

**Joint Standing Committee on Treaties: Consideration of
the National Interest Analysis**

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

**Submission from the Ombudsman of various
Australian States and Territories,
and the Commonwealth**

Background

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Optional Protocol”) was signed by Australia in 2009. Australia has not yet ratified or implemented the Optional Protocol. The United Nations Human Rights Council has urged ratification by Australia.

A National Interest Analysis (NIA) has been completed, including consultation with all states and territories and other interested organisations and individuals. The National Interest Analysis report has been referred to the Australian Parliament’s Joint Standing Committee on Treaties (JSCOT) for review.

Implementation of the Optional Protocol requires Australia to develop a National Preventive Mechanism to undertake inspections, make recommendations and prepare reports in relation to all places of detention aimed at detecting and preventing practices contravening the aims of the convention. Places of detention are broadly defined for the purposes of the Optional Protocol and include a wide range of facilities and services where people are detained. In Australia these places of detention are administered by various agencies of commonwealth, state or territory governments.

National Interest Analysis Summary

The “Summary Page” of the National Interest Analysis is provided on the JSCOT website.

The Optional Protocol has come into force generally and several countries comparable to Australia – such as the United Kingdom and New Zealand - have become States Parties and demonstrated the usefulness of the regime it establishes.

The NIA Summary outlines the results of consultation with governments and other parties across Australia about the ratification of the Optional Protocol and the model by which it could best be implemented. It draws on the experiences of the comparable States Parties mentioned above.

Of particular importance the Summary notes that in Australia the Optional Protocol will strengthen measures already in place to prevent torture and other prohibited actions against people:

“Undertaking monitoring of places of detention in accordance with the Optional Protocol will achieve a more national and comprehensive approach with a greater ability to identify gaps and issues particular to individual Australian jurisdictions, or commonly experienced by all.”

It is anticipated in the NIA Summary that upon ratification, implementation of the Optional Protocol would be delayed for three years to allow for a period of preparation. It is further anticipated that “implementation will involve designating a range of existing inspection regimes at the jurisdictional level, utilising a co-operative approach between the Commonwealth, States and Territories” and “that at least some existing monitoring and complaints bodies will be designated to form the national preventive mechanism”.

Submission

In recognition of the stated objective of a comprehensive approach to the monitoring of places of detention in Australia via the Optional Protocol, Parliamentary Ombudsman of States, Territories and the Commonwealth jointly submit their support for both ratification and implementation of the Optional Protocol.

The Parliamentary Ombudsman of New South Wales, Victoria, Queensland, South Australia, Tasmania, Northern Territory, and Commonwealth/ACT consider their offices are well placed to fulfil a National Preventive Mechanism role under a “mixed model” as outlined in the NIA Summary.

The Parliamentary Ombudsman Offices of Australia cover a unique jurisdiction independent of government but consistent among them is their role in promoting the human rights of all people, and especially those who are made vulnerable by their detention in various facilities and services operated by the state. Australian Ombudsman offices have a history over several decades of going into such places and investigating complaints, reporting their findings and observations, making useful recommendations and monitoring compliance with the recommendations made.

Any agency designated as a National Preventive Mechanism will require sufficient resources to ensure the obligations for inspecting and reporting can be met to a level consistent with the requirements of the UN Sub-Committee. Expanding the remit of experienced existing agencies such as the Parliamentary Ombudsman rather than creating additional inspecting bodies across the country would still present the most cost effective option.

Advantages a properly resourced Ombudsman can bring to this role include:

- Independence
- Existing credibility with the bodies to be inspected and with the community
- Avoiding proliferation of oversight bodies, especially in times of financial constraint
- Proven experience in visiting detention facilities - including prisons, juvenile centres, police holding cells, secure forensic services, community disability services, immigration detention – and during the course of such visits, identifying problems and making recommendations for change which are able to be implemented
- Proven experience conducting detailed audits and reviews including multi-disciplinary exploration of systems and procedures
- Proven experience and commonality in reporting on our investigations, audits and reviews
- Proven track record of exercising coercive powers appropriately, efficiently and effectively
- Established relationships with the agencies controlling many facilities/services to be inspected.
- Existing strong communication and liaison networks across all State, Territory and Commonwealth Ombudsman offices, as evidenced by this joint submission.

Any of the signatories to this submission would be pleased to provide further information or assistance to the Committee on these issues upon request.

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30 March 2012