



Global Initiative to
End All Corporal Punishment
of Children

AUSTRALIA – COUNTRY REPORT

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

The near universal acceptance of corporal punishment in childrearing means that legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment and provisions confirming a right to use “reasonable” punishment provide a legal justification for the use of corporal punishment. The following legal defences for the use of corporal punishment should be repealed/amended and the law clarified to state that all forms of corporal punishment are unlawful: New South Wales Crimes Act (s61), Northern Territory Criminal Code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) and the relevant common law defences in Australian Capital Territory and Victoria.

Other legislative measures necessary

Schools – Explicit prohibition should be enacted in relation to all education settings, including public and private schools, in Queensland, Northern Territory and South Australia. In Western Australia, explicit prohibition should be enacted in relation independent schools, in addition to repeal of s257 of the Criminal Code Act and the provisions for corporal punishment in the Country High School Hostels Authority Act Regulations 1962.

Penal system – Explicit prohibition of corporal punishment should be enacted in relation to disciplinary measures in detention centres in Australian Capital Territory and Western Australia.

Alternative care settings – In addition to repeal/amendment of all legal defences for the use of corporal punishment by persons with parental authority (see above), explicit prohibition should be enacted of all corporal punishment in all forms of alternative care in Australian Capital Territory, Northern Territory, Tasmania, Victoria and Western Australia.

DETAILED COUNTRY REPORT

Legality of corporal punishment

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.

In **Tasmania** in 2003, the Law Reform Institute recommended the abolition of the defence of reasonable correction from criminal and civil law. As at December 2008, no changes in the law had been made.

Schools

Corporal punishment in schools is regulated at state level. Corporal punishment 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 prohibited. Draft legislation which would prohibit in all schools and early children centres is due to be introduced into the South Australian Parliament in 2009.

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

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) and **South Australia** (Family and Community Services Regulations 1996, s13). 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) and **South Australia** (by licensing requirements). 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. **Australian Capital Territory** allows for "reasonable" discipline (Children and Young People Act 1999, s366) and does not prohibit corporal punishment.

Prevalence research

A survey of parents in Queensland, conducted by the Parenting and Family Support Centre, University of Queensland, and reported in 2007, found that 71% smacked their children occasionally. When asked how likely parents were to use smacking as a punishment, 43% said they were likely or very likely to give a single smack with their hand; 10% said they were likely or very likely to spank their child more than once with their hand or another object.¹

Telephone interviews with a representative sample of 720 adults aged 18+ were carried out in 2006 by Quantum Market Research on behalf of the Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse at Monash University. The research found that 45% of respondents believed it was reasonable to leave a mark on a child as a result of physical punishment (representing a decrease from the 55% found in similar research in 2002). One in 10 believed that it was appropriate to use implements such as canes, sticks, belts, or slippers to punish a child (representing an increase in support for the use of implements compared with the 4% figure found in the 2002 research); one in seven (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. When presented with the statement

¹ Reported in *Herald Sun*, 19 May 2007

that it is sometimes necessary to smack a naughty child, 69% agreed, representing a decline in support for corporal punishment when compared with similar research in 2002 (75%).²

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee notes with satisfaction that most of its concerns and recommendations (CRC/C/15/Add.79) made upon the consideration of the State party’s initial report (CRC/C/8/Add.31) in 1997 have been addressed. However, it notes that some concerns and recommendations have been insufficiently or partly addressed regarding, inter alia, ... corporal punishment...

“The Committee notes with concern that corporal punishment in the home is lawful throughout Australia under the label “reasonable chastisement” and other similar provisions in states’ legislation. Furthermore, the Committee is concerned that while corporal punishment has been prohibited in government schools and some private ones in most states and territories, it is still lawful in many private education institutions and in both government and private schools in South Australia and the Northern Territory.

“The Committee recommends that the State party:

- a) take appropriate measures to prohibit corporal punishment at home and in public and private schools, detention centres and all alternative care settings in all states and territories;
- b) strengthen awareness-raising and education campaigns, with the involvement of children, in order to promote positive, non-violent forms of discipline and respect for children’s rights, while raising awareness about the negative consequences of corporal punishment.”

Committee on the Rights of the Child

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

“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28 (2), 37 (a), (c), and 39. The Committee is also concerned about the existence of child abuse and violence within the family.

“The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment in private schools and at home. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention. The Committee also believes that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. Further measures should be taken with a view to ensuring the physical and psychological recovery and social reintegration of the victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention.”

Committee Against Torture

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

² Tucci, J., Mitchell, J. & Goddard, C., 2006, *Crossing the Line: Making the case for changing Australian laws about the physical punishment of children*, Ringwood, Victoria, Australia: Australian Childhood Foundation

“The Committee notes that corporal punishment of children is not explicitly prohibited in all States and Territories and may still be applied as ‘reasonable chastisement’.

The State party 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.”

Summary: Legal status of corporal punishment of children in Australia

State/territory	Prohibited in the home	Prohibited in schools	Prohibited in the penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Australian Capital Territory	NO	YES	YES	YES ³	NO
New South Wales	NO	YES	YES	YES	YES
Northern Territory	NO	NO	YES	YES	NO
Queensland	NO	NO ⁴	YES	YES	YES
South Australia	NO	NO ⁵	YES	YES	YES
Tasmania	NO	YES	YES	YES	NO ⁶
Victoria	NO	YES	YES	YES	SOME ⁷
Western Australia	NO	SOME ⁸	YES	NO	SOME ⁹

³ But no explicit prohibition

⁴ Prohibited in government schools as a matter of policy

⁵ Draft legislation which would prohibit under discussion (December 2008)

⁶ Prohibited by policy in child care centres and foster care

⁷ Prohibited in child care centres

⁸ Prohibited in government schools

⁹ Prohibited in child care centres