



Criminal Code Amendment (Trafficking in Persons Offences) Act 2005

No. 96, 2005

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

Note: An electronic version of this Act is available in SCALEplus
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**An Act to amend the *Criminal Code Act 1995* to
provide for offences relating to trafficking in
persons, and for related purposes**

[Assented to 6 July 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Criminal Code Amendment
(Trafficking in Persons Offences) Act 2005*.

2 Commencement

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

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.	6 July 2005
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent.	3 August 2005

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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

Criminal Code Act 1995

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

Repeal the subsection.

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

Repeal the subsection.

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

Repeal the definition.

4 Section 270.5 of the *Criminal Code*

Repeal the section, substitute:

270.5 Jurisdictional requirement

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

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

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

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

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

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

Repeal the subsection, substitute:

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

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

- (a) the fact that the engagement will involve the provision of sexual services; or
 - (aa) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
 - (b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
 - (c) the extent to which the person will be free to cease providing sexual services; or
 - (d) the extent to which the person will be free to leave his or her place of residence; or
 - (da) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
 - (e) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents;
- is guilty of an offence.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
 - (b) in any other case—imprisonment for 7 years.
- (1A) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person has been deceived about any matter referred to in a paragraph of that subsection, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:
- (a) the economic relationship between the person and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the person and the alleged offender;
 - (c) the personal circumstances of the person, including but not limited to:
 - (i) whether the person is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) the person’s ability to speak, write and understand English or the language in which the deception or inducement occurred; and

(iii) the extent of the person's social and physical dependence on the alleged offender.

(1B) Subsection (1A) does not:

- (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
- (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

7A Subsection 270.7(2)

Insert:

deceive has the same meaning as in Division 271.

8 Sections 270.10 and 270.11 of the *Criminal Code*

Repeal the sections.

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

Add:

Division 271—Trafficking in persons and debt bondage

Subdivision A—Definitions

271.1 Definitions

In this Division:

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

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

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

threat means:

- (a) a threat of force; or
- (b) a threat to cause a person's removal from Australia; or

- (c) a threat of any other detrimental action;
unless there are reasonable grounds for the threat of that action.

Subdivision B—Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

- (1) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.

- (1A) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

- (1B) A person (the *first person*) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

- (1C) A person (the *first person*) commits an offence of trafficking in persons if:

- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
- (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

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

Penalty: Imprisonment for 12 years.

- (2A) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) there is an arrangement for the other person to provide sexual services in Australia; and

- (c) the first person deceives the other person about any of the following:
- (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (2C) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) there is an arrangement for the other person to provide sexual services outside Australia; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

(3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

271.3 Aggravated offence of trafficking in persons

- (1) A person (the *first person*) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the *victim*) and any of the following applies:
- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B)—after entry into Australia; and
 - (ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;
 - (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

271.4 Offence of trafficking in children

- (1) A person (the *first person*) commits an offence of trafficking in children if:
- (a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and
 - (b) the other person is under the age of 18; and

- (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

- (2) A person (the *first person*) commits an offence of trafficking in children if:
 - (a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

271.5 Offence of domestic trafficking in persons

- (1) A person (the *first person*) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person uses force or threats; and

- (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) there is an arrangement for the other person to provide sexual services; and
 - (c) the first person deceives the other person about any of the following:

- (i) the nature of the sexual services to be provided;
- (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

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

271.6 Aggravated offence of domestic trafficking in persons

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

Penalty: Imprisonment for 20 years.

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

defendant not guilty of the aggravated offence, but guilty of an offence against that section.

271.7 Offence of domestic trafficking in children

- (1) A person commits an offence of domestic trafficking in children if:
- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

- (2) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

Subdivision C—Offences relating to debt bondage

271.8 Offence of debt bondage

- (1) A person commits an offence of debt bondage if:
- (a) the person engages in conduct that causes another person to enter into debt bondage; and
 - (b) the person intends to cause the other person to enter into debt bondage.

Penalty: Imprisonment for 12 months.

- (2) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person (the *first person*) has

caused another person (the *second person*) to enter into debt bondage, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:

- (a) the economic relationship between the first person and the second person;
- (b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);
- (c) the personal circumstances of the second person, including but not limited to:
 - (i) whether the second person is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) the second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
 - (iii) the extent of the second person's social and physical dependence on the first person.
- (3) Subsection (2) does not:
 - (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
 - (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

271.9 Offence of aggravated debt bondage

- (1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the *victim*) and the victim is under 18.

Penalty: Imprisonment for 2 years.

- (2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.
- (3) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.8, it may find the

defendant not guilty of the aggravated offence but guilty of an offence against that section.

Subdivision D—General provisions relating to offences under this Division

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

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

271.11 Jurisdictional requirement for offences related to domestic trafficking in persons

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

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

271.12 Other laws not excluded

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

271.13 Double jeopardy

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

10 Dictionary in the *Criminal Code*

Insert:

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

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

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

- (ba) the debt owed or claimed to be owed is manifestly excessive; or
- (c) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or
- (d) the length and nature of those services are not respectively limited and defined.

11 Dictionary in the *Criminal Code*

Insert:

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

- (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
- (b) the exploiter's conduct causes an organ of the victim to be removed and:
 - (i) the removal is contrary to the law of the State or Territory where it is carried out; or
 - (ii) neither the victim nor the victim's legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim.

12 Dictionary in the *Criminal Code*

Insert:

forced labour is defined in section 73.2.

13 Dictionary in the *Criminal Code*

Insert:

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

14 Dictionary in the *Criminal Code*

Insert:

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

15 Dictionary in the *Criminal Code*

Insert:

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

16 Dictionary in the *Criminal Code*

Insert:

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

Schedule 2—Consequential amendments

Crimes Act 1914

1 After paragraph 15Y(1)(c)

Insert:

- (caa) an offence against Division 271 of the *Criminal Code* (trafficking in persons, trafficking in children, debt bondage);
- or

2 Paragraph 15Y(1)(e)

After “paragraph (a), (b), (c)”, insert “, (caa)”.

3 Paragraph 15Y(1)(f)

After “paragraph (a), (b), (c)”, insert “(caa)”.

Telecommunications (Interception) Act 1979

4 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;

[Minister’s second reading speech made in—
Senate on 8 December 2004
House of Representatives on 21 June 2005]

(238/04)

