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BY: *Gillian Gould*

Australian Government
Attorney-General's Department

Information Law and
Human Rights Division

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Supplementary Submission 10.1
TT 11 October 2005

Ms Gillian Gould
Committee Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Ms Gould

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography

I refer to the Department's appearance before the Joint Standing Committee on Treaties on 7 November 2005 in relation to the above Optional Protocol. At that hearing the Department took on notice two questions. Enclosed are the Departmental responses to those questions.

The action officer for this matter is Peter Thomson who can be contacted on 62506039.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Minogue'.

Matt Minogue
Assistant Secretary
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JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

Question Taken on Notice at the hearing into the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography

The Acting Chair, Mrs May, asked the following question at the hearing on 7 November 2005:

ACTING CHAIR—I will just take you back to the state legislation. I understand that, at a COAG meeting in June, COAG asked the Standing Committee of Attorneys-General in consultation with the Australasian Police Ministers Council to look at the consistency of child pornography laws at a state and federal level. Is there an update following on from that meeting on the progress of work? Are there inconsistencies between state and federal on child pornography laws that we need to have a look at or should be made aware of?

Mr Minogue—I am sorry; we do not have witnesses here who are familiar with that COAG decision and how it has been working through the bureaucracy. We are anecdotally aware that there are inconsistencies; hence, the COAG concern and the action to follow it up. But I am not in a position to provide you with an update on that today.

ACTING CHAIR—Could you take that notice then and provide that update for us?

Mr Minogue—Certainly. (TR 27-28)

The answer to the honourable member's question is as follows:

"The Attorney-General's Department's advises that on 27 October 2004, the Prime Minister wrote to all State and Territory Premiers and Chief Ministers proposing that uniform child pornography laws be considered through the Council of Australian Governments (COAG) Senior Officials' meeting.

At their meeting on 4-5 November 2004 the Standing Committee of Attorneys-General (SCAG) Ministers:

- (a) noted the progress made towards uniformity of penalty levels for key child pornography offences
- (b) noted that COAG is considering these issues
- (c) agreed that a paper recommending model provisions be prepared by Model Criminal Code Officers Committee (MCCOC) for the assistance of the COAG Senior Officials Group in their broader review aimed at increasing uniformity, and
- (d) requested the Secretary write to the Chair of COAG Senior Officials indicating that SCAG Ministers intend to develop model provisions that will be provided to COAG to assist in its broader review.

On 16 February 2005, the Secretary of SCAG provided a copy of the MCCOC's report to COAG.

At the COAG meeting on 3 June 2005, COAG asked SCAG, in consultation with Australasian Police Ministers Council (APMC), to undertake further work on consistency in child pornography

offences based on the MCCOC report. This work is to have a particular focus on the actual or potential operational impacts of inconsistencies between laws.

At the 28-29 July 2005 SCAG meeting Ministers:

1. noted the communiqué from COAG relating to child pornography
2. noted the progress made towards uniformity of penalty levels for key child pornography offences, and
3. requested the Secretary to SCAG write to APMC inviting comments on any actual or potential operational impacts of inconsistencies between child pornography laws.

In October 2005 the APMC agreed that it would consider any potential or actual operational impacts arising from jurisdictional inconsistencies in child pornography laws at its first meeting in 2006 and respond to SCAG.”

JOINT STANDING COMMITTEE ON TREATIES
ATTORNEY-GENERAL'S DEPARTMENT

Question Taken on Notice at the hearing into the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography

Mr Adams asked the following question at the hearing on 7 November 2005:

Mr ADAMS -My concern is that somebody travelling overseas might see an organisation advertising children for adoption. Is that illegal? Of course it would go to the individual country, but is the convention trying to outlaw that sort of thing?

Mr Minogue -I do not think the convention itself is directed to the nature of the practice of arranging intercountry adoptions other than those procedures already under way and implemented under the Hague convention. What it does do is require criminalising things external to that and unreasonable fees or imposts. In terms of the specific question of whether advertising for adoption is illegal under Australian law as at today, I would have to take that on notice and get back to the committee. I do not have a specific answer to that. (TR27)

The answer to the honourable member's question is as follows:

"The Attorney-General's Department understands the following, from consultation with relevant State and Territory Departments, in relation to the legality of advertising adoption services in Australia:

(a) that properly accredited agencies are permitted to appropriately advertise their adoption services;
(b) that, generally, in Australia, it is an offence for non-accredited bodies to advertise adoption services and the following legislative provisions are relevant:

- *Adoption Act 1993* (ACT), especially sections 95 and 96;
- *Adoption Act 2000* (New South Wales), especially sections 178 and 179;
- *Adoption of Children Act 1994* (Northern Territory), especially sections 70 and 71;
- *Adoption of Children Act 1964* (Queensland), especially sections 44 and 45;
- *Adoption Act 1988* (South Australia), especially section 29;
- *Adoption Act 1988* (Tasmania), sections 108 and 109;
- *Adoption Act 1984* (Victoria), especially sections 120 and 121; and
- *Adoption Act 1994* (Western Australia), especially sections 11 and 12."