

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD
PROSTITUTION AND CHILD PORNOGRAPHY, DONE AT
NEW YORK ON 25 MAY 2000
[2002] ATNIF 3**

Documents tabled on 11 October 2005:

National Interest Analysis [2005] ATNIA 15

with attachment on consultation

Text of the proposed treaty action

Background information: Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

**Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000
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Nature and timing of proposed treaty action

1. It is proposed that Australia take binding treaty action to accede to the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (the Optional Protocol) by depositing an instrument of accession with the Secretary-General of the United Nations under article 13(2).
2. Australia signed the Optional Protocol on 18 December 2001. In accordance with article 14(1), the Optional Protocol entered into force generally on 18 January 2002. As at 15 September 2005, 111 states had signed the Optional Protocol, with 100 having deposited instruments of ratification or accession. Pursuant to article 14(2) the Optional Protocol will enter into force for Australia one month after the date of deposit of the instrument of accession.
3. Acceding to the Optional Protocol will not affect any existing treaty to which Australia is a party.

Overview and national interest summary

4. The Optional Protocol was developed to protect children from the worst forms of commercial sexual exploitation. It spells out some of the important protections for children contained in the *Convention on the Rights of the Child*. UNICEF estimates that one million children (mainly girls, but also a significant number of boys) enter the multi-billion dollar commercial sex trade every year. The Protocol requires ratifying countries to criminalise (domestically and transnationally) serious violations of children's rights, including the sale of children for the purposes of sexual exploitation, organ transfer, forced labour and certain adoptions, and offences relating to child prostitution and pornography.
5. Australia was an active participant in the development and negotiation of the text of the Optional Protocol. Accession will signal Australia's strong support and continuing commitment to the promotion and protection of children's rights in this area, and also to the broader goals of the Convention on the Rights of the Child.

Reasons for Australia to take the proposed treaty action

6. Child exploitation is a serious issue for the international community and for Australia. Recent policy and legislative initiatives at both the Federal and State and Territory levels have demonstrated Australia's commitment to adopt strong measures to combat slavery, sexual servitude and people trafficking, especially with regard to children.

7. On 6 July 2005, the Commonwealth *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* came into effect. This legislation creates new and revised trafficking in persons offences that comprehensively criminalise trafficking in persons.

8. Accession to the Optional Protocol will promote the Australian Government's strong stance on people trafficking and child exploitation issues in the region. Trafficking of women and children, including for sexual exploitation, both regionally and globally, is of increasing concern to Australia and to other members of the Association of Southeast Asian Nations (ASEAN). It has been identified by ASEAN as a priority issue for regional cooperation. The global trade in human beings has also been denounced by the Secretary-General of the United Nations (UN) as one of the most egregious violations of human rights which the UN now confronts.

9. Australia is one of 11 States that have signed but not yet ratified the Optional Protocol. Some Asia-Pacific States such as China, Japan, Vietnam and Cambodia have already ratified the Optional Protocol, while others, like Indonesia, are yet to do so. Accession would put Australia in a strong position to encourage other Asia-Pacific States to become Parties, and strengthen the protections in our region against child exploitation. Encouraging such measures by regional states is in Australia's interest as it can be expected to limit the opportunities for trafficking in women and children from major source countries in the region.

10. Accession will align our international obligations with the active approach of Australia's *Asia Regional Cooperation to Prevent People Trafficking* program which is aimed at reducing the incidence of people trafficking in the South East Asian region. Australia also conducts a number of other initiatives through its development assistance programs aimed at reducing the risks of exploitation for children in the region. In particular, Australia's contributions to the region through the *Child Wise: Preventing the Sexual Exploitation of Children in ASEAN Tourism Destinations through Community and Professional Education* program, the *Australia-China Human Rights Technical Cooperation* program and the *South Asia Governance Fund* demonstrate the Australian Government's commitment to combating child exploitation in our region.

11. Accession to the Optional Protocol would also reflect the effective protections afforded to children under Australian law, by its institutions and in Australian society. Accession would also accord with the expectations of the public following signature of the Optional Protocol. The Government continues to receive correspondence from members of the public encouraging Australia to accede to the Optional Protocol.

Obligations

12. Accession to the Optional Protocol would put Australia under a number of obligations including ensuring that the relevant conduct is criminalised, that extradition and mutual assistance procedures are established, that the conduct is subject to confiscation laws, that rules of evidence protect vulnerable witnesses, and that policy measures are implemented to support the legislative framework.

Criminal law obligations

13. If it accedes to the Optional Protocol, Australia will be obliged to criminalise the sale of a child (as a minimum, for the purposes of sexual exploitation, transfer of organs or engagement of the child in forced labour), child prostitution and child pornography (relevant offences) (articles 1, 2 and 3(1)). Australia will be obliged to ensure that these acts are criminalised whether they are committed domestically or transnationally, on an individual or organised basis (article 3(1)), or by a natural or legal person (article 3(4)). Australia will also be obliged to make it an offence to attempt to commit one of the relevant offences or to participate or be complicit in the commission of a relevant offence (article 3(2)). The Optional Protocol requires that States take measures to prohibit the production and dissemination of material that advertises the offences in the Optional Protocol (article 9(5)), for example an advertisement for an internet site that displays child pornography.

14. If Australia accedes to the Optional Protocol, it will be under an obligation to make it possible to prosecute the relevant offences where they are committed inside Australia, or on board an Australian registered ship or aircraft (article 4(1)) or where the extradition of an alleged offender who is an Australian national is refused and the person is in Australia (article 4(3)).

15. Accession will also put Australia under an obligation to ensure the rights and best interests of the child are protected throughout the process of prosecuting an alleged offender (article 8). In particular, the Optional Protocol would require Australia to implement rules of court that recognise the vulnerability and special needs of child witnesses (article 8(1)), to protect the interests of the child in criminal justice processes (article 8(3)) and to ensure that proper rehabilitation assistance is available for victims of the relevant offences (articles 8(4) and 8(5)).

16. These articles provide greater detail to the obligations under the Convention on the Rights of the Child under articles 1, 11, 21, 32, 33, 34, 35 and 36, which already oblige Australia to take measures to combat the relevant offences.

Extradition, mutual assistance and other international cooperation obligations

17. Accession will oblige Australia to deem the relevant offences extraditable offences, and to recognise the relevant offences as extraditable offences where no extradition treaty exists between Australia and another country (article 5). Australia will also be obliged to establish reciprocity over the relevant offences for the purposes of meeting requests from other countries for the extradition of a person where the offence is committed outside Australia (article 5(3)).

18. Should Australia accede to the Optional Protocol, it will be obliged to give mutual assistance to other States Parties, whether in accordance with a mutual assistance treaty or under domestic law (article 6).

19. Accession to the Optional Protocol will also oblige Australia to strengthen international cooperation arrangements for the prevention, detection, investigation, prosecution and punishment of the relevant offences (article 10(1)), for the assistance of child victims (article 10(2)) and to address the root causes of the offences by providing appropriate assistance to other countries (articles 10(3) and 10(4)).

Proceeds of crime obligations

20. The Optional Protocol also addresses the seizure confiscation of the instruments and proceeds of the crime. Accession will require Australia ensure that the instruments and proceeds of crime are subject to seizure and confiscation legislation (article 7(a)), and to ensure that the premises used to commit a relevant offence can be closed either temporarily or permanently (article 7(c)).

21. Australia will also be under an obligation to execute requests from other countries for seizure and confiscation (article 7(b)).

Related policy obligations

22. Australia will also be subject to obligations requiring the implementation of appropriate policy measures to support the legislative framework. The Optional Protocol will require Australia to implement measures and programs to prevent the relevant offences being committed (article 9(1)) and to raise public awareness of the relevant offences (article 9(2)). We will also be obliged to provide appropriate assistance to victims (article 9(3)) and to ensure adequate procedures exist to enable victims to seek compensation (article 9(4)).

Reporting obligations

23. To allow the Committee on the Rights of the Child (CRC) to monitor the implementation of the Optional Protocol, Australia would also be obliged to submit a report to the CRC within two years of acceding to the Optional Protocol detailing the measures taken to implement the obligations (article 12(1)). Subsequent reports on implementation would form part of the regular reports required under article 44 of the Convention on the Rights of the Child (article 12(2)).

Implementation

24. If Australia accedes to the Optional Protocol, we will be obliged to make extradition regulations to meet the obligations in article 5. Regulations for this purpose will be made before accession to the Optional Protocol.

25. Apart from making relevant extradition regulations, Australia is compliant with the other mandatory obligations of the Optional Protocol. Since Australia signed the Optional Protocol on 18 December 2001, amendments have been made to other relevant legislation at Commonwealth and State and Territory level to ensure that Australia complies with the legislative requirements of the Optional Protocol.

26. At the Commonwealth level, compliance with the obligations of the Optional Protocol is established under the *Criminal Code*, the *Crimes Act 1914* and the *Customs Act 1901*. Jurisdictional requirements are supplemented by the *Crimes at Sea Act 2000* and the *Crimes (Aviation) Act 1991*. Obligations relating to adoption are met by the operation of the State and Territory Adoption Acts and the Commonwealth migration laws. States and Territories also have other important legislation which implements the obligations of the Optional Protocol, notably those regarding child prostitution and child pornography.

Costs

27. Accession to the Optional Protocol will have no financial implications at the Commonwealth or State and Territory levels. Australia will have to submit a report on our compliance to the CRC (under article 12 of the Optional Protocol) within two years of the Protocol entering into force for Australia.

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. Any State Party may propose an amendment to the Optional Protocol. If, within four months of a State Party communicating its proposed amendment to the United Nations Secretary General, at least one third of the States Parties favour a conference of States Parties to consider the amendment, such a conference shall be convened. Any amendment adopted by a majority of States Parties at the conference would then be submitted to the United Nations General Assembly for approval (Article 16(1)). The amendment would not enter into force until it had been approved by the General Assembly and accepted by a two-thirds majority of States Parties (Article 16(2)). Even then, the amendment would only be binding upon those States Parties which had accepted it (Article 16(3)). Australian acceptance of any amendment to the Optional Protocol would be subject to Australia's treaty making process.

Withdrawal or denunciation

30. Any State Party may denounce the Optional Protocol at any time by giving written notification to the United Nations Secretary General. Denunciation would take effect one year after the date of receipt of the notification by the Secretary General (article 15(1)). Denunciation does not release State Parties from obligations under the Optional Protocol in respect of relevant offences occurring before the denunciation takes effect (article 15(2)). Denunciation by Australia would be subject to our treaty making process.

Contact details

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CONSULTATION

**Optional Protocol to the Convention on the Rights of the Child on the Sale of
Children, Child Prostitution and Child Pornography, done at New York on
25 May 2000
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1. This proposed action will have an impact on the States and Territories. The impact results from the fact that much of the subject matter of the Optional Protocol depends on State and Territory legislation and policy measures.
2. Following signature of the Optional Protocol, the Attorney-General consulted with State and Territory Attorneys-General through the Standing Committee of Attorneys-General (SCAG). Ratification of the Optional Protocol has been on the SCAG agenda since December 2003.
3. In letters to the Federal Attorney-General, the Attorneys-General of the States and Territories have indicated that the legislation of each of their jurisdictions complies with the Optional Protocol. Since signature, the Attorney-General's Department has consulted with State and Territory Departments of Justice on various issues relating to compliance with the Optional Protocol. Confirmation of compliance from all States and Territories has now been received.
4. During the negotiation of the Optional Protocol, consultation took place between the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade and the Attorney-General's Department. The States and Territories were informed through the schedule of treaties provided to the Standing Committee on Treaties.
5. Approval for signature of the Optional Protocol was given by the Prime Minister, the Attorney-General and the Ministers for Foreign Affairs, Employment and Workplace Relations, Family and Community Services, Immigration and Multicultural and Indigenous Affairs and the Minister for Communications, Information Technology and the Arts. Final approval for signature was given by the Governor-General in Council on 6 December 2001.

BACKGROUND INFORMATION

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000

Current Status List as at 15 September 2005.

Participant	Signature	Ratification, Accession (a)
Afghanistan	.	19 Sep 2002 a
Andorra	7 Sep 2000	30 Apr 2001
Angola	.	24 Mar 2005 a
Antigua and Barbuda	18 Dec 2001	30 Apr 2002
Argentina	1 Apr 2002	25 Sep 2003
Armenia	24 Sep 2003	30 Jun 2005
Australia	18 Dec 2001	.
Austria	6 Sep 2000	6 May 2004
Azerbaijan	8 Sep 2000	3 Jul 2002
Bahrain	.	21 Sep 2004 a
Bangladesh	6 Sep 2000	6 Sep 2000
Belarus	.	23 Jan 2002 a
Belgium	6 Sep 2000	.
Belize	6 Sep 2000	1 Dec 2003
Benin	22 Feb 2001	31 Jan 2005
Bolivia	10 Nov 2001	3 Jun 2003
Bosnia and Herzegovina	7 Sep 2000	4 Sep 2002
Botswana	.	24 Sep 2003 a
Brazil	6 Sep 2000	27 Jan 2004
Bulgaria	8 Jun 2001	12 Feb 2002
Burkina Faso	16 Nov 2001	.
Cambodia	27 Jun 2000	30 May 2002
Cameroon	5 Oct 2001	.
Canada	10 Nov 2001	14 Sep 2005
Cape Verde	.	10 May 2002 a
Chad	8 May 2002	28 Aug 2002
Chile	28 Jun 2000	6 Feb 2003
China	6 Sep 2000	3 Dec 2002

Colombia	6 Sep 2000	11 Nov 2003
Costa Rica	7 Sep 2000	9 Apr 2002
Croatia	8 May 2002	13 May 2002
Cuba	13 Oct 2000	25 Sep 2001
Cyprus	8 Feb 2001	.
Czech Republic	26 Jan 2005	.
Democratic Republic of the Congo	.	11 Nov 2001 a
Denmark	7 Sep 2000	24 Jul 2003
Dominica	.	20 Sep 2002 a
Ecuador	6 Sep 2000	30 Jan 2004
Egypt	.	12 Jul 2002 a
El Salvador	13 Sep 2002	17 May 2004
Equatorial Guinea	.	7 Feb 2003 a
Eritrea	.	16 Feb 2005 a
Estonia	24 Sep 2003	3 Aug 2004
Finland	7 Sep 2000	.
France	6 Sep 2000	5 Feb 2003
Gabon	8 Sep 2000	.
Gambia	21 Dec 2000	.
Georgia	.	28 Jun 2005 a
Germany	6 Sep 2000	.
Ghana	24 Sep 2003	.
Greece	7 Sep 2000	.
Guatemala	7 Sep 2000	9 May 2002
Guinea-Bissau	8 Sep 2000	.
Haiti	15 Aug 2002	.
Holy See	10 Oct 2000	24 Oct 2001
Honduras	.	8 May 2002 a
Hungary	11 Mar 2002	.
Iceland	7 Sep 2000	9 Jul 2001
India	15 Nov 2004	16 Aug 2005
Indonesia	24 Sep 2001	.
Ireland	7 Sep 2000	.
Israel	14 Nov 2001	.
Italy	6 Sep 2000	9 May 2002
Jamaica	8 Sep 2000	.
Japan	10 May 2002	24 Jan 2005

Jordan	6 Sep 2000	.
Kazakhstan	6 Sep 2000	24 Aug 2001
Kenya	8 Sep 2000	.
Kuwait	.	26 Aug 2004 a
Kyrgyzstan	.	12 Feb 2003 a
Latvia	1 Feb 2002	.
Lebanon	10 Oct 2001	8 Nov 2004
Lesotho	6 Sep 2000	24 Sep 2003
Liberia	22 Sep 2004	.
Libyan Arab Jamahiriya	.	18 Jun 2004 a
Liechtenstein	8 Sep 2000	.
Lithuania	.	5 Aug 2004 a
Luxembourg	8 Sep 2000	.
Madagascar	7 Sep 2000	22 Sep 2004
Malawi	7 Sep 2000	.
Maldives	10 May 2002	10 May 2002
Mali	.	16 May 2002 a
Malta	7 Sep 2000	.
Mauritius	11 Nov 2001	.
Mexico	7 Sep 2000	15 Mar 2002
Micronesia (Federated States of)	8 May 2002	.
Monaco	26 Jun 2000	.
Mongolia	12 Nov 2001	27 Jun 2003
Morocco	8 Sep 2000	2 Oct 2001
Mozambique	.	6 Mar 2003 a
Namibia	8 Sep 2000	16 Apr 2002
Nauru	8 Sep 2000	.
Nepal	8 Sep 2000	.
Netherlands	7 Sep 2000	23 Aug 2005
New Zealand	7 Sep 2000	.
Nicaragua	.	2 Dec 2004 a
Niger	27 Mar 2002	26 Oct 2004
Nigeria	8 Sep 2000	.
Norway	13 Jun 2000	2 Oct 2001
Oman	.	17 Sep 2004 a
Pakistan	26 Sep 2001	.
Panama	31 Oct 2000	9 Feb 2001

Paraguay	13 Sep 2000	18 Aug 2003
Peru	1 Nov 2000	8 May 2002
Philippines	8 Sep 2000	28 May 2002
Poland	13 Feb 2002	4 Feb 2005
Portugal	6 Sep 2000	16 May 2003
Qatar	.	14 Dec 2001 a
Republic of Korea	6 Sep 2000	24 Sep 2004
Republic of Moldova	8 Feb 2002	.
Romania	6 Sep 2000	18 Oct 2001
Rwanda	.	14 Mar 2002 a
San Marino	5 Jun 2000	.
Senegal	8 Sep 2000	5 Nov 2003
Serbia and Montenegro	8 Oct 2001	10 Oct 2002
Seychelles	23 Jan 2001	.
Sierra Leone	8 Sep 2000	17 Sep 2001
Slovakia	30 Nov 2001	25 Jun 2004
Slovenia	8 Sep 2000	23 Sep 2004
South Africa	.	30 Jun 2003 a
Spain	6 Sep 2000	18 Dec 2001
Sri Lanka	8 May 2002	.
Sudan	.	2 Nov 2004 a
Suriname	10 May 2002	.
Sweden	8 Sep 2000	.
Switzerland	7 Sep 2000	.
Syrian Arab Republic	.	15 May 2003 a
Tajikistan	.	5 Aug 2002 a
The Former Yugoslav Republic of Macedonia	17 Jul 2001	17 Oct 2003
Timor-Leste	.	16 Apr 2003 a
Togo	15 Nov 2001	2 Jul 2004
Tunisia	22 Apr 2002	13 Sep 2002
Turkey	8 Sep 2000	19 Aug 2002
Turkmenistan	.	28 Mar 2005 a
Uganda	.	30 Nov 2001 a
Ukraine	7 Sep 2000	3 Jul 2003
United Kingdom of Great Britain and Northern Ireland	7 Sep 2000	.
United Republic of Tanzania	.	24 Apr 2003 a
United States of America	5 Jul 2000	23 Dec 2002

Uruguay	7 Sep 2000	3 Jul 2003
Venezuela (Bolivarian Republic of)	7 Sep 2000	8 May 2002
Viet Nam	8 Sep 2000	20 Dec 2001
Yemen	.	15 Dec 2004 a