



Australian Government
Attorney-General's Department

Secretary

03/609

3 February 2004

OPCAT Submission No:15.....

Dr Andrew Southcott MP
Committee Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

RECEIVED
04 FEB 2004

BY:.....

Dear Dr Southcott

Inquiry into the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I refer to your letter to the Attorney-General dated 18 December 2003 concerning the Committee's inquiry into the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Attorney-General replied on 27 January 2004.

I am pleased to enclose a submission to the inquiry. This submission is made jointly by the Attorney-General's Department and the Departments of Foreign Affairs and Trade, and Immigration and Multicultural and Indigenous Affairs.

Yours sincerely

Ian Govey
A/g Secretary

February 2004

OPCAT
Submission No:15.....

Inquiry by the Joint Standing Committee on Treaties

**Submission by the Attorney-General's Department and Departments of
Immigration and Multicultural and Indigenous Affairs and
Foreign Affairs and Trade**

**The Optional Protocol to the Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment**

Introduction

Australia supports international action against torture and deplores such behaviour wherever and whenever it occurs. Australia has ratified the International Covenant on Civil and Political Rights (the ICCPR), which proscribes torture and other cruel, inhuman or degrading treatment or punishment. Australia has also ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT) which requires States Parties to take effective measures to prevent acts of torture and to ensure that acts of torture are offences in domestic criminal law. Australia has complied with this obligation in the *Crimes (Torture) Act 1988*.

Under the CAT the Committee Against Torture may examine any situation where there are well-founded indications that torture is being systematically practiced and submit observations. Before such an examination is made, the Committee will seek the co-operation of the State Party concerned and may visit the State Party only with the consent of that Party.

Australia has traditionally co-sponsored the resolution on torture tabled by Denmark each year at the United Nations Commission on Human Rights and at the Third Committee of the UN General Assembly. Australia has also actively engaged in negotiations with a view to achieving the widest possible support for the resolution.

On a bilateral level, torture has been examined during the human rights dialogues Australia conducts with China, Vietnam and Iran. Through the Human Rights Technical Cooperation Program with China, Australia has carried out activities which will assist the Chinese Government in its efforts to eradicate torture.

**The Optional Protocol to the Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment**

The Optional Protocol to the Convention (Optional Protocol) constitutes a standing invitation to a Sub-Committee of the Committee Against Torture established by the Optional Protocol, to visit places where people are deprived of their liberty in the territory of States Parties. As such, visits may be conducted in the absence of well-founded indications of torture, and without the consent of the State Party concerned to the specific visit proposed. The Optional Protocol therefore establishes an additional monitoring mechanism to those found in the CAT itself.

The Australian Government has not made a decision about whether it will ratify the Optional Protocol. The Government has, however, expressed its concerns with both substantial and procedural aspects of the Optional Protocol.

Procedural Issues

In 1992, a UN Working Group was established by the Commission on Human Rights (CHR) to develop a draft optional protocol to the CAT, using as a basis for its discussions a draft text submitted by the Government of Costa Rica at the Commission's forty-seventh session.

The Working Group met annually over a ten year period and Australia participated in the first eight sessions. Australia did not attend the 2001 and 2002 meetings as there was little likelihood of useful progress at those meetings.

The Working Group failed to reach agreement on a draft text. In the absence of an agreed text, the Chair of the Working Group independently prepared a draft text and tabled that text at the last meeting of the Working Group in January 2002. The Working Group did not consider in detail nor reach consensus on the Chair's text.

Nevertheless the CHR adopted by vote the Chair's text. It was not adopted by consensus, as is desirable for human rights instruments to ensure broad support for the standards elaborated.

The voting pattern at CHR shows a close vote (29 States voted for, 10 voted against and 14 abstained). Australia was not a member of CHR when the vote took place.

At the UN Economic and Social Council (ECOSOC), Australia supported a US proposal to resubmit the draft Optional Protocol to the CHR Working Group for further consideration. That proposal was not successful. Australia voted against the adoption of the Optional Protocol, but it was adopted by vote on 24 July 2002 (35 voted for, 8 voted against and 10 abstentions).

The Third Committee of the UN General Assembly adopted the Optional Protocol on 7 November 2002 (104 States voted for, 8 voted against and 37 abstained). Australia abstained and made an Explanation of Vote (EOV) setting out our procedural and substantive concerns with the Optional Protocol. The Explanation of Vote is **Attachment A**.

Substantive Concerns

A review of Australia's interaction with the UN treaty body system found that the UN human rights bodies needed reform, notably:

- to ensure adequate recognition of the primary role of democratically elected governments as it is governments which take on human rights obligations and are responsible for fulfilling them, and the subordinate role of non government organisations in this respect
- to ensure that committees and individual members work within their mandates
- to reduce duplication and improve coordination between committees, and
- to address the inadequate secretariat resources to support the committees' work.

The Government announced a range of measures it would pursue to improve the effectiveness of the UN treaty body system in August 2000.

An important aspect of the treaty body reform initiative is that Australia will only agree to visits to Australia by treaty committees where there is a compelling reason to do so. This is to ensure that committee resources are directed to areas of greatest need. Ratification of the Optional Protocol would constitute a standing invitation for the Sub-Committee to visit, specifically, Australian prisons and other facilities. The Optional Protocol is inconsistent with Australia's policy on visits to Australia by UN committees as it does not balance the unrestricted right of these visits with appropriate checks to ensure that this power is not abused.

The Current Status of the Optional Protocol

The Optional Protocol provides that 20 ratifications are necessary before it enters into force. To date only three States have ratified the Optional Protocol. The list of States that have signed and ratified the Optional Protocol is **Attachment B**.

Attachment A

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

Explanation of Vote

Australia strongly supports international action against torture and deplores such behaviour wherever and whenever it occurs. However, Australia has serious concerns about the process which has resulted in Third Committee considering the Optional Protocol to the Convention Against Torture, as well as having concerns about the substance of the Protocol's text. Australia voted against the Protocol in the UN Economic and Social Council on 24 July 2002 to ensure our concerns were widely recognised and understood. Having done so, and keeping in mind Australia's opposition to the use of torture, Australia is able to abstain in this vote on the Protocol, but seeks to again emphasise our procedural and substantive concerns.

Procedurally, the Protocol was earlier adopted by a vote of the UN Commission on Human Rights (CHR) on 22 April 2002. It is the norm, and Australia's strong preference, that human rights treaties be adopted by consensus at CHR to ensure they are broadly supported. Australia remains particularly concerned that this Protocol was adopted by a vote. The text voted upon by CHR was only tabled at the most recent meeting of the working group established to draft the Protocol, held from 14 to 25 January 2002, and was not considered in detail at that meeting.

Substantively, becoming a Party to the Protocol would constitute a standing invitation for the Sub-Committee established under the Protocol to visit that State's prisons and other similar facilities. From Australia's point of view, this would be inconsistent with the Government's decision that it will only consent to such visits where there is a compelling reason to do so. This decision was taken as part of Australia's review of its interaction with UN human rights treaty committees and special procedures. Like others, Australia has concerns about the operation of such UN committees and procedures, and has proposed a number of initiatives to improve their effectiveness.

Australia is unable to support the particular mechanism proposed in the Protocol because of these procedural and substantive concerns. However, we remain strongly committed to seeking more appropriate international mechanisms to eradicate torture.

Attachment A

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

Explanation of Vote

Australia strongly supports international action against torture and deplores such behaviour wherever and whenever it occurs. However, Australia has serious concerns about the process which has resulted in Third Committee considering the Optional Protocol to the Convention Against Torture, as well as having concerns about the substance of the Protocol's text. Australia voted against the Protocol in the UN Economic and Social Council on 24 July 2002 to ensure our concerns were widely recognised and understood. Having done so, and keeping in mind Australia's opposition to the use of torture, Australia is able to abstain in this vote on the Protocol, but seeks to again emphasise our procedural and substantive concerns.

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Sidley, Kristine (REPS)

From: Cochran, Jenny (REPS)
Sent: Wednesday, 4 February 2004 10:03 AM
To: Committee, Treaties (REPS)
Subject: FW: Joint Submission - AGD, DFAT, DIMIA - Inquiry OP to CAT

Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

Ph: (02) 6277 4618
Fax: (02) 6277 2219

-----Original Message-----

From: Ramsay, Alice [mailto:Alice.Ramsay@ag.gov.au]
Sent: Wednesday, 4 February 2004 9:59 AM
To: Cochran, Jenny (REPS)
Cc: Sellick, Suesan; Hall, Matt; Skillen, Geoff; 'paul.kitson@immi.gov.au'; 'Gerry.McGuire@dfat.gov.au'
Subject: Joint Submission - AGD, DFAT, DIMIA - Inquiry OP to CAT

Hi Jenny

As discussed, please find attached joint submission from AGD, DFAT and DIMIA for the JSCOT inquiry into the OP to CAT.

Kind Regards,

Alice

Alice Ramsay
A/g Senior Legal Officer
Human Rights Branch
(Race, Age & International)
Civil Justice Division
Attorney-General's Department
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If you have received this transmission in error
please notify us immediately by return e-mail
and delete all copies.

Attachment B

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

Status of Signature / Ratification as at 2 February 2004

Signatories 23, Ratifications 3

Participant	Signature	Ratification / Accession
Albania		01 October 2003 a
Argentina	30 April 2003	
Austria	25 September 2003	
Brazil	13 October 2003	
Costa Rica	04 February 2003	
Croatia	23 September 2003	
Denmark	26 June 2003	
Finland	23 September 2003	
Guatemala	25 September 2003	
Iceland	24 September 2003	
Italy	20 August 2003	
Madagascar	24 September 2003	
Mali	19 January 2004	
Malta	24 September 2003	24 September 2003
Mexico	23 September 2003	
New Zealand	23 September 2003	
Norway	24 September 2003	
Romania	24 September 2003	
Senegal	04 February 2003	
Serbia and Montenegro	25 September 2003	
Sierra Leone	26 September 2003	
Sweden	26 June 2003	
United Kingdom	26 June 2003	10 December 2003
Uruguay	12 January 2004	