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Dear Joint Standing Committee,

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

Thank-you for the opportunity to make a submission regarding Australia's possible ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT').

It is of our opinion that the ratification of OPCAT is an important step in the demonstration of Australia's commitment to the seeking out and eradication of torture in all its forms as per the Government's intention when ratifying the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention'). Such ratification is particularly important for the future of Australia's Aborigines and Torres Strait Islander population, as will be indicated below.

We applaud the National Interest Analysis' ('NIAs') recommendation to ratify and acknowledge the importance and weight of the decision making powers of the Joint Standing Committee ('the Committee') on this matter.

It is on this note that we turn to our own convictions and reasons for supporting the ratification of OPCAT.

Overarching Reasons to Ratify

When the Committee initially considered ratifying OPCAT in 2004, numerous submissions cited Australia's long standing status as a leader in human rights standards and how ratifying OPCAT would highlight Australia's international commitment to the eradication of torture. Further submissions identified how the proposed domestic mechanisms (the National Preventive Mechanisms or 'NPMs') would strengthen existing regulatory and inspectorial agencies, leaving no doubt in domestic eyes Australia's position on torture and other forms of ill-treatment of those deprived of liberty. Ratification would be instrumental in demonstrating Australia's co-operation with the United Nations' Human Rights Systems.

For these reasons, and others to be presented, we respectfully urge the Committee to reconsider their previous standing on the ratification of OPCAT, and highlight the feelings of those in dissent in the Committee's original consideration.

The movement towards ratification is aided by the lessons learned from other countries and their experience in the ratification and implementation of obligations under OPCAT. One of our closest neighbours, New Zealand, has been at the fore of the OPCAT implementation movement. As the Committee is no doubt aware, New Zealand has been voted a member of the Sub-committee for the Prevention of Torture ('SPT') and had great success in the establishment of OPCAT-compliant NPMs within four (4) years of ratification.

At a recent conference hosted by Monash University Law School – *Implementing Human Rights in Closed Environments 2012* – Natalie Pierce (the Legal Advisor to the Chair of the Independent Police Conduct Authority) of New Zealand spoke to this organisations experience in the implementation, application and practical obligations under OPCAT. Pierce's paper identified how current mechanisms for review and oversight were strengthened through the utilisation of OPCAT-compliant NPMs and how such mechanisms were particularly effective in regards to the seldom considered closed environments such as police cells. Pierce's propositions are further reinforced by the findings of the New Zealand Human Rights Commission annual report 2010.

It is with consideration of New Zealand's position that we turn to our particular interest in the ratification of OPCAT and the implementation of OPCAT-compliant NPMs.

Aborigines and Torres Strait Islander Peoples and OPCAT

The over-representation of Aborigines and Torres Strait Islander ('Indigenous') peoples in Australian prisons is an issue the Committee is undoubtedly aware of. According to the latest *Prisoners in Australia* report compiled by the Australian Bureau of Statistics, Indigenous peoples represented over a quarter of the prison population (26%; 7,656 prisoners in total), constituting 1,868 imprisoned Indigenous adults for every 100,000 Indigenous adults in Australia. Alarming, at 30 June 2011, the rate of Indigenous imprisonment had remained high, with Indigenous incarceration being 14 times that of non-Indigenous persons (130 per 100,000).

The consistent problem faced in regards to Indigenous issues is that much of the theorising comes from non-Indigenous peoples. It is because of this that there is little true understanding of how the regimes forced upon those of Indigenous decent impact on their well-being, their survival and their way of life. Such considerations are especially relevant to those Indigenous people who live what could be called a 'modified traditional' life, where the cultural aspects of traditional life are influenced by 'modern' or 'introduced' catalytic factors such as alcohol, drugs, modern medicines and technology. Ratification of OPCAT provides a mechanism to ensure the neo-colonisation of Aborigine and Torres Strait Islander peoples is not continued via a criminal justice system that can be structurally racist.

As it stands, we have no knowledge of what 'torture' or other expressions such as 'cruel, inhuman or degrading treatment or punishment' mean to Indigenous persons. As such, the implementation of OPCAT could be instrumental in heightening ours (as researchers) and policy makers' knowledge of what human rights is in the Indigenous context. This knowledge would aid in the proper and humane treatment of Indigenous persons in a detention orientated context.

This lack of understanding should not be a barrier to the implementation of a protocol that seeks to strengthen domestic oversight and review and allow for the recommendations of those well-versed in human rights and the setting of international human rights standards. Instead, it should encourage the welcoming of change and heightened understanding of human rights in various contexts and settings, especially in regards to race, sex, and ancestry.

Support for Ratification

For all of the reasons highlighted in the Committee's previous considerations of the ratification of OPCAT, and for those proposed herein regarding the Australian Indigenous populace, we would urge the Committee to reconsider its previous reservations to ratification. As such we are strongly in support of the ratification of OPCAT.

Respectfully,

Ms Sjharn Leeson, Dr John Rynne and Dr Catrin Smith.