

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CRIMINAL CODE AMENDMENT
(TRAFFICKING IN PERSONS OFFENCES) BILL 2004

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and Customs,

Senator the Honourable Chris Ellison)

**CRIMINAL CODE AMENDMENT
(TRAFFICKING IN PERSONS OFFENCES) BILL 2004**

GENERAL OUTLINE

This Bill amends the *Criminal Code Act 1995* (the *Criminal Code*) and the *Telecommunications (Interception) Act 1979* (the *Telecommunications Interception Act*).

The Bill improves the existing strong federal regime of offences targeting trafficking in persons. The Bill criminalises comprehensively every aspect of trafficking in persons and fulfils Australia's legislative obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*. Passage of this bill, combined with other measures already in place, will permit Australian ratification of this Protocol.

The principal features of the Bill are:

- a significant extension to the existing deceptive recruiting for sexual services offence in section 270.7 of the *Criminal Code*
- an amendment to the penalty for the aggravated sexual servitude offence in section 270.6 of the *Criminal Code* (raising the penalty from 19 years to 20 years imprisonment)
- new offences targeting the trafficking of persons into Australia
- a new offence of trafficking children into Australia
- a new offence of debt bondage
- new domestic trafficking in persons offences where trafficking in persons activity takes place wholly within Australia, and
- amendments to make telephone interception warrants available for the investigation of the new trafficking offences.

FINANCIAL IMPACT STATEMENT

There is no financial impact flowing directly from the offence provisions in this Bill.

NOTES ON CLAUSES

General

Unless otherwise indicated, any reference to a 'section', 'subsection' or 'paragraph' in these notes is a reference to a section, subsection or paragraph in the *Criminal Code Act 1995* (the *Criminal Code*).

Clause 1: Short title

This is a formal clause which provides for the citation of the Bill. This clause provides that the Bill when passed may be cited as the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2004*.

Clause 2: Commencement

This clause set out when the various parts of the Bill commence.

Sections 1 to 3 of the Bill (the short title, the commencement and the schedules provision) and anything in the Bill not covered elsewhere in the table in clause 2 will commence on the day the Bill receives Royal Assent.

Schedules 1 and 2 of the Bill, which insert new offences into the *Criminal Code* and provide that warrants under the *Telecommunications (Interception) Act 1979* are available for the investigation of the new people trafficking offences, commence on the 28th day after the day on which the Bill receives Royal Assent. This will enable the orderly implementation of the measures.

Clause 3: Schedule(s)

This clause makes it clear that the Schedules to the Bill will amend the Acts set out in those Schedules in accordance with the provisions set out in each Schedule.

Schedule 1- Amendment of the Criminal Code Act 1995

Item 1

This item removes the definition of *exploited* from subsection 73.2(2) of the *Criminal Code* so that it can be replaced by the definition of *exploitation* in the Dictionary of the *Criminal Code* (see item 13).

The existing definition of *exploited* in the *Criminal Code* only applies to the extraterritorial people smuggling offences in Division 73. The new definition of *exploitation* inserted in the Dictionary of the *Criminal Code* will apply to all the trafficking in persons offences, including the offences inserted by the Bill.

Item 2

This item repeals the definitions of *travel document* and *identity document* in subsection 73.6(2). Items 15 and 18 of the Bill insert these definitions into the Dictionary of the *Criminal Code*.

The existing definition in the *Criminal Code* only applies to the extraterritorial people smuggling offences in Division 73. The new definition in the Dictionary will also apply to the new trafficking in persons offences.

Item 3

This item repeals the definition of *sexual service* in subsection 270.4(2) of the *Criminal Code*. Item 17 of the Bill inserts an identical definition of *sexual service* into the Dictionary of the *Criminal Code*.

The existing definition in the *Criminal Code* only applies to the offences in Division 270. The new definition of *sexual service* will also apply to the new trafficking in persons offences which are found in Division 271.

Item 4

This item repeals section 270.5 of the *Criminal Code*. Section 270.5 describes the jurisdictional requirements that must be established before a person can commit an offence against section 270.6 or 270.7 of the *Criminal Code*.

Division 270 was enacted before the introduction of Division 15 of the *Criminal Code*. Division 15 provides for 'Extended geographical jurisdiction' for Commonwealth offences, and provides four categories of extended geographical jurisdiction.

Item 4 applies Category B jurisdiction to the offences of sexual servitude and deceptive recruiting for sexual services under sections 270.6 and 270.7. Under Category B jurisdiction, a person commits the offence if:

- the conduct constituting the alleged offence occurs wholly or partly in Australia or on board an Australian aircraft or ship, or
- the conduct occurs wholly outside Australia and a result of the conduct occurs wholly or partly in Australia or on board an Australian aircraft or ship, or
- the conduct occurs wholly outside Australia and the person is an Australian citizen, resident or body corporate incorporated in Australia, or
- the alleged offence is an ancillary offence, the conduct constituting that offence occurs wholly outside Australia and the conduct or a result of the constituting the primary offence (to which the ancillary offence relates) occurs or is intended by the person to occur wholly or partly in Australia or wholly or partly on board an Australian aircraft or ship.

Division 15 was enacted after the enactment of Division 270, so it is now appropriate to determine the geographical reach of the offence with reference to the general principles of the *Criminal Code*. Category B jurisdiction is similar to what was provided for in section 270.5.

Items 5 and 6

These items increase the penalty for the aggravated sexual servitude offence in section 270.6 of the *Criminal Code* from 19 years imprisonment to 20 years imprisonment.

The aggravated sexual servitude offence applies where a person causes a person under the age of 18 to enter into sexual servitude or conducts any business that involves the sexual servitude of a person under the age of 18. The 18 year old threshold accords with the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Trafficking Protocol).

This amendment aligns the penalty for this offence with the penalty for the extraterritorial offence of people smuggling aggravated by exploitation in section 73.2 of the *Criminal Code*.

This amendment also ensures consistency with the penalty that applies to the new offences of trafficking children into Australia (new section 271.2) and trafficking children within Australia (new section 271.4).

Item 7

Existing section 270.7 of the *Criminal Code* makes it an offence for a person to intentionally deceive another person about the fact that their employment or other engagement will involve the provision of sexual services.

The existing offence does not address the situation where a person knows that he or she will be working in the sex industry but is deceived about the exploitative conditions of that employment. This is addressed by new subsection 270.7(1) in item 7, which significantly extends the scope of the offence of deceptive recruiting for sexual services. The amended offence includes deception about the conditions under which sexual services are to be provided.

The new offence covers deception about:

- the extent to which the person will be free to leave the place or area where the person provides sexual services
- the extent to which the person will be free to cease providing sexual services
- the extent to which the person will be free to leave his or her place of residence, and
- the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person's travel or identity documents.

The definition of *trafficking in persons* in Article 3(a) of the Trafficking Protocol identifies deception as one of the 'means' of trafficking in persons. This amendment ensures that Australia's criminal laws are fully compliant with the definition of *trafficking in persons* in the Protocol.

New subsections 270.7(1A) and (1B) in item 7 provide that a court or jury may treat a broad range of information as admissible evidence in proceedings under this section. New subsection 270.7(1A) provides that the court or jury may consider evidence of the economic relationship between the victim and alleged offender, the terms of any contract or agreement and the personal circumstances of the victim (including the person's migration status, ability to speak and understand English, and social and physical dependence on the alleged offender). However, new subsections 270.7(1B) provides that new subsection 270.7(1A) does not provide an exhaustive list. That is, it does not limit the leading of any other evidence, nor does it limit the manner in which evidence may be adduced or the admissibility of evidence under the Commonwealth *Evidence Act 1995* or equivalent State and Territory legislation.

New subsections 270.7(1A) and (1B) are designed to ensure that the court or jury is able to take into account the significant power imbalances between people traffickers and their victims.

The amended offence criminalises activity that is essentially preparatory to sexual servitude and is not designed to capture employment disputes in the context of legalised prostitution. That is, the deceptive recruiting offence will not capture employment disputes in the sex industry where the sex worker disputing the particular contract or arrangement has not been trafficked into Australia.

The amendments to the deceptive recruiting offence in item 7 remain aligned with the original purpose and object of the offence as introduced in 1999 and recognises the fact that the general regulation of prostitution is a matter for the States and Territories.

Item 7 provides for a penalty of 7 years imprisonment or 9 years imprisonment in the case of the aggravated offence in existing subsection 270.8 of the *Criminal Code*. The aggravated offence applies where the victim is under 18 years of age, and the person intended to commit, or was reckless as to committing, the offence against a person under that age.

Item 8

This item is consequential to the amendment in item 4 of the Bill which applies Category B jurisdiction to the offences of sexual servitude and deceptive recruiting for sexual services.

Existing section 270.10 of the *Criminal Code* provides that, in determining whether a person has committed an offence against Division 270, it does not matter whether or not the person is an Australian citizen or resident. Persons who are not Australian citizens or residents are automatically covered by the offences in Division 270 because item 4 applies Category B extended geographical jurisdiction to those offences. Accordingly, section 270.10 is no longer necessary.

Section 16.1 of the *Criminal Code* deals with the Attorney-General's consent for certain prosecutions (where the conduct occurs wholly in a foreign country and the alleged offender is not an Australian citizen, resident or body corporate). Section 16.1 automatically applies to offences which attract Category B jurisdiction. Therefore, section 270.11 is no longer necessary.

Item 9 – Division 271

Item 9 creates new offences of trafficking in persons and debt bondage.

New section 271.1 defines key terms for the purposes of new Division 271. These definitions are not in the Dictionary of the *Criminal Code* because they only apply to the offences in new Division 271.

Confiscate is defined to mean to take possession of a travel or identity document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document. It will be an offence to deceive a person about the fact that their travel or identity documents will be confiscated in the context of the amended deceptive recruiting offence (item 7) and in the context of the offences of trafficking persons into Australia (new section 271.2) and trafficking persons within Australia (new section 271.5).

Constitutional corporation is defined as a corporation to which paragraph 51(xx) of *Commonwealth Of Australia Constitution Act* (the *Constitution*) applies.

Paragraph 51(xx) of the *Constitution* confers on the Australian Government the power to make laws for the peace, order, and good government of the Commonwealth with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

Deceive means mislead as to fact (including the intention of any person) as to law, by words or other conduct. This is similar to the definition of deception in section 133.1 of the *Criminal Code* which applies to the fraudulent conduct offences in Part 7.3 of the *Criminal Code*.

Threat includes a threat of force, a threat to cause a person's removal from Australia or a threat of any other detrimental action unless there are reasonable grounds for the threat of that action.

New section 271.2 creates a new offence of trafficking in persons. This offence targets the transportation of persons to Australia by means of force, threats or deception. Force, threats and deception are three means of trafficking in persons identified in Article 3(a) of the Trafficking Protocol. This offence expands the existing slavery and sexual servitude offences. Whereas the existing offences focus on 'final' exploitation of the person, the new offence includes transporting the person for the purposes of exploitation. This is one of the practices contemplated in the Trafficking Protocol.

New subsection 271.2(1) criminalises organising or facilitating the entry, proposed entry or receipt of another person into Australia by means of force or threats. For example, this new offence would apply to a person who uses force or threats to gain the consent of a trafficking victim to travel to Australia, even where that person is not involved in the final exploitation of that trafficking victim.

New subsection 271.2(3) provides that absolute liability applies to the element of the offence in paragraph 271.2(1)(c). This means that it will not be necessary for the prosecution to prove a fault element for that particular physical element, and that the defence of mistake of fact will not be available to the defence (see section 6.2 of the *Criminal Code*). It will still be necessary to show that the person used force or threats against the person.

This element of the offence does not affect the culpability of the offender, but rather sets the perimeters of the offence. Under the *Criminal Code*, the fault element of 'recklessness' applies to an element of a circumstance unless another fault element is specified. Recklessness requires the person to be aware of a substantial risk, but to engage in the conduct anyway. If the prosecution was required to prove awareness on the part of the defendant that the force or threats would result in the victim's consent, many defendants would be able to evade liability by demonstrating that they did not turn their minds to that issue (despite the fact that they had committed the prohibited

conduct). Therefore, it is necessary only to prove that the person used threats or force, and that those threats or that force in fact resulted in the victim consenting. A penalty of 12 years imprisonment will apply to the new offence in subsection 271.2(1).

New subsection 271.2(2) makes it an offence for a person to organise or facilitate the entry, proposed entry or receipt of another person into Australia where there is deception about the fact that the entry, receipt or arrangements made in Australia will involve the provision of sexual services, exploitation, debt bondage or the confiscation (whether temporary or permanent, or destruction) of the other person's travel or identity documents. For example, this offence would apply to a person who organises for a trafficking victim to go to Australia, and who deceives that trafficking victim about the fact that their passport will be taken from them when they are in Australia.

For the purposes of this offence, it does not matter whether the victim's entry or proposed entry is lawful or unlawful under the *Migration Act 1958 (Migration Act)*. Sections 232A, 233 and 233A of the *Migration Act* deal specifically with bringing groups of non-citizens into Australia. This reflects the distinction between people trafficking and people smuggling. Division 73 of the *Criminal Code* covers people smuggling activity that takes place outside Australia.

A penalty of 12 years imprisonment will apply to the new offence in subsection 271.2(2).

New subsection 271.3(1) creates an aggravated offence of trafficking in persons where the offender commits the offence of trafficking in persons and that person:

- intends that the victim will be exploited, or
- subjects the victim to cruel, inhuman or degrading treatment or
- engages in conduct that gives rise to a danger or death of serious harm to the victim and is reckless as to that danger.

For example, this offence would apply where the offender arranges for the victim to be transported to Australia in a vessel that is so unseaworthy as to give rise to a danger of death or serious harm to the victim. This offence would also cover a situation where a trafficker forces a trafficking victim to have unprotected sexual intercourse, potentially exposing the victim to sexually transmitted diseases.

Under new subsection 271.3(2), if a court or jury decides the aggravated offence has not been proven, but that the lesser offence (new section 271.2) has been proven, the court or jury can deliver a guilty verdict under the lesser offence.

The aggravated offence reflects the aggravated extraterritorial people smuggling offence in section 73.2 of the *Criminal Code*.

A penalty of 20 years imprisonment will apply to the aggravated offence in new section 271.3.

New section 271.4 provides for an offence of trafficking in children.

Article 3(a) of the Trafficking Protocol defines trafficking in persons as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The new trafficking in children offence reflects Article 3(c) of the Trafficking Protocol, which provides that:

the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons, even if it does not involve any of the means set forth in subparagraph (a) of this article.

New section 271.4 applies where a person intentionally organises or facilitates the entry or proposed entry of a person under the age of 18 into Australia, and intends or is reckless as to whether that person will be used to provide sexual services or will be otherwise exploited. A penalty of 20 years imprisonment applies to this offence.

The definition of **Exploitation** that applies to this offence is inserted into the Dictionary of the *Criminal Code* by item 13. Exploitation occurs where the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude, or causes an organ of the victim to be removed without consent by either the victim or the victim's legal guardian, and the organ was not removed for a medical reason. The reference to organ removal mirrors the requirements of the Trafficking Protocol.

Similarly, the definition of **sexual service** for the purposes of this offence is inserted into the Dictionary of the *Criminal Code* by item 17. **Sexual service** is defined as the commercial use or display of the body of the person providing the service for the sexual gratification of others.

New subsection 271.5(1) creates a new offence of domestic trafficking in persons where the trafficking activity occurs wholly within Australia. This new offence complements new section 271.2, and ensures that the offences in new section 271.2 are fully effective.

For example, a people trafficker in a foreign country may organise the entry of a person into Australia for the purposes of subjecting the person to sexual servitude in a brothel. Once the victim has arrived in Australia, a second participant in the trafficking activity may provide accommodation for the victim for a short period and then organise the victim's forced transportation to the specific destination where the

brothel is located. The activity of the second participant would be covered by the offence in new section 271.5.

Implementing offences which cover purely domestic trafficking activity will address the conduct of persons who are not directly involved in organising a trafficking victim's entry into Australia but who facilitate the arrangements to exploit the victim within Australia. These offences will assist in ensuring each and every participant in the 'chain' of exploitation of the victim can be prosecuted for that participation.

Similar to new section 271.4, the domestic trafficking offence applies where:

- the offender uses force or threats to obtain the other person's consent to that transportation, or
- the offender deceives the other person about the fact that the transportation (or any arrangements made for the other person at the arrival destination) will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person's travel or identity documents.

As with the new offence in subsection 271.2(1), absolute liability applies to the element of the offence in paragraph 271.5(1)(c). Therefore, once it has been shown that the use of force or threats resulted in the person obtaining the victim's consent to the transportation, it is not necessary to prove, for example, that the person was aware that the force or threats resulted in that consent.

For Constitutional reasons, the domestic trafficking offences only apply in the situations established in new section 271.11 The Constitutional issues are explained further below. The penalty for this offence is 12 years imprisonment.

New section 271.6 creates the offence of aggravated domestic trafficking in persons. It mirrors the offence of aggravated trafficking in persons in new section 271.3.

New subsection 271.6(1) creates an aggravated offence of domestic trafficking in persons where the offender commits the offence of domestic trafficking in persons and that person:

- intends that the victim will be exploited, or
- subjects the victim to cruel, inhuman or degrading treatment or
- engages in conduct that gives rise to a danger or death of serious harm to the victim and is reckless as to that danger.

Under new subsection 271.6(2), if a court or jury is not convinced that the aggravated offence has been proven, but that the lesser offence (new section 271.5) has been proven, it can deliver a guilty verdict under the lesser offence.

New section 271.7 creates the offence of domestic trafficking in children. It mirrors the section 271.4 offence of trafficking in children.

The penalty for the aggravated domestic trafficking offence and the domestic trafficking in children offence is 20 years imprisonment.

New subsection 271.8(1) creates the offence of debt bondage.

One tactic employed by people traffickers is the use of debt contracts or arrangements. Under these arrangements, the victim is coerced into providing sexual services or other labour to pay off large ‘debts’ supposedly incurred because the trafficker has arranged the victim’s travel to a country or entry into that country or has organised employment and accommodation for the victim following the entry.

New subsection 271.8(1) makes it an offence to engage in conduct that causes and is intended to cause another person to enter into debt bondage. The definition of **debt bondage** is contained in item 10 and is based on the definition adopted in the *Supplementary Convention (to the 1926 International Convention to Suppress the Slave Trade and Slavery) on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery*.

Debt bondage will be defined in the Dictionary as:

The status or condition arising from a pledge by a person of his or her personal services (or of the personal services of a 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:

- the reasonable value of those services is not applied towards the liquidation of the debt or the purported debt, or
- the length and nature of those services are not respectively limited and defined.

The definition refers to a “debt owed or claimed to be owed”. This definition is drafted to ensure that traffickers who invent or grossly inflate debts owed to them by their victims are covered by the offence. For example, where a trafficker claims that his or her victim owes a debt of \$20,000 on the basis that the trafficker booked and paid for the victim’s \$2000 airfare to Australia, the debt “claimed to be owed” will be covered by the offence.

This definition of debt bondage is sufficiently limited to ensure the offence does not inadvertently target legitimate employment arrangements involving the application of services towards the liquidation of the debt and the limitation and definition of the length and nature of the services involved.

The definition of debt bondage is not limited to a debt that exists at the time the pledge is given. The definition is drafted broadly to ensure it captures situations where the debt owed or claimed to be owed increases following the making of the

pledge. This would cover situations where, for example, the perpetrator applies some of the value of the services provided to the liquidation of the debt, but also provides accommodation or other amenities to the victim, effectively increasing the amount of the debt owed. It would also cover the situation where, for example, the perpetrator provides payment to the victim, either in the form of money or some other valuable consideration.

New subsections 270.8(2) and (3) are in similar terms to new subsections 270.7(1A) and (1B). Subsection 270.8(2) provides that a court or jury may treat a broad range of information, including evidence of the economic relationship between the victim and alleged offender, the terms of any contract or agreement and the personal circumstances of the victim as admissible evidence in proceedings under this section. However, new subsections 270.8(3) provides that new subsection 270.8(2) does not limit the leading of any other evidence, nor does it limit the manner in which evidence may be adduced or the admissibility of evidence.

Consistent with new subsections 270.7(1A) and (1B) in the deceptive recruiting offence, new subsections 270.8(2) and (3) are designed to ensure that the court or jury is able to take into account significant power imbalances.

This offence is less serious than the trafficking in persons offences or the sexual servitude or slavery offences. The penalty for this offence is 12 months imprisonment, which enables this offence to be dealt with as a summary offence, reflects the relative seriousness of the offence. The debt bondage offence provides an alternative in cases where it may be difficult to prove the commission of one of the more serious offences. The offence recognises that debt bondage is exploitative in itself and conducive to more significant abuse of individuals by those in a position to exploit them.

New subsection 271.9(1) creates an aggravated debt bondage offence where a person commits the offence of debt bondage against a victim under the age of 18. New subsection 271.9(2) provides that the aggravated offence applies where that person intends or is reckless as to committing the offence against a person under that age.

A penalty of two years imprisonment for the aggravated offence is consistent with the deceptive recruiting for sexual services offence and sexual servitude offence in Division 270 of the *Criminal Code* which provide for higher penalties where the victim is under the age of 18. It is also consistent with the higher penalties for the new offences of trafficking in children into Australia and trafficking children within Australia in new sections 271.4 and 271.7.

Under new subsection 271.9(3), if a court or jury is not convinced that the aggravated offence has been proven, but that the lesser offence (new section 271.8) has been proven, it can deliver a guilty verdict under the lesser offence.

New section 271.10 provides that category B geographical jurisdiction applies to the offences in new sections 271.2, 271.3, 271.4, 271.8 and 271.9.

That is, category B jurisdiction applies to the offences of trafficking persons into Australia, aggravated offences of trafficking persons into Australia and trafficking children into Australia, debt bondage and aggravated debt bondage. Section 15.2 of the *Criminal Code* describes Category B jurisdiction (explained under item 4, above).

New section 271.11 outlines the jurisdictional requirements for the domestic trafficking in persons offences in new sections 271.5, 271.6 and 271.7. These are the offences of domestic trafficking in persons, aggravated domestic trafficking in persons, and domestic trafficking in children.

The domestic trafficking in persons offences apply where:

- the conduct constituting the offence occurs to any extent outside Australia
- the conduct involves transportation across State borders for reward or in connected with a commercial arrangement
- the conduct occurs within a Territory or involves transportation to or from a Territory
- the conduct is engaged in by a constitutional corporation or in circumstances where the victims were intended to be employed by such a corporation
- some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service, or
- the victim of the conduct is an alien.

The Commonwealth's power to legislate in relation to domestic trafficking is limited by section 51 of the *Constitution*. Accordingly, the list of circumstances set out in this section reflects the Australian Government's constitutional power to implement offences that target trafficking in persons activity within Australia.

New section 271.12 clarifies that new Division 271 is not intended to exclude or limit the operation of any other federal law or any State or Territory law. All State and Territory jurisdictions except Queensland and Tasmania have enacted sexual servitude laws.

New section 271.13 provides protection against double jeopardy for all of the offences in new Division 271. This section provides that, if a person has been convicted or acquitted outside Australia for an offence in respect of particular conduct, the person cannot be convicted of an offence against new Division 271 in respect of that particular conduct.

Item 10

This item defines *debt bondage* for the debt bondage offence (this is discussed above, see item 9, new section 271.8).

Item 11

This item inserts the definition of *exploitation* into the Dictionary of the *Criminal Code*.

Exploitation is defined as occurring where the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude. These terms are all defined in the *Criminal Code*.

Exploitation is also defined as occurring where the exploiter's conduct causes an organ of the victim to be removed either where the removal is contrary to the law of the jurisdiction in which the organ is removed, or where neither the victim nor the victim's legal guardian consented to the organ's removal and there was no medical reason for the removal of the organ.

This definition reflects Article 3(a) of the Trafficking Protocol which states:

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Item 12

Item 12 inserts the definition of *forced labour* in section 73.2 of the *Criminal Code* into the Dictionary of the *Criminal Code*.

Forced labour is currently defined in section 73.2 as the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- is not free to cease providing labour or services, or
- is not free to leave the place or area where the person provides labour or services.

Item 13

This item inserts the definition of *identity document* into the Dictionary of the *Criminal Code*. An identity document is defined as 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. For example, a driver's licence would be an identity document.

Item 14

This item inserts a definition of *personal service* into the Dictionary of the *Criminal Code* for the purposes of the debt bondage offence.

Personal service is defined broadly to include any labour or service, including a sexual service, provided by a person.

Item 15

This item inserts the definition of *sexual service* into the Dictionary of the *Criminal Code*. This term means the commercial use or display of the body of the person providing the service for the sexual gratification for others. For example, this definition covers not only an act of prostitution but activities such as stripping (where it takes place in the commercial context for the sexual gratification of others).

Item 16

This item inserts the definition of *travel document* into the Dictionary of the *Criminal Code*. *Travel document* means any kind of document required, under the law of a country, to enter or leave that country. All passports and visas would be covered by this definition.

Schedule 2 – Telecommunications (Interception) Act 1979

Item 1

This item amends the *Telecommunications (Interception) Act 1979* (the *Telecommunications Interception Act*), to ensure that law enforcement agencies, including the Australian Crime Commission and the Australian Federal Police can seek telecommunications interception warrants in connection with the investigation of all the trafficking in persons in a manner consistent with the current interception regime.

Under the *Telecommunications Interception Act*, there are two classes of offences for which telecommunications interception warrants can be obtained. Prior to issuing a telecommunications interception warrant to an agency, an issuing authority must be satisfied of a range of matters, including that there are reasonable grounds for suspecting that a person is using or is likely to use the telecommunications service, and that information that would be likely to assist in the investigation of a class 1 or class 2 offence could be obtained by interception of that service.

Class 1 offences are the most serious Commonwealth offences, and include crimes such as murder and certain terrorism offences. Class 2 offences are also serious offences, and must be punishable by at least 7 years imprisonment. All class 1 offences for the purposes of the *Telecommunications Interception Act* are listed in section 5D of the Act.

For class 2 warrants, the issuing authority must consider a number of additional factors, namely the privacy of the person of interest and the gravity of the alleged conduct constituting the offence.

The existing offences against section 73.2 of the *Criminal Code* (people smuggling aggravated by exploitation) and all the offences in Division 270 (slavery, sexual servitude and deceptive recruiting) are included as ‘class 2’ offences.

This item amends section 5D of the *Telecommunications Interception Act* to ensure the new trafficking in persons offences in Division 271 of the *Criminal Code* (except for the debt bondage offences) and all of the offences in Division 73 of the *Criminal Code* are included as ‘class 2’ offences. The penalty and seriousness of these offences makes them appropriate to be included in the ‘class 2’ category of offences to which telecommunications interception warrants should be available under the *Telecommunications Interception Act*. The classification of the new trafficking offences as class 2 offences will contribute to the effective enforcement of those offences.