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**TRAFFICKING IN PERSONS AND DEBT BONDAGE OFFENCES**  
**Division 271 *Criminal Code* (Cth)**  
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## 1. Introduction

In 2003 the Australian Government announced a \$20 million dollar initiative designed to combat trafficking in persons. A central part of this initiative was a legislative review of Australia's existing anti-trafficking laws in order to identify the necessary changes in law needed to comprehensively criminalise trafficking in persons.<sup>1</sup> The law relevant to trafficking in persons at this time only included slavery, sexual servitude and deceptive recruiting offences (set out in Division 270 *Criminal Code* (Cth))<sup>2</sup> as well as an aggravated people smuggling offence (s 73.2 *Criminal Code* (Cth))<sup>3</sup>. The aggravated people smuggling offence criminalises the smuggling of a person into a foreign country with the intention that the person will be exploited<sup>4</sup> in the foreign country (whether by the first person or another).<sup>5</sup> It was intended that this offence would criminalise 'the type of activity commonly associated with the illegal trafficking in persons'.<sup>6</sup>

In June 2004, the Parliamentary Joint Committee on the Australian Crime Commission released its finding from an *Inquiry into the Trafficking of Women for Sexual Servitude*, noting that the existing offences in the Commonwealth law were 'effective' but that a 'speedy review' of the law and legislative amendments was required.<sup>7</sup> To specifically address the inadequacies of the current offences, the *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004* (Cth) was drafted and referred to the Senate Legal and Constitutional Committee. After an inquiry into the proposed Bill, a report was released detailing a number of recommendations.<sup>8</sup> Following subsequent amendments the Bill was assented to on July 6, 2005. The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth)<sup>9</sup> inserted a new Division 271 entitled 'Trafficking in persons and debt bondage' into the *Criminal Code* (Cth). This Act also significantly extended the scope of the existing deceptive recruiting offence<sup>10</sup> in Division 270 by amending the offence to include deception about the conditions under which sexual services are to be provided.<sup>11</sup>

When the Bill was introduced into the House of Representatives, then Attorney General Mr Philip Ruddock, summarised the purpose of the offences contained in Division 271:

The offences ensure all aspects of trafficking in persons are criminalised in Australia – from the use of deception to recruit a trafficking victim, through to the transportation of a victim to or from Australia by the use of threats, force or deception, through to the receipt and exploitation of the victim.<sup>12</sup>

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<sup>1</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 30 (Philip Ruddock, Attorney-General).

<sup>2</sup> Introduced by *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth).

<sup>3</sup> Introduced by *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* (Cth).

<sup>4</sup> This is defined to include slavery, sexual servitude, forced labour and the removal of organs: see 'exploitation' in the *Criminal Code* (Cth) Dictionary.

<sup>5</sup> *Criminal Code* (Cth) s 73.2.

<sup>6</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 4 December 2002, 9535 (Larry Anthony, Minister for Children and Youth Affairs).

<sup>7</sup> Parliamentary Joint Committee on the Australian Crime Commission, Senate, *Inquiry into the trafficking of women for sexual servitude* (2004) x.

<sup>8</sup> Legal and Constitutional Committee, Senate, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004* (2005).

<sup>9</sup> No 96 of 2005.

<sup>10</sup> *Criminal Code* (Cth) s 270.7.

<sup>11</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004* (Cth) Item 7. See 'Slavery, sexual servitude and deceptive recruiting offences' at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>12</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 31 (Philip Ruddock, Attorney General).

Importantly, the provisions introduced in this Act also allowed Australia to ratify and meet its obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.<sup>13</sup> This Protocol supplements the *United Nations Convention against Transnational Organised Crime*.<sup>14</sup>

To date, there have only been two prosecutions brought under Division 271.<sup>15</sup> The first person to be charged with trafficking in person offences under Division 271 of the *Criminal Code* (Cth) was Yogalingham Rasalingam, an Indian restaurant owner residing in Glenbrook in the Blue Mountains near Sydney. Mr Rasalingam was accused of bringing Anbalagan Rajendran — another man from his home town in southern India — to Australia and forcing him to work seven days a week, sometimes for more than 15 hours a day.<sup>16</sup> Yogalingham Rasalingam was charged with trafficking a person under s 271.2(1B) *Criminal Code* (Cth)<sup>17</sup> and with intentionally exercising control over a slave: s 270.3(1) (d). The jury, however, found him not guilty on both counts.

The second case involved Mr Keith William Dobie, a Gold Coast man who recently pleaded guilty to trafficking charges under the *Criminal Code* (Cth). Mr Dobie is a hairdresser from Broadbeach, Qld, who allegedly started a prostitution racket after his hair salon, KD Concepts in Currumbin, was destroyed by flooding and fire. The prosecution argued that to pay off debt owed to loan sharks for the repairs, Dobie was directly involved in the deceptive recruitment of at least two Thai women, Ms K A and Ms S H, and was possibly preparing to bring more women from Thailand to Australia. Mr Dobie was charged on July 19, 2006 with trafficking in persons, presenting false information to an immigration officer, and dealing in the proceeds of crime.<sup>18</sup> He pleaded guilty to all charges at the Southport District Court on October 20, 2008.<sup>19</sup> During his sentencing hearing in November 2008 he attempted to withdraw his guilty plea, but was sentenced on December 23, 2008 to five years imprisonment with a non-parole period of 22 months. On January 7, 2009, Keith Dobie sought leave to appeal his sentence.

The limited case law thus far has provided little interpretation of the offences in Division 271.

## 2. Offences relating to trafficking in persons

The *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* only requires legislation in relation to transnational activity, however the Act also creates domestic trafficking offences.<sup>20</sup> In terms of trafficking in persons offences, the Act creates:

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<sup>13</sup> Opened for signature 15 December 2000, 2237 UNTS 319, Annex II (entered into force 31 May 2004), (the '*Protocol*'). For more information see [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>14</sup> Opened for signature 15 December 2000, 2225 UNTS 209 (entered into force 29 September 2003), (the '*Convention*').

<sup>15</sup> For detailed case reports see [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>16</sup> Kim Arlington, "Chef told: work like a machine", (11 Oct 2007) *The Daily Telegraph* (Sydney), 13; *Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288.

<sup>17</sup> Facilitating the entry of another person to Australia, being reckless as to the exploitation of that other person: s 271.2(1B) *Criminal Code* (Cth).

<sup>18</sup> "Hairdresser exploited Thai sex workers, say police", *Gold Coast Bulletin* (Gold Coast), 2 Aug 2006, 7; "'Deception' lured sex worker to Australia", *The Courier Mail* (Brisbane), 9 May 2007, 7.

<sup>19</sup> Greg Stolz, "Thais prostituted to pay off debt", *Courier Mail* (Brisbane), 21 October 2008, 5.

<sup>20</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 8.

specific offences where the trafficker transports the victim into or out of Australia by using force, threats or deception. It also creates new trafficking offences that do not specify a means of trafficking but require the perpetrator to be reckless as to whether the victim will be exploited.<sup>21</sup>

Offences relating to trafficking in persons are broken into those that concern transnational trafficking (s 271.2) and those that concern domestic trafficking (s 271.5). Both the transnational and domestic offences, however, are almost identical in terms of their elements. In each case there are four scenarios that, if proved, amount to the commission of a trafficking in person offence. The first scenario is relevant when there has been a use of force or threats to gain compliance.<sup>22</sup> The second scenario deals with recklessness as to whether the other person will be exploited.<sup>23</sup> The third scenario covers situations where there has been deception as to the provision by the other person of sexual services, or exploitation, or debt bondage or the confiscation of travel or identity documents.<sup>24</sup> Finally, the fourth scenario is relevant when there has been deception relating to the nature and extent of sexual services to be provided or the existence or quantum of debt owed.<sup>25</sup>

## 2.1 Section 271.2 Criminal Code (Cth)

Section 271.2 sets out trafficking in persons offences on a transnational level and as such the four core scenarios are divided into eight subsections; this is to separate the activity as occurring either upon exit or entry to Australia. Sections 271.2(1), (1B), 272.2(2) and (2B) cover instances where a person organises or otherwise facilitates the entry, proposed entry or receipt of another person into Australia. Conversely, ss 272.2(1A), (1C), 271.2(2A) and (2C) operate where the offender organises or facilitates the exit or proposed exit of a person from Australia. Each subsection then contains extra elements that need to be proved depending on the scenario that most appropriately fits the trafficking activity being prosecuted.

It is important to note that absolute liability applies to one element of the offence created in s 271.2(1) and (1A) — that the use of threats or force results in the victim consenting to being brought to Australia. Because absolute liability applies to this element the prosecution will not need to prove that the defendant put their mind to the fact that force or threats would result in the victim's consent. Additionally, the defendant will not have a mistake of fact defence in relation to this element of the offence. The *Explanatory Memorandum* explains the use of absolute liability in this way:

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.<sup>26</sup>

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<sup>21</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 30 (Philip Ruddock, Attorney General).

<sup>22</sup> *Criminal Code* (Cth) ss 271.2(1), 271.2(1A), 271.5(1).

<sup>23</sup> *Criminal Code* (Cth) ss 271.2(1B), 271.2(1C), 271.5(2).

<sup>24</sup> *Criminal Code* (Cth) ss 271.2(2), 271.2(2A), 271.5(2A).

<sup>25</sup> *Criminal Code* (Cth) ss 271.2(2B), 271.2(2C), 271.5(2B).

<sup>26</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* Item 9.

S 271.2	Offence of trafficking in persons	
	Physical Elements	Fault Elements
<b>Element common to all subsections</b>	<ul style="list-style-type: none"> <li>The first person organises or facilitates the <i>entry/exit</i> or proposed <i>entry/exit</i>, or the receipt, of another person <i>into/from</i> Australia; <b>AND</b></li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.2(1) and (1A)</b> <i>Threat or force to obtain compliance</i>	<ul style="list-style-type: none"> <li>The first person uses force or threats; <b>AND</b></li> <li>That use of force or threats results in the first person obtaining the other person's compliance in respect of that <i>entry/exit</i> or proposed <i>entry/exit</i> or in respect of that receipt.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Absolute liability</li> </ul>
<b>S 271.2(1B) and (1C)</b> <i>Reckless as to exploitation</i>	<ul style="list-style-type: none"> <li>In organising or facilitating that <i>entry/exit</i> or proposed <i>entry/exit</i>, 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 <i>entry/exit</i> or receipt.</li> </ul>	<ul style="list-style-type: none"> <li>Recklessness</li> </ul>
<b>S 271.2(2) and (2A)</b> <i>Deception about future exploitation or purpose of entry/exit</i>	<ul style="list-style-type: none"> <li>In organising or facilitating that <i>entry/exit</i> or proposed <i>entry/exit</i>, or that receipt, the first person deceives the other person about the fact that the other person's <i>entry/exit</i> or proposed <i>entry/exit</i>, 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.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S271.2(2B) and 2(C)</b> <i>Deception about conditions of arrangement to provide sexual services</i>	<ul style="list-style-type: none"> <li>There is an arrangement for the other person to provide sexual services <i>in/outside</i> Australia; <b>AND</b></li> <li>The first person deceives the other person about any of the following:                             <ul style="list-style-type: none"> <li>The nature of the sexual services to be provided;</li> <li>The extent to which the other person will be free to cease providing sexual services.</li> <li>The extent to which the other person will be free to leave his or her place of residence;</li> <li>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.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Imprisonment for 12 years</li> </ul>	

## 2.2 Section 271.5 Criminal Code (Cth)

The offence of domestic trafficking in persons was created to 'ensure that each and every participant in the "chain" of exploitation of the victim can be prosecuted for that participation'.<sup>27</sup> The offence is largely a mirror version of the transnational equivalent described above. The major difference is that the common element to all subsections refers to the 'transportation of another person from one place in Australia to another place in Australia'. The four scenarios and their elements, however, do not differ.

<sup>27</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 31 (Philip Ruddock, Attorney General).

S 271.5	Offence of domestic trafficking in persons	
	Physical Elements	Fault Elements
<b>Element common to all subsections</b>	<ul style="list-style-type: none"> <li>The first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; <b>AND</b></li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.5(1)</b> <i>Threat or force to obtain compliance</i>	<ul style="list-style-type: none"> <li>The first person uses force or threats; <b>AND</b></li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Absolute liability<sup>28</sup></li> </ul>
<b>S 271.5(2)</b> <i>Reckless as to exploitation</i>	<ul style="list-style-type: none"> <li>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, that transportation.</li> </ul>	<ul style="list-style-type: none"> <li>Recklessness</li> </ul>
<b>S 271.5(2A)</b> <i>Deception about future exploitation or purpose of entry/exit</i>	<ul style="list-style-type: none"> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S271.5(2B)</b> <i>Deception about conditions of arrangement to provide sexual services</i>	<ul style="list-style-type: none"> <li>There is an arrangement for the other person to provide sexual services; <b>AND</b></li> <li>The first person deceives the other person about any of the following:                             <ul style="list-style-type: none"> <li>The nature of the sexual services to be provided;</li> <li>The extent to which the other person will be free to cease providing sexual services.</li> <li>The extent to which the other person will be free to leave his or her place of residence;</li> <li>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.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Imprisonment for 12 years</li> </ul>	

### 2.3 Aggravated offences

Sections 271.3 and 271.6 create an aggravated offence of trafficking in persons (on a transnational and domestic level, respectively) if they intend the victim to be exploited, they subject the victim to cruel, inhuman or degrading treatment or they engage in conduct reckless as to the danger of the victim dying or being seriously harmed. The aggravated offence carries a tougher penalty of 20 years imprisonment and is 'comparable to penalties for kidnapping and serious assault'.<sup>29</sup>

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

<sup>28</sup> See Section 2.2 of this document for an explanation of absolute liability in the context of this element.

<sup>29</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 30 (Philip Ruddock, Attorney-General).

he or she is guilty of the lesser offence, it may find the defendant not guilty of the aggravated offence, but guilty of the lesser offence.<sup>30</sup>

S 271.3	Aggravated offence of trafficking in persons	
	Physical Elements	Fault Elements
<b>Element common to all subsections</b>	<ul style="list-style-type: none"> <li>The first person commits the offence of trafficking in persons in relation to another person (the victim); <b>AND</b></li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.3(1)(a)</b> <i>Intending exploitation</i>	<ul style="list-style-type: none"> <li>The first person commits the offence intending that the victim will be exploited, either by the first person or another:                             <ul style="list-style-type: none"> <li>If the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B) – after entry into Australia; <b>AND</b></li> <li>If the offence of trafficking persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C) – after exit into Australia.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.3(1)(b)</b> <i>Cruel, inhuman or degrading treatment</i>	<ul style="list-style-type: none"> <li>The first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.3(1)(c)</b> <i>Danger of death or serious harm</i>	<ul style="list-style-type: none"> <li>The first person, in committing the offence:                             <ul style="list-style-type: none"> <li>Engages in conduct that gives rise to a danger of death or serious harm to the victim; <b>AND</b></li> <li>Is reckless as to that danger.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Recklessness</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Imprisonment for 20 years</li> </ul>	

S 271.6	Aggravated offence of domestic trafficking in persons	
	Physical Elements	Fault Elements
<b>Element common to all subsections</b>	<ul style="list-style-type: none"> <li>The first person commits the offence of trafficking in persons in relation to another person (the victim): <b>AND</b></li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.6(1)(a)</b> <i>Intending exploitation</i>	<ul style="list-style-type: none"> <li>The first person commits the offence intending that the victim will be exploited, either by the first person or another, after the arrival at the place at which the person has been transported.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.6(1)(b)</b> <i>Cruel, inhuman or degrading treatment</i>	<ul style="list-style-type: none"> <li>The first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> </ul>
<b>S 271.6(1)(c)</b> <i>Danger of death or serious harm</i>	<ul style="list-style-type: none"> <li>The first person, in committing the offence:                             <ul style="list-style-type: none"> <li>Engages in conduct that gives rise to a danger of death or serious harm to the victim; <b>AND</b></li> <li>Is reckless as to that danger.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention</li> <li>Recklessness</li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>Imprisonment for 20 years</li> </ul>	

<sup>30</sup> *Criminal Code (Cth)* ss 271.3(2), 271.6(2).

### 3. Offences relating to trafficking in children

Sections 271.4 and 271.7 create the offences of trafficking in children (on a transnational and domestic level, respectively) where the victim is under 18 years of age and the offender organises the victim’s entry into Australia and intends or is reckless about whether the victim will be used to provide sexual services or otherwise exploited after entering Australia. The maximum penalty for this offence is 25 years imprisonment. The high penalty for these offences is designed to reflect the ‘particularly repugnant nature of trafficking in children’.<sup>31</sup>

S 271.4	Offence of trafficking in children	
Elements	Physical Elements	Fault Elements
	<ul style="list-style-type: none"> <li>The first person organises or facilitates the <i>entry/exit</i> or proposed <i>entry/exit into/from</i> Australia, or the receipt in Australia, of another person; <b>AND</b></li> <li>The other person is under the age of 18; <b>AND</b></li> <li>The first person 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 <i>entry/exit</i> or receipt; <b>OR</b></li> <li>The first person 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 <i>entry/exit</i> or receipt.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention or recklessness</li> <li>Intention</li> <li>Recklessness</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Imprisonment for 25 years</li> </ul>	

Section 271.2 creates the offence of domestic trafficking in children and mirrors the s 271.4 offence of trafficking in children.

S 271.7	Offence of domestic trafficking in children	
Elements	Physical Elements	Fault Elements
	<ul style="list-style-type: none"> <li>The first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; <b>AND</b></li> <li>The other person is under the age of 18; <b>AND</b></li> <li>The first person intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, during or following the transportation to that other place; <b>OR</b></li> <li>The first person 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, during or following the transportation to that other place.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention or recklessness</li> <li>Intention</li> <li>Recklessness</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Imprisonment for 25 years</li> </ul>	

<sup>31</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 30 (Philip Ruddock, Attorney-General).

#### 4. Offences relating to debt bondage

'Debt bondage' is defined as occurring when 'a person pledges his or her services or the services of another person as security for a debt if the reasonable value of those services is not applied to repay the debt or if the length and nature of the services is not defined'.<sup>32</sup> This definition is based on the one 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*.<sup>33</sup> Division 271 inserts an offence of debt bondage (s 271.8) and an aggravated offence of debt bondage (s 271.9).

##### 4.1 Section 271.8 Criminal Code (Cth)

The offence of debt bondage in s 271.8 occurs if a person intentionally causes another person to enter into debt bondage. According to Mr Ruddock, Attorney-General at the time the legislation was introduced, the debt bondage offence

prevents traffickers from using unfair debt contracts and other similar arrangements to force victims into providing sexual services or other labour to pay off large debts supposedly incurred by the trafficker in transporting the victim'.<sup>34</sup>

The offence was, however, designed such that legitimate employment arrangements that are not exploitative or unfair will not be captured by the offence.<sup>35</sup>

The Explanatory Memorandum further explains the purpose of the debt bondage 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.<sup>36</sup>

Admissible evidence in a debt bondage prosecution can include the economic relationship between the parties, the terms of any agreement between them, and the personal circumstances of the alleged victim (including their ability to speak English and the extent of their social and physical dependence on the alleged offender). This offence is considered less serious than the trafficking in persons, sexual servitude and slavery offences. Given this, the penalty is 12 months imprisonment, which enables this offence to be dealt with summarily.<sup>37</sup>

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<sup>32</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 9.

<sup>33</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* Item 9.

<sup>34</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 31 (Philip Ruddock, Attorney General).

<sup>35</sup> Australia (Cth), *Parliamentary Debates*, House of Representatives, 21 June 2005, 31 (Philip Ruddock, Attorney General).

<sup>36</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* Item 9.

<sup>37</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* Item 9.

S 271.8	Offence of debt bondage	
Elements	Physical Elements	Fault Elements
	<ul style="list-style-type: none"> <li>The person engages in conduct that causes another person to enter into debt bondage; <b>AND</b></li> <li>The person intends to cause the other person to enter into debt bondage.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention</li> </ul>
Matters to consider	<ul style="list-style-type: none"> <li>In determining for the purposes of any proceedings for this offence, 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:                             <ul style="list-style-type: none"> <li>The economic relationship between the first person and the second person;</li> <li>The terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);</li> <li>The personal circumstances of the second person, including but not limited to:</li> <li>Whether the second person is entitled to be in Australia under the <i>Migration Act 1958</i>; and</li> <li>The second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and</li> <li>The extent of the second person's social and physical dependence on the first person.</li> </ul> </li> </ul>	
Penalty	<ul style="list-style-type: none"> <li>Imprisonment for 12 months.</li> </ul>	

#### 4.2 Section 271.9 Criminal Code (Cth)

An offence of aggravated debt bondage is found in s 271.9. This offence will occur if the offender commits an offence of debt bondage (s 271.8) and the victim is under 18 years of age. In order for a person to be convicted of this aggravated offence, the prosecution must prove that the defendant intentionally committed or was reckless about committing the offence against a person under the age of 18.<sup>38</sup>

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* (Cth) which provide for higher penalties where the victim is under the age of 18. It is also consistent with the higher penalties for the offences of trafficking in children into Australia and trafficking children within Australia in ss 271.4 and 271.7.

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

S 271.9	Offence of aggravated debt bondage	
Elements	Physical Elements	Fault Elements
	<ul style="list-style-type: none"> <li>The person commits an offence of debt bondage (s 271.8) in relation to another person (the victim).</li> <li>The victim is under 18.</li> </ul>	<ul style="list-style-type: none"> <li>Intention</li> <li>Intention or recklessness</li> </ul>
Penalty	<ul style="list-style-type: none"> <li>Imprisonment for 2 years</li> </ul>	

<sup>38</sup> Explanatory Memorandum, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* Item 9.

## 5. Jurisdictional requirements

Extended geographical jurisdiction (category B) applies to the international trafficking in persons offences (ss 271.2, 271.3, 271.4) as well as the debt bondage offences (ss 271.8-271.9).<sup>39</sup> This means that these offences apply to conduct by Australian citizens or bodies corporate anywhere in the world, subject to a foreign law defence.<sup>40</sup>

For constitutional reasons, the domestic trafficking in person offences (ss 271.5, 271.6 or 271.7) must be tied to specific heads of Commonwealth power.<sup>41</sup> The Act thus provides that the domestic trafficking offences will be activated if any of the conduct occurs outside Australia, the conduct involves transportation across State borders for reward, the conduct occurs within a territory, is engaged in by a constitutional corporation, some of the conduct makes use of a postal, telegraphic or telephonic service, or the victim is an alien.<sup>42</sup> Section 271.12 also states that Division 271 'is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory'. This section is designed to preserve the operation of other relevant Commonwealth, State and Territory laws such as State or Territory sexual servitude laws.<sup>43</sup>

## 6. Definitions

<b>Section 271.1</b>	<b>Confiscate</b> , 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.
<b>Section 271.1</b>	<b>Constitutional corporation</b> , means a corporation to which paragraph 51(xx) of the Constitution applies.
<b>Criminal Code (Cth) Dictionary</b>	<b>Debt bondage</b> means the status or condition that arises from a pledge by a person: <ul style="list-style-type: none"> <li>(a) of his or her personal services; or</li> <li>(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: <ul style="list-style-type: none"> <li>(ba) the debt owed or claimed to be owed is manifestly excessive; or</li> <li>(bc) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or</li> <li>(bd) the length and nature of those services are not respectively limited and defined.</li> </ul> </li> </ul>
<b>Section 271.1</b>	<b>Deceive</b> , means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.
<b>Criminal Code (Cth) Dictionary</b>	<b>Exploitation</b> , of one person (the victim) by another person (the exploiter), occurs if: <ul style="list-style-type: none"> <li>(a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude;</li> <li>(b) the exploiter's conduct causes an organ of the victim to be removed and: <ul style="list-style-type: none"> <li>(i) the removal is contrary to the law of the State or Territory where it is carried out; or</li> <li>(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.</li> </ul> </li> </ul>

<sup>39</sup> Criminal Code (Cth) ss 15.2-15.4.

<sup>40</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 7.

<sup>41</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 7.

<sup>42</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 8.

<sup>43</sup> Bills Digest, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (Cth)* 9. See the separate file on the relevant State/Territory offences at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<b>Section 73.2(3)</b>	<b>Forced labour</b> , means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats: (a) is not free to cease providing labour or services; or (b) is not free to leave the place or area where the person provides labour or services.
<b>Criminal Code (Cth) Dictionary</b>	<b>Identity document</b> 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.
<b>Criminal Code (Cth) Dictionary</b>	<b>Sexual service</b> , means the commercial use or display of the body of the person providing the service for the sexual gratification of others.
<b>Sections 271.4(3) 271.7(2)</b>	<b>Sexual service</b> , means the use or display of the body of the person providing the service for the sexual gratification of others. <i>** This definition applies only to child trafficking offences.</i>
<b>Section 271.1</b>	<b>Threat</b> 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 threat of that action.
<b>Criminal Code (Cth) Dictionary</b>	<b>Travel document</b> includes any kind of document required, under the law of a country, to enter or leave that country.

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