



S N A I C C

Secretariat of National Aboriginal & Islander Child Care

Attorney General's Department
Central Office
3-5 National Circuit
BARTON ACT 2600

Sent by email: CRCOP3@ag.gov.au

10 April 2012

Dear Sir/Madam,

Third Optional Protocol of the Convention on the Rights of the Child

SNAICC writes to urge the Australian Government to sign and ratify the Third Optional Protocol of the United Nations Convention on the Rights of the Child. This Optional Protocol, which establishes an individual communications mechanism under the Convention, responds to a critical gap in protection of the rights of the child in Australia.

SNAICC fully supports and endorses the position detailed in the submission to the Attorney General by the Human Rights Law Centre, a copy of which is enclosed.

SNAICC reinforces the importance of the Optional Protocol for improved protection of the rights of Aboriginal and Torres Strait Islander children and youth, who continue to be grossly over-represented in all areas of disadvantage and who struggle to realise their right to experience their own culture in many aspects of life.

Yours faithfully,

Frank Hytten
Chief Executive Officer
SNAICC

Encl.

ABN 42 513 562 148

Submission:
**Third Optional Protocol to the
Convention on the Rights of the Child**



The Human Rights Law Centre (HRLC) unreservedly supports Australia's signature of the Third Optional Protocol to the Convention on the Rights of the Child (CRC).

Consistent with Australia's strong bipartisan contribution to the development of international human rights laws and institutions, the HRLC strongly encourages expeditious ratification of the Third Optional Protocol. Particularly given Australia's constructive role in the development of the text for the communications procedure under the CRC, it would be fitting for Australia's ratification to place it as one of the countries to bring the Optional Protocol into force.

Ratification would also be timely ahead of Australia's review under the CRC in May 2012.

About the Third Optional Protocol

The text of the Third Optional Protocol was adopted by the UN General Assembly in December 2011. Its purpose is to provide international communication mechanisms to "complement such national mechanisms and further enhance the implementation of the Convention".

The Third Optional Protocol establishes three procedures:

1. an individual communications procedure, which provides a channel for individuals or groups of individuals to submit a complaint to the Committee of an alleged violation of any of the rights contained in the CRC (or its First or Second Optional Protocols) and to seek redress for that violation;¹
2. an inter-state complaints procedure, which allows the Committee to consider communications by one State party alleging that another State party is not fulfilling its obligations under the CRC or its Optional Protocols. Prior to being subject to the Committee's jurisdiction as regards inter-state complaints, a State party must take the additional step to acknowledge and declare its acceptance of the Committee's jurisdiction;² and
3. an inquiry Procedure, which allows the Committee to initiate investigations into allegations of grave or systemic violations of CRC or its Optional Protocol rights by a State party upon receipt of reliable information.³

The Third Optional Protocol does not create any new rights but rather provides a redress mechanism for violations of rights under the CRC and its First and Second Optional Protocols.

The HRLC considers that Australia should sign, and expeditiously ratify, the Third Optional Protocol for the following reasons:

1. Complement and strengthen existing mechanisms protecting children's rights

Australia has made important progress in recent years in the recognition and protection of children's rights. However, it is clear that challenges remain in Australia's implementation of the CRC. A comprehensive NGO report on Australia's compliance with the CRC identifies that human rights are yet to be effectively incorporated into many areas of law and policy to

¹ Article 5 of the Third Optional Protocol.

² Article 12 of the Third Optional Protocol.

³ Article 13 of the Third Optional Protocol.

benefit children.⁴ This is particularly evident in areas such as the rights of Aboriginal and Torres Strait Islander children, children experiencing homelessness and children in immigration detention, among other concerns.

The Optional Protocol is not intended to replace existing domestic remedies or eliminate the need for analysis and change. Rather, the goal of the Optional Protocol is to strengthen the protection and promotion of children's human rights and fundamental freedoms at the domestic level. However, even where domestic measures are strong, in some circumstances they may fail. If this occurs, access to international mechanisms provides a secondary but necessary procedure by which children can access a remedy for the violation at issue.

2. Give effect to Australia's international legal obligation to provide effective remedies

It is a central principle of international human rights law that the obligation to respect, protect and fulfil human rights includes a duty to provide effective remedies to victims where their rights have been breached.⁵ The Optional Protocol provides an additional means by which Australia can ensure that this obligation is met. The HRLC considers that ratification of the Optional Protocol will encourage current and future Australian governments to improve upon existing enforcement mechanisms for children's rights and to take additional steps to implement the CRC.

Further, the HRLC notes that Australia is already party to individual complaints procedures under other international human rights treaties, including the ICCPR, CERD, CEDAW, CRPD and CAT. These treaties already recognise and protect the rights of children, either directly or indirectly. Ratification of the Third Optional Protocol would therefore not subject Australia to any obligations that it is already not subject to under other human rights treaties.

Use of the enforcement procedures under the Third Optional Protocol would also enable the Committee on the Rights of the Child to develop a focused and detailed jurisprudence that could assist Australia (and other states) in the implementation of obligations under CRC. Currently, complaints to other human rights bodies relating to issues affecting children are not dealt with or considered by a committee with specialist expertise on children's rights. Under the Third Optional Protocol, hearing of complaints by a specialist body will provide practical and authoritative interpretation of the CRC's provisions and states' obligations through the development of international children's rights jurisprudence.

3. Providing international human rights leadership

The Third Optional Protocol will enter into force following its 10th ratification. Consistent with the Australian Government's commitment to being a principled human rights leader, the HRLC strongly urges the Australian Government to be part of the first group of States to ratify

⁴ See generally *Listen to Children*, NGO Report on Australia's compliance with the CRC (2011), available at <http://www.childrights.org.au/>.

⁵ *International Covenant on Civil and Political Rights*, 16 December 1966 (entered into force 23 March 1976), article 2(3); Office of the United Nations High Commissioner for Human Rights, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

the Third Optional Protocol, particularly in light of the constructive role taken by the Government in its drafting and development.

Prompt signature and ratification by Australia of the Third Optional Protocol will signify Australia's commitment to the Convention and the protection and promotion of children's rights in the international arena. Particularly ahead of Australia's review under the CRC in May 2012, ratification of the Optional Protocol would be a practical and tangible demonstration of Australia's strong commitment to respect for children's rights and constructive engagement with the UN human rights system.

4. Minimal implementation obligations

The HRLC considers that the Third Optional Protocol can be implemented without difficulty within Australia's existing political and legal structures. The Optional Protocol does not impose any new substantive obligations beyond a commitment to co-operate in the communication and inquiry procedures.

This also means that ratification can be undertaken with negligible cost implications for Australian governments. In fact, any costs involved in ratifying the Third Optional Protocol are highly likely to be more than offset by the benefits that would flow from ratification. As identified above, ratification would complement and strengthen existing domestic mechanisms, thereby fostering and promoting systemic analysis and change to better protect children's rights in Australia. This is likely to have the beneficial effect of minimising the costs of addressing instances of violations of children's rights, including avoiding some direct costs of litigation and compensation payments.

In addition, ratification of the Third Optional Protocol is unlikely to subject the Australian Government to a flood of complaints and investigations by the Committee on the Rights of the Child. The Third Optional Protocol sets out strict admissibility requirements that must be met before the Committee can consider the merits of a communication alleging a violation of CRC by Australia. Among these is the requirement that the author of a communication exhaust all available domestic remedies in relation to an alleged violation. Similarly, stringent threshold requirements must be met before the Committee will receive an inter-state complaint or initiate an inquiry procedure.

For the reasons outlined above, the HRLC strongly encourages Australia to sign and expeditiously ratify the Third Optional Protocol to the CRC.

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