

2004

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Criminal Code Amendment (Trafficking
in Persons Offences) Bill 2004**

No. , 2004

(Justice and Customs)

**A Bill for an Act to amend the *Criminal Code Act
1995* to provide for offences relating to trafficking
in persons, and for related purposes**

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1 **A Bill for an Act to amend the *Criminal Code Act***
2 ***1995 to provide for offences relating to trafficking***
3 ***in persons, and for related purposes***

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Criminal Code Amendment*
7 *(Trafficking in Persons Offences) Act 2004*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Amendments relating to**
3 **deceptive recruiting, trafficking in**
4 **persons and debt bondage**
5

6 *Criminal Code Act 1995*

7 **1 Subsection 73.2(2) of the *Criminal Code***

8 Repeal the subsection.

9 **2 Subsection 73.6(2) of the *Criminal Code***

10 Repeal the subsection.

11 **3 Subsection 270.4(2) of the *Criminal Code* (definition of**
12 ***sexual service*)**

13 Repeal the definition.

14 **4 Section 270.5 of the *Criminal Code***

15 Repeal the section, substitute:

16 **270.5 Jurisdictional requirement**

17 Section 15.2 (extended geographical jurisdiction—category B)
18 applies to an offence against section 270.6 or 270.7.

19 **5 Subsection 270.6(1) of the *Criminal Code* (penalty)**

20 Omit “19 years”, substitute “20 years”.

21 **6 Subsection 270.6(2) of the *Criminal Code* (penalty)**

22 Omit “19 years”, substitute “20 years”.

23 **7 Subsection 270.7(1) of the *Criminal Code***

24 Repeal the subsection, substitute:

- 25 (1) A person who, with the intention of inducing another person to
26 enter into an engagement to provide sexual services, deceives that
27 other person about:

Schedule 1 Amendments relating to deceptive recruiting, trafficking in persons and debt bondage

- 1 (a) the fact that the engagement will involve the provision of
2 sexual services; or
3 (b) the extent to which the person will be free to leave the place
4 or area where the person provides sexual services; or
5 (c) the extent to which the person will be free to cease providing
6 sexual services; or
7 (d) the extent to which the person will be free to leave his or her
8 place of residence; or
9 (e) the fact that the engagement will involve exploitation, debt
10 bondage or the confiscation of the person's travel or identity
11 documents;
12 is guilty of an offence.
- 13 **Penalty:**
- 14 (a) in the case of an aggravated offence (see section 270.8)—
15 imprisonment for 9 years; or
16 (b) in any other case—imprisonment for 7 years.
- 17 (1A) In determining, for the purposes of any proceedings for an offence
18 against subsection (1), whether a person has been deceived about
19 any matter referred to in paragraph (1)(a), (b), (c), (d) or (e), a
20 court, or if the trial is before a jury, the jury, may treat any of the
21 following matters as admissible evidence:
- 22 (a) the economic relationship between the person and the alleged
23 offender;
24 (b) the terms of any written or oral contract or agreement
25 between the person and the alleged offender;
26 (c) the personal circumstances of the person, including but not
27 limited to:
28 (i) whether the person is entitled to be in Australia under
29 the *Migration Act 1958*; and
30 (ii) the person's ability to speak, write and understand
31 English; and
32 (iii) the extent of the person's social and physical
33 dependence on the alleged offender.
- 34 (1B) Subsection (1A) does not:
- 35 (a) prevent the leading of any other evidence in proceedings for
36 an offence against subsection (1); or

1 (b) limit the manner in which evidence may be adduced or the
2 admissibility of evidence.

3 **8 Sections 270.10 and 270.11 of the *Criminal Code***

4 Repeal the sections.

5 **9 At the end of Chapter 8 of the *Criminal Code***

6 Add:

7 **Division 271—Trafficking in persons and debt bondage**

8 **Subdivision A—Definitions**

9 **271.1 Definitions**

10 In this Division:

11 *confiscate*, in relation to a person's travel or identity document,
12 means to take possession of the document, whether permanently or
13 otherwise, to the exclusion of the person, or to destroy the
14 document.

15 *constitutional corporation* means a corporation to which
16 paragraph 51(xx) of the Constitution applies.

17 *deceive* means mislead as to fact (including the intention of any
18 person) or as to law, by words or other conduct.

19 *threat* means:

- 20 (a) a threat of force; or
21 (b) a threat to cause a person's removal from Australia; or
22 (c) a threat of any other detrimental action;
23 unless there are reasonable grounds for the threat of that action.

24 **Subdivision B—Offences relating to trafficking in persons**

25 **271.2 Offence of trafficking in persons**

- 26 (1) A person (the *first person*) commits an offence of trafficking in
27 persons if:
28 (a) the first person organises or facilitates the entry or proposed
29 entry, or the receipt, of another person into Australia; and

- 1 (b) the first person uses force or threats; and
2 (c) that use of force or threats results in the first person obtaining
3 the other person's consent to that entry or proposed entry or
4 to that receipt.

5 Penalty: Imprisonment for 12 years.

- 6 (2) A person (the *first person*) commits an offence of trafficking in
7 persons if:
8 (a) the first person organises or facilitates the entry or proposed
9 entry, or the receipt, of another person into Australia; and
10 (b) the first person deceives the other person about the fact that
11 the other person's entry or proposed entry, the other person's
12 receipt or any arrangements for the other person's stay in
13 Australia, will involve the provision of sexual services,
14 exploitation, debt bondage or the confiscation of the other
15 person's travel or identity documents.

16 Penalty: Imprisonment for 12 years.

- 17 (3) Absolute liability applies to paragraph (1)(c).

18 **271.3 Aggravated offence of trafficking in persons**

- 19 (1) A person (the *first person*) commits an aggravated offence of
20 trafficking in persons if the first person commits the offence of
21 trafficking in persons in relation to another person (the *victim*) and
22 any of the following applies:
23 (a) the first person commits the offence intending that the victim
24 will be exploited, either by the first person or another, after
25 entry into Australia;
26 (b) the first person, in committing the offence, subjects the
27 victim to cruel, inhuman or degrading treatment;
28 (c) the first person, in committing the offence:
29 (i) engages in conduct that gives rise to a danger of death
30 or serious harm to the victim; and
31 (ii) is reckless as to that danger.

32 Penalty: Imprisonment for 20 years.

- 33 (2) If, on a trial for an offence against this section, the court, or if the
34 trial is before a jury, the jury, is not satisfied that the defendant is

1 guilty of the aggravated offence, but is satisfied that he or she is
2 guilty of an offence against section 271.2, it may find the
3 defendant not guilty of the aggravated offence but guilty of an
4 offence against that section.

5 **271.4 Offence of trafficking in children**

6 A person (the *first person*) commits an offence of trafficking in
7 children if:

- 8 (a) the first person organises or facilitates the entry or proposed
9 entry into Australia, or the receipt in Australia, of another
10 person; and
11 (b) the other person is under the age of 18; and
12 (c) in organising or facilitating that entry or proposed entry, or
13 that receipt, the first person:
14 (i) intends that the other person will be used to provide
15 sexual services or will be otherwise exploited, either by
16 the first person or another, after that entry or receipt; or
17 (ii) is reckless as to whether the other person will be used to
18 provide sexual services or will be otherwise exploited,
19 either by the first person or another, after that entry or
20 receipt.

21 Penalty: Imprisonment for 20 years.

22 **271.5 Offence of domestic trafficking in persons**

23 (1) A person (the *first person*) commits an offence of domestic
24 trafficking in persons if:

- 25 (a) the first person organises or facilitates the transportation of
26 another person from one place in Australia to another place
27 in Australia; and
28 (b) the first person uses force or threats; and
29 (c) that use of force or threats results in the first person obtaining
30 the other person's consent to that transportation.

31 Penalty: Imprisonment for 12 years.

32 (2) A person (the *first person*) commits an offence of domestic
33 trafficking in persons if:

- 1 (a) the first person organises or facilitates the transportation of
2 another person from one place in Australia to another place
3 in Australia; and
4 (b) the first person deceives the other person about the fact that
5 the transportation, or any arrangements the first person has
6 made for the other person following the transportation, will
7 involve the provision of sexual services, exploitation, debt
8 bondage or the confiscation of the other person's travel or
9 identity documents.

10 Penalty: Imprisonment for 12 years.

- 11 (3) Absolute liability applies to paragraph (1)(c).

12 **271.6 Aggravated offence of domestic trafficking in persons**

- 13 (1) A person (the *first person*) commits an aggravated offence of
14 domestic trafficking in persons if the first person commits the
15 offence of domestic trafficking in persons in relation to another
16 person (the *victim*) and any of the following applies:
17 (a) the first person commits the offence intending that the victim
18 will be exploited, either by the first person or by another,
19 after arrival at the place to which the person has been
20 transported;
21 (b) the first person, in committing the offence, subjects the
22 victim to cruel, inhuman or degrading treatment;
23 (c) the first person, in committing the offence:
24 (i) engages in conduct that gives rise to a danger of death
25 or serious harm to the victim; and
26 (ii) is reckless as to that danger.

27 Penalty: Imprisonment for 20 years.

- 28 (2) If, on a trial for an offence against this section, the court, or if the
29 trial is before a jury, the jury, is not satisfied that the defendant is
30 guilty of the aggravated offence, but is satisfied that he or she is
31 guilty of an offence against section 271.5, it may find the
32 defendant not guilty of the aggravated offence, but guilty of an
33 offence against that section.

1 **271.7 Offence of domestic trafficking in children**

2 A person commits an offence of domestic trafficking in children if:

- 3 (a) the first-mentioned person organises or facilitates the
4 transportation of another person from one place in Australia
5 to another place in Australia; and
6 (b) the other person is under the age of 18; and
7 (c) in organising or facilitating that transportation, the
8 first-mentioned person:
9 (i) intends that the other person will be used to provide
10 sexual services or will be otherwise exploited, either by
11 the first-mentioned person or another, during or
12 following the transportation to that other place; or
13 (ii) is reckless as to whether the other person will be used to
14 provide sexual services or will be otherwise exploited,
15 either by the first-mentioned person or another, during
16 or following the transportation to that other place.

17 Penalty: Imprisonment for 20 years.

18 **Subdivision C—Offences relating to debt bondage**

19 **271.8 Offence of debt bondage**

20 (1) A person commits an offence of debt bondage if:

- 21 (a) the person engages in conduct that causes another person to
22 enter into debt bondage; and
23 (b) the person intends to cause the other person to enter into debt
24 bondage.

25 Penalty: Imprisonment for 12 months.

26 (2) In determining, for the purposes of any proceedings for an offence
27 against subsection (1), whether a person (the *first person*) has
28 caused another person (the *second person*) to enter into debt
29 bondage, a court, or if the trial is before a jury, the jury, may treat
30 any of the following matters as admissible evidence:

- 31 (a) the economic relationship between the first person and the
32 second person;
33 (b) the terms of any written or oral contract or agreement
34 between the first person and the second person;

- 1 (c) the personal circumstances of the second person, including
2 but not limited to:
3 (i) whether the second person is entitled to be in Australia
4 under the *Migration Act 1958*; and
5 (ii) the second person's ability to speak, write and
6 understand English; and
7 (iii) the extent of the second person's social and physical
8 dependence on the first person.
- 9 (3) Subsection (2) does not:
10 (a) prevent the leading of any other evidence in proceedings for
11 an offence against subsection (1); or
12 (b) limit the manner in which evidence may be adduced or the
13 admissibility of evidence.

14 **271.9 Offence of aggravated debt bondage**

- 15 (1) A person commits an offence of aggravated debt bondage if the
16 person commits an offence of debt bondage in relation to another
17 person (the *victim*) and the victim is under 18.
- 18 Penalty: Imprisonment for 2 years.
- 19 (2) In order to prove an offence of aggravated debt bondage, the
20 prosecution must prove that the defendant intended to commit, or
21 was reckless as to committing, the offence against a person under
22 that age.
- 23 (3) If, on a trial for an offence against this section, the court, or if the
24 trial is before a jury, the jury, is not satisfied that the defendant is
25 guilty of the aggravated offence, but is satisfied that he or she is
26 guilty of an offence against section 271.8, it may find the
27 defendant not guilty of the aggravated offence but guilty of an
28 offence against that section.

1 **Subdivision D—General provisions relating to offences under**
2 **this Division**

3 **271.10 Jurisdictional requirement for offences other than offences**
4 **related to domestic trafficking in persons**

5 Section 15.2 (extended geographical jurisdiction—category B)
6 applies to an offence against section 271.2, 271.3, 271.4, 271.8 or
7 271.9.

8 **271.11 Jurisdictional requirement for offences related to domestic**
9 **trafficking in persons**

10 A person commits an offence against section 271.5, 271.6 or 271.7
11 only if one or more of the following paragraphs applies:

- 12 (a) the conduct constituting the offence occurs to any extent
13 outside Australia;
- 14 (b) the conduct constituting the offence involves transportation
15 across State borders, either for reward or in connection with a
16 commercial arrangement;
- 17 (c) the conduct constituting the offence occurs within a Territory
18 or involves transportation to or from a Territory;
- 19 (d) the conduct constituting the offence is engaged in by, or on
20 behalf of, a constitutional corporation, or in circumstances
21 where the victims of the trafficking conduct were intended to
22 be employed by a constitutional corporation;
- 23 (e) some of the conduct constituting the offence is engaged in by
24 communication using a postal, telegraphic or telephonic
25 service within the meaning of paragraph 51(v) of the
26 Constitution;
- 27 (f) the victim of the conduct constituting the offence is an alien
28 for the purposes of paragraph 51(xix) of the Constitution.

29 **271.12 Other laws not excluded**

30 This Division is not intended to exclude or limit the operation of
31 any other law of the Commonwealth or any law of a State or
32 Territory.

1 **271.13 Double jeopardy**

2 If a person has been convicted or acquitted in a country outside
3 Australia of an offence against the law of that country in respect of
4 any conduct, the person cannot be convicted of an offence against
5 this Division in respect of that conduct.

6 **10 Dictionary in the *Criminal Code***

7 Insert:

8 *debt bondage* means the status or condition that arises from a
9 pledge by a person:

- 10 (a) of his or her personal services; or
11 (b) of the personal services of another person under his or her
12 control;

13 as security for a debt owed, or claimed to be owed, (including any
14 debt incurred, or claimed to be incurred, after the pledge is given),
15 by that person if:

- 16 (c) the reasonable value of those services is not applied toward
17 the liquidation of the debt or purported debt; or
18 (d) the length and nature of those services are not respectively
19 limited and defined.

20 **11 Dictionary in the *Criminal Code***

21 Insert:

22 *exploitation*, of one person (the *victim*) by another person (the
23 *exploiter*), occurs if:

- 24 (a) the exploiter's conduct causes the victim to enter into
25 slavery, forced labour or sexual servitude; or
26 (b) the exploiter's conduct causes an organ of the victim to be
27 removed and:

- 28 (i) the removal is contrary to the law of the State or
29 Territory where it is carried out; or
30 (ii) neither the victim nor the victim's legal guardian
31 consented to the removal and it does not meet a medical
32 or therapeutic need of the victim.

33 **12 Dictionary in the *Criminal Code***

34 Insert:

1 *forced labour* is defined in section 73.2.

2 **13 Dictionary in the *Criminal Code***

3 Insert:

4 *identity document* includes any kind of document that may be used
5 to establish the identity of a person in a country under the law or
6 procedures of that country.

7 **14 Dictionary in the *Criminal Code***

8 Insert:

9 *personal service* means any labour or service, including a sexual
10 service, provided by a person.

11 **15 Dictionary in the *Criminal Code***

12 Insert:

13 *sexual service* means the commercial use or display of the body of
14 the person providing the service for the sexual gratification of
15 others.

16 **16 Dictionary in the *Criminal Code***

17 Insert:

18 *travel document* includes any kind of document required, under the
19 law of a country, to enter or leave that country.

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Schedule 2—Amendment of the Telecommunications (Interception) Act 1979

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1 Paragraphs 5D(3A)(a) and (b)

Repeal the paragraphs, substitute:

- (a) section 73.1, 73.2, 73.3, 73.8, 73.9, 73.10 or 73.11; or
- (b) section 270.3, 270.6, 270.7 or 270.8; or
- (c) section 271.2, 271.3, 271.4, 271.5, 271.6 or 271.7;