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Joint Standing Committee on Treaties

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Submission to the Joint Standing Committee on Treaties Inquiry into ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Victorian Foundation for Survivors of Torture (Foundation House) welcomes the opportunity to make this submission to the inquiry of the Joint Standing Committee on Treaties into ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Foundation House considers that there are compelling domestic and international reasons for Australia to ratify OPCAT. The National Interest Analysis provides a very good overview of these. In particular, the evidence indicates that ratification would significantly enhance current arrangements to ensure people deprived of their liberty within Australia are not subjected to acts of torture and other cruel, inhuman and degrading treatment or punishment. Ratification would strengthen the capacity of Australia to promote human rights internationally and particularly in the Asia-Pacific region, which is a foreign policy objective that is shared across the political spectrum.¹

There are no strong legal, financial, political or other grounds for Australia not to ratify the treaty. Implementation of the treaty obligations will involve some additional costs to the Australian, state and territory governments. However, on the basis of experience elsewhere these are demonstrably modest. Further, there is the real prospect of financial savings, for example through the avoidance of events that give rise to litigation, compensation for harm and the costs of providing health services to people who have been harmed.

This submission focuses upon the benefits of ratification for the monitoring of immigration detention, the area with which we are particularly familiar.

¹ See for example, Joint Standing Committee on Foreign Affairs, Defence and Trade, "Human rights in the Asia-Pacific – Challenges and opportunities," Canberra 2010.

The expertise of Foundation House relating to immigration detention

Foundation House was established in 1987 to assist survivors of torture and trauma, of refugee backgrounds, who had settled in Victoria. We are contracted by the Department of Health and Ageing under the Program of Assistance for Survivors of Torture and Trauma. There are similar agencies providing specialist rehabilitation services in each state and territory and we are members of a national network, the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT).

Many of the clients of Foundation House and the other FASSTT member agencies are or have been in Australian immigration detention facilities, often for very prolonged periods. Our knowledge of the treatment of detainees, their conditions of detention, the impacts on health and well-being, and the monitoring of places of detention is also based on our research² and close links with a range of other agencies and service providers involved with the immigration detention system.

OPCAT and the monitoring of immigration detention

Immigration detention facilities are monitored by a number of bodies with different mandates and approaches:

- the Australian Human Rights Commission;
- the Commonwealth Ombudsman;
- the United Nations High Commissioner for Refugees;
- Minister's Council on Asylum Seekers and Detention; and
- Australian Red Cross.

The bodies communicate regularly in order to coordinate their work.

However, none of the monitoring bodies “is properly resourced to undertake this important work,” as recently stated by the Hon Catherine Branson QC, the President of the Australian Human Rights Commission.³ As a consequence there are gaps. Speaking of her agency, Ms Branson said:

Reluctantly, the Commission has recently decided that we are no longer able to undertake detailed monitoring and reporting of conditions in

² See in particular Guy Coffey, Ida Kaplan, Robyn Sampson and Maria Tucci, “The meaning and mental health consequences of long-term immigration detention for people seeking asylum,” *Social Science & Medicine*, 70 (2010) 2070-2079.

³ The Hon Catherine Branson QC, President, Australian Human Rights Commission, “Applying human rights in closed environments: practical observations on monitoring and oversight,” speech delivered at ‘Implementing human rights in closed environments’ conference, Monash University, Melbourne, 21 February 2012.

immigration detention facilities. This is largely a matter of resourcing – we do not receive any dedicated resources to undertake this work. We will continue to visit immigration detention facilities, but visits will be shorter and we will no longer publish detailed monitoring reports.⁴

The other monitoring bodies do not publish monitoring reports on conditions in immigration detention facilities as a matter of course or at all.

A particular deficiency in the monitoring arrangements relates to scrutiny of health needs and health services provided to people detained in immigration detention facilities. The monitoring bodies lack the resources to engage suitably qualified and experienced health professionals to undertake this work on a routine basis although health issues have been a recurring subject of major concern for a lengthy period.

The “Inquiry into the circumstances of the immigration detention of Cornelia Rau” conducted by Mr Mick Palmer in 2005 recommended that the Minister for Immigration establish an Immigration Detention Health Review Commission as an independent body under the Commonwealth Ombudsman’s legislation to carry out independent external reviews of health and medical services provided to immigration detainees and of their welfare (Recommendation 6.11). The recommendation has not been implemented. The pressing need for such reviews to be conducted remains.

By ratifying OPCAT, the Australian Government undertakes to ensure that the national preventive mechanism has both the powers and resources to discharge its responsibilities effectively. Implementation of OPCAT should therefore promote the desirable outcome of strengthening the monitoring of immigration detention.

Conclusion

Foundation House submits that the preponderance of evidence presented to the inquiry of the Joint Standing Committee on Treaties strongly supports ratification of OPCAT by the Australian Government.

⁴ *ibid*