

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING  
IN PERSONS, ESPECIALLY WOMEN AND CHILDREN,  
SUPPLEMENTING THE UNITED NATIONS CONVENTION  
AGAINST TRANSNATIONAL ORGANIZED CRIME  
(NEW YORK, 15 NOVEMBER 2000)  
[2003] ATNIF 1**

**Documents tabled on 3 December 2003:**

**National Interest Analysis**

**Text of the Proposed treaty action**

**Annexures:**

**Consultations**

**Current status list**

## **NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY**

### **SUMMARY PAGE**

#### **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000) [2003] ATNIF 1**

##### **Date of Tabling of Proposed Treaty Action**

1. 3 December 2003.

##### **Nature and Timing of Proposed Treaty Action**

2. The proposed binding treaty action is the ratification by Australia of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (the Protocol). It is proposed that Australia lodge its instrument of ratification with the Secretary-General of the United Nations by mid-2004.
3. The Protocol was adopted by the United Nations General Assembly on 15 November 2000. Australia signed the Protocol on 11 December 2002. In accordance with Article 17 of the Protocol, the Protocol will enter into force generally on 25 December 2003, following the deposit on 23 September 2003 of the fortieth instrument of ratification, accession, acceptance or approval. The Protocol would enter into force for Australia thirty days after the date on which Australia's instrument of ratification is deposited with the Secretary-General of the United Nations (Article 17(2)).
4. The Protocol supplements the Convention Against Transnational Organised Crime (the TOC Convention), which entered into force generally on 29 September 2003. The proposed ratification of the TOC Convention by Australia is the subject of a separate proposed treaty action and national interest analysis.
5. Upon signature of the Protocol, Australia deposited the following declaration:  
The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders.  
This declaration will remain effective following ratification.

##### **Overview and National Interest Summary**

6. The Protocol forms a key element of a global approach to prevent and combat transnational organised crime established by the TOC Convention. The purpose of the Protocol is to prevent and combat trafficking in persons, especially women and children, through a comprehensive international approach including measures to prevent trafficking, punish traffickers and protect the victims of trafficking.
7. Ratifying the Protocol is in Australia's interests as it highlights Australia's domestic efforts in the international arena, demonstrates Australia's commitment to working with other destination and source countries and ensures that Australia's approach to trafficking is consistent with the approach of other parties.

## **Reasons for Australia to Take the Proposed Treaty Action**

8. Trafficking in persons is a particularly repugnant form of transnational organised crime, involving the deception and degradation of hundreds of thousands of victims around the world. The Asia-Pacific region has become a hub for trafficking in persons, particularly for the purposes of sexual servitude. All countries, including destination countries like Australia, have a responsibility to address this issue.

9. The Government recently announced a \$20 million package of measures to combat trafficking and provide support for victims; one component of this package was ratification of the Protocol. Australia's ratification of the Protocol will further demonstrate Australia's commitment to eradicating trafficking in persons. Ratification has widespread domestic support amongst community groups working on trafficking issues.

10. It is impossible to precisely identify the number of trafficked persons in Australia, although evidence gathered to date suggests that the number is small. However, regardless of the size of the problem, trafficking in persons is a serious crime and must be addressed by all countries. Australia's ratification of the Protocol will be a strong statement of commitment and example on this issue.

11. Ratification of the TOC Convention will also support Australia's work as co-chair of the Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime. As co-chair of these conferences with Indonesia, the Australian Government has taken an active role in promoting regional cooperation to break down the criminal networks responsible for transnational crime. Australia and Indonesia issued co-chairs' statements after both Regional Ministerial Conferences encouraging states to consider ratifying the TOC and its People Smuggling and Trafficking in Persons Protocols.

12. Failure to ratify the TOC Convention may weaken Australia's standing in international and regional fora designed to encourage international cooperation against transnational crime.

## **Obligations**

13. The Protocol includes a number of mandatory obligations relating to the criminalisation of conduct, the protection of victims of trafficking, the prevention of trafficking and international cooperation.

### *Criminalisation*

14. Article 5 requires that States Parties criminalise trafficking offences as defined by Article 3 of the Protocol. These offences include attempting to commit trafficking offences, participating as an accomplice in trafficking offences, and directing others to commit trafficking offences

### *Procedural elements*

15. Under Article 6, Australia would be required to protect the privacy and identity of victims of trafficking, and provide victims of trafficking with information on court and

administrative proceedings, as well as assistance to enable their views and concerns to be presented and considered.

#### *Facilitating return of victims of trafficking*

16. Under Article 8 of the Protocol, Australia would be required to facilitate and accept the return of a victim of trafficking without undue or unreasonable delay, verify whether a victim of trafficking is an Australian national or permanent resident of Australia at the time of entry into the receiving country, and issue travel documents to enable a trafficking victim to travel to and re-enter Australia.

#### *Preventive Measures*

17. Under Article 9 of the Protocol, Australia would be required to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons and to protect trafficking victims from re-victimisation. Australia would be required also to adopt or strengthen legislative or other measures to discourage the demand that fosters exploitation (Article 9).

18. Article 10 requires cooperation between law enforcement, immigration and other relevant authorities of States Parties to the Protocol through the exchange of information. It also requires States Parties to provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.

19. Under Article 11, Australia would be required to adopt legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of trafficking offences, and to establish sanctions for breaches. Australia would also be required to verify the legitimacy and validity of travel or identity documents issued or purported to have been issued by Australia and suspected of being used for trafficking (Article 13).

#### *Dispute settlement*

20. Article 15 of the Protocol provides that any dispute between States Parties concerning the interpretation or application of the Protocol that is not resolved through negotiations within a reasonable time may be submitted to arbitration at the request of a party to the dispute. It further provides that in the event that the parties are unable to agree on the organisation of the arbitration within six months of the request for arbitration, any of the parties to the dispute may refer the dispute to the International Court of Justice.

21. A State Party to the Protocol may declare at the time of signature, ratification, acceptance or approval of the Protocol that it is not bound by the procedure set out in Article 15. It is not proposed that Australia make such a declaration when ratifying the Protocol.

#### **Implementation**

22. A number of the obligations under the Protocol can be implemented administratively or under existing Commonwealth legislation. Australia already has strong laws criminalising sexual servitude, slavery, deceptive recruiting and people smuggling under

the *Criminal Code*. These offences are all covered by the *Proceeds of Crime Act 2002* as serious offences for which convicted persons can be required to forfeit all their property.

23. Amendments will be made to the *Criminal Code* to introduce new offences to criminalise trafficking in persons to give effect to the obligations under Articles 3 and 5 of the Protocol. In addition, amendments will be made to the *Migration Regulations 1994* to introduce new visa arrangements for trafficking victims so as to enable Australia to give effect to the provisions of Article 7 of the Protocol. The new offences are likely to be introduced in the 2004 Autumn sittings. Once passed, Australia will fully comply with the Protocol.

24. In addition, the package of measures to combat trafficking in persons announced by the Australian Government on 13 October 2003 will ensure Australia exceeds the remaining obligations set out in the Protocol.

### **Costs**

25. There are no foreseeable financial costs to Australia that will be imposed by ratification of the Protocol.

26. The costs of participation in the Conference of Parties to the TOC Convention is borne by individual States Parties.

### **Consultation**

27. The Commonwealth Government consulted with the States and Territories on the TOC Convention through the Standing Committee on Treaties and relevant ministerial committees. Details of the consultation process are at **Attachment A**.

### **Regulation Impact Statement**

28. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future Treaty Action**

29. Under Article 18, amendments to the Protocol may be proposed by a State Party to the Convention at any time after 25 December 2008 (five years after the entry into force of the Protocol). The agreement of a two-thirds majority of States Parties present and voting at a Conference of the Parties is required for the adoption of a proposed amendment to the Convention. An adopted amendment to the Protocol would be binding only upon those States Parties that express their consent to be bound by it and is subject to ratification, acceptance, accession or approval by States Parties.

30. An amendment will enter into force 90 days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of the amendment.

31. Amendments to the Protocol would be subject to the Australian treaty process.

### **Withdrawal or Denunciation**

32. Article 19 of the Protocol provides that a State Party may denounce the Protocol by written notification to the Secretary-General of the United Nations. Such denunciation would take effect one year after the receipt of such notification by the Secretary-General (Article 19(1)).

33. Denunciation would be subject to the Australian treaty process.

### **Contact details**

International Crime Branch  
Attorney-General's Department

**Protocol to Prevent, Suppress and Punish Trafficking in Persons,  
Especially Women and Children, supplementing the United Nations  
Convention against Transnational Organized Crime  
(New York, 15 November 2000)  
[2003] ATNIF 1**

**Consultations**

1. The States and Territories have been closely consulted on the Protocol.
2. During the negotiation of the Protocol, in November 1999 and April 2000, the Commonwealth briefed States and Territories on the Protocol at the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) meetings. In June 2000, the then Minister for Justice and Customs, Senator the Hon Amanda Vanstone wrote to the State and Territory Attorneys-General about the Protocol. The matter was discussed at HOCOLEA again in June 2000. The Commonwealth Government prepared a paper outlining the status of the negotiations for the Standing Committee of Attorneys-General (SCAG) meeting in July 2000. The National Anti-Crime Strategy Lead Ministers were briefed on the Protocol in November 2000.
3. Following adoption of the Protocol by the United Nations General Assembly, HOCOLEA was provided with status reports in February and May 2001. The Convention was discussed at the Standing Committee on Treaties (SCOT) meeting in May 2001. At that time, the Convention and the three Protocols had appeared on lists of multilateral treaty action under consideration tabled in the Commonwealth Parliament, and they had been on the SCOT list of treaties for some time.
4. In the general area of trafficking in persons, the Minister for Justice and Customs has worked closely with his State and Territory counterparts through the Australian Police Ministers' Council (APMC). On 20 October 2003, the Australian Crime Commissioners' Forum (ACCF) adopted proposals for a national plan of action to combat trafficking in women for the purposes of sexual servitude. The finalised plan should be endorsed by Ministers at the next APMC.
5. The Protocol was discussed again at the SCOT meeting in November 2003. At this meeting, the Commonwealth Government informed the States and Territories of its intention to table the Convention and the Protocol for consideration by the Commonwealth Parliament's Joint Standing Committee on Treaties.

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**Current Status List**

<b>Country</b>	<b>Signature</b>	<b>Ratification, Acceptance (A), Approval (AA), Accession (a)</b>
Afghanistan		
Albania	12 December 2000	21 August 2002
Algeria	6 June 2001	
Angola		
Argentina	12 December 2000	19 November 2002
Armenia	15 November 2001	01 July 2003
Australia	11 December 2002	
Austria	12 December 2000	
Azerbaijan	12 December 2000	30 October 2003
Bahamas	09 April 2001	
Barbados	26 September 2001	
Belarus	14 December 2000	25 June 2003
Belgium	12 December 2000	
Belize		26 September 2003a
Benin	13 December 2000	
Bolivia	12 December 2000	
Bosnia and Herzegovina	12 December 2000	24 April 2002
Botswana	10 April 2002	29 August 2002
Brazil	12 December 2000	
Bulgaria	13 December 2000	5 December 2001
Burkina Faso	15 December 2000	15 May 2002
Burundi	14 December 2000	
Cambodia	11 November 2001	
Cameroon	13 December 2000	
Canada	14 December 2000	13 May 2002
Cape Verde	13 December 2000	
Chile	08 August 2002	
China		
Colombia	12 December 2000	
Congo	14 December 2000	
Costa Rica	16 March 2001	09 September 2003
Côte D' Ivoire		
Croatia	12 December 2000	24 January 2003
Cuba		
Cyprus	12 December 2000	06 August 2003
Czech Republic	10 December 2002	
Denmark	12 December 2000	30 September 2003
Dominican Republic	15 December 2000	



Ecuador	13 December 2000	17 September 2002
Egypt	01 May 2002	
El Salvador	15 August 2002	
Equatorial Guinea	14 December 2000	07 February 2003
Estonia	20 September 2002	
Ethiopia		
European Community	12 December 2000	
Finland	12 December 2000	
France	12 December 2000	29 October 2002
Gambia	14 December 2000	05 May 2003
Georgia	13 December 2000	
Germany	12 December 2000	
Greece	13 December 2000	
Guatemala		
Guinea-Bissau	14 December 2000	
Haiti	13 December 2000	
Honduras		
Hungary	14 December 2000	
Iceland	13 December 2000	
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)		
Ireland	13 December 2000	
Israel	14 November 2001	
Italy	12 December 2000	
Jamaica	13 February 2002	
Japan	09 December 2002	
Kazakhstan		
Kuwait		
Kyrgyzstan	13 December 2000	
Lao People's Democratic Republic		26 September 2003 a
Latvia	10 December 2002	
Lebanon	09 December 2002	
Lesotho	14 December 2000	24 September 2003
Libyan Arab Jamahiriya	13 November 2001	
Liechtenstein	14 March 2001	
Lithuania	25 April 2002	23 June 2003
Luxemburg	13 December 2000	
Madagascar	14 December 2000	
Malawi		
Mali	15 December 2000	12 April 2002
Malta	14 December 2000	24 September 2003
Mauritius		24 September 2003 a
Mexico	13 December 2000	04 May 2003
Monaco	13 December 2000	5 June 2001
Morocco		
Mozambique	15 December 2000	
Namibia	13 December 2000	16 August 2002
Nauru	12 November 2001	
Netherlands	12 December 2000	
New Zealand	14 December 2000	19 July 2002
Nicaragua		
Nigeria	13 December 2000	28 June 2001
Niger	21 August 2001	
Norway	13 December 2000	23 September 2003

Pakistan		
Panama	13 December 2000	
Paraguay	12 December 2000	
Peru	14 December 2000	23 January 2002
Philippines	14 December 2000	28 may 2002
Poland	04 October 2001	26 September 2003
Portugal	12 December 2000	
Republic of Korea	13 December 2000	
Republic of Moldova	14 December 2000	
Romania	14 December 2000	04 December 2002
Russian Federation	12 December 2000	
Rwanda	14 December 2000	26 September 2003
Saint Vincent and the Grenadines	20 November 2002	
San Marino	14 December 2000	
Saudi Arabia	10 December 2002	
Senegal	13 December 2000	27 October 2003
Serbia and Montenegro	12 December 2000	6 Sep 2001
Seychelles	22 July 2002	
Sierra Leone	27 November 2001	
Singapore		
Slovakia	15 November 2001	
Slovenia	15 November 2001	
South Africa	14 December 2000	
Spain	13 December 2000	01 march 2002
Sri Lanka	13 December 2000	
Sudan		
Swaziland	08 January 2001	
Sweden	12 December 2000	
Switzerland	02 April 2002	
Syrian Arab Republic	13 December 2000	
Tajikistan		08 July 2002 a
Thailand	18 December 2001	
The former Yugoslav Republic of Macedonia	12 December 2000	
Togo	12 December 2000	
Trinidad and Tobago	26 September 2001	
Tunisia	13 December 2000	14 July 2003
Turkey	13 December 2000	25 March 2003
Uganda	12 December 2000	
Ukraine	15 November 2001	
United Kingdom of Great Britain and Northern Ireland	14 December 2000	
United Republic of Tanzania	13 December 2000	
United States of America	13 December 2000	
Uruguay	13 December 2000	
Uzbekistan	28 June 2001	
Venezuela	14 December 2000	13 May 2002
Vietnam		
Yemen		
Zimbabwe		