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30 March 2012

Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
[jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Secretary,

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**Ratification of the OPCAT**

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I write on behalf of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) which is comprised of the following Aboriginal and Torres Strait Islander legal services (ATSILS):

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

The NATSILS strongly support the ratification of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>1</sup>

Ratification of the OPCAT is needed to better protect the rights contained within the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>2</sup> to which Australia is a party, and provide the focus on prevention which is essential to a proactive approach towards human rights protection.

The OPCAT provides for the prevention of torture and other cruel, inhuman or degrading treatment or punishment by requiring engagement with independent inspections and other forms of monitoring by the United Nations Subcommittee on Prevention of Torture (SPT) and the implementation of a National Preventative Mechanism (NPM). There are serious and well-documented human rights concerns in regards to conditions within detention around Australia and there is strong evidence that external scrutiny of places of detention can deter and, where necessary, help provide redress in regards to cases of torture and other forms of ill treatment.<sup>3</sup> Implementing effective mechanisms to prevent and address these concerns is of special importance to the NATSILS given the over-representation of Aboriginal and Torres Strait Islander peoples in detention.

In addition to protecting the individual human rights of those in detention, the NATSILS consider that ratification of the OPCAT and the prevention of torture and other forms of ill treatment is also in the interests of the broader community as such would promote the effective rehabilitation of

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<sup>1</sup> *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 18 December 2002, A-24841, (entry into force 22 June 2006).

<sup>2</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, I-24841, (entry into force 26 June 1987).

<sup>3</sup> National Interest Analysis (2012) ATNIA 6, [10, 11].

those detained and their successful reintegration back into the community. Hence, increasing community safety overall.

Ratification of the OPCAT is also a very cost effective way of progressing Australia's human rights protections. There would be minimal cost involved in facilitating visits by the SPT as the United Nations is responsible for its expenditure<sup>4</sup> and the National Interest Analysis (NIA) prepared by the Commonwealth Attorney-General's Department found that the costs associated with designating, establishing and administering a system of NPMs would be modest.<sup>5</sup>

Where there may be costs involved in ensuring that NPMs are provided with the necessary independence as required under the OPCAT and resources to perform their functions, this cost is highly likely to be more than offset by the benefits that would flow from improved inspection and monitoring mechanisms and the resulting improved conditions within detention. These include fewer complaints, injuries and hopefully deaths in custody which will result in reduced litigation costs, compensation payments and savings in the use of legal and health care systems resulting from incidents of ill treatment.

Thus, the NATSILS agree with the NIA's assessment that there is unlikely to be any disadvantages or negative impacts for Australia and that, rather, ratification of the OPCAT is likely to have significant positive impacts, including economic benefits.

We urge Joint Standing Committee on Treaties (JSCOT) to recommend to the Commonwealth Government that Australia ratify the OPCAT.

If you would like to discuss this matter further please contact Ms Rachel O'Brien, National Legal Secretariat Officer, on 07 3025 3888 or [rachel.obrien@atsils.org.au](mailto:rachel.obrien@atsils.org.au).

Yours sincerely,

**SHANE DUFFY**  
Chairperson  
National Aboriginal and Torres Strait Islander Legal Services (NATSILS)

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<sup>4</sup> *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 18 December 2002, [25], A-24841, (entry into force 22 June 2006).

<sup>5</sup> National Interest Analysis, above n 3, [34].



**Victorian Aboriginal Legal Service Co-operative Ltd**



**Aboriginal Legal Service of Western Australia**



**Aboriginal Legal Rights Movement Inc**



**NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY**



**Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd**



**ALS**

**Aboriginal Legal Service (NSW/ACT) Limited**