

APPENDIX 4

LEGISLATIVE PROVISIONS GOVERNING CHILDREN IN INSTITUTIONS

The following legislative provisions from a number of Australian jurisdictions relate to the treatment of children in institutions. Comparisons of what was legislatively permitted regarding punishment of children, with examples of actual abuses as outlined in the report, demonstrate that laws were broken and actions were illegal at various times in many institutions across Australia. An examination of what was specified under statutes regarding inspections of institutions and punishment books, by government welfare agencies, against claims made to the Committee that such inspections were not undertaken, also shows that laws were not always adhered to. Similarly legislative provisions that children in institutions receive an education were often ignored.

This list is not exhaustive in terms of legislation that has governed the care and protection of children in Australia.

Jurisdiction – New South Wales
Legislation – <i>Child Welfare Act 1923</i>
<p>PART IV – INSTITUTIONS</p> <p>s.17 Every institution shall be controlled and administered under the direction of the Minister, and shall once at least in every three months, be visited and inspected by a person appointed by the Minister.</p> <p>s.27 Any person who—</p> <p>(a) ill-treats, terrorises, overworks, or injures any child committed to or an inmate of an institution;</p> <p>(d) having the charge of any such child—</p> <p style="padding-left: 20px;">(i) illegally discharges or dismisses or attempts to discharge or dismiss him from an institution;</p> <p style="padding-left: 20px;">(ii) neglects such child;</p> <p style="padding-left: 20px;">(iii) does not well and truly observe, perform, and keep all the covenants, conditions and agreements contained in any indenture or agreement entered into by him respecting any child and which by such indenture or agreement he has bound himself or agreed to observe, perform or keep,</p> <p>shall be liable to a penalty not exceeding one hundred pounds or to be imprisoned for a period not exceeding six months or both.</p>

Legislation – *Child Welfare Act 1939*

Part XI –

Corporal punishment must not exceed a maximum of three strokes on each hand

- (4) Every effort should be made to enforce discipline without the use of corporal punishment.
- (5) Punishment by way of isolated detention shall be used only in exceptional cases, and subject to the following conditions:
- (a) no inmate under fourteen years of age shall be placed in isolated detention;
 - (b) the room used for the purpose shall be light and airy and kept dimly lighted after nightfall;
 - (c) some form of useful occupation shall be provided;
 - (d) some means of communication with a member of the staff shall be provided;
 - (e) if the isolated detention is to be continued for more than twenty-four hours the circumstances shall immediately be reported to the Director;
 - (f) no inmate shall be placed in isolated detention for two or more consecutive periods in any one fortnight.
- (6) Corporal punishment shall be subject to the following conditions:—
- (a) it shall be inflicted only with a cane of a form and kind approved by the Minister;
 - (b) it shall be inflicted by an officer or instructor appointed by the superintendent and in his presence;
 - (c) it shall not be inflicted in the presence of other inmates;
- (9) Striking, cuffing, shaking, or any other form of physical violence, other than that permitted by this Act, or under the general rules of law, is prohibited
- No inmate shall be punished by being dosed with medicine or any other substance
- No inmate shall be allowed to administer any form of punishment to any other inmate.

Jurisdiction – Victoria**Legislation – *Children's Welfare Act 1954*
Regulations****PART V – ESTABLISHED RECEPTION CENTRES CHILDREN'S HOMES AND JUVENILE SCHOOLS**

46. Corporal punishment shall not be imposed on any inmate of reception centre children's home or juvenile school. Correction for acts of misbehaviour shall be determined by the Officer in Charge and shall be restricted to fatigue duties, deprivation of privileges, variation of diet, or temporary isolation. Any variation of diet or temporary isolation for a period of more than 24 hours shall be subject to the approval of the medical officer of the centre home or school.

PART VI – APPROVED CHILDREN'S HOMES JUVENILE SCHOOLS AND JUVENILE HOSTELS

51. At any time after the declaration by the Minister of any place as an approved children's home juvenile school or juvenile hostel, the Director may cause an examination to be made for the purpose of determining –
- (a) the nature and suitability of the sleeping dining recreational educational and other facilities provided for the inmates;

- (b) the adequacy or otherwise of the bathroom kitchen laundry and other domestic provisions;
- (d) the method in operation for the provision of medical attention;
- (e) the procedure adopted for the correction of misbehaviour on the part of the inmates;
- (f) in respect to a children's home, the extent to which inmates are required to perform day to day duties in the establishment as distinct from any temporary tasks which could be regarded as of a training or disciplinary nature;
- (g) in respect to a juvenile school, the methods of training, education and general rehabilitation employed;
- (h) generally, the methods of organization and management operating in any approved children's home juvenile school or juvenile hostel and the adequacy or otherwise of the provisions existing for the care and welfare of the inmates;

55. Corporal punishment shall not be imposed on any ward placed in an approved children's home or juvenile school. Correction for acts of misbehaviour shall be at the direction of the person in charge and shall be restricted to fatigue duties, deprivation of privileges, variation of diet or temporary isolation provided that any variation in diet or temporary isolation shall not exceed a period of 24 hours.

[Note: 46 and 55 were amended in November 1955 to exclude the variation of diet as a correction for acts of misbehaviour].

Thirteenth Schedule

BOARDING-OUT CONDITIONS

1. The Foster Mother shall at all times provide the child with adequate and proper food clothing and sleeping accommodation and, generally, shall treat the child as an integral member of the family.
3. When necessary, medical attention for the child must be promptly obtained by the Foster Mother and the instructions of the Medical Practitioner must be strictly complied with by her.
5. The Foster Mother shall exercise the utmost care and understanding in training the child in good habits and, generally, shall at all times have due regard for the development of the child's personality and physical and moral welfare.

Legislation – Social Welfare Act 1960

REGULATIONS

PART IV – ESTABLISHED RECEPTION CENTRES CHILDREN'S HOMES SCHOOLS AND HOSTELS

- 36 (a) For the purpose of maintaining discipline, officers of established children's homes, reception centres, schools or hostels shall exercise the utmost restraint, patience and understanding in the control and supervision of children and young persons under their care.
- (b) Initially, correction shall be by way of explanation and encouragement.
 - (c) The Director-General may authorize the Superintendent or Matron of an established children's home, reception centre, school or hostel (and upon application, pursuant to Regulation 48, the Superintendent or Matron of an approved children's home, approved school or approved hostel) to use such of the following disciplinary measures as he determines, within the meaning of this Regulation, for the preservation of discipline:-

- (i) fatigue duties;
 - (ii) deprivation of privileges;
 - (iii) subject to the provisions of Regulation 38 hereafter, corporal punishment.
- (d) Temporary isolation shall not be imposed upon any inmate of an established children's home, reception centre, school or hostel, provided that sending an inmate to his or her own room under supervision for a period not exceeding two hours shall not be regarded as temporary isolation for the purpose of this sub-section.
- 37 Corporal punishment as a corrective measure shall be authorized only to meet major acts of misconduct or repeated insubordination. Every instance of behaviour considered to require such correction shall be reported by the officer or officers observing same to the Superintendent or Matron who, after interviewing the inmate concerned and being satisfied that medical, psychological or psychiatric advice would not be more appropriate and that in the interests of discipline generally immediate action is necessary, shall order the nature and extent of the corrective measures to be adopted.
- 38 (a) Corporal punishment shall not be imposed on girls, or on boys under the age of ten years.
- (b) Corporal punishment shall not exceed six strokes on the hand or breech with a leather strap of a length, width and texture approved by the Director-General, and shall only be administered in private by an officer detailed by the Superintendent or Matron, and in the presence of another officer acting as witness.
- (c) Smacking with the open hand the hand or breech of a child shall not be regarded as corporal punishment within the meaning of this Regulation.
- (d) Boxing of the ears and other forms of physical punishment other than those provided under this Act and the general rules of law are prohibited.
- 39 (a) A Correction Book shall be maintained by the Superintendent or Matron of each established children's home, reception centre or school, and in every case where corporal punishment is ordered pursuant to this Regulation the name of the inmate concerned shall be entered therein, together with the particulars of the behaviour, the nature and extent of the corrective measures ordered, the signature of the Superintendent or Matron, as the case may be, the signature of the officer administering same and the witnessing officer. This book shall be examined and noted by the Director-General or other Senior Officer deputed by him at intervals not exceeding six months.

Jurisdiction – Queensland

Legislation – *State Children Acts 1911-1928* Regulations

II – INSTITUTIONS

2. The Director or inspector may at any time inspect any institution and any part of any institution established or licensed under the Act. Such inspection may be made as often as occasion may require, and at least once every month. All officers of each institution shall afford every assistance to such person in the proper performance of his duties, which are to see that the Regulations are carefully observed; that all matters connected with the industrial training of the inmates are properly carried out; and to report any defects or improvements he may deem necessary for the comfort or benefit of the inmates.
23. The superintendent of any institution may punish any State child guilty of misconduct. All complaints and punishments whatever shall be carefully recorded and entered in the

punishment-book provided for that purpose, and such book shall be produced to the Director or inspector whenever he visits the institution.

- 24 Corporal punishment shall be administered as seldom as possible, and shall be only resorted to when absolutely necessary for discipline, and not for first offences unless of a grave nature. No corporal punishment shall be inflicted except by direction and in the presence of the superintendent.

IV – CHILDREN BOARDED-OUT WITH FOSTER-MOTHERS

- 43 Children boarded-out must be allowed to play at reasonable times when not attending school, and, if employed in any way, must only be placed at such work as will afford them easy healthful exercise. It must be distinctly understood that the children are not to be made the drudges of the households in which they are placed.

V – CHILDREN APPRENTICED OR PLACED OUT FOR HIRE

- 73 Every child apprenticed or placed out for hire shall have the right to a private interview with the inspector or visitor, and any foster-parent who prevents or attempts to influence the child from making a correct statement shall be guilty of an offence under these Regulations.

IX – GENERAL

- 102 It shall be the duty of every person with or to whom a State child is placed out or apprenticed to report at once to the Director or district officer any interference with the child under his charge by relatives or friends.

Legislation – *Children's Services Act 1965*

DUTIES OF THOSE IN CHARGE OF INSTITUTIONS

Health and welfare of children:

- s.69(1): A person having a child in his or her charge shall not ill-treat, neglect, abandon or expose the child in a manner likely to cause the child unnecessary suffering or to injure the child's physical or mental health nor suffer the child to be so ill-treated, neglected, abandoned or exposed.

Education and employment:

- Reg. 16. The governing authority of a licensed or established institution must ensure that all children attend school as required by law and the Director must ensure that the child is provided with necessary textbooks.

Punishment of children in institutions:

Reg. 23.

- (5). Corporal punishment shall be subject to the following conditions:
- (a) It shall not be inflicted on any female child;
 - (b) It shall be inflicted not otherwise than with a leather strap of a type approved by a director or an Officer of the Department so authorised by him and shall be applied over the child's ordinary trousers;
 - (d) It shall be administered as little as possible and only when absolutely necessary for discipline;
 - (e) It shall not be inflicted in the presence of other children in the institution;
- (6). A child shall not be punished by:
- (a) Being dosed with medicine or any other substance; or
 - (b) Being compelled to hold himself in a constrained or fatiguing position.

Jurisdiction – South Australia

Legislation – *Maintenance Act 1926* Regulations

State children's homes and institutions

INSPECTORS & INQUIRING OFFICERS

19. The Inspectors and Inquiring Officers shall visit, as directed by the Chairman, all State Children, shall see that the regulations are fully complied with, that the homes are satisfactory as regards cleanliness, accommodation, and moral surroundings, and that children are kindly treated and well fed and clothed by the foster parents, employers, or other persons having the care of them.

PUNISHMENT OF STATE CHILDREN (BOYS)

103. When an inmate of any institution has been guilty of any grave moral or other offence which in the opinion of the Superintendent or officer in charge, renders necessary or expedient the isolation and separation of such inmate from all other inmates, a detention room may be used for the purpose, and the Superintendent or officer in charge may, if he should deem it necessary or expedient, order such inmate to be detained for a period not exceeding 48 hours.

104. In all cases in which corporal punishment is directed to be inflicted under these regulations care must be taken that the health of the boy to be so punished will not suffer by its infliction.

PUNISHMENT OF STATE CHILDREN (GIRLS)

106. No person shall administer corporal punishment to any girl in any institution under the control of the Board.
107. Any girl guilty of violent conduct may, with the approval of the Matron, be detained in a detention room for a period of 48 hours. Should any further detention be necessary, it shall not exceed an additional 24 hours, and then only on the consent of the Chairman.

Legislation – *Community Welfare Act 1972* Regulations

Part IX – HOMES AND CENTRES

40. ...Punishment of a child shall be normally by deprivation of a privilege or privileges. No child shall be deprived of food or clothing as a punishment. No child shall receive corporal punishment.
- 41 Detention rooms shall be used only in accordance with the following conditions:
- (a) a resident of a home under the control of the Minister who is under the age of 12 years shall not be placed in a detention room for any period.

Jurisdiction – Western Australia

Legislation – *Child Welfare Act 1907-1927* Regulations at 1934

Institutions:

6. Subject to the control and direction of the Secretary, the Officer-in-charge of a Government institution shall be responsible for the custody of all children admitted therein, and shall see that all the officers carry out their duties in a proper manner.
7. The manager of a subsidised institution shall be responsible for the custody of all children admitted therein, and shall see that all officers carry out their duties in a proper

manner.

- 8 The manager of an institution shall promptly report to the Secretary the serious illness or death of a child, and any other special event which may occur.
- 9 The inmates shall be supplied with ample plain, wholesome food.
- 12 All inmates of school age must attend an efficient school.
- 13 An inspector of the Education Department shall at least once yearly test the attainments of all inmates who are wards of the Department, and submit a report to the Secretary.
- 19 The discipline enforced shall be mild and firm. All degrading and injurious punishments shall be avoided. The 'boxing' of children's ears is strictly forbidden, as is also the corporal punishment of girls of twelve years old and over. Corporal punishment shall not be inflicted upon girls below the age of twelve years, except under very extreme circumstances.
- 20 (a) Corporal punishment may, as a last resort, be inflicted in the presence of a witness by the manager or by the schoolmaster, under the direction and on the responsibility of the manager.
- 20 (b) Corporal punishment may be administered for offences against morality, gross impertinence, or for persistent disobedience, but not for trivial breaches of discipline or dullness in learning.
- 20 (c) For the purpose of this Regulation 'corporal punishment' means punishment by means of strokes with a cane inflicted on the hands.
21. Every case of corporal punishment must be recorded in the punishment book immediately after the infliction thereof, giving date, details of the offence, number of strokes administered, and signature of witness.
- 22 (a) Discipline may be generally maintained by the granting of privileges and the following of light punishments:
 - (1) forfeiture of privileges; (2) extra school tasks or drill; (3) confinement in a room with reasonable access of light and air.

As to (3), no inmate of any subsidised institution shall be confined for a longer period than four hours.
- 30 (2) The dormitories and dining-rooms shall be made as bright and homelike as possible by the provision of pictures, flowers, small furnishings, etc.
- 31 The Secretary, or an officer of the Department authorised by him, may inspect any institution established or subsidised under the Act as often as occasion may require, and shall do so at least once in every six months. All matters connected with the industrial training of the inmates, the general management, discipline, admissions, discharges, etc, shall be dealt with by him; and all books and journals shall be open for his inspection.

Wards Apprenticed or placed out at Service

- 42 (1) Every ward placed out or apprenticed shall be visited once at least in every six months by a visitor or some person authorised in that behalf by the Secretary, and such visitor or person shall be allowed every facility for an inspection of the home and conditions of the ward's employment.
- 43 Every child placed out for service or apprenticed shall have the right to a private interview with the Inspector or other visitor, and any employer who prevents or attempts to influence a child from making a correct statement shall be guilty of an offence under these Regulations.

Wards Boarded-out with Foster-parents

- 78 A ward boarded-out with a foster-parent shall be fed, lodged, and clothed to the satisfaction of the Secretary... A ward shall be allowed to play at reasonable times when not attending school, and, if employed in any way, must only be placed at such work as will afford easy healthful exercise. It must be distinctly understood that the ward is not to be made a drudge of the household.
- 79 (1) Every ward boarded-out with a foster-parent shall, if possible, be visited at least once in every three months by an officer of the Department or a visitor.
- 80 (1) Every ward over the age of six years boarded-out with a foster-parent shall be sent regularly to school until fourteen years old, or until he has passed the compulsory standard required by the Education Act for the time being in force.
- 80 (2) School teachers are required to furnish a report every three months, on Form No. 11, as to such ward's attendance, progress, behaviour, and appearance.
- 81 The Secretary, or any person authorised in writing by him, may visit and converse with wards of the Department wherever they may be, and, if necessary, question them as to whether they are properly treated, fed, and clothed.

Jurisdiction – Tasmania

Legislation – *Child Welfare Act 1960*

Part IV – Wards of the State:

Section 47: No person shall wilfully ill-treat or neglect a ward of the State placed out with him under this Act or cause such a ward of the State to be ill-treated or neglected. Penalty: One hundred pounds or 12 months imprisonment.

Part VI – Children's Boarding Homes and Day Nurseries

S.54: Licences to be issued for children's boarding homes and day nurseries.

S.60: Inspections to be carried out every 3 months.

Part VII – Protection, and Regulation of Employment, of Children

Section 66: No person, who has attained the age of sixteen years and has the custody, care or control of a child who has not attained that age shall wilfully ill-treat, neglect, abandon, or expose that child, or cause that child to be ill-treated, neglected, abandoned or exposed.