

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002

Introduction

- 6.1 On 28 February 2012, the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* was tabled in the Commonwealth Parliament.

Background

- 6.2 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was signed by Australia on 19 May 2009. It can be ratified by any State that has ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 10 December 1984.¹ Australia is a Party to the Convention, which entered into force generally on 26 June 1987 and in Australia on 7 September 1989.²
- 6.3 Australian law already strongly prohibits all forms of torture. The proposed action recognises the importance of supporting and

1 For further information see: <http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html> accessed 30 March 2012.

2 National Interest Analysis [2012] ATNIA 6 with attachment on consultation, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002*, [2009] ATNIF 10, (Hereafter referred to 'NIA'), para 1.

strengthening the measures already in place and will further underline our commitment to the Convention's values and protections and support our efforts to ensure that other countries meet the same standard.

Undertaking monitoring of places of detention will achieve a more national and comprehensive approach with a greater ability to identify gaps and issues – particularly to individual Australian jurisdictions.³

- 6.4 Although torture is unlikely to be an issue in the overwhelming majority of circumstances where people are detained in Australia, the Optional Protocol, as its name suggests, has a broader focus as it also refers to other forms of cruel, inhuman or degrading treatment or punishment.⁴

National interest summary

- 6.5 The Optional Protocol provides for a system of regular visits to places of detention by a national body or bodies to be designated by the State Party and also by the United Nations (UN) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the 'SPT').⁵ The Attorney-General's Department explained:

The SPT is a 25-member committee currently chaired by the United Kingdom's Professor Malcolm Evans. Visits are conducted by a small number of members, usually between two and six, perhaps with an accompanying expert and with secretariat support.⁶

- 6.6 The Optional Protocol aims to strengthen the protection of persons deprived of their liberty against acts of torture and other cruel, inhuman or degrading treatment or punishment. It provides for a mechanism to better ensure that detaining authorities are accountable for conditions in places of detention and for greater international transparency. The model of activity provided for under the Optional Protocol is for dialogue and review between the detaining authority and the visiting body to encourage States to improve conditions where necessary.⁷ The Attorney-General's Department further explained:

3 NIA, para 5.

4 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

5 NIA, para 3.

6 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

7 NIA, para 4.

The government expects that SPT monitoring visits would be of one or two week's duration, with visits occurring no more than once every five or so years and probably considerably less frequently. Members of the SPT and the National Preventive Mechanism are to be given such privileges and immunities as are necessary for the independent exercise of their functions. This dual system aims to serve as the basis for constructive dialogue with detaining authorities on the adequacy of the conditions and treatment of people in all places where they are deprived of their liberty.⁸

Reasons for Australia to take the proposed treaty action

- 6.7 The Optional Protocol has now been in force for over five years and has more than sixty States Parties while a further 22 are signatories.⁹ Ratification and implementation will improve outcomes for detainees in Australia by providing a more integrated and internationally recognised oversight mechanism. The Government sees that it will provide an opportunity for organisations involved in detention management and oversight to share problem solving measures and other information, on the conditions and treatment of detainees.¹⁰
- 6.8 Implementation should minimise instances giving rise to concerns about the treatment and welfare of people detained in places of detention in Australia. In addition to the human rights benefits, monitoring has the potential to minimise the costs of addressing such instances, including avoiding litigation costs and compensation payments.¹¹
- 6.9 The Optional Protocol can be an effective mechanism even in jurisdictions which already enjoy preventive monitoring through pre-existing oversight bodies. The New Zealand Human Rights Commission noted in 2010 that the Protocol had been valuable in 'identifying issues and situations that are otherwise overlooked, and in providing authoritative assessments of whether new developments and specific initiatives will meet the international standards for safe and humane detention'.¹² Moreover, in

8 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 14.

9 States Parties include the United Kingdom, Spain, France, Germany and Brazil. In the Asia-Pacific region, New Zealand, Peru, Mexico, Chile and Cambodia are States Parties. NIA, para 10.

10 NIA, para 7.

11 NIA, para 11.

12 NIA, para 10.

addition to the human rights benefits, monitoring under the optional protocol has the potential to minimise the costs of addressing such instances, including avoiding some costs of litigation and compensation.¹³ The Attorney-General's Department provided some tangible evidence of that benefit:

I sought some information from New Zealand to see what their experience was and the New Zealand ombudsman wrote to me. New Zealand is obviously smaller and it is not a federal system; it may be comparable to a state. The ombudsman said that they estimated the financial liability arising from mistreatment being \$25 million to \$35 million and the cost of their NMP to be \$250,000, which is 1.4 per cent. He described it as a very cheap insurance premium.¹⁴

6.10 Australia will gain from adopting the treaty according to the Attorney-General's Department:

The government also believes it is in Australia's national interest to promote adherence to international human rights standards. Ratification would maintain Australia's leadership on human rights outcomes and credibility in calling on other countries to adhere to internationally accepted standards. Australia's existing systems are comparatively strong. It has nothing to fear and much to gain by being open to international scrutiny and building and maintaining domestic arrangements that are exemplars of effective human rights enforcement.¹⁵

Obligations

6.11 **Article 4(1)** provides that State Parties must allow both the Subcommittee (see below) and the national preventive mechanism to make visits 'to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'. Specific examples of places of detention are not provided in the Protocol. The definition is deliberately broad, as is its purpose. The Subcommittee's

13 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

14 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 25.

15 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

practice indicates that its inspections usually focus on usual detention facilities such as prisons, police stations and immigration detention centres, rather than on small places of temporary detention.¹⁶

United Nations Subcommittee

- 6.12 **Article 2** provides for the establishment of a Subcommittee whose membership comprises twenty-five independent and impartial experts who are nationals of States Parties, serving in their individual capacities.
- 6.13 **Article 5** requires that in the election of subcommittee members, due consideration is to be given to an equitable geographic distribution and to the representation of different forms of civilisation and legal systems of the States Parties. Further, no two members of the Subcommittee may be nationals of the same State.
- 6.14 **Article 11** prescribes the main functions of the Subcommittee which are:
- to visit places of detention and make recommendations to States Parties about protecting people deprived of their liberty against torture and other forms of ill-treatment; and
 - to advise and assist States Parties in the establishment, maintenance and strengthening of their national preventive mechanisms, including through the provision of technical advice and training and by making recommendations to States Parties regarding the mechanisms' capacity and mandate.¹⁷
- 6.15 **Article 13(3)** stipulates that visits are to be conducted by at least two members of the Subcommittee who may be accompanied by experts. The Subcommittee currently has a programme for visits to take place approximately once every five years.¹⁸
- 6.16 **Articles 12 and 14** require that States Parties guarantee unrestricted access to places of detention; access to all relevant information, including on conditions of detention; and the opportunity to conduct private interviews with detainees and other relevant persons. States Parties may only object to a detention facility visit if urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder warrant a temporary delay.¹⁹ Article 12 also requires the State Parties to examine the

16 NIA, para 12.

17 NIA, para 13.

18 NIA, para 14.

19 NIA, para 15.

Subcommittee's recommendations and discuss implementation measures.²⁰

- 6.17 **Article 16** requires that Subcommittee reports are generally confidential unless the State Party requests publication or itself makes part of the report public. In addition, if the State Party has refused to cooperate with the Subcommittee, the Committee Against Torture may, following consultation with the State Party, decide to make a public statement or publish the Subcommittee's report.²¹

National Preventive Mechanism

- 6.18 **Article 3** requires States Parties to establish, maintain or designate one or several independent visiting bodies as their National Preventive Mechanism.
- 6.19 **Article 17** provides that the national preventive mechanism be established within one year of the Protocol's entry into force, or of ratification or accession.²² The mechanism may consist of decentralised units as long as they conform to the Protocol's requirements.²³
- 6.20 **Article 18** requires that States Parties must guarantee the functional independence of the national preventive mechanism and the independence of its personnel and make available the necessary resources for the performance of its functions.²⁴
- 6.21 **Article 19** obliges States Parties to grant the national preventive mechanism, at a minimum, the power to: regularly examine the treatment of detainees; make recommendations to relevant authorities with the aim of improving the treatment and conditions of detainees and to prevent torture and other ill-treatment; and the power to submit proposals and observations concerning existing or draft legislation.²⁵
- 6.22 **Article 20** requires States Parties to grant the national preventive mechanism: information concerning the numbers of detainees and the location of their places of detention; a right of access to places of detention and to information concerning the treatment of detainees and their conditions of detention; the opportunity to conduct private interviews

20 NIA, para 17.

21 NIA, para 17.

22 NIA, para 22.

23 NIA, para 18.

24 NIA, para 19.

25 NIA, para 19.

with detainees; the liberty of choosing where it will visit and whom it will interview; and the right to contact and meet with the Subcommittee.²⁶

- 6.23 **Articles 22 and 23** oblige relevant Government authorities to examine the reports and recommendations of the national preventive mechanism, enter into dialogue with the national preventive mechanism on the implementation of its recommendations and publish and disseminate the annual report of its national preventive mechanism.²⁷
- 6.24 **Article 24** provides that States Parties may make a declaration upon ratification, postponing the implementation of their obligations with respect to either the Subcommittee or the national preventive mechanism, but not both. This postponement is valid for up to three years and, with the consent of the Committee Against Torture, may be extended for a further two years.²⁸

Protections, Confidentiality, Privileges and Immunities

- 6.25 **Articles 15 and 21** provide that there is to be no sanction or prejudice exercised against any person or organisation for communicating any information to the Subcommittee or national preventive mechanism.²⁹
- 6.26 **Articles 16(2) and 21** state that personal data may not be published by the Subcommittee or the national preventive mechanism without the express consent of the individual concerned.³⁰ Article 21 also provides that confidential information collected by a national preventive mechanism is privileged.³¹
- 6.27 **Article 35** requires that the members of the Subcommittee and of the national preventive mechanism must be allowed such privileges and immunities as are necessary for the independent exercise of their functions. For the Subcommittee, the privileges and immunities are those specified in section 22 of the *Convention on the Privileges and Immunities of the United Nations*, done at New York on 13 February 1946.³²

26 NIA, para 20.

27 NIA, para 21.

28 NIA, para 22.

29 NIA, para 23.

30 NIA, para 23.

31 NIA, para 23.

32 NIA, para 24.

Implementation

- 6.28 It is expected that necessary legislative or administrative arrangements to provide for Subcommittee visits will be put in place by States Parties before they ratify the Optional Protocol. For this reason, the Australian Government proposes that a declaration would be made on ratification pursuant to Article 24, that Australia's obligations under the Protocol in relation to the national preventive mechanism would be delayed by three years.³³ This approach has been adopted by countries such as the United Kingdom and Germany. This delay is expected to provide a clear and reasonable timeframe for managing any necessary administrative and legislative changes to effectively implement the Protocol.³⁴
- 6.29 Australia's inspection systems, while substantial, do not fully meet the Optional Protocol requirements. It is anticipated that implementation will involve designating a range of existing inspection regimes at the jurisdictional level, utilising a cooperative approach between the Commonwealth and the States and Territories.³⁵ A working group of officials from all jurisdictions, reporting to the Standing Committee on Law and Justice, has been formed to carry forward implementation arrangements.³⁶

Obligations relating to the Subcommittee

- 6.30 Existing legislation is sufficient to provide for the required privileges and immunities of Subcommittee members performing their duties in Australia. The *Convention on the Privileges and Immunities of the United Nations* is given effect in Australia by the *International Organisation (Privileges and Immunities) Act 1963* and the *United Nations (Privileges and Immunities) Regulations 1986*. However, some changes to Commonwealth, State and Territory laws and policies will be required to clearly enable the Subcommittee to carry out its functions.³⁷

Obligations relating to the National Preventive Mechanism

- 6.31 It is anticipated that at least some existing monitoring and complaints bodies will be designated to form the Australian National Preventive Mechanism. At present, existing bodies carry out visits or inspections to most major categories of detention, including prisons, and immigration

33 NIA, para 25.

34 NIA, para 26.

35 NIA, para 27.

36 NIA, para 28.

37 NIA, para 29.

detention centres. Reliance on these existing bodies to fulfil national preventive mechanism obligations would be possible provided that the necessary and, in many cases, relatively minor changes are made to the structure, mandate or powers of these bodies in order to comply with the Optional Protocol.³⁸

- 6.32 The agencies that would form the National Preventive Mechanism, and the arrangements between these for the purposes of the Protocol have not been settled. Some gaps exist, particularly relating to police cells and detainee transfer vehicles, and more may be identified on further review. These gaps might be removed by expanding the mandate of an existing independent body or establishing a new independent body to specifically carry out the national preventive mechanism functions with respect to these detention facilities. Time will be needed to make and implement across each jurisdiction the necessary decisions and arrangements for the national preventive mechanism including to prepare and pass relevant legislative amendments, undertake training and to agree upon and institute effective liaison and cooperation arrangements.³⁹

Delay in Implementation: Article 24

- 6.33 As mentioned, the Australian Government proposes that a declaration be made on ratification, pursuant to Article 24, that Australia's obligations under the Protocol in relation to the national preventive mechanism be delayed by three years. In Australia, most places of detention and by far the greatest number of people detained are the responsibility of states and territories. Thus to ensure all jurisdictions are ready, the Government will work towards domestic implementation during the three years allowed post ratification:

Since 2009, the Commonwealth, states and territories have undertaken considerable work in researching and considering the nature of the commitments required under the optional protocol and reviewing what arrangements can be put in place to give effect to Australia's international obligations. Importantly, the Commonwealth, state and territory attorneys-general agreed to continue to work towards ratification of the optional protocol at the April 2012 meeting of the Standing Council on Law and Justice. The number of jurisdictions involved has and will continue to add time to this process, hence the proposal set out in the national interest analysis to delay domestic implementation for up

38 NIA, para 30.

39 NIA, para 31.

to three years post ratification. Some submissions have called for earlier action, but the government thinks the approach and timetable proposed are practical and sensible in the context of cooperative action that needs to be taken across nine jurisdictions.⁴⁰

6.34 Furthermore:

...successive governments in Australia have taken the view that we do not enter into international treaty obligations until all of the provisions of the treaty are already implemented and able to be complied with. So if, for example, we were to ratify before the NPM was set up – the NPM being quite a complex interjurisdictional model with legislation required in every jurisdiction – then we would be undertaking the obligations that apply to the NPM before we had an OPCAT compliant NPM in place. So the delay really reflects the period of time necessary in a complex federal system like Australia to set up a body that is up and running, functioning, and compliant with the OPCAT by the time that three-year period is finished...

Three years does seem like a long time in some respects but negotiating with states and territories can also take a long time.⁴¹

Is the Delay Justified?

6.35 A number of critics have argued that there is no justification for Australia to make a declaration under Article 24. They believe that it is not necessary to have all the inspection regimes and the national preventive mechanism fully settled before implementation commences, as Amnesty International told the Committee:

With the substantive existing bodies already in existence, arrangements can be put in place whilst modifications occur rather than causing significant delays at the expense of human rights.... The complete establishment of agencies and their jurisdiction takes years to materialise, however, this is no reason to delay the adoption of transitional measures of implementation.⁴²

40 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

41 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 18.

42 Amnesty International, *Submission 15*, p. 3.

6.36 The Australian Centre for Disability Law points out that the Optional Protocol is designed to be a flexible and non-punitive institution building treaty – so there is no need to delay commencement.⁴³ In fact, by seeking the maximum postponement possible, there will be ‘a negative signal about Australia’s commitment to human rights...’.⁴⁴ As Professor Harding cautions, a declaration under Article 24 should:

not be taken as a permit for ratifying and then doing little else for three years.⁴⁵

6.37 The Committee is conscious that the complexities of Australia’s federal system will delay finalisation of the arrangements. Australian government policy too is that action to bring a treaty into force will not be taken until any implementing legislation has been passed, either by the Commonwealth or by state or territory governments.⁴⁶ While recognising the practical restraints, the Committee agrees with the Australian Human Rights Commission that jurisdictions should be encouraged to establish their preventive mechanisms ahead of time.⁴⁷ At the very least, a three year time limit does provide a clear deadline for having the arrangements in place in all jurisdictions.⁴⁸ The Committee urges the Australian Government and the states and territories to finalise establishment of the National Preventive Mechanism as soon as possible and to consult widely with civil society as they do so. The Committee recommends accordingly.

43 Public Interest Advocacy Centre Ltd (PIAC), *Submission 18*, pp. 8-9.

44 PIAC, *Submission 18*, p. 11.

45 Professor Richard Harding, *Submission 4*, p. 6.

46 *Signed, Sealed and Delivered: Treaties and Treaty Making: Officials Handbook*, 10th Edition, July 2010, para 13.

47 Australian Human Rights Commission (AHRC), *Submission 13*, p. 12.

48 See Human Rights Law Centre, *Submission 6*, p. 3.

Recommendation 5

That the Australian Government work with the states and territories to implement a national preventive mechanism fully compliant with the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002* as quickly as possible on ratification of the Optional Protocol and the exercise of Article 24 of that Protocol.

OPCAT implementation experience so far

6.38 So far, overseas experience at implementation has been generally positive:

Overseas experience has been that adopting OPCAT preventative mechanisms has complemented existing individual complaints investigation and resolution systems. For example, in the United Kingdom the Chief Inspector of Prisons, an NPM body since 2009, now also carries out systemic reviews. Reviews have been conducted into the treatment of women and children, into suicide in detention and in health care. Creating a broader national and international sharing of experiences, processes and issues is already stimulating the adoption of effective practices from one jurisdiction to another, and New Zealand has noted an intention to pursue a similar approach to that of the UK and examine a number of systemic issues.⁴⁹

Australian Immigration Detention Centres

6.39 Although the detention of asylum seekers is not something within the Attorney-General's portfolio, the Department believes that:

[OPCAT] should not impact on that issue, in that there is already quite a wide system of monitoring of immigration detention centres. While there may be some changes as a result of this [treaty], and dialogue with bodies about how to improve that level of detention, ratification should not be a determining factor in whether or not Australia's system of mandatory detention remains, for example.⁵⁰

49 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 15.

50 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 16.

Costs

- 6.40 The UN is responsible for the Subcommittee's expenditure. A special fund has been set up by the UN, financed by voluntary contributions of governments, non-government organisations and other public or private entities. It is not presently proposed that Australia make a contribution to this fund.⁵¹
- 6.41 There should be minimal costs for Australia associated with facilitating visits by the Subcommittee to places of detention. The Subcommittee considers that State Parties should be visited once every four to five years on average. Based on the visits to State Parties to date, Subcommittee visits last between one and two weeks and target a small selection of places of detention (for example, the country visit to Sweden focused on one police detention facility, four police stations, and three prisons during a five day visit).⁵²
- 6.42 Costs in establishing and administering its national preventive mechanism should be ongoing and relatively stable. A preliminary assessment undertaken for the Attorney-General's Department confirmed that the cost of a National Preventive Mechanism in Australia will be the lowest if reliance is placed on use of existing bodies to undertake this role. Individual jurisdictions should bear their own costs because of their responsibility for the welfare of detainees. As significant changes are not expected to be necessary, the costs are expected to be modest. Further consultation with States and Territories on costs will be conducted.⁵³

Financial Benefits of Signing

- 6.43 Jurisdictions also stand to benefit financially from improved risk management and flow on effects from regular monitoring of their places of detention. Jurisdictions such as New Zealand have stated that preventing ill-treatment of detainees contributes to a costs saving in the use of the legal and health care systems arising from incidents of ill-treatment.⁵⁴ The Public Interest Law Clearing House agrees:

inspections and monitoring creates costs savings by improving conditions for those held in detention, leading to less litigation,

51 NIA, para 32.

52 NIA, para 33.

53 NIA, para 34.

54 NIA, para 35.

and fewer complaints, injuries and hopefully fewer deaths in custody.⁵⁵

- 6.44 The Australian Human Rights Commission also argues that preventive monitoring can contribute to a reduction in claims for compensation and associated costs of mistreatment:

As external accountability is strengthened, there is likely to be a decrease in incidences of mistreatment which give rise to compensation paid in settlements... It is estimated that over the past decade, the Australian Government has spent more than \$16 million in compensation to people who experienced mistreatment in immigration detention.⁵⁶

- 6.45 The Public Interest Advocacy Centre (PIAC) has tried to quantify the costs of claims against police, claims against police or correctional institutions in relation to detention or custody, the costs of inquests on deaths in custody or care and the costs of awards, settlements and claims in relation to immigration detention.⁵⁷ PIAC reports, for example, that costs to the New South Wales Police for compensation in the context of unlawful arrests or detention are just under \$4.1 million for 2009-2010. PIAC notes that the Department of Immigration and Citizenship reported that in 2010-2011 it spent \$31.2 million on legal expenses and as of 30 June 2011 had 40 civil compensation claims before the courts.⁵⁸

PIAC states and the Committee agrees that it is very difficult to accurately estimate the costs to Australian jurisdictions of investigating and litigating incidents and practices in detention leading to allegations of ill-treatment. However, any reduction in the incidents giving rise to these costs through compliance with the Optional Protocol will be of benefit to the public purse and make a further strong argument for the ratification and speedy implementation of the Protocol.

JSCOT's previous deliberations and recommendation

- 6.46 The Optional Protocol was previously referred to the Committee by the Senate in 2003 for inquiry and report. The Committee Report (Number 58, tabled on 24 March 2004) contained a majority recommendation against

55 Public Interest Law Clearing House, *Submission 23*, p. 2.

56 AHRC, *Submission 13*, p. 9.

57 PIAC, *Submission 18*, p. 10.

58 PIAC, *Submission 18*, Appendix.

signature or ratification of the Optional Protocol.⁵⁹ The main concern of the majority report was that mandating Subcommittee visits to a jurisdiction such as Australia, in the absence of compelling reasons, was not an appropriate use of the United Nations' resources.⁶⁰ The Committee's previous consideration was also undertaken before the Optional Protocol had come into force generally.⁶¹

- 6.47 Australia has many mechanisms in place for oversight and inspection of places of detention which might be expected to have already detected and addressed the practices of concern under the Optional Protocol. Analysis since 2004 has shown, however, that there are varying levels of oversight both between different types of detention, and between jurisdictions. There are also some gaps in monitoring – the key area of significance being detention in police detention facilities – which could be addressed by implementing the Optional Protocol.⁶²

Conclusion

- 6.48 Notwithstanding its recommendation in 2003 that Australia should not ratify the Optional Protocol, the Committee believes that it is now appropriate for Australia to ratify the Optional Protocol.
- 6.49 In 2003, the function of having an international visiting mechanism working collaboratively with a domestic equivalent was untried. Since then, international experience has shown that the Subcommittee is operating successfully in the way anticipated by the Optional Protocol.⁶³ The Attorney-General's Department noted positive tangible outcomes of ratification for other countries and that both the UK and New Zealand have found the operations of the Subcommittee and a national preventative mechanism to be valuable and of benefit.⁶⁴

59 Joint Standing Committee on Treaties, *Report 58: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 2004, Canberra.

60 NIA, para 8.

61 NIA, para 10.

62 NIA, para 9.

63 Mr Matthew Richard Hall, Assistant Secretary, Human Rights Policy Branch, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, p. 17.

64 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, pp. 16-17.

- 6.50 Secondly, although there were concerns with the efficiency of UN operations in 2003, better practices have – at least in part – ameliorated some of the UN resourcing concerns that were then current.⁶⁵
- 6.51 The Committee agrees that there are advantages to Australia in engaging with agreements such as this. Our ratification of the Optional Protocol may also encourage other countries to engage with the process, thereby strengthening human rights protections internationally.

Recommendation 6

The Committee supports the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* done at New York on 18 December 2002 and recommends that binding treaty action be taken.

65 Mr Greg Manning, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department, *Committee Hansard*, 7 May 2012, pp. 16-17.