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**To:** Committee, Treaties (REPS)  
**Subject:** Submission

OPCAT  
Submission No: .....18.....

Please find attached a submission on the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment.

Thank you for your extension and I apologise for the delay.

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Young Lawyers Human Rights Committee  
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**HENRY DAVIS YORK**

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**Submission of the  
New South Wales Young Lawyers Human Rights Committee**

**To the Joint Standing Committee on Treaties:**

**Inquiry into the Optional Protocol to the Convention Against  
Torture and Other Cruel, Inhuman or degrading Treatment or  
Punishment**

13 February 2004

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The Secretariat  
Joint Standing Committee on Treaties  
Canberra ACT 2600  
AUSTRALIA

13 February 2004

Dear Committee Members,

**Inquiry into the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment**

The Human Rights Committee of NSW Young Lawyers (YLHRC) is a group of young lawyers and law students who are concerned with a range of human rights issues in both Australia and abroad.

YLHRC is grateful for the opportunity to make a submission to the Committee on the purpose and importance of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (the "**Optional Protocol**"). We have also addressed some of the concerns that have been raised about the Optional Protocol by the Government.

**1. Introduction**

Australia became a signatory to the Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (the "**Convention**") on 10 December 1985. Ratification took place on 8 August 1989 and took force on 7 September of the same year.

In December 2002, a majority of the United Nations General Assembly approved the Optional Protocol. It would appear that to date the Federal Government has made no formal decision regarding the signing of the Optional Protocol.<sup>1</sup>

For the reasons outlined below, the YLHRC submit that the Australian Government should, as a priority, sign and ratify the Optional Protocol.

**2. Australian concerns**

Concerns that have been raised by the Government in relation to the signing of the Optional Protocol have been both procedural and substantive.<sup>2</sup>

**(a) Procedural concerns**

Procedurally, Government representatives have stated that the Government is concerned with the adoption process of the text of the Optional Protocol. Namely, that

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<sup>1</sup> See Question on Notice No. 2711, at Commonwealth of Australia House Hansard, 1 December 2003, page 23416

<sup>2</sup> See comments by Ms Leigh, Estimates, Legal and Constitutional legislation Committee, Commonwealth of Australia Senate Hansard, 26 May 2003, page 27

it was tabled at the last minute, and that the working group was unable to consider in detail or reach consensus on the text.<sup>3</sup>

We submit that these concerns are not well founded. The Optional Protocol was the subject of at least 10 years of negotiation by a UN working party and, moreover, its support in the General Assembly was overwhelming. One hundred and twenty seven nations voted in favour of the Optional Protocol, only three nations voted against the Optional Protocol and forty two nations abstained (including Australia). The negotiation and participation that ended in the final text, and the support from within the General Assembly, indicates that Government concerns regarding the procedural adoption of the Optional Protocol are not justified.

**(b) Concerns regarding treaty body reform**

With respect to the substantive issues, the Government's concerns relate generally to the possible reform of treaty organs and monitoring bodies, and specifically to a perceived inappropriateness of becoming a party to another monitoring instrument whilst holding concerns about the existing process.<sup>4</sup>

We note that the main criticism of treaty organs and monitoring bodies is the burden on state parties to meet the various reporting obligations. The proposals considered by the General Assembly to reduce reporting burdens includes reducing the number of treaty bodies (without reducing the obligations under the relevant conventions) or consolidating reports into a single "global" report. These issues have been considered for over a decade<sup>5</sup> and there has been considerable disagreement as to how, and if, any reforms should proceed. Whatever the outcome, the reforms should not be the basis of Australia's decision not becoming a party to an important human rights instrument, such as the Optional Protocol. Certainly it has not affected the decision of the 127 nations that voted in favour of the Optional Protocol in the General Assembly.

**(c) Concerns regarding visiting places of detention**

Another concern is the standing invitation to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (the "**Subcommittee**") to visit places of detention within Australia, such as prisons. This contrasts with the Government's decision to consent to such visits only where there is a compelling reason to do so.<sup>6</sup> After voting not to sign the Optional Protocol, a spokesman for the Foreign Minister, Alexander Downer, defended the vote, saying: "*it would mean they were able to come in any time*".<sup>7</sup>

We submit that the Government should have no concerns with the Subcommittee's visits. The acceptance of the visits is part of the independent monitoring of compliance with the obligations undertaken by ratification of the Convention. The Subcommittee is composed of 10 independent experts elected by state parties to the

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<sup>3</sup> See note 2 above.

<sup>4</sup> See note 2 above.

<sup>5</sup> These matters have been considered since 1993 when they were raised in Philip Alston's Interim Report on Study on Enhancing the Long Term Effectiveness of the United Nations Human Rights Treaty Regime (UN Doc A/CONF.157/PC/62/Add.11/Rev.1 (1993)).

<sup>6</sup> See Letter to the Hon Alexander Downer, MP from Bill O'Shea President of the Law Institute of Victoria date 13 February 2003 (available on the internet)

<sup>7</sup> Skehan, C reporting in the Sydney Morning Herald, "*Australia lines up against torture inspections*" July 26 2002.

Optional Protocol and must be persons with "proven professional experience in the field of administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty" (Article 5.2). The object of the Subcommittee is to make recommendations for the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment (see Article 11(a)). Furthermore these recommendations must be communicated confidentially (see Article 16).

### 3. **Purpose: Protection of Detainees**

Detained persons have been identified as a class of persons most in need of protection from torture and other forms of inhumane treatment. From within detention institutions detainees may be unable to speak out against, or seek assistance in relation to such treatment.

Prison conditions in Australia should comply with the Minimum Standard Guidelines for Australian Prisons, which are based on the United Nations Standard Minimum Rules for the Treatment of Prisoners and Standard Minimum Rules for the Administration of Juvenile Justice. However, over the past decade there has been concern about several issues in Australian detention centres including Aboriginal deaths in custody, the disproportionately high percentage of Aboriginal children in the juvenile justice system (largely due to mandatory sentencing schemes).

Another form of detention which has attracted scrutiny from both the Australian public and the international community has been Australia's treatment of persons detained while seeking refugee status. In particular, there has been significant public concern over the detention of children in immigration detention centres.

United Nations representatives have also expressed concern in the past over the differing standards in prisons between Australian States.<sup>8</sup> YLHRC queries whether the opinion of Australian State Governments have been sought in respect to signing the Optional Protocol considering their primary role in running Australia's prisons. We note that the Federal Labor Shadow Minister for Foreign Affairs, Mr Kevin Rudd, has spoken in favour of signing the Optional Protocol<sup>9</sup>.

Signature of this Protocol will facilitate a transparent, safe detention system across the spectrum of detention from psychiatric hospitals to immigration centres. It will enable the correct systems to be implemented and maintained in order to prevent any possible contravention of the fundamental human right to be free from torture. It will protect detainees from arbitrary ill treatment, as well as ensuring that Australia sets the standard for safe but secure detention systems.

The prevention of such treatment is enormously important because it cannot be reversed. The impact on, and cost to, the individual, their family and the wider community is significant. Torture victims experience lifetimes of shock and trauma which could be avoided by enabling mechanisms such as that proposed in the Optional Protocol to operate effectively.

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<sup>8</sup> Interview with President of the UN Australian Association, Margaret Reynolds on PM, Radio National, Australian Broadcasting Corporation, Friday, 22 September, 2000.

<sup>9</sup> See note 5 above and ABC News Online report "*Australia 'shamed' by torture vote*" 26 July 2002.

#### 4. **Benefits to Australia**

We submit that the Government should give serious consideration to ratifying the Optional Protocol. In support of this proposition we refer to the following points in favour of signing and ratification of the Optional Protocol:

(a) **Commitment to the prevention of torture**

Ratification of the Optional Protocol will demonstrate Australia's commitment to the protection of human rights among its own citizens and persons who seek refuge in the country. It demonstrates a commitment by Australian State and Federal Governments to ensure that all detention centres, including prisons, juvenile detention centres and immigration detention centres, are free from torture and other cruel, inhuman or degrading treatment or punishment as defined in the Convention.

(b) **Cooperation with the United Nations efforts to prevent torture**

Signature and ratification of the Optional Protocol would also demonstrate Australia's willingness to cooperate with the United Nations to promote human rights and will give credibility to an important process of independent and impartial monitoring and compliance.

This benefit has particular significance in the current political and legislative climate in which there is a perceived conflict between human rights and protection from terrorism.

(c) **Promotion of the adoption of the Optional Protocol in the region**

Australia is a country that prides itself on its democracy, standard of living and its philosophy of a 'fair go'. Signing the Optional Protocol communicates this to the international community and shows that Australia is serious about its human rights obligations. Furthermore, it sets an example to other countries in the Asia Pacific region, countries that Australia works with in order to improve their human rights records, such as Burma.

(d) **International reputation**

Ratification would ensure that Australia's reputation does not suffer through comparison with countries who have poor human rights records and do not support the Optional Protocol.

Ratification of the Optional Protocol not only protects persons in Australia from torture and other cruel, inhuman or degrading treatment or punishment, it sends a message to the international community about what Australia considers is an unacceptable breach of human rights. Recently, the Australian Government has spoken out strongly against Saddam Hussein's regime in Iraq, and has criticised the illegal detention and torture of innocent Iraqis at the hands of that dictatorship.

It is imperative that the Australian Government not only **speaks** out against such breaches of human rights, but **acts** to prevent them. Supporting the Optional Protocol is an important step in ensuring that the United Nations has the power to prevent such atrocities occurring wherever possible.

5. **Conclusion**

The Optional Protocol is not intended to discredit Australia. It is non-confrontational and confidential. It is based on recommendation, advice and awareness and is an important step in ensuring that persons detained in Australia are free from torture and other cruel, inhuman or degrading treatment or punishment.