

Human Rights Committee

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Submission by the NSW Young Lawyers Human Rights Committee

*Joint Standing Committee on Treaties
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Introduction

1. The NSW Young Lawyers Human Rights Committee (YLHRC) welcomes the opportunity to make a submission.
2. We note that Australia ratified the Convention *against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) on 8 August 1989.
3. In its report to the UN Committee Against Torture in 2008 the Australian Government indicated ‘there were plans to accede to *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.’¹
4. Australia signed the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) on 19 May 2009.
5. The YLHRC refers to Australia’s acceptance in June 2011 of six Universal Periodic Review (UPR) recommendations made by United Nations Member States calling on Australia to ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).²
6. We further refer to and endorse the letter dated 21 December 2011 to the Commonwealth Attorney General, the Hon Nicola Roxon MP, sent on behalf of a number of Australian legal and human rights organisations urging the Australian Government to ratify the OPCAT.³
7. We note the Australian Government’s repeated statements of commitment to human rights and to strengthening Australia’s engagement with the United Nations.⁴ The YLHRC submits that to ratify the OPCAT is an important way of further demonstrating this commitment.

¹ United Nations Committee Against Torture, *Summary Record of the 815th meeting, Consideration of Reports Submitted by States Parties under Article 19 of the Convention - Third periodic report of Australia*, CAT/C/SR.815, 8 May 2008 at paragraph 33 accessed on 23 March 2012 at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/415/86/PDF/G0841586.pdf?OpenElement>

² UPR Recommendations 86.1 – 86.6 Report of the Working Group on the Universal Periodic Review, Australia, Appendix, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/17/10/Add.1, 31 May 2011 at 5 accessed on 23 March 2012 at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf

³ Letter to Attorney General, Ratification of OP CAT, 21 December 2011 accessed on 13 March 2012 at: <http://www.cla.asn.au/Article/2011/OPCAT.pdf>

⁴ United Nations Committee Against Torture, *Summary Record of the 815th meeting*, Note 1 at paragraph 33; Former Minister for Foreign Affairs the Hon Mr Kevin Rudd, ‘Australia’s foreign policy priorities and our candidature for the UN Security Council’, *Speech to the National Press Club*, Canberra, 1 June 2011 accessed on 23 March 2012 at: http://foreignminister.gov.au/speeches/2011/kr_sp_110601.html ; Former Minister for Foreign Affairs the Hon Mr Kevin Rudd, ‘Australia’s Engagement in Improving Global Human Rights’, *Australian Government and NGO Forum on Human Rights*, Parliament House Canberra, 22 June accessed on 23 March 2012 at: http://www.foreignminister.gov.au/speeches/2011/kr_sp_110622.html

8. YLHRC strongly supports Australia's ratification of the *OPCAT* which will strengthen the protection of persons deprived of their liberty against acts of torture and other cruel, inhuman or degrading treatment or punishment.

About NSW Young Lawyers and the Human Rights Committee

9. NSW Young Lawyers (**NSWYL**) is the largest body of young and newly practising lawyers, and law students in Australia. NSWYL supports practitioners in their early career development in numerous ways, including by encouraging involvement in its 15 separate committees, each dedicated to a particular area of practice. Membership is automatic for all NSW lawyers under the age of 36 and/or in their first five years of practice, as well as law students.
8. The NSWYL Human Rights Committee (**YLHRC**) comprises of a group of approximately 500 lawyers and law students interested in Australian and international human rights issues. The objectives of the Committee are to raise awareness about human rights issues and provide education to the legal profession and wider community about human rights. Members of the Committee share a commitment to effectively promoting and protecting human rights.

Reasons for ratifying OPCAT

9. By ratifying *OPCAT*, Australia will agree to international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture (**SPT**).⁵ Australia will also commit itself to establishing an independent National Preventive Mechanism (**NPM**) to conduct inspections of all places of detention.⁶
10. YLHRC strongly supports the proposal that Australia ratify *OPCAT*, as doing so will:
 - provide a mechanism to better ensure that detaining authorities are accountable for conditions in places of detention;⁷
 - strengthen protection against torture and other cruel, inhuman or degrading treatment or punishment;⁸
 - require State Parties to examine the recommendations of the SPT and enter into dialogue with it on possible implementation measures;⁹ and
 - ensure greater transparency.¹⁰

⁵ Articles 1 & 2 *OPCAT*

⁶ Articles 3, 19 & 20 *OPCAT*

⁷ Articles 11, 12, 14, & 16(4) *OPCAT*

⁸ Articles 4 & 19 *OPCAT*

⁹ Article 12(d) *OPCAT*

¹⁰ Articles 14 & 23 *OPCAT*

Additional Comments

11. YLHRC refers to a seminar hosted by the Australian Human Rights Commission and Asia Pacific Forum on the topic of implementing OPCAT and supports the recommendations made about the development of the NPM. This includes: NGOs playing a key role in designing the NPM and implementing OPCAT; the adequate resourcing of the NPM; and that the independence of the NPM 'must be actual and perceived, especially from the perspective of the rights-holder'.¹¹

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¹¹ Ben Schokman, *Implementing OPCAT in Australia*, Seminar hosted by the Australian Human Rights Commission and the Asia Pacific Forum of National Human Rights Institutions, Sydney, 25 November 2009 accessed on 23 March 2012 at: http://www.humanrights.gov.au/human_rights/opcat/opcat_seminar2009.html#Heading212