85 cases children were hit on the head, in 36 cases they were punched, in 13 kicked.  

3.2 In telephone interviews with a representative sample of 720 adults in 2006, 45% believed it was reasonable to leave a mark on a child as a result of physical punishment; one in 10 believed it was appropriate to use implements such as canes, sticks, belts, or slippers to punish a child; 14% supported the use of a wooden spoon. Two out of five (41%) believed that smacking a child is effective in shaping his or her behaviour, while one in ten believed that smacking a teenager is an effective way of discipline.  

3.3 A survey of parents in Queensland, conducted by the Parenting and Family Support Centre, University of Queensland, found that 71% smacked their children occasionally. In a 2011 online poll of more than 4,000 people, 85% of parents admitted smacking their children. In a 2012 online poll of more than 12,000 people, 92.47% replied “no” to the question “should smacking a child be a criminal offence?”

4 Recommendations by human rights treaty monitoring bodies

4.1 The Committee on the Rights of the Child has three times 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, in 2005 on the second/third report, and in 2012 on the fourth report.

4.2 In 2008, the Committee Against Torture recommended the adoption of legislation prohibiting corporal punishment at home and in all other settings.

4.3 Australia was examined in the first cycle of the Universal Periodic Review in 2011. The Government rejected the recommendation to “introduce a full prohibition of corporal punishment within the family in all states and territories”.

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3 Department of Justice and Attorney General (2008), Review of Section 280 of the Criminal Code
5 Reported in Herald Sun, 19 May 2007
6 Reported in news.com.au, 12 September 2011
7 Reported in The Daily Telegraph, 4 February 2012
8 10 October 1997, CRC/C/15/Add.79, Concluding observations on initial report, paras. 15 and 26; 20 October 2005, Concluding observations on second and third report, CRC/C/15/Add.268, paras. 5, 35 and 36; 19 June 2012, CRC/C/AUS/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 7, 8, 43, 44, 45 and 46
9 22 May 2008, CAT/C/AUS/CO/1, Concluding observations on third report, para. 31