

Ending family violence in Australia – challenging physical punishment of girls and boys



Global Initiative to
End All Corporal Punishment
of Children

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 70th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2017

Introduction: family violence in Australia and CEDAW's examination of the eighth state party report

Legal protection from domestic violence is provided for in the Family Violence Law 1975 and various state-level laws. But the notion of “reasonable chastisement” is present throughout the territory and physical punishment in the home is not explicitly banned in any state.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Australia. In particular, we hope the Committee will:

- in its list of issues for Australia, ask what progress is being made towards enacting a legal ban of violent punishment in childrearing at the federal and state levels, and
- in its concluding observations on the eighth state party report, recommend that Australia ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys, and to repeal the defence of “reasonable chastisement”.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Australia
 2. Treaty body and UPR recommendations on the issue made to Australia to date.
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1 Laws on domestic violence and corporal punishment of children in Australia

Summary

1.1 Although the Family Violence Law 1975 protects girls and boys from some family violence, it does not protect them from direct suffering of violence in the form of physical punishment.

Detail

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

1.3 The Australian Family Violence Law 1975 defines family violence as “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful” (art. 4). It protects a child from being exposed to family violence but not from direct suffering of violence in the form of physical punishment.

1.4 The aims of the National Framework for Protecting Australia’s Children 2009-2020¹ 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 – 2022² also does not address corporal punishment. 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 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

1.5 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 The Government later effectively rejected the recommendation

¹ Council of Australian Governments (2009), *Protecting Children is Everyone’s Business, National Framework for Protecting Australia’s Children 2009–2020*

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)

³ Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, in correspondence with the Global Initiative, March 2015

⁴ The Royal Australasian College of Physicians, Paediatric & Child Health Division (2013), *Position Statement on Physical Punishment of Children*

⁵ 9 May 2012, CRC/C/AUS/Q/4/Add.1, Reply to list of issues, para. 53

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 In March 2016, a ruling by the South Australian Supreme Court found in favour of “reasonable” corporal punishment of children by parents.⁷

1.6 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Australia to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal all legal defences for its use.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 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 1997,⁸ on the second/third report in 2005⁹ and on the fourth report in 2012.¹⁰

2.2 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”.¹¹

2.3 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.¹² 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”.¹³ The Government accepted the second of these but rejected the first.¹⁴

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⁶ 29 February 2016, A/HRC/31/14/Add.1, Report of the working group: Addendum, paras. 47 and 48

⁷ *Police v Gray*, [2016] SASC 39, Judgment issued 21 March 2016

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

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

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

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

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

¹³ 13 January 2016, A/HRC/31/14, Report of the working group, paras. 136(165) and 136(193)

¹⁴ 29 February 2016, A/HRC/31/14/Add.1, Report of the working group: Addendum, paras. 47 and 48