



**Convention on the  
Rights of the Child**

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**Committee on the Rights of the Child**

**Consideration of reports submitted by States  
parties under article 12, paragraph 1 of the  
Optional Protocol to the Convention on the Rights  
of the Child on the sale of children, child  
prostitution and child pornography**

**Initial reports of States parties due in 2008**

**Australia\***

[25 June 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## Abbreviations

ACT	Australian Capital Territory
AFP	Australian Federal Police
AGD	Commonwealth Attorney-General's Department
AIC	Australian Institute of Criminology
AusAID	Australian Agency for International Development
CDPP	Commonwealth Director of Public Prosecutions
Cth	Commonwealth of Australia
DIAC	Department of Immigration and Citizenship
NSW	New South Wales
NGO	Non-Government Organisation
NT	Northern Territory
CPOT	Child Protection Operations Team
Qld	Queensland
SA	South Australia
Tas	Tasmania
TSET	Transnational Sexual Exploitation and Trafficking
UN	United Nations
UNICEF	United Nations Children's Fund
VGT	Virtual Global Taskforce
Vic	Victoria
WA	Western Australia

## I. Executive summary

1. The Australian Government is pleased to present to the Committee on the Rights of the Child Australia's initial report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Optional Protocol).
2. The Optional Protocol was developed to protect children from the worst forms of commercial sexual exploitation. It further elaborates some of the important protections for children contained in the Convention on the Rights of the Child (the Convention). 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 Optional Protocol requires States parties to criminalize (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, as well as offences relating to child prostitution and pornography.
3. Australia was an active participant in the development and negotiation of the text of the Optional Protocol. Australia remains strongly supportive of, and has a continuing commitment to, the promotion and protection of the rights enunciated in the protocol, and also to the broader goals of the Convention.
4. Australia has taken many steps to implement the Optional Protocol and is satisfied that it has measures in place that will secure the rights of children under the terms of both the Convention and Optional Protocol.
5. This report should also be read in conjunction with Australia's fourth report under the Convention and Australia's common core document.

## II. Introduction

### A. Preparation and structure of report

6. Australia signed the Optional Protocol on 18 December 2001 and ratified it on 8 January 2007. It entered into force for Australia on 8 February 2007 pursuant to article 14, paragraph 2 of the Optional Protocol.
7. This is Australia's initial report to the Committee on the Rights of the Child (the Committee) submitted under article 12, paragraph 1 of the Optional Protocol.
8. This report has been prepared in accordance with the Committee's revised guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1 of the Optional Protocol<sup>1</sup> and the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents.<sup>2</sup> Accordingly this report is a supplement to Australia's

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<sup>1</sup> Adopted by the Committee at its forty-third session on 29 September 2006: CRC/C/OPSC/2 (3 November 2006).

<sup>2</sup> Committee on the Rights of the Child, General Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1(b), of the Convention, CRC/C/58/Rev.1 (29 November 2005); Fourth Inter-Committee Meeting, Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, HRI/MC/2005/3 (1 June 2005).

Common Core Document of June 2006<sup>3</sup> and should be read in conjunction with that core document and with Australia's fourth report under the Convention on the Rights of the Child.

9. This supplementary report addresses information on the specific steps taken to implement the Optional Protocol.

10. The reporting period for this report is January 2007 to December 2008.

## **B. Consultation with State and Territory Governments**

11. Australia's federal system is described in paragraphs 16 to 31 of Australia's Common Core Document. As the State and Territory Governments are responsible for many of the government activities that give effect to the Optional Protocol, extensive consultations have occurred between the Australian Government and State and Territory Governments in implementing the Optional Protocol.

12. The measures taken by the State and Territory Governments are set out in annex 1 to this report. Further detail regarding these measures can be provided at the Committee's request. The report itself describes the measures taken by the Australian Government.

## **C. Consultation with non-governmental organizations (NGOs)**

13. The Government sought the views of NGOs in drafting this report and took them into account as appropriate.

## **D. External Territories**

14. The territory of Australia includes a number of external Territories. Of these, only Norfolk Island and the Indian Ocean Territories, comprising the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, are inhabited. Norfolk Island is essentially self-governing, for example, it has its own health and social security systems. However, the Australian Government retains the power of veto over legislation in some areas.

# **III. Implementation of the Optional Protocol**

## **A. General measures of implementation**

15. Child exploitation is a serious issue for the international community and for Australia. Recent policy and legislative initiatives at both the Commonwealth 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.

16. At the Commonwealth level, compliance with the obligations of the Optional Protocol is established under the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth) and the *Customs Act 1901* (Cth). Jurisdictional requirements are met by these Acts, in combination with the *Crimes at Sea Act 2000* (Cth) and the *Crimes (Aviation) Act 1991* (Cth). Obligations relating to adoption are met by the operation of the State and Territory

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<sup>3</sup> HRI/CORE/AUS/2007.

adoption legislation and the Commonwealth migration laws. Much of the subject matter of the Optional Protocol depends on State and Territory legislation and policy measures, notably those regarding child prostitution and child pornography. The Commonwealth is satisfied that the legislation of each of the States and Territories complies with the Optional Protocol.

### **Criminal law obligations**

17. At the Commonwealth level, there are offences in relation to:

- Child sex tourism that takes place outside Australia under the *Crimes Act 1914*<sup>4</sup>
- Slavery, sexual servitude and deceptive recruitment for sexual services, sale of a child, debt bondage and people trafficking under the Criminal Code<sup>5</sup>
- Online child sexual abuse under the Criminal Code including using a carriage service for child pornography material; possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service; using a carriage service for child abuse material; possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service; using a carriage service to procure persons under 16 years of age; and using a carriage service to “groom” persons under 16 years of age<sup>6</sup>

18. It is also an offence to attempt to commit one of these offences or to participate or be complicit in the commission of them.

19. The Optional Protocol requires that States take measures to prohibit the production and dissemination of material that advertises the offences in the Optional Protocol, for example an advertisement for an Internet site that displays child pornography. Australia has enacted legislation to ensure that these are offences (see annex 3).

20. The legislation mentioned above allows the Australian Government to prosecute the relevant offences where they are committed inside Australia, or on board an Australian registered ship or aircraft or where the extradition of an alleged offender who is an Australian national is refused and the person is in Australia. Some offences also provide for extended jurisdiction.

21. Australia ensures the rights and best interests of the child are protected throughout the process of prosecuting an alleged offender. In particular, the vulnerability and special needs of child witnesses are recognized and the interests of the child in criminal justice processes are protected. Proper rehabilitation assistance is available for victims of the relevant offences.

22. The Australian Government keeps its criminal law framework in relation to the sale of children, child prostitution and child pornography under ongoing review and amends this framework in response to operational experience.

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<sup>4</sup> Part IIIA. The Crimes Act 1914 (Cth) is available at: <<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/33D99B720D2108B6CA25753E0010A68C>>.

<sup>5</sup> Schedule to the Criminal Code Act 1995 (Cth), available at: <<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/A2606AF5A9792124CA2575A10001B086?OpenDocument>>.

<sup>6</sup> *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No.2) 2004*, available at: <<http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/asmade/bytitle/A0BA7D273D5F7225CA256F72001197AA?OpenDocument>>.

**Extradition, mutual assistance and other international cooperation obligations**

23. Australia is able to make extradition requests under the *Extradition Act 1988* (Cth) for the offences under the Optional Protocol where no extradition treaty exists between Australia and another country, if that country is a State Party to the Protocol. On 8 February 2007, the *Extradition (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography) Regulations 2006* (the Regulations) entered into force. The Regulations currently adopt a 'list-based' approach in prescribing States Parties to the Optional Protocol in a schedule to the Regulations. This enables Australia to receive requests from prescribed States Parties, or other countries where an extradition relationship exists between Australia and that country, for the extradition of a person where the offence is committed outside Australia.

24. Since the Protocol entered into force, Australia has not made or received any extradition requests under the Protocol, or for any offences referred to in the Protocol.

25. Australia is able to provide mutual assistance to other States Parties, to assist in the investigation or prosecution of the relevant offences or to take action in restraining or forfeiting the proceeds of such offences. Under Australia's mutual assistance legislation, Australia is able to provide assistance to any country without the need for a mutual assistance treaty.

26. The Australian Federal Police (AFP) has an international network which enables it to engage with the police forces of other States Parties in the investigation of relevant offences.

27. The Australian Government has taken a strong stance on people trafficking and child exploitation in the region. Australia has strengthened international cooperation arrangements for the prevention, detection, investigation, prosecution and punishment of the offences relevant to the Protocol, for the assistance of child victims and to address the root causes of the offences by providing appropriate assistance to other countries, most particularly in the Asia-Pacific region.

**Proceeds of crime obligations**

28. Australia ensures that the instruments and proceeds of crime are subject to seizure and confiscation. The *Proceeds of Crime Act 2002* (Cth) provides for the confiscation of proceeds and instruments of Commonwealth crimes. The Act contains provisions enabling the forfeiture of proceeds of crime on a civil standard of proof (balance of probabilities). The Act could be applied to confiscate proceeds (and instruments) of offences against children.

**Government agencies responsible**

29. The Australian Government is taking a strong leadership role through concerted domestic, bilateral, regional and international efforts to encourage domestic cooperation between the States and Territories, local governments, NGOs and the community sector.

30. The AFP Transnational Sexual Exploitation and Trafficking (TSET) Team was established in October 2003 to investigate claims of slavery, sexual servitude and child sex tourism. Child sex tourism offences are now investigated by the Child Protection Operations Team (CPOT). The 23-member TSET Team is highly mobile, intelligence-driven and able to respond flexibly and quickly to emerging cases anywhere in Australia. It brings together investigators and specialist analysts to tackle people trafficking and sexual exploitation. It targets and investigates trafficking syndicates and makes a substantial impact on combating sexual servitude in Australia.

31. The AFP CPOT (formerly the Online Child Sex Exploitation Team) commenced work in January 2005 focussing on investigation, providing national assessment and coordination capability for all international and national referrals of offences relating to images and material depicting child pornography and child abuse material on the Internet as well as the use of the Internet to abuse children. A team of 60 investigators provides capacity across a range of functions including intelligence targeting and infiltration, investigation and computer forensics, prevention and education. CPOT brings together international law enforcement agencies and organisations to collaboratively pursue and combat the exploitation of children online.

32. The Department of Immigration and Citizenship (DIAC) and the AFP collaborate in training immigration compliance officers under the curriculum of the College of Immigration on how to identify possible indicators of people trafficking during compliance field operations and are instructed to refer any matters to the AFP for investigation under an agreed referral protocol. This training invites participation from relevant NGOs.

33. The Attorney-General's Department, as the Australian Central Authority under the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention), is responsible for ensuring that Australia meets its obligations under that Convention. The Attorney-General's Department has taken on primary responsibility for all of Australia's intercountry adoption programmes.

## **B. General Convention principles**

34. The general principles, which include non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child, are all reflected in the legislation and policy to implement the Optional Protocol.

35. Australia's interpretation of these principles and means of implementation are outlined in Australia's First, Second and Third Combined and Fourth Reports under the Convention.

## **C. Data**

36. Since 2004, the AFP's TSET Team has investigated over 250 cases relating to allegations involving slavery, deceptive recruiting and sexual servitude. In Australia, as in other countries, women represent the majority of trafficking victims (there have been no confirmed reports of children being trafficked into, or within Australia).

37. The AFP has also investigated more than 150 allegations of child sex tourism offences. It is a crime for Australian citizens or permanent residents to engage in, facilitate or benefit from sexual activity with children (under 16 years of age) whilst overseas. These offences carry penalties of up to 17 years imprisonment for individuals and up to \$500,000 in fines for companies. Since 1994, 29 Australians have been charged with child sex tourism offences resulting in 20 convictions.

38. CPOT has seen substantial success in the investigation and prosecution of online offenders. Since CPOT's inception in January 2005 it has:



- Received in excess of 850 referrals from the Virtual Global Taskforce (VGT);<sup>7</sup> the AFP's International Network; Australian and State Government Departments, members of the public; State and Territory police and Internet Service Providers
- Referred more than 800 'persons of interest' packages to State and Territory police
- Laid more than 366 charges against 271 people

Thirty-two persons have now been convicted since the inception of CPOT with a further 11 awaiting sentencing.

39. CPOT has worked on or assisted with investigations referred from Australian State and Territory Police, Government and NGOs, Internet Service Providers and Internet Content Hosts, the Australian Communications and Media Authority, Australian High Tech Crime Centre, international law enforcement agencies, Interpol, United Kingdom (UK) Child Exploitation Online Protection Centre, the VGT and members of the public.

40. CPOT is currently investigating a number of allegations of adults using the Internet, including social networking sites, to engage in chat with children for the purpose of grooming them for sexual encounters.

41. In addition to these investigations the AFP has completed one successful prosecution of a male for grooming a child. He received a gaol sentence of two years and nine months for grooming and an additional two years for possession of child pornography material.

42. Two matters are currently before the Courts in which the AFP has charged two men with using the Internet to groom children (the two cases are not related).

43. The AFP's Operation Lobate is an ongoing operation involving the collaborative efforts of federal, state and territory law enforcement agencies. To date, Operation Lobate has led to the execution of five warrants, the arrest of four people and the conviction of three persons on child pornography offences across Australia. Three people have already faced court and a further person is currently before the courts.

44. The AFP's Operation Irenic was conducted November 2007 during which the AFP executed 44 search warrants and arrested 23 people. Five individuals have appeared before court and been sentenced and one person was sentenced to 9 months periodic detention.

45. In May 2008 AFP Operation Centurion was conducted. 303 search warrants were executed and 100 people arrested on child exploitation charges. One person appeared before Court and was sentenced to 20 months' imprisonment.

46. Since Commonwealth legislation in relation to online child sexual abuse was enacted in 2005, sentences handed down have ranged from a fine of \$1200 for the offence of accessing child pornography to a custodial sentence of three years and six months for grooming a person under the age of 16 years.

47. Since January 2008 there have been 150 arrests concerning allegations of:

- Using a carriage service for child pornography material
- Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service
- Using a carriage service for child abuse material, or

<sup>7</sup> The VGT is an alliance between local and international law enforcement agencies aiming to make the Internet a safer place, to identify, locate and help children at risk and to hold perpetrators appropriately to account.

- Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service

48. Following a 12-month investigation into an online child abuse image and video-sharing network, in December 2008 the AFP identified 22 suspects in NSW, Vic and Qld. As part of this operation (Operation Resistance), CPOT seized more than 15,000 videos and 500,000 images of child abuse which were shared between members of a peer-to-peer network. The AFP executed 28 search warrants, resulting in 19 men being arrested and three other matters being pursued through other court processes. Operation Resistance began when the AFP received a referral from the Brazilian Federal Police in December 2007.

49. To date there have been no prosecutions for the offence of trafficking in children or the offence of domestic trafficking in children.

#### **D. Prevention**

50. To facilitate the domestic deterrence and prevention of trafficking, the Australian Government has provided funding of over \$58 million for Australia's anti-trafficking strategy. The Strategy focuses on preventing, investigating and prosecuting trafficking offences, including those involving children, as well as providing support for all victims of trafficking.

51. The key measures in the Government's Strategy for the next four years will consist of:

- Funding for the Australian Institute of Criminology (AIC) for research into regional trafficking activities.
- Funding for DIAC for the establishment of two additional Senior Migration Compliance (Trafficking) positions in the Asia region.
- Funding for the Attorney-General's Department (AGD) to facilitate its ongoing role as the lead agency for the Government's strategy including an information campaign.
- Increased funding for investigation activities by the AFP.
- Funding for prosecution activities by the CDPP.
- Funding for the Office for Women to extend the victim support programme to victims who are returning to Australia to give evidence.
- A Communication Awareness Strategy which targets victims of trafficking who are working in the legal or illegal sex industry in Australia, as well as others who are likely to come into contact with these people – for example, other sex workers, clients, brothel owners and managers, brothel regulators, migration agents, sex worker outreach organisations, and providers of sexual health services. The communications products also provide information on where victims of trafficking can seek assistance and how to report suspected cases of trafficking.

52. CPOT has in place key measures which are aimed at reducing the incidence and impact of online child sex exploitation through the development, coordination and promotion of national and international prevention activities and programmes. The key prevention focus areas are: offenders (deterrence), facilitators (education and cooperation) and victims (education and awareness). The AFP's CPOT works closely with NGOs, government agencies and the community to develop, promote and implement crime reduction strategies.

53. In addition to the awareness strategy and AFP programmes, in 2003 the Australian Government appointed a Senior Migration Officer (Trafficking) to Bangkok to focus exclusively on people trafficking issues. The position helps to stop people trafficking at its source by vetting immigration caseloads for fraud that may lead to trafficking and profiling possible victims and offenders. The position has also helped to facilitate the Australian Government's contribution to local trafficking investigations and prosecutions. In May 2007, the Government expanded on this initiative to appoint two additional trafficking specialist positions in Beijing and Manila. The Senior Migration Officer (Trafficking) positions supplement the work of the Government's already established offshore immigration compliance network comprising some 30 specialist overseas compliance officers and 22 Airport Liaison Officers who are stationed at key departure points overseas.

54. The Australian Government also trains and provides information sessions on a range of Australian extraterritorial offences, including those offences covered by the Optional Protocol. For example, the Department of Foreign Affairs and Trade provides training to officers overseas, or to be posted overseas, on Australian offences that have extraterritorial application (such as child sex tourism and trafficking) and posted officers' obligations to report any allegations or admissions regarding such offences.

55. Consular assistance is not extended to protecting Australians from the consequences of actions that are prohibited under Australian law, including trafficking-related offences. If an Australian consular client makes admissions in relation to the sexual exploitation of children, they are advised that any information they provide in relation to child sex activities will be reported directly to the Australian Federal Police. Where a consular officer becomes aware of child sex allegations involving a consular client, the consular officer must report the matter immediately, so that it can be referred to the AFP.

## **E. Prohibition and related matters**

### **Criminal law**

56. Where it has been identified that there may be a person of interest, the AFP works collaboratively with its State, Territory and international partners to ensure that any significant persons of interest are followed up by the appropriate jurisdiction. The results of this work are summarised under the heading 'Data' above.

### **Adoption**

57. The Optional Protocol contains provisions requiring States Parties to criminalize the improper inducement of consent for adoption. Private adoption arrangements are unlawful in most States and Territories. Australia also relies on migration legislation when fulfilling its international obligations under the Optional Protocol. In order to meet the migration requirements, and obtain a visa for an adopted child to enter Australia, the overseas adoption must have the approval of the relevant State and Territory authority. There is no provision to grant a visa to a child who has been adopted overseas under private arrangements unless the adoptive parent has been genuinely resident overseas for 12 months at the time of the visa application and meets the requirements of the Migration Regulations.

## **F. Protection of the rights of victims**

### **Protection of victims in society**

58. The Australian Government has introduced a comprehensive victim support package to take account of the welfare of all victims of trafficking, children or adults, and child victims of prostitution, sale and pornography.

59. Any non-citizen minor located by authorities working in the sex industry is automatically considered a victim of people trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Where a minor is identified as a victim the matter would be referred to the relevant State/Territory authority responsible for child protection issues and a case management approach with specific attention to the rights and welfare needs of the child would be implemented.

60. Where any non-citizen, regardless of age, is identified as a person of interest in a people trafficking-related matter the victim may be granted a visa allowing them to remain in Australia for certain periods of time. The victim may be granted a permanent visa if the Minister for Immigration and Citizenship is satisfied that the person would be in danger if returned to his or her home country.

61. The Australian Government also has in place reintegration assistance which may be afforded to victims of trafficking who choose to return to their countries of origin.

62. The Government has also introduced training to increase awareness among police and immigration officials who come into contact with victims of trafficking during field operations. The training is designed to better help officers recognize indicators of trafficking and respond appropriately by ensuring that victims are removed from servitude and placed in a secure, supportive environment.

### **Protection of victims in criminal proceedings**

63. To protect children in Australian proceedings, CPOT has the capability to pursue offenders off-shore through existing relationships with foreign law enforcement agencies, in addition to the networks of the VGT and the Australian High Tech Crime Centre.

## **G. International assistance and cooperation**

### **International assistance**

64. The AFP, through its international network, is actively engaged with countries in Asia, the Pacific and South America to facilitate efforts in combating child sex offences. Australia (through the AFP) is a member of the VGT. Through these arrangements, international cooperation, information exchange and capacity-building programmes have enhanced efforts to identify and investigate those involved in the sexual exploitation of children. The AFP also supports local law enforcement efforts by providing investigative assistance, forensic support, computer forensics and international liaison.

65. A total of 55 Australians have been arrested overseas for child sexual exploitation offences, resulting in a further 29 convictions.

66. The AFP, in collaboration with national and international partners, has successfully identified and charged numerous offenders with online child sexual exploitation offences, including grooming and procuring, since the inception of CPOT.

67. Internationally, one AFP investigation has resulted in 63 arrests across 35 countries with 14 of the arrests being contact offenders, and 22 children rescued as victims of abuse.

68. The Regional Legal Assistance Unit in AGD has also provided assistance to countries in the Asia-Pacific region to criminalize people smuggling and develop legislative frameworks facilitating international legal cooperation for smuggling and trafficking offences.

### **International cooperation**

69. At the United General Assembly, Australia regularly co-sponsors resolutions on the rights of the child and trafficking in women and girls. Among other things, these resolutions call on all States to take practical measures to address the issues they cover, including through criminalisation of child exploitation, effective prosecution of offenders and adequate support and rehabilitation for victims. The resolutions also call on all States to ratify the Convention on the Rights of the Child and the Optional Protocol. More generally, Australia has demonstrated its commitment to the objectives of the Convention and the Optional Protocol through statements delivered to the General Assembly, the Commission on the Status of Women and the Human Rights Council.

70. Australia, through the Australian Agency for International Development (AusAID), supports the protection of children in a number of direct and indirect ways. With its focus on poverty reduction and sustainable development, the aid programme addresses the fundamental causes of exploitation of children in developing countries. Support for improved governance, in particular strengthening basic service delivery, law and justice, human rights and developing civil society, contribute to an environment where protection of children can be strengthened and where exploitation is less likely to occur.

71. Children's rights, including in relation to trafficking, are discussed in Australia's bilateral human rights dialogues with China, Laos and Vietnam. The \$21 million, five-year Asia Regional Trafficking in Persons project, which began in August 2006, builds on the achievements of the Asia Regional Cooperation to Prevent People Trafficking project (2003–2006) and aims to promote a more effective and coordinated approach to people trafficking by criminal justice systems of governments in the Asia region. This is being achieved through capacity building and resources to strengthen law enforcement responses to trafficking, to strengthen judicial and prosecutorial responses to trafficking, and to enhance policy, legal, research and outreach capability in the region to address this issue. ARTIP partner countries currently include Thailand, Lao PDR, Cambodia, Burma and Indonesia, and the project will expand to include Vietnam by the end of 2008, and finally the Philippines in 2009.

72. A number of other initiatives through development assistance programmes aim to reduce the risks of exploitation of children in the region. The Australian Government works closely with UNICEF as a key partner in its development cooperation programme. Australia's core funding to UNICEF contributes to their work on protecting children from violence, exploitation and abuse. In 2007–2008, Australia provided \$13.7 million in core funding to UNICEF. In December 2008, AusAID signed a partnership framework with UNICEF, and will increase its core funding to UNICEF from \$14.5 million in 2008–2009 to \$34.1 million in 2011–12. Australia was also Vice-President of the UNICEF Board Bureau in 2007 and contributed to the development of UNICEF's child protection strategy.

73. In addition, the aid programme funds a range of projects addressing child protection/anti-trafficking that are being implemented by UN agencies and NGOs. These include UNICEF's 4-year, \$2.73 million project in the Philippines 'Children in Need of Special Protection' to protect children from trafficking and address the needs of children in armed conflict areas; a \$1.2 million annual contribution to UNICEF's 'Pacific Child

Protection Programme' which addresses all issues of child abuse, exploitation and violence, including the commercial sexual exploitation of children; World Vision's 6-year, \$800,000 project 'Assistance, Support and Protection for Migrant and Trafficked Women and Children' which aims to reduce migrant community vulnerability to trafficking in Thai-Burma border areas; and World Vision/Save the Children's 3 year, \$2.036 million project in Cambodia, 'Mobilising Communities for Child Protection' which aims to increase capacity of families and communities to value and safeguard children from sexual abuse and exploitation by strengthening/promoting child protection models.

74. AusAID is providing \$0.5 million to the Australian organisation Child Wise to assist ASEAN with the development of a 5-year 'Transition Plan for a Sustainable Response to Child Sex Tourism in South East Asia' in conjunction with the ASEAN Regional Task Force on Child Sex Tourism. It will include a sustainable training plan; potential for public-private partnership; and strengthening and institutionalising the ASEAN Regional Task Force's work. Previous support to ChildWise helped to establish the ASEAN Regional Taskforce to Prevent Child-Sex Tourism in 2005. The Taskforce has played a crucial role in the oversight of the regional response to child-sex tourism and each year, the information gathered is published in the form of the ASEAN Child-Sex Tourism Review.

75. AusAID and the Australian Federal Police provided funding of \$690,000 in 2005 for the 3-year, 'Preventing the Sexual Exploitation of Children in ASEAN Tourism Destinations through Community and Professional Education' project. This project aimed to establish 'Child Wise Tourism' principles in the work of National Tourism Administrations to prevent child sex tourism in participating countries (Burma, Cambodia, Indonesia, Lao PDR, Philippines, Thailand, Vietnam).

76. The aid programme also supports projects that assist the recovery and reintegration of victims of trafficking, including the \$665,000, 4-year, 'Return and Reintegration of Trafficked Women and Children Project Phase II', delivered through the International Organisation for Migration (IOM), and the US\$330,094 'Thai Returnees Pilot Project' for returning victims of trafficking from Australia to Thailand which commenced in 2006.

77. AusAID also introduced a comprehensive child protection policy covering all aspects of its international development operations in March 2008. The policy articulates Australia's zero tolerance approach to child abuse and child pornography and provides a clear framework for managing and reducing the risks of child abuse by persons engaged in delivering Australian aid programme activities (including AusAID staff and all contractors and non-government organisations funded by AusAID).

78. The policy includes enhanced codes of conduct and strengthened recruitment and screening processes for AusAID staff and mandatory child protection compliance standards for contractors and non-government organisations funded by AusAID. A dedicated position of Child Protection Officer has been created within AusAID to oversee implementation of the policy. Compliance is actively monitored by AusAID through a range of new and existing mechanisms.

79. The Australian Government is at the forefront of regional efforts to combat people smuggling and trafficking. The Australian Government and the Indonesian Government co-chair the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime which has played a key role in combating people trafficking in many countries in the region. Through the Bali Process, Australia devised model legislation on people trafficking which has subsequently been used by many regional countries in the development of their own legislation.

80. A number of anti-trafficking and anti-child sex tourism activities have been held under the auspices of the Bali Process, including a workshop on support for victims of

trafficking which was held in Bali, Indonesia in November 2006 and a workshop on strategies to combat child sex tourism held in Manila, the Philippines in June 2006.

81. The Australian Government also supports a number of aid projects that focus on regional cooperation and aim to improve the recovery and reintegration of victims of trafficking, including the Return and Reintegration of Trafficked Women and Children in the Mekong Region Project, delivered through the International Organisation for Migration (IOM) that was completed in March 2007, and the Regional Pilot Project for Returning Victims of Trafficking from Australia to Thailand.

## **H. Other legal provisions**

82. On 14 September 2005 Australia ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth) fulfils Australia's legislative obligations under the Protocol. The Act creates new and revised trafficking in persons offences that criminalize trafficking in persons.

## Annexes

### Annex 1

## State and Territory measures to implement the Optional Protocol

### General measures of implementation

#### Criminal law obligations

##### *Western Australia*

1. A “child” for the purposes of the relevant West Australian legislation is a person under the age of 18 years. There are no specific references to sale of children and child prostitution in WA laws, however these matters would be taken up under child abuse and neglect in the *Children and Community Services Act 2004* (WA). Child abuse amounting to assault would be an offence under the *Criminal Code* (WA). The *Working with Children (Criminal Record Checking) Act 2004* (WA) and the *Community Protection (Offender Reporting) Act 2004* (WA) make similar provisions in relation to child abuse and child pornography. The *Children and Community Services Act 2004* (WA) provides that child abuse is one of the matters that triggers the application of the Act for the protection of a child.

2. There are offences relating to making, giving or receiving or agreeing to make, give or receive, payment or reward for or in consideration of adoptions or associated processes (s 122(1) *Adoption Act 1994* (WA)).

##### *Tasmania*

3. In Tasmania, the *Sex Industry Act 2005* (Tas) makes it an offence for a person to:

- Procure, cause or permit a child to provide sexual services in a sexual services business (section 9)
- Receive a fee or reward where the person knows or might reasonably be expected to know is derived either directly or indirectly from sexual services provided by a child in a sexual services business

4. The *Criminal Code Act 1924* (Tas) creates a number of offences in relation to child exploitation materials, including offences in relation to production (section 130), access (section 130C), possession (section 130B), distribution (section 130A), communicating with intent to procure persons under 17 years of age to engage in unlawful sexual acts (section 125D(1)) and making a communication with intent to expose a person under 17 years of age to indecent material (section 125D(2)). The Act also contains a number of other offences in relation to sexual and indecent acts committed against young persons under the age of 17 years.

5. The *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas) also contains offences for making, reproducing, possessing, distributing and procuring children for involvement in child exploitation material.



### South Australia

6. In South Australia, the relevant laws are found in the *Criminal Law Consolidation Act 1935* (SA). The principal relevant offences are the offences of producing, disseminating or possessing child pornography (Division 11A); procuring a child to commit an indecent act (section 58) and use of children in commercial sexual services (Division 12).

7. The *Adoption Act 1988* (SA) also contains provisions to regulate adoption and protect against abuse.

### Queensland

8. The Criminal Law in Queensland is codified in the *Criminal Code 1899* (the Code). Chapter 22 of the Code is entitled '*Offences against Morality*' and contains Queensland's child sex offences. The relevant offences contained in this chapter cover actual child sexual abuse as well as involvement in child pornography and prostitution.

9. It is also an offence to:

- Attempt to commit such offences
- Aid, counsel or procure another to commit such offences or
- Do or omit to do any act for the purpose of enabling or aiding a person to commit the relevant offences

10. The *Classification of Computer Games and Images Act 1995* (Qld) creates offences of producing, selling or possessing child abuse material.

11. With regard to child pornography material there are legislative provisions relating to forfeiture. The *Classification of Computer Games and Images Act 1995* gives the court discretion to order forfeiture of the offending film, computer game or publication and anything used in connection with the offence when a person has been convicted of an offence under those Acts, and in some circumstances where a conviction has not occurred.

### ACT

12. The criminal legislation giving effect to the protections under the Convention and Optional Protocol is the *Crimes Act 1900* (ACT), *Prostitution Act 1992* (ACT), and *Criminal Code 2002* (ACT). Other legislation contains supporting provisions, namely the *Crimes (Child Sex Offenders) Act 2005* (ACT), *Crimes (Sentencing) Act 2005* (ACT), and *Victims of Crime Act 1994* (ACT).

13. The ACT *Human Rights Act 2004* incorporates provisions of the *International Covenant on Civil and Political Rights* (ICCPR) into ACT law. Various provisions in the ICCPR protect the rights of the child, including articles 10, 14, 23 and 24. The Human Rights Act requires that all ACT legislation be interpreted and applied consistently with human rights unless legislation clearly authorizes otherwise. It is intended that the Human Rights Act will be interpreted and applied consistently with international law and internationally accepted standards. The ACT judiciary and other public officials may refer to the Convention, the International Covenant on Civil and Political Rights and other related rules and guidelines for the purpose of interpreting the Human Rights Act.

### NSW

14. NSW legislation criminalizes:

- Child sexual assault, sexual servitude, child abduction and procuring for prostitution

- Child prostitution and child pornography, including promoting, using premises for, engaging in or obtaining benefit from child prostitution, using children for pornographic purposes, and production, dissemination and possession of child pornography

15. Offences specifically concerning procurement or ‘grooming’ of children for sexual activity are shortly to be introduced. It is also an offence to attempt, aid or abet, or be complicit in the commission of any of the above offences.

16. Significant protections are available for children participating in the criminal justice system, including pre-recording of interviews, remote witness facilities and support persons.

#### *Victoria*

17. In Victoria, there are criminal offences under the *Crimes Act 1958* (Vic) for production of child pornography, the *Classification (Publications, Film and Computer Games) (Enforcement) Act 1995* (Vic) for publication of child pornography, and the *Prostitution Control Act 1994* (Vic) for child prostitution.

18. While these offences directly address the relevant criminal conduct regarding sale of children, child prostitution and child pornography, there are related offences which may be relevant to this area. These offences are for broader criminal conduct and may not in all instances constitute offences specifically against children. They include facilitating child sexual abuse, abduction, forcing a victim into sexual servitude and deceptive recruiting for sexual services.

### **Government agencies responsible**

#### *Western Australia*

19. The West Australian Department for Child Protection assists in the administration of both the *Adoption Act 1994* (WA) and the *Children and Community Services Act 2004* (WA). The Department for Child Protection would investigate allegations about the employment of a child to perform in an indecent, obscene or pornographic manner in the course of participating in an exhibition or in the making of an advertisement, with possible involvement of, and assistance from, the Western Australia Police and the Labour Relations Division of the Department of Consumer and Employment Protection.

20. The Western Australian Government has recently appointed a Commissioner for Children and Young People under the *Commissioner for Children and Young People Act 2006* (WA). The Commissioner is an independent and impartial position, which reports directly to Parliament. The Commissioner is an advocate for all children and young people under the age of 18 years in Western Australia, having special regard to the needs of children and young people considered vulnerable, at risk or in care. Special regard is also given to the needs of Aboriginal and Torres Strait Islander children and young people.

#### *Tasmania*

21. The Department of Police and Emergency Management (DPEM) is responsible for the investigation of complaints and enforcement of the legislation relevant to the Protocol.

22. The Department of Health and Human Services (Child Protection Services) administers the *Children, Young Persons and Their Families Act 1997* (Tas) and has statutory powers under the Act to intervene to provide assistance to children, young people and their families, including providing care and protection to children.

23. The Department of Justice is responsible for the administration and review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas), *Criminal Code Act 1924* (Tas), *Police Offences Act 1935* (Tas) and the *Sex Industry Act 2005* (Tas).

#### *South Australia*

24. The South Australian government agency responsible for implementation of the legislation relevant to the Optional Protocol is the Department for Families and Communities.

#### *Queensland*

25. The Commission for Children and Young People and Child Guardian (the Commission) is responsible for promoting and protecting the rights, interests and wellbeing of children and young people in Queensland. The *Commission for Children and Young People and Child Guardian Act 2000* (Qld) requires action in response to information that a child is, or may be, the victim of a criminal offence. This would include information about the sale of children, child pornography or child prostitution. When the Commissioner becomes aware of this information she must refer the matter to any or all of the following entities:

- The Department of Child Safety
- The Queensland Police Service and/or
- The Crime and Misconduct Commission

26. Examples of matters which have been actioned by the Commission under the Act include referrals about a youth worker allegedly showing pornography to young people and a father allegedly trying to sell his daughter for marriage.

27. In 1997, the Queensland Police Service (QPS) State Crime Operations Command formed Task Force Argos, which is principally responsible for the investigation of organised paedophilia, child exploitation via the Internet and the production/possession and distribution of child pornography.

#### *ACT*

28. The key agencies responsible for administering the *Children and Young People Act 1999* (ACT), which contains a number of provisions to protect child abuse and exploitation are the Department of Disability, Housing and Community Services and the Children's Court.

29. The key agencies responsible for administering the *Adoption Act 1993* (ACT) which contains provisions concerning private and overseas adoption in the ACT are the Department of Disability, Housing and Community Services and the Supreme Court.

#### *NSW*

30. The NSW Police Force's Child Protection and Sex Crimes Squad provides a centralised specialist investigative response to child abuse and neglect and deals with complex and protracted criminal investigations concerning paedophile activity, child prostitution, child pornography and institutionalised sexual abuse where there are multiple offenders.

31. The Squad also runs the Child Exploitation Internet Unit, which investigates child pornography and paedophile use of the Internet. The Squad works with the AFP's CPOT to investigate offences relating to child pornography and use of the Internet to abuse children.

*Victoria*

32. Victoria Police is responsible for investigation and prosecution of criminal offences in the *Crimes Act 1958* (Vic) including those listed above that relate to the rights of the Optional Protocol.

**Data**

*Western Australia*

33. To date, no persons have been charged with the relevant offences under the *Adoption Act 1994* (WA) or the *Children and Community Services Act 2004* (WA). The relevant offences under the *Children and Community Services Act 2004* came into force from 1 March 2006.

34. There are no recent cases where an adult person has been charged with managing a child prostitute.

35. WA Police intelligence holdings indicate that 430 cases of child pornography have been detected and investigated since 2004, with almost all resulting in the prosecution of offenders. The WA Police Child Protection Squad currently has 53 active investigations relating to child pornography. The AFP CPOT works cooperatively with the WA Police, with three AFP members attached to the Child Protection Team.

*Tasmania*

36. There have been no prosecutions and investigations under the relevant provisions of the *Police Offences Act 1935* (Tas), which were only enacted in late 2007.

37. There have been a number of prosecutions under the relevant provisions in the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas) and *Criminal Code Act 1924* (Tas).

*Queensland*

38. Since 2001 Task Force Argos investigators have:

- Identified and arrested 100 Australian offenders on a total of 802 charges for using the Internet to procure children for the purpose of sexual exploitation
- Rescued from situations of sexual exploitation 78 children, with 61 child victims removed from actual sexual contact situations (42 Qld, 7 interstate, 12 overseas) and 17 children identified as having been procured/exposed to sexual offences (15 Queensland, 2 interstate)
- Undertaken 1680 Internet based investigations, and have been directly responsible for the arrest of over 400 Australians for the possession and distribution of child pornography

39. Since August 2005 the covert Internet teams have also generated 265 investigative referrals to national and international law enforcement partners, and 125 referrals to Queensland regional police.

*ACT*

40. There have been no offences detected relating to the sale of children or child prostitution in the ACT since 1 January 2007. However, between 1 January 2007 and August 2008, ACT Policing apprehended 5 people for using a carriage service to groom or procure a person under 16 years of age.

41. In addition, in the same period of time, ACT Policing apprehended 15 people for possession of child pornography.

#### *NSW*

42. Conviction statistics for the period 2000 to 2007 under the *Crimes Act 1900* (NSW):

- Child abduction (including attempts) – 8 convictions
- Inducing child to participate in prostitution (including attempts) – 9 convictions
- Obtain benefit from child prostitution – 4 convictions
- Use premises for child prostitution – 1 conviction
- Use child under 14 for pornographic purposes – 2 convictions
- Use child over 14 for pornographic purposes (including attempts) – 3 convictions (convictions from January 2000 to June 2007)
- Produce/disseminate child pornography – 5 (convictions from January 2005 to June 2007; offence created in 2004)
- Possess child pornography – 45 (convictions from January 2005 to June 2007, offence created in 2004)

#### *Victoria*

43. In 2005–06, Victoria Police recorded 421 offences under the *Crimes Act 1958* (Vic) and 3 under the *Prostitution Control Act 1994* (Vic). The equivalent figures for 2006–2007 were 282 and 18 respectively. The Crimes Act offences included production and possession of child pornography and procuring minors for pornographic purposes. The Prostitution Control Act offences related to inducing, allowing or benefiting from child prostitution.

### **Prevention**

44. The States and Territories have instituted methods used to identify children who are especially vulnerable to such practices, such as street children, girls, children living in remote areas and those living in poverty. The following section also describes any campaigns or other measures that have been taken to promote public awareness of the harmful consequences of the sale of children and child prostitution and pornography.

#### *Western Australia*

45. The Department for Child Protection and the Labour Relations Division of the Department of Consumer and Employment Protection have produced a publication to promote awareness of the employment of children laws, including the offences relating to the employment of a child to perform in an indecent, obscene or pornographic manner in the course of participating in an exhibition or in the making of an advertisement.

46. The WA Police received Commonwealth funding to produce and distribute an information DVD to both parents and children (via their schools) on the dangers of cyber predators. The DVD, *Keeping Safe on the Internet*, warns parents and children about the many and varied ways that Child Exploitation Material is transmitted.

#### *Tasmania*

47. Compliance checks are conducted on retail outlets selling restricted and non-restricted materials by the Office of Film and Literature Classification in conjunction with

the Department of Justice. Matters are referred to the Department of Police and Emergency Management where prosecution action is appropriate.

#### *Queensland*

48. In 2004 the Queensland Police Service's Argos Task Force implemented and received national support for the "Child Pornography: behind every picture there's pain" poster campaign. The poster was distributed to law enforcement nationally, and was utilised in the national media to assist in raising public awareness.

49. In 2003, as a direct response to the proliferation of online sexual abuse of children, Argos investigators developed an Internet safety awareness booklet 'Who's chatting to your kids', to assist in the education of parents and carers about the dangers associated with unsupervised use of the Internet by children.

#### *NSW*

50. The Department of Community Services (DoCS) only conducts intercountry adoptions with countries that are members to the Hague Convention on Intercountry.

51. DoCS conducts a full Working with Children Check and fingerprint check on all prospective adoptive parents to ensure children are not placed with applicants that have any history of child pornography or child sexual offences.

52. Under the NSW *Commission for Children and Young People Act 1998* people convicted of child pornography or child prostitution offences are prohibited from applying for, or remaining in, child-related employment in NSW.

53. In response to the NSW Aboriginal Child Sexual Assault Taskforce report, *Breaking the Silence: Creating the Future – Addressing child sexual assault in Aboriginal Communities in NSW* dated 2006, the NSW Government developed the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011.

#### *Victoria*

54. Victoria Police's Sexual Crimes Squad is currently negotiating with Streetworks – a Department of Human Services initiative about developing targeted strategies to tackle child prostitution in certain suburbs of Melbourne. These will complement existing relationships between Victoria Police and Department of Human Services (DHS) aimed at intelligence collection and investigations that target child sex offenders.

55. Victoria Police's Sexual Crimes Squad also delivers a range of information and education sessions about child pornography to internal Victoria Police units, other Government, schools and non-government organisations.

56. The Community Liaison Scheme (CLS) is a joint State, Territory and Australian Government initiative aimed at improving compliance with classification laws. By educating industry about their obligations under the National Classification Scheme (NCS), the CLS works with business so that accurate and timely classification information is available to consumers.

#### *Tasmania*

57. The *Children, Young Persons and Their Families Act 1997* (Tas) provides a general definition of risk used for the reporting (both voluntary and mandatory) of those children at risk of abuse or neglect. Such reports are assessed by Children and Family Services staff to determine the most appropriate response. Such responses can range from the provision of support to assist children, young people and their families through to statutory intervention

by Child Protection Services. In cases where the abuse is of a criminal nature (e.g. child prostitution) the matter is referred to Tasmania Police, who then lead the investigation of the alleged offence, while Children and Family Services take carriage of the care and protection concerns for the young person involved.

#### *ACT*

58. Under the *Prostitution Act 1992* (ACT), police conduct random checks of licensed brothels within the ACT to ensure that children are not working within these premises. ACT Policing media team, in conjunction with investigators from the Sexual Assault and Child Abuse Team produce media releases on operations and arrests relating to child pornography to educate the community and deter further offences being committed.

### **Protection of the rights of victims**

#### *Western Australia*

59. The *Children and Community Services Act 2004* (WA) contains a general principle of child participation in relation to decisions made under that Act which are likely to have a significant impact on a child's life.

69. The rights of all victims are outlined in the *Criminal Investigation Act 2006* (WA). In the case of a child of tender age, this information is passed on to the responsible parent or other legal guardian.

61. The *Children's Court of Western Australia Act 1988* (WA) provides that neither the identity of a child, nor any other information which may lead to the identification of the child, is to be disclosed. Child interviews are not disclosed in criminal matters.

62. The Child Witness Service provides support services to all children under the age of 18 years throughout the legal process. These services include:

- Provision of information regarding their rights, progress of proceedings and the disposition of the case
- Practical and emotional preparation regarding their role in the proceedings and support to provide their evidence by close circuit television
- A safe, secure location from which to give their evidence outside the courtroom to protect their privacy
- Support to write a victim impact statement
- Assessment of the child's needs and liaison with the Office of the Director of Public Prosecutions to ensure the child's needs and rights are considered in the proceedings

#### *Tasmania*

63. The *Evidence (Children and Special Witnesses) Act 2001* (Tas) provides rights and protections for child victims including protecting the privacy and identity of child victims.

64. As part of the sentencing process, Victim Impact Statements may be presented to the court prior to sentencing.

65. Victim Crime Units are set up within each of the Tasmania Police CIB offices. Personnel in these units are specifically trained to deal with child victims and have appropriate procedures and processes in place. Victim Support Services within the Department of Justice provides a range of support services for victims of crime including child victims.

*South Australia*

66. The *Victims of Crime Act 2001* (SA) makes comprehensive provision for the rights of all victims, including children, to information about their role in the case. The courts have the power to suppress the publication of evidence where publication could cause hardship to a child, whether the child is a victim of an offence, a witness or otherwise involved.

67. Victims of crime are entitled to make witness impact statements before an offender is sentenced. Victims of crime who suffer physical or mental injury may also claim compensation and, in this process, can submit evidence to the court about how the offence has affected their lives.

68. The Witness Assistance Service of the Office of the Director of Public Prosecutions provides a service to ensure that all victims of crime and their immediate family have access to information and support services, and are aware of their rights and responsibilities when dealing with the criminal justice system.

69. The *Evidence Act 1929* (SA) also permits the child to be accompanied in court by a companion and to testify by CCTV or using a screen.

*Queensland*

70. Queensland's overarching legislation in this area is the *Criminal Offence Victims Act 1995* (COVA). The COVA has a twofold objective – to improve the delivery of justice to victims of crime, and to provide for an improved system for the determination and payment of criminal compensation for victims of violent crime.

71. The COVA requires that child victims be informed of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases.

72. In relation to victims of crime, the Queensland Police Service seeks to ensure that members of the community whose lives are affected, either directly or indirectly, by criminal activity are afforded due consideration to assist them in overcoming the effects of physical or psychological injury and trauma and financial disadvantage. The QPS has implemented a comprehensive range of policies with respect to the rights of victims of crime, including children, to assist in safeguarding their dignity through the provision of just, considerate and informed attention to victims in the application of the law.

73. The *Criminal Law (Sexual Offenders) Act 1978* (Qld) prohibits the publication of identifying particulars of a complainant (including child complainants) in a matter involving offences of a sexual nature.

*NT*

74. The *Care and Protection of Children Act 2007* (NT) is designed to ensure children's right to be heard and to participate in decisions affecting them and to be kept informed of decisions taken regarding their placement away from the family. There are a range of other provisions which ensure children are kept informed and their views are taken into account when decisions are taken.

75. The Act makes it an offence to disclose a child's identity when they have been in the care of the State, where statutory child protection has been taken and/or they are in any way involved in a sexual offence (as victim or otherwise involved).



## ACT

76. ACT law makes comprehensive provision for the victims of crime, based on the principles that are set out in the United Nations Declaration of Basic Principles of Justice for Victims of Crime.

77. The *Victims of Crime Act 1994* (ACT) outlines that in the administration of justice, the following principles are to, as far as practicable and appropriate, govern the treatment of victims:

(a) A victim should be dealt with at all times in a sympathetic, constructive and reassuring way and with appropriate regard to his or her personal situation, rights and dignity;

(b) A victim should be told at reasonable intervals (generally not more than 1 month) of the progress of police investigations about the relevant offence, except if the disclosure might jeopardise the investigation, and, in that case, the victim should be told accordingly;

(c) A victim should be told about the charges laid against the accused and of any modification of the charges;

(d) A victim should be told about any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;

(e) A victim should be told about any decision not to proceed with a charge against the accused;

(f) If any victim's property is held by the Territory for the purposes of investigation or evidence – inconvenience to the victim should be minimised and the property returned promptly;

(g) A victim should be told about the trial process and of the rights and responsibilities of witnesses;

(h) A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;

(i) A victim's residential address should be withheld unless the court directs otherwise;

(j) A victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the victim to appear;

(k) A victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;

(l) A victim who is known to have expressed concern about the need for protection from an offender should be told about the offender's impending release from custody.

## NSW

78. Under section 105 of the NSW *Children and Young Persons (Care and Protection) Act 1998* the publication or broadcasting of names of children or young persons the subject of a report or involved in care proceedings is prohibited, with some exceptions. In instances where a child victim of pornography, prostitution and/or sale/trafficking is referred to the Department of Community Services, the Children and Young Persons (Care and Protection) Act allows for the participation of children and young persons in decisions which will have a significant impact on their lives.

*Victoria*

79. Victorian law contains measures to inform child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases. These include protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims.

80. The law attempts to minimise further trauma experienced by children who are the victims of sexual offences by making it easier for them to give evidence in criminal proceedings. It provides for:

- Remote facilities for giving evidence away from the court room and the accused
- A right for a child witness to have a support person with them when giving evidence
- Protection from confusing and harassing questioning
- A prohibition against self-represented accused persons from personally cross-examining a victim
- Strict guidelines for judges when giving warnings to juries where there has been a delay in reporting a sexual assault

## Annex 2

### Legislation and administrative arrangements

#### *Commonwealth*

Crimes Act 1914

Criminal Code Act 1995 Divisions 270 and 271

Extradition Act 1988

Extradition (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography) Regulations 2006

Migration Act 1958

Mutual Assistance in Criminal Matters Act 1987

Proceeds of Crime Act 2002

#### *Western Australia*

Adoption Act 1994

Children and Community Services Act 2004

Children's Court of Western Australia Act 1988

Classification (Publications, Films and Computer Games) Enforcement Act 1996

Commissioner for Children and Young People Act 2006

Community Protection (Offender Reporting) Act 2004

Criminal Code Act Compilation Act 1913

Criminal Investigation Act 2006

Family Court Act 1997

Prisoners (International Transfer) Act 2000

Prisons Act 1981

Prostitution Act 2000

Sentence Administration Act 2003

Victims of Crime Act 1994

Working with Children (Criminal Record Checking) Act 2004

#### *Tasmania*

Children, Young Persons and Their Families Act 1997

Classification (Publications, Films and Computer Games) Enforcement Act 1995

Community Protection (Offender Reporting) Act 2005

Criminal Code Act 1924

Police Offences Act 1935

Sex Industry Act 2005

*South Australia*

Adoption Act 1988

Criminal Law Consolidation Act 1935

*Australian Capital Territory*

Adoption Act 1993

Bail Act 1992

Children and Young People Act 1999

Confiscation of Criminal Assets Act 2003

Crimes Act 1900

Crimes (Child Sex Offenders) Act 2005

Crimes (Sentencing) Act 2005

Criminal Code 2002

Evidence Act 1971

Evidence (Miscellaneous Provisions) Act 1991

Human Rights Act 2004

Legislation Act 2001

Witness Protection Act 1996

Transplantation and Anatomy Act 1978

Victims of Crime (Financial Assistance) Act 1983

Victims of Crime Act 1994

Witness Protection Act 1996

*NSW*

Adoption Act 2000

Children and Young Persons (Care and Protection) Act 1998

Child Protection (Offenders Registration) Act 2000

Children (Criminal Proceedings) Act 1987

Commission for Children and Young People Act 1998

Crimes Act 1900

Criminal Procedure Act 1986

Victims Rights Act 1996

*Victoria*

Crimes Act 1958

Classification (Publications, Film and Computer Games) (Enforcement) Act 1995

Prostitution Control Act 1994

Judicial Proceedings Reports Act 1958

Children Youth and Families Act 2005

## Annex 3

**Criminal offences**

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
<b>Western Australia</b>		
<i>Children and Community Services Act 2004</i>		
S192	Prohibition on employment of child to perform in indecent manner	10 years
<i>Prostitution Act 2000</i>		
S15	Acting as a prostitute for a child	9 months
S16	Causing, permitting or seeking to induce child to act as prostitute	14 years
S17	Obtaining payment for prostitution by a child	14 years
S18	Agreement for prostitution by a child	14 years
S19	Child not to seek services of a prostitute	\$6,000
S20	Prostitution at place where child present	1st offence – \$25,000; Subsequent offence, 2 years
S21	Allowing child to be at place involving prostitution	1st offence – \$25,000; Subsequent offence, 2 years
<i>Classification (Publications, Films and Video Games) Act 1996</i>		
S60(1)	Child pornography – supply or possession with intent to supply	7 years
S60(2)	Child pornography – publication	5 years
S60(3)	Child pornography – exhibition	5 years
S60(4)	Child pornography – mere possession (exceptions exist for police investigators and legal counsel)	5 years
S99	Child pornography is classed as ‘objectionable material’ – other pornography is generally classed as ‘restricted material’	
S101	Transmitting, obtaining, demonstrating, advertising or requesting objectionable material	\$15,000 or 18 months
S102	Transmitting or making restricted material available to a minor	\$5,000

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
<i>Community Protection (Offender Reporting) Act 2004</i>		
S52; Sch 2	Child pornography offences are reportable and a convict must comply with reporting requirements for 15 years (life for two or more offences)	
<i>Working with Children (Criminal Record Checking) Act 2004</i>		
S12	CEO of Department for Child Protection must approve anyone convicted of a child pornography offence working with children	
<i>WA Criminal Code (Schedule to Criminal Code Act Compilation Act 1913)</i>		
S557K(4)	Consorting with other child sex offender(s)	\$24,000 or 2 years
S557K(6)	Lurking near school or other public place where children are regularly present	\$24,000 or 2 years
<b>Tasmania</b>		
<i>Criminal Code Act 1924</i>		
S125C	Procuring unlawful sexual intercourse with person under 17 years, &c.	21 years (maximum)
S125D	Communications with intent to procure person under 17 years, &c.	21 years
S130	Involving person under 18 years in production of child exploitation material	21 years
S130A	Production of child exploitation material	21 years
S130B	Distribution of child exploitation material	21 years
S130C	Possession of child exploitation material	21 years
S130D	Accessing child exploitation material	21 years
S130F	(Court may order) forfeiture of child exploitation material, &c.	
<i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>		
S72A	Offence to make or reproduce child exploitation material	300PU or 3 years or both
S73	Offence to procure child to be involved in making child exploitation material	300PU or 3 years or both
S73A	Offence to distribute child exploitation material	300PU or 3 years or both
S74A	Possession of child exploitation material	200PU or 2 years or both
S74B	Defences include wrong classification and legitimate purpose	
<i>Police Offences Act 1935</i>		
S13A	Observation or recording in breach of privacy	50PU or 12 months or both

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
S13B	Publishing or distributing prohibited visual recording	50PU or 12 months or both
S13C	Possession of prohibited visual recording	50PU or 12 months or both
<b>Queensland</b>		
<i>Criminal Code 1899</i>		
S208	Unlawful sodomy	14 years (maximum), or life if victim is under 12, or under 18 and descended from perpetrator or in perpetrator's care
S209	Attempted sodomy	7 years/12 years
S210	Indecent treatment of children under 16	14 years/20 years
S213	Owner etc. permitting abuse of children on premises	10 years/14 years/Life (depending on type of abuse)
S215	Carnal knowledge with or of children under 16	14 years/life
S217	Procuring young person etc. for carnal knowledge	14 years
S218	Procuring sexual acts by coercion etc.	14 years
S218A	Using Internet etc. to procure children under 16	5 years/10 years
S219	Taking child for immoral purposes	10 years/14 years/Life
S221	Conspiracy to defile	10 years
S228A	Involving child in making child exploitation material	10 years
S228B	Making child exploitation material	10 years
S228C	Distributing child exploitation material	10 years
S228D	Possessing child exploitation material	5 years
S229B	Maintaining a sexual relationship with a child	Life
S229G	Procuring prostitution (of child or intellectually disabled person)	14 years
S229H	Knowingly participating in provision of prostitution	14 years
S229I	Persons found in places reasonably suspected of being used for prostitution etc.	14 years



<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
S229K	Having an interest in premises used for the purposes of prostitution etc.	14 years
S229L	Permitting young person etc. to be at place used for prostitution	14 years
<i>Classification of Computer Games and Images Act 1995</i>		
S24	Sale of objectionable computer game prohibited	60PU or 6 months
S26	Possession of objectionable computer game	60PU or 6 months (harsher penalties apply if you demonstrate game in public or if it contains child abuse material)
S27	Making objectionable computer game	250PU or 2 years (1000PU or 5 years if it involves child abuse)
<b>South Australia</b>		
<i>Criminal Law Consolidated Act 1935</i>		
S58	Acts of gross indecency (involving child under 16)	3 years for first offence
S63	Production or dissemination of child pornography	10 years/12 years (aggravated)
S63A	Possession of child pornography	5 years/7 years
S63B	Procuring child to commit indecent act etc.	10 years/12 years
S66	Sexual servitude and related offences	Life (if you compel a child under 14 into providing sexual services), 19 years if victim aged 14–18
S67	Deceptive recruiting for commercial sexual services	12 years (child victim)
S68	Use of children in commercial sexual services	Life (if victim under 14), otherwise 9 years. Lesser penalties depending on degree of involvement
<i>Evidence Act 1929</i>		
S69A	Court may make suppression orders to prevent undue hardship to children	

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
<b>ACT</b>		
<i>Adoption Act 1993</i>		
S94	Payment in Consideration of adoptions	500PU/5 years/both
S95	Unauthorised arrangements for adoption	200PU/2 years/both
S96	Unauthorised advertising	50PU/6 months/both
S100	Presenting consent obtained by fraud etc.	500PU/5 years/both
<i>Children and Young People Act 1999</i>		
S369	Employment of children and young people in certain businesses etc.	100 PU, 1 years imprisonment, or both
S370	Employment of young children	50 PU, 6 months imprisonment, or both
S374(4)	Dangerous employment	200 PU, 2 years imprisonment, or both
S376	Duty of employers of children and young people	50 PU
<i>Criminal Code 2002</i>		
S622	Supplying controlled drug to child for selling	Commercial quantity: Imprisonment for life. Other quantity: 2500 PU, 25 years imprisonment or both
S624	Procuring child to traffic in controlled drug	Commercial quantity: Imprisonment for life. Other quantity: 2500 PU, 25 years imprisonment or both
S625	Supplying controlled drug to child	500/1000/2000PU, imprisonment 5/10/25 years, or both
<i>Crimes Act 1900</i>		
S37	Abduction of young person	5 years
S38	Kidnapping	With grievous bodily harm: 20 years. Other case: 15 years
S39	Neglect etc. of children	Neglect: 100/200 PU, 1/2 years or both
S40	Unlawfully taking child	10 years
S55	Sexual intercourse with young person	14/17 years

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
S56	Maintaining a sexual relationship with a young person	7 years imprisonment (can be extended where other offences involved)
S61	Acts of indecency with young people	10/12 years
S63	Abduction	10 years
S64	Using child for production of child pornography etc.	1000/1500 PU, 10/15 years or both
S64A	Trading in child pornography	1200 PU/12 years
S65	Possessing child pornography	500 PU/5 years
S66	Using the Internet to deprave young people	Make available pornographic material: 100 PU, 5 years
S74	Prohibition of female genital mutilation	15 years
S75	Removal of child from ACT for genital mutilation	7 years
S79	Sexual servitude offences	Aggravated: 19 years. Other case: 15 years
S80	Deceptive recruiting for sexual services	Aggravated: 9 years. Other case: 15 years
S81	Increased penalty for aggravated offences	
<i>Prostitution Act 1992</i>		
S19(2)	Soliciting	3 years
S20	Causing child to provide commercial sexual services etc.	Age < 12 years: 1500 PU, 15 years or both. Age >12 years: 1000 PU/10 years
S21	Proceeds of child prostitution	7 years
S23	Child on premises	20 PU
<i>Transplantation &amp; Anatomy Act 1978</i>		
S44	Certain contracts not to be entered into	50 PU
<b>Victoria</b>		
<i>Crimes Act 1958</i>		
S49A	Facilitating sexual offences against children	20 years (15 for an attempt)
S54	Occupier etc. permitting unlawful sexual penetration	15 years (victim under 13)/10 years (victim between 13 and 17)
S56	Abduction of child under the age of 16	5 years

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
S57	Procuring sexual penetration by threats or fraud	10 years (threats)/5 years (fraud)
S58	Procuring sexual penetration of a child	10 years
S60AB	Sexual servitude (forcing someone into sexual servitude or being involved in such coercion)	15 years
S60AC	Aggravated sexual servitude (against minor under 18)	20 years
S60AD	Deceptive recruiting for commercial sexual services	5 years
S60AE	Aggravated deceptive recruiting for commercial sexual services	10 years
S68	Production of child pornography	10 years
S69	Procurement of a minor for child pornography	10 years
S70	Possession of child pornography	5 years
S70AC	Sexual performances involving a child	10 years
<i>Classification (Publications, Film and Computer Games) (Enforcement) Act 1995</i>		
S57A	Publication or transmission of child pornography	10 years
<i>Prostitution Control Act 1994</i>		
S5	Causing or inducing a child (under 18) to take part in prostitution	10 years
S6	Obtaining payment for sexual services provided by a child	15 years
S7	Agreement for provision of sexual services by a child	15 years
S11	Allowing child to take part in prostitution	10 years
<b>NSW</b>		
<i>Crimes Act 1900</i>		
S91D	Promoting/Engaging in act of child prostitution	14 years (victim under 14)/10 years
S91E	Obtain benefit from child prostitution	10 years
S91F	Premises not to be used for child prostitution	7 years
S91G(1)	Child under 14 not to be used for pornographic purposes	14 years

<i>Provision</i>	<i>Offence/prohibition</i>	<i>Penalty</i>
S91G(2)	Child over 14 not to be used for pornographic purposes	10 years
S91H(2)	Production/Dissemination of child pornography	10 years
S91H(3)	Possession of child pornography	5 years
<i>Child Protection (Offenders Registration) Act 2000</i>		
S4	Notice to be given when a person is convicted of a registrable child sex offence	
S10	Registrable person must report annually	
S11	Registrable person must report changes to relevant personal information	
S17	Offence of failing to comply with reporting obligations	100PU/2 years
<i>Adoption Act 2000</i>		
S177	Payments for NSW adoptions or intercountry adoptions and adoption services (other than authorised payments)	25PU/12 months/both
S178	Unauthorised advertising	25PU/12 months
S179	Making available or supplying prohibited adoption advertising on on-line service	25PU/12 months
S181	False statements	25PU/12 months
S183	Presenting forged consent or other document	25PU/12 months
S184	Undue influence	25PU/12 months
S185	Improper witnessing of consent	25PU/12 months

*Notes:*

<sup>1</sup> The terms of imprisonment referred to above are maximums – Australian legislation rarely provides for minimum sentences.

<sup>2</sup> PU means Penalty Unit, which is an amount of money varying from state to state.

<sup>3</sup> All states have separate provisions for those who aid, abet, counsel or procure the indictable offences listed above, usually allowing them to be tried as the principal offender but with less severe maximum penalties.