



Dissenting Report—Mr Kim Wilkie MP, Senator Linda Kirk, Senator Gavin Marshall, Senator Ursula Stephens, Hon Dick Adams MP, Mr Martyn Evans MP and Senator Andrew Bartlett

The following Committee members: Mr Kim Wilkie MP, Senator Linda Kirk, Senator Gavin Marshall, Senator Ursula Stephens, Hon Dick Adams MP, Mr Martyn Evans MP and Senator Andrew Bartlett, agree with most of the findings of the Committee's report on the inquiry into the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Optional Protocol), but believe that certain sections of the report and the recommendation do not reflect the views of all Committee members.

The dissenting Committee members note the strong support in the evidence for Australia's ratification of the Optional Protocol. Specifically, 17 of the 20 submissions received support Australia's ratification. The dissenting Committee members were persuaded by arguments raised in those submissions, namely

- maintaining Australia's leadership in human rights standards
- comments on the Australian Government's reservations in relation to the Optional Protocol.

Australia's leadership in human rights standards

The dissenting Committee members strongly support the views expressed in the evidence, as set out in the report, that Australia's ratification of the Optional Protocol is an important act of leadership, and significant step in maintaining Australia's good human rights standards.

The dissenting Committee members support Ms Nicole Bieske's statement that Australia should

set an example. We need to show by our conduct that we have nothing to hide and open it to other countries. As time goes on and as more countries ratify, there is a kind of snowballing process. It becomes significantly discussed at an international level and there is increasing pressure upon other countries to ratify.¹

The dissenting Committee members believe that Australia is already in substantial compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and therefore has nothing to fear from becoming a State Party. Further, in light of Australia's recent appointment as Chair of the UN Human Rights Commission, the dissenting members believe that Australia should ratify the Optional Protocol.

Comments on the Australian Government's reservations in relation to the Optional Protocol

Procedural concerns

The dissenting Committee members are critical that Australia was not represented at the UN Working Group to develop the text of the Optional Protocol in 2001 and 2002. Further, the dissenting members are critical of the Government's reasoning that the UN Working Group did not warrant the focus of Australia's 'limited resources' and was not seen as a 'productive' exercise.

Substantive concerns

The dissenting Committee members do not support the Government's substantive concerns in relation to the Optional Protocol.

1 Ms Nicole Bieske, *Transcript of Evidence*, 9 February 2004, p. 23.

The dissenting members support the evidence presented to the Committee that ratification of the Optional Protocol is likely to result in fewer complaints being taken to HREOC and the UN, and that it would enhance and strengthen existing international mechanisms.

Conclusion

For the reasons outlined above, the dissenting Committee members believe that, based on the evidence presented to the Committee, it is in Australia's national interest to continue to work with the UN and ratify the Optional Protocol. Therefore the dissenting Committee members recommend that Australia take appropriate binding treaty action.

Recommendation

The dissenting Committee members support the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and recommend that binding treaty action be taken.