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Submission

on the

Possible Ratification of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women

to the

Joint Standing Committee on Treaties

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TABLE OF CONTENTS

1.	Introduction	1
2.	National sovereignty	1
3.	The ideological views of the Committee.....	1
4.	Endnotes	3

1. Introduction

The Optional Protocol to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women was adopted on 6 October 1999 and opened for signature on 10 December 1999. It entered into force on 22 December 2000. It currently has 90 states parties. Australia is permitted to accede to the Optional Protocol, under Article 15(3), because it has signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [1983] ATS 9, which entered into force for Australia on 28 July 1983.

If Australia lodges an instrument of accession to the Optional Protocol, the Optional Protocol would enter into force for Australia three months after the lodging of this instrument (Article 16(2)).

The Optional Protocol was tabled on 26 August 2008. The Joint Standing Committee on Treaties has invited public submissions which are due by 19 September 2008.

2. National sovereignty

If Australia were to ratify the Optional Protocol it would authorise any woman or group of women to lodge a complaint to be heard by the Committee on the Elimination of Discrimination Against Women, if they believe that their rights as expressed in the Convention on the Elimination of Discrimination Against Women have been violated. The Committee first determines if a complaint is admissible – this includes determining whether all domestic remedies have been exhausted (with exceptions). If the complaint is determined to be admissible, the Committee then considers the substantive complaint. If the complaint is upheld, the Committee can propose remedies to the State party – which is obliged to respond to this proposal.

It is contrary to the fundamental notion of Australia as a sovereign nation to allow a committee of foreigners – appointed by the nations which have ratified the Convention, including several with notoriously poor records on human rights – to second guess the outcome of domestic judicial proceedings or the validity of laws passed by our parliaments.

3. The ideological views of the Committee

As well as being empowered to determine complaints under the Optional Protocol, the same Committee on the Elimination of Discrimination Against Women is tasked with considering the periodic reports made by States parties to the Convention.

Examples from the General Recommendations and the Concluding Observations of this Committee on the reports of various States parties illustrate that this Committee has a particular ideological bias and frequently makes recommendations and observations which exceed the provisions of the Convention.

- The Convention requires States parties to achieve “substantive equality” of women with men, ie “equality of results” in all areas. A 2004 Committee recommendation stated: “It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account... Equality of results is the logical corollary of de facto or substantive equality.”¹

This unrealistic ideology can result in socially harmful policies – such as recruiting physically small and weak women in order to achieve equal numbers of male and female firepersons, ignoring the reality that men are on average taller and possess greater upper body strength than

women. Thus, efficient fireperson units will naturally have more men than women. Similarly embroiderers, with a requirement for fine motor skills, are more likely to be female than male because of biological differences.

- A 2006 Committee recommendation states that Australia should “consider the adoption of quotas and targets ... to further increase the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, particularly indigenous women and women belonging to ethnic minorities.”² Again, the concept of artificial “quotas and targets” ignores the reality of biological differences and preferences.
- Mothers’ Day and awards for mothers are “of concern”, according to the Committee in 2000: “The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mothers’ Day and a Mothers’ Award, which it sees as encouraging women’s traditional roles.”³ In other words, women are to be encouraged in all roles except those where they have excelled in the past. Such tyrannical coercion is mind-boggling!
- In 2008, the Committee determined that State parties should “regulate the invocation of conscientious objection by health professionals ... it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women ... if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”⁴

In other words, if a doctor, nurse or pharmacist has a deep conscientious objection to helping to kill an unborn baby in the womb or to helping create a child who would not have both mum and dad role models, would be forced, contrary to conscience, to become an accomplice by providing a referral to another health professional who has no such scruples. The Committee ignores the fact that abortion and artificial reproductive technology are not mentioned in the Convention.

- Again in 2008: “The Committee also calls on the State party to consider the impact on women of the draft law on the protection of human life in the prenatal stage to ensure that the draft law is in line with the Convention.”⁵ Note again that the Convention makes no reference to abortion – yet the Committee routinely criticises States parties that have laws, or are considering laws, which restrict abortion.

These examples show that the Committee lacks the professional competence and objective neutrality needed to determine complaints.

Article 1 of the Optional Protocol states that “A State Party to the present Protocol (‘State Party’) recognises the competence of the Committee on the Elimination of Discrimination against Women (‘the Committee’) to receive and consider communications submitted in accordance with Article 2.”

It would be very reckless to ratify the Optional Protocol and thereby wrongly acknowledge the “competence” of this Committee.

Recommendation:

Australia should not ratify the Optional Protocol to the Convention on the Elimination of Discrimination Against Women.

4. Endnotes

1. General recommendation no. 25, 2004; [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)
2. Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia, 2006; <http://daccessdds.un.org/doc/UNDOC/GEN/N06/237/98/PDF/N0623798.pdf?OpenElement>
3. Summary record of the 461st meeting, 2000; <http://daccessdds.un.org/doc/UNDOC/GEN/N00/266/72/PDF/N0026672.pdf?OpenElement>
4. Draft concluding observations of the Committee on the Elimination of Discrimination against Women: Slovakia, 2008; <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SVK.CO.4.pdf>
5. Concluding observations of the Committee on the Elimination of Discrimination against Women: Lithuania, 2008; <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.LTU.CO.4.pdf>