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Facsimile Message

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Subject: AUSTRALIAN GOVERNMENT RESPONSE TO SPECIAL RAPPORTEUR
 ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Please find attached the document referred to above. We would be grateful if you would forward to the appropriate person. Please let me know if you would also like to receive an electronic copy of this document and if so advise an email address to which it can be forwarded.

S. Coppard (for J. Feeney)

OHCHR REGISTRY

15 OCT 2004

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Note No.63/04

The Australian Permanent Mission presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit the Australian Government's Response to special rapporteur on the sale of children, child prostitution and child pornography – request for information on legislation which defines pornography, etc

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

The Optional Protocol was adopted without a vote by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. Australia signed the Optional Protocol in New York on 18 December 2001.

Australia was an active participant in the development and negotiation of the text of the Optional Protocol.

The Australian Government intends to pursue ratification as a priority. The Australian Government's policy on ratifying international instruments is that ratification should not occur until compliance with a treaty is ensured.

Many of the obligations under the Optional Protocol are matters for State and Territory laws. While the relevant criminal laws already include offences covering child prostitution and pornography, some amendments are required to ensure these laws comply with all aspects of the Protocol – for example, to make State and Territory offences apply transnationally. At the federal level a minor amendment to the *Crimes (Aviation) Act 1991* is necessary to cover aircraft outside Australia. Legislation addressing this issue has been introduced into the Australian Parliament

The Optional Protocol was discussed at the Standing Committee of Attorneys-General in March 2004. It was agreed that the necessary legislative amendments would be made in all jurisdictions to ensure compliance with the Protocol and facilitate ratification.

In line with the Government's consultative approach on international instruments, the views of the Australian Parliament's Joint Standing Committee on Treaties will also be sought before ratification.

Existing federal laws preventing trafficking of women and children and related crimes

Australia has already enacted legislation that criminalises slavery, sexual servitude and deceptive recruiting for sexual services.

Division 270 of the *Commonwealth Criminal Code*, which came into force in 1999, prohibits slavery, sexual servitude and deceptive recruiting for sexual services. Slavery carries a maximum penalty of 25 years imprisonment, sexual servitude attracts a maximum penalty of up to 19 years and deceptive recruiting carries a maximum penalty of up to 9 years. Section 73.2 of the Criminal Code, which came into force in 2002, criminalises people smuggling aggravated by exploitation where the people smuggling occurs to a foreign country (whether or not via Australia). Where the conduct occurs wholly outside Australia, this offence only applies to Australian citizens and residents. This offence carries a maximum penalty of 20 years imprisonment. People smuggling into Australia is dealt with under the *Migration Act 1958*.

The proposed Criminal Code (Trafficking in Persons Offences) Amendment Bill includes a general trafficking offence which will criminalise bringing a person to Australia by means of threats, force or deception, a debt bondage offence (to target the scenario where a people trafficker forces his or her victim to provide services to pay off large 'debts' in return for arranging the victim's entry into Australia) and a significant extension to the deceptive recruiting for sexual services offence to ensure that it applies to deception about the fact that an engagement to provide sexual services will involve exploitation.

Recent federal laws on Internet child pornography, grooming and procuring offences.

Child pornography and child abuse material offences

The *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004* ('the Act') includes new *Criminal Code* offences which target the use of the Internet to access, transmit and make available child pornography and child abuse material, as well as the possession or production of such material with intent to place it on the Internet.

These offences complement existing offences prohibiting the importation of such material into Australia. Each of these offences carries a maximum penalty of ten years imprisonment.

These offences do not enter into force until six months after the date of Royal Assent of the Bill (31 August 2004). This commencement date is to enable industry and law enforcement bodies to prepare for the new requirements. For example, Internet service providers who are aware of child pornography material or child abuse material will now be required to refer this material to the police. This will require the development of procedures between the police and the providers.

Specifically, the Act makes it an offence to:

- use a carriage service to access, transmit, publish, make available or otherwise distribute child pornography material (section 474.19)
- possess, control, produce, supply or obtain child pornography material with the intention that it be used to commit an offence against section 474.19 (section 474.20)
- use a carriage service to access, transmit, publish, make available or otherwise distribute child abuse material (section 474.22), and
- possess, control, produce, supply or obtain child abuse material with the intention that it be used to commit an offence against section 474.22 (section 474.23).

Grooming and procuring offences

The Act also makes it an offence to use a carriage service to procure or 'groom' a person who is under 16 years of age, for the purpose of engaging in sexual activity with that person or so that a third person can engage in sexual activity with that person.

The maximum penalties for the 'grooming' and procuring offences range from 12 to 15 years imprisonment.

Definition of child pornography

The Act contains the following definitions of child abuse material and child pornography material:

child abuse material means:

- (a) material that depicts a person, or a representation of a person, who:
 - (i) is, or appears to be, under 18 years of age; and
 - (ii) is, or appears to be, a victim of torture, cruelty or physical abuse;
 and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material that describes a person who:
 - (i) is, or is implied to be, under 18 years of age; and
 - (ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;
 and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

child pornography material means:

- (a) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
 - (i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;
 and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (b) material the dominant characteristic of which is the depiction, for a sexual purpose, of:
 - (i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or
 - (ii) a representation of such a sexual organ or anal region; or
 - (iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;
 in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (c) material that describes a person who is, or is implied to be, under 18 years of age and who:
 - (i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or
 - (ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;
 and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or
- (d) material that describes:

- (i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or
- (ii) the breasts of a female person who is, or is implied to be, under 18 years of age; and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.

The Australian Permanent Mission takes this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva
15 October 2004