



Jon Stanhope MLA

OPCAT
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CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS

MEMBER FOR GINNINDERRA

RECEIVED
17 FEB 2004

BY:

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

Dear Dr Southcott

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

I refer to your letter of 5 December 2003 concerning 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* (the Optional Protocol).

The ACT Government strongly supports Australian signature and ratification of the Optional Protocol. Australian adherence to this important human rights instrument would be an important contribution to international action to prevent torture and other gross violations of human rights.

As you will be aware, the objective of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Optional Protocol establishes a Subcommittee on Prevention of Torture of the United Nations Committee on Torture. The Subcommittee may visit places of incarceration – prisons, police stations, detention centres, psychiatric institutions, detention areas in military bases, immigration detention centres, centres for juveniles, and places of administrative detention – with a view to strengthening the protection of detained persons. States parties undertake to accept such visits and to establish one or several national visiting bodies for the prevention of torture and inhuman treatment.

States parties also undertake to grant the Subcommittee access to information relating to the numbers, locations and treatment of detained persons, and allow the Subcommittee to have private interviews with detained persons.

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The obligations of the Optional Protocol apply to all parts of federal states parties.

The Australian Government consulted with State and Territory Governments in the course of the negotiation of the Optional Protocol.

I am advised that the ACT Department of Justice and Community Safety provided detailed input. The ACT Government supported efforts to strengthen the convention in a number of areas. In summary, these were that:

- the Subcommittee should have a standing invitation to visit State parties rather than require prior consent;
- visits by the Subcommittee should be allowed to all places where persons may be incarcerated;
- the Subcommittee should have broad right of freedom of movement within the country it is visiting while paying due regard to the protection of individual privacy;
- that strict confidentiality of reports should be the general rule, but publication should take place where the state party concerned demonstrates an unwillingness to improve protections for people subject to detention; and
- there should be no provision for reservations.

These issues were addressed in the final text of the Optional Protocol which was adopted by the UN General Assembly by 127 votes to 4 (Marshall Islands, Palau, Nigeria and United States) with 41 abstentions (including Australia) on 18 December 2002.

It is a matter of regret that the Australian Government abstained in the UN vote on the adoption of the Optional Protocol.

Since it was opened for signature on 4 February 2003, the Optional Protocol has been signed by 24 countries including the United Kingdom and New Zealand.

I note that in answer to a Question on Notice on 1 December 2003, the Foreign Minister, the Hon Alexander Downer MP, indicated that the Australian Government had "not yet made a formal decision on signing the Protocol".

It is my hope that the Joint Standing Committee on Treaties will make a bipartisan recommendation that the Australian Government sign the Optional Protocol without further delay.

The ACT Government's support for Australian signature and ratification of the Optional Protocol is consistent with our strong focus on enhancing respect for human rights within the Territory.

On 18 November 2003, I introduced the *Human Rights Bill 2003* into the ACT Legislative Assembly. The purpose of the Bill is to promote the protection of human rights in the ACT consistent with the International Covenant on Civil and Political Rights, and to ensure that law enforcement, public administration and the delivery of public services in the ACT takes place within a strong human rights framework.

Amongst other things, the ACT *Human Rights Bill 2003* gives statutory recognition to:

- the prohibition on torture and cruel, inhumane or degrading treatment or punishment (Section 10); and
- the right of a person deprived of liberty to humane treatment and respect for the inherent dignity of the human person (Section 19).

It is anticipated that the Legislative Assembly will debate the Bill during its March sittings. The text of the Bill can be found at http://www.legislation.act.gov.au/b/db_8266/default.asp.

Australian ratification of the Optional Protocol would require the ACT Government to accept obligations relating to visits and the provision of information relating to the detention of persons under ACT criminal law, the *Mental Health (Treatment and Care) Act 1994* and the *Children and Young People Act 1999*. Ratification of the Optional Protocol may require some amendment of ACT legislation to explicitly allow international visits to places where persons are detained and to clarify the role of ACT Official Visitors if they are to fulfil functions of national visiting bodies.

In this regard it should also be noted that the ACT Government is developing legislation for the operation and management of the new ACT new prison. Development of prison legislation will take place within the framework of the *Human Rights Bill 2003* and international standards that apply to the protection of prisoners. Provision for an independent official visitor will be part of the Government's consideration when developing the statutory framework for the facility.

I hope that this information is of assistance to Joint Committee in its review of the Optional Protocol.

Yours sincerely

Jon Stanhope MLA
Chief Minister

1. The first part of the document is a letter from the author to the editor of the journal.

2. The second part is a letter from the editor to the author, acknowledging the receipt of the manuscript.

3. The third part is a letter from the author to the editor, responding to the editor's comments.

4. The fourth part is a letter from the editor to the author, informing the author of the journal's decision.

5. The fifth part is a letter from the author to the editor, expressing gratitude for the journal's consideration.

6. The sixth part is a letter from the editor to the author, providing final instructions and information.

7. The seventh part is a letter from the author to the editor, confirming the author's agreement with the journal's decision.

8. The eighth part is a letter from the editor to the author, providing final contact information.

9. The ninth part is a letter from the author to the editor, providing final contact information.

10. The tenth part is a letter from the editor to the author, providing final contact information.

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