



Australia's Domestic Implementation of the *Convention Against Torture*

Entrenchment of Basic Human Rights

Australia remains the only developed nation without a constitutional or legislative Bill of Rights at the national level. Australia's domestic law continues to fail to provide effective legislative, administrative, judicial or other protection to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment within its jurisdiction. There is no constitutional prohibition on torture and other cruel, inhuman or degrading treatment or punishment and the *Convention* has only been partially adopted into federal law.¹

The governments of Victoria and the Australian Capital Territory (ACT) have recently introduced limited legislative protection of human rights within their jurisdictions incorporating many, but not all, of the rights contained in the *International Covenant on Civil and Political Rights*.² While a general prohibition on torture and other cruel, inhuman or degrading treatment or punishment is contained in both the Victorian and ACT legislation, neither act provides for an independent right to take legal action to remedy a breach and therefore falls short of providing an 'effective remedy' as required under international human rights law. Further, the prohibition on torture is not absolute or non-derogable, but may be subject to 'such reasonable limits as can be demonstrably justified in a free and democratic society'.³

The Human Rights and Equal Opportunity Commission is an independent human rights institution in accord with the Paris Principles, however its authority is limited only to enquiry into complaints. It cannot make enforceable determinations and there is no requirement on the executive government to even respond to its recommendations.

Optional Protocol to the Convention Against Torture

The Australian Government's failure to ratify the *Optional Protocol to the Convention* denies Australians an important avenue of redress where any available domestic remedies have been exhausted. The Australian Government is not willing to bind itself to a protocol that constitutes a standing invitation and that would not provide an opportunity for the government to make decisions on a case-by-case basis.⁴

The Australian Government's decision has received strong criticism from several parliamentary bodies, including the Senate and the dissenting members of the Joint Standing Committee on Treaties.⁵ Indeed, 85% of public submissions to the Joint Standing Committee supported ratification of the *Optional Protocol*.

Communications to UN Treaty Bodies

In its Report, Australia acknowledges that it has been the subject of a number of complaints to the UN Human Rights Committee alleging a violation of article 7 of the *ICCPR* within the reporting period. At paragraph 46, it says that these complaints will be addressed in Australia's upcoming Fifth Periodic Report under the *ICCPR*.

Australia has recently released its Fifth Periodic Report to the Human Rights Committee. In relation to the matters of *Cabal and Pasini v Australia*,⁶ *Madafferi v Australia*⁷ and *Brough v Australia*⁸, in all of which the Committee found violations of articles 7 or 10 of the *ICCPR* in respect of conditions of detention, the Australian Government has rejected the Committee's Views and indicated that the complainants will not be

paid compensation or otherwise remedied. These responses raise serious issues in relation to the *Convention against Torture*.

TABLE OF CROSS-REFERENCES

Issue	Relevant Articles of <i>Convention Against Torture</i>	References to Issue in NGO Submissions
Entrenchment of Basic Human Rights	2, 4	NACLC/HRLRC Submission of 6 July 2007, Part 1 NSWCCL Shadow Report (27 July 2007) Part 3.1
Optional Protocol to the Convention Against Torture	2, 4	NACLC/HRLRC Submission of 9 October 2007, Part 1 NSWCCL Shadow Report (27 July 2007) Part 8
Communications to UN Treaty Bodies	2, 4	NACLC/HRLRC Submission of 6 July 2007, Part 6(a)

Endnotes

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- ¹ See *Crimes (Torture) Act 1988* (Cth).
 - ² Specifically, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2004* (ACT).
 - ³ See, eg, section 7(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
 - ⁴ Commonwealth Parliament, Joint Standing Committee on Treaties, *Report: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (23 March 2004) [3.66], <http://www.aph.gov.au/House/committee/jsct/OPCAT/report.htm>.
 - ⁵ Commonwealth of Australia, Senate, Parliamentary Debates, 25 March 2004, 21896.
 - ⁶ *Cabal and Pasini v Australia*, UN Doc CCPR/C/78/D/1020/2001 (7 August 2003).
 - ⁷ *Madafferi v Australia*, UN Doc CCPR/C/81/D//2001 (2004). See also [NSWCCL Shadow Report](#), [118].
 - ⁸ *Brough v Australia*, UN Doc CCPR/C/86/D/1184/2003 (2006). See also [NSWCCL Shadow Report](#), [168]-[171].